

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

FIVE J'S FAMILY ENTERPRISES L.P., a California Limited Partnership; and Does 1 through 50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ALISSA WHITNEY, an individual, on behalf of herself, and on behalf of all persons similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

NOV 19 2021

BY Sylvia Guajardo
SYLVIA GUAJARDO, DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
San Bernardino Superior Court - Civil Division
247 West Third Street
San Bernardino, CA 92415

CASE NUMBER:
(Número del Caso)
CIV SB 2129063

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. SBN: 248676 Tel: (619) 599-8292 Fax: (619) 599-8291
JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121 Sylvia Guajardo

DATE: **NOV 19 2021** Clerk, by _____, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

(SEAL)

Copy

VIA FAX

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17 ATTORNEYS FOR PLAINTIFF ALISSA WHITNEY

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF SAN BERNARDINO**

20 ALISSA WHITNEY, an individual, on behalf
21 of herself, and on behalf of all persons
22 similarly situated,

23 PLAINTIFF,

24 vs.

25 FIVE J'S FAMILY ENTERPRISES L.P., a
26 California Limited Partnership; and Does 1
27 through 50, Inclusive,

28 DEFENDANTS.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

OCT 12 2021

BY *Sylvia Guajardo*
SYLVIA GUAJARDO, DEPUTY

Case No.: **CIV SB 2129063**

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200, et seq.;
2. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
3. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1182.12, 1194, 1197 & 1197.1;
5. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, et seq.;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. VIOLATIONS OF CALIFORNIA LABOR CODE § 1198 AND CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 11070(14) (FAILURE TO PROVIDE SEATING);

VIA FAX

9. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 *et seq.*]

[JURY TRIAL DEMANDED]

Plaintiff ALISSA WHITNEY (“PLAINTIFF”), individually and on behalf of all those similarly situated, allege on information and belief, except for their own acts and knowledge, the following:

THE PARTIES

1. Defendant FIVE J’S FAMILY ENTERPRISES L.P. (“DEFENDANT” and/or “DEFENDANTS”) is a California limited partnership that at all relevant times relevant mentioned owned and operated numerous McDonald’s® franchise restaurants, throughout Southern California, including in the City of Temecula and County of San Bernardino.

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

3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are jointly and severally liable to PLAINTIFF and those similarly situated, for

1 the loss sustained as a proximate result of the conduct of the DEFENDANTS' agents, servants
2 and/or employees.

3 4. Plaintiff worked for DEFENDANTS from approximately October 7, 2020,
4 through November 20, 2020, as a non-exempt employee, paid on an hourly basis entitled to legally
5 mandated meal and rest periods, minimum wages and overtime compensation.

6 5. PLAINTIFF brings this class action under California Code of Civil Procedure §
7 382 on behalf of herself and a California class, defined as all of DEFENDANTS' current and
8 former non-exempt employees, employed in California (the "CALIFORNIA CLASS") at any time
9 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
10 by the Court ("CLASS PERIOD"). The members of the classes are so numerous that joinder of
11 all class members is impractical. PLAINTIFF reserves the right to amend the following class
12 definitions before the Court determines whether class certification is appropriate, or thereafter
13 upon leave of Court:

14 6. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
15 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
16 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
17 which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant
18 meal and rest periods or an additional hour of pay at the regular rate of compensation in *lieu*
19 thereof in violation of California Labor Code Sections 226.7(c), 512(a) and the applicable
20 Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFF and the
21 CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code
22 Sections 510, 1194, 1197, and 1197.1, and (3) failed to provide accurate itemized wage statements
23 in violation of California Labor Code Sections 226 and 226.3.

24 7. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
25 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
26 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

THE CONDUCT

9. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

A. Meal Period Violations

9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's demanding work requirements and DEFENDANTS' under staffing,

1 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
2 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
3 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
4 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a
5 result, the PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum wage and
6 overtime wages by regularly working without their time being accurately recorded and without
7 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform
8 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS members for all
9 time worked is evidenced by DEFENDANTS' business records.

10 10. From time-to-time during the CLASS PERIOD, because of their rigorous work
11 schedules, DEFENDANTS' inadequate staffing practices, and DEFENDANTS' policy and
12 practice requiring PLAINTIFF and the CALIFORNIA CLASS to remain on DEFENDANTS'
13 premises during meal periods, PLAINTIFF and other CALIFORNIA CLASS members were
14 from time-to-time unable to take thirty (30) minutes duty free meal periods and were not fully
15 relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS members
16 were required from time-to-time to perform work as ordered by DEFENDANTS for more than
17 five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from
18 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second
19 off-duty meal period for some workdays in which these employees were required by
20 DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work
21 performed by the PLAINTIFF and the members of the CALIFORNIA CLASS does not qualify
22 for limited and narrowly construed "on-duty" meal period exception. PLAINTIFF and other
23 members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional
24 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.
25 DEFENDANTS failed to maintain adequate staffing levels while increasing the production
26 levels for each employee.

27 **B. Rest Period Violations**

1 11. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
2 CALIFORNIA CLASS members were also required from time to time to work more than four
3 (4) hours without being provided ten (10) minute rest periods because of their rigorous work
4 schedule, DEFENDANTS' inadequate staffing and DEFENDANTS' policy and practice
5 requiring PLAINTIFF and the CALIFORNIA CLASS to remain on DEFENDANTS' premises
6 during rest periods. Further, for the same reasons these employees were denied their first rest
7 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
8 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked
9 of between six (6) and eight (8) hours from time to time, and a first, second and third rest period
10 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
11 PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-hour
12 wages in lieu thereof. As a result of their rigorous work schedules and DEFENDANTS'
13 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS members were from time to
14 time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

15 **B. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

16 12. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
17 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
18 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required
19 PLAINTIFF and the other members of the CALIFORNIA CLASS to perform work while off-the
20 clock during meal periods. Notwithstanding, from time-to-time DEFENDANTS failed to pay
21 PLAINTIFF and other members of the CALIFORNIA CLASS necessary wages for attending for
22 performing work at DEFENDANTS' direction, request and benefit, while off-the clock during
23 meal periods.

24 13. During the CLASS PERIOD, from time-to-time DEFENDANTS required
25 PLAINTIFF and other members of the CALIFORNIA CLASS to perform mandatory pre-shift
26 health screenings while off-the clock.

27 14. DEFENDANTS directed and directly benefited from the uncompensated off-the-
28 clock work performed by PLAINTIFF and the other members of the CALIFORNIA Class.

1 15. DEFENDANTS controlled the work schedules, duties, protocols, applications,
2 assignments and employment conditions of PLAINTIFF and the other members of the on-Exempt
3 Class.

4 16. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
5 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
6 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
7 wages earned and owed for all the work they performed, including off-the-clock work.

8 17. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
9 exempt employees, subject to the requirements of the California Labor Code.

10 18. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
11 members of the CALIFORNIA CLASS of all minimum, regular and overtime wages owed for
12 the off-the-clock work activities and their required meal periods. Because PLAINTIFF and the
13 other members of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and
14 more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of
15 overtime pay.

16 19. DEFENDANTS knew or should have known that PLAINTIFF and the other
17 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

18 20. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
19 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
20 for the time spent attending required meetings and sales trainings. DEFENDANTS' uniform
21 policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages
22 for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
23 records.

24 **C. Wage Statement Violation**

25 21. California Labor Code Section 226 requires an employer to furnish its employees
26 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
27 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
28 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name

1 of the employee and only the last four digits of the employee's social security number or an
2 employee identification number other than a social security number, (8) the name and address of
3 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
4 period and the corresponding number of hours worked at each hourly rate by the employee.

5 22. From time-to-time during the CLAIM PERIOD, predicated on the conduct
6 described herein, DEFENDANTS issued inaccurate itemized wage statements to PLAINTIFF
7 and the CALIFORNIA CLASS that failed to accurately show (1) gross wages earned, (2) total
8 hours worked, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for
9 which the employee is paid, (8) the name and address of the legal entity that is the employer and,
10 (9) all applicable hourly rates in effect during the pay period and the corresponding number of
11 hours worked at each hourly rate by the employee.

12 23. As a result, DEFENDANTS issued PLAINTIFF and the CALIFORNIA CLASS
13 with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are
14 knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical
15 or inadvertent mistake.

16 **D. Suitable Seating Violation**

17 24. PLAINTIFF further alleges that the station counters in DEFENDANTS' stores
18 provide ample space behind each counter area to allow for the presence and use of a stool or seat
19 by DEFENDANTS' employees' during the performance of their work duties. DEFENDANTS'
20 employees' working at DEFENDANTS' stores spend a very substantial portion, and, in many
21 workdays, the vast majority of their working time behind these counters. The nature of the
22 position can reasonably be accomplished while using a seat/stool.

23 25. In violation of the applicable sections of the California Labor Code and the
24 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
25 DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly
26 and systematically failed to provide PLAINTIFF and the other members of the CALIFORNIA
27 CLASS suitable seating when the nature of these employees' work reasonably permitted sitting.
28

1 26. DEFENDANTS knew or should have known that PLAINTIFF and other
2 CALIFORNIA CLASS members were entitled to suitable seating and/or were entitled to sit when
3 it did not interfere with the performance of their duties, and that DEFENDANTS did not provide
4 suitable seating and/or did not allow them to sit when it did not interfere with the performance of
5 their duties. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA CLASS
6 members, DEFENDANTS violated California Labor Code Section 1198 and Wage Order 4-2001,
7 Section 14 by failing to provide suitable seats.

8 **E. Class Action Allegations**

9 27. PLAINTIFF brings the First through Eighth Causes of Action as a class action
10 pursuant to California Code of Civil Procedure § 382 on behalf the CALIFORNIA CLASS,
11 defined *supra*, that worked for DEFENDANT in California at any time beginning four (4) years
12 prior to the filing of this Complaint and ending on the date as determined by the Court (“CLASS
13 PERIOD”).

14 28. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been
15 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
16 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
17 illegal meal and rest period policies, failure to separately compensate rest periods, failure to
18 separately compensate, failure to provide accurate itemized wage statements, failure to maintain
19 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

20 29. The members of the class are so numerous that joinder of all class members is
21 impractical.

22 30. Common questions of law and fact regarding DEFENDANTS’ conduct, including
23 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to
24 provide legally compliant meal and rest periods, failure to provide accurate itemized wage
25 statements accurate, and failure ensure they are paid at least minimum wage and overtime, exist
26 as to all members of the class and predominate over any questions affecting solely any individual
27 members of the class. Among the questions of law and fact common to the class are:
28

- a. Whether DEFENDANTS maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANTS maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate overtime wages and sick pay;
- e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members at least minimum wage for all hours worked;
- f. Whether DEFENDANTS issued legally compliant wage statements;
- g. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- h. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- i. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

31. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

32. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same interests as the other members of the class.

1 33. PLAINTIFF will fairly and adequately represent and protect the interests of the
2 CALIFORNIA CLASS members.

3 34. PLAINTIFF retained able class counsel with extensive experience in class action
4 litigation.

5 35. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
6 interests of the other CALIFORNIA CLASS members.

7 36. There is a strong community of interest among PLAINTIFF and the members of the
8 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are
9 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
10 sustained;

11 37. The questions of law and fact common to the CALIFORNIA CLASS members
12 predominate over any questions affecting only individual members, including legal and factual
13 issues relating to liability and damages.

14 38. A class action is superior to other available methods for the fair and efficient
15 adjudication of this controversy because joinder of all class members is impractical. Moreover,
16 since the damages suffered by individual members of the class may be relatively small, the
17 expense and burden of individual litigation makes it practically impossible for the members of
18 the class individually to redress the wrongs done to them. Without class certification and
19 determination of declaratory, injunctive, statutory and other legal questions within the class
20 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS
21 will create the risk of:

22 a. Inconsistent or varying adjudications with respect to individual members
23 of the CALIFORNIA CLASS which would establish incompatible standards of
24 conduct for the parties opposing the CALIFORNIA CLASS; and/or,

25 b. Adjudication with respect to individual members of the CALIFORNIA
26 CLASS which would as a practical matter be dispositive of the interests of the
27 other members not party to the adjudication or substantially impair or impeded
28 their ability to protect their interests.

1 39. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
3 the conduct of DEFENDANTS.

4 ///

5 **JURISDICTION AND VENUE**

6 40. This Court has jurisdiction over this Action pursuant to California Code of Civil
7 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
8 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
9 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

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

15 **FIRST CAUSE OF ACTION**

16 **For Unlawful Business Practices**

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

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

19 42. PLAINTIFF, and the CALIFORNIA CLASS, reallege and incorporate by this
20 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

21 43. DEFENDANTS are a “person” as that term is defined under Cal. Bus. and Prof.
22 Code § 17021.

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

27 Any person who engages, has engaged, or proposes to engage in
28 unfair competition may be enjoined in any court of competent

jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Cal. Bus. & Prof. Code § 17203.

45. By the conduct alleged herein, DEFENDANTS have engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 515, 558, 1194, 1197, 1197.1, 1198, and 1198.5 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

47. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and other members of the CALIFORNIA CLASS, all wages due to them for all hours worked, and premiums for their missed meal and rest periods, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

48. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANTS.

3 49. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
4 unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to
5 provide legally required uninterrupted duty-free meal breaks to PLAINTIFF and the other
6 members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

7 50. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
8 CALIFORNIA CLASS member, all unpaid wages resulting from working off-the-clock, one (1)
9 hour of pay at the regular rate of compensation for each workday in which an off-duty meal period
10 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each
11 workday in which a second off-duty meal period was not timely provided for each ten (10) hours
12 of work.

13 51. PLAINTIFF further demands on behalf of themselves and on behalf of each
14 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
15 not timely provided and/or paid as required by law.

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

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

27 54. PLAINTIFF and the other members of the CALIFORNIA CLASS were further
28 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
2 engaging in any unlawful and unfair business practices in the future.

3 55. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
4 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
5 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As
6 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
7 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
8 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
9 unlawful and unfair business practices.

10 **SECOND CAUSE OF ACTION**

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

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

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

14 56. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
15 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
16 Complaint.

17 57. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
18 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS members as
19 required by the applicable Wage Order and Labor Code. The nature of the work performed by
20 PLAINTIFF and the CALIFORNIA CLASS members did not prevent these employees from
21 being relieved of all of their duties for the legally required off-duty meal periods. As a result of
22 their rigorous work schedules and understaffing in the case of the CALIFORNIA CLASS
23 Members, PLAINTIFF and other CALIFORNIA CLASS members were often not fully relieved
24 of duty by DEFENDANTS during their meal periods. Additionally, DEFENDANTS' failure to
25 provide PLAINTIFF and the CALIFORNIA CLASS members with legally required meal breaks
26 prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records. As a
27 result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal
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breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

58. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

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

THIRD CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

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

61. PLAINTIFF and other CALIFORNIA CLASS members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules and understaffing with respect to the CALIFORNIA CLASS members, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

1 62. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable
2 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS members
3 who were not provided a rest period, in accordance with the applicable Wage Order, one
4 additional hour of compensation at each employee's regular rate of pay for each workday that rest
5 period was not provided.

6 63. As a proximate result of the aforementioned violations, PLAINTIFF and
7 CALIFORNIA CLASS members have been damaged in an amount according to proof at trial,
8 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

9 **FOURTH CAUSE OF ACTION**

10 **For Failure to Pay Minimum Wages**

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

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

13 64. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
14 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
15 Complaint.

16 65. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
17 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
18 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay PLAINTIFF and
19 the members of the CALIFORNIA CLASS for all hours worked and, as a result, not paying
20 minimum wages for all hours worked by PLAINTIFF and CALIFORNIA CLASS Members.

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

23 67. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
24 commission is the minimum wage to be paid to employees, and the payment of a less wage than
25 the minimum so fixed is unlawful.

26 68. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including minimum wage compensation and interest thereon, together with the costs of suit.
28

1 69. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
2 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
3 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
4 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
5 the CALIFORNIA CLASS.

6 70. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
8 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
9 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

10 71. In committing these violations of the California Labor Code, DEFENDANTS
11 inaccurately calculated the correct time worked and consequently underpaid the actual time
12 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS
13 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
14 of the California Labor Code, the Industrial Welfare Commission requirements and other
15 applicable laws and regulations.

16 72. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
17 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
18 minimum wage compensation for their time worked for DEFENDANTS.

19 73. During the CLASS PERIOD, PLAINTIFF and the other members of the
20 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
21 failure to pay all earned wages.

22 74. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
23 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
24 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
25 suffered and will continue to suffer an economic injury in amounts which are presently unknown
26 to them and which will be ascertained according to proof at trial.

27 75. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were under compensated for their time worked.

1 DEFENDANTS systematically elected, either through intentional malfeasance or gross
2 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
3 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
4 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
5 for their time worked.

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

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

25 **FIFTH CAUSE OF ACTION**

26 **For Failure to Pay Overtime Compensation**

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

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

1 78. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
2 incorporate by this reference, as though full set forth herein, the prior paragraphs of this
3 Complaint.

4 79. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
5 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
6 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees
7 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
8 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

15 82. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
16 including minimum wage and overtime compensation and interest thereon, together with the costs
17 of suit.

18 83. Cal. Lab. Code § 1198 further states that the employment of an employee for longer
19 hours than those fixed by the Industrial Welfare Commission is unlawful.

20 84. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
21 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
22 they worked, including overtime work.

23 85. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
24 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
25 implementing a uniform policy and practice that failed to accurately record overtime worked by
26 PLAINTIFF and other CALIFORNIA CLASS members and denied accurate compensation to
27 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
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1 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
2 (12) hours in a workday, and/or forty (40) hours in any workweek.

3 86. In committing these violations of the California Labor Code, DEFENDANTS
4 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
5 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
6 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
7 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
8 regulations.

9 87. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
10 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
11 compensation for overtime worked.

12 88. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
13 from the overtime requirements of the law. None of these exemptions are applicable to the
14 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
15 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
16 agreement that would preclude the causes of action contained herein this Complaint. Rather,
17 PLAINTIFF brings this action on behalf of herself and the CALIFORNIA CLASS based on
18 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
19 California.

20 89. During the CLASS PERIOD, PLAINTIFF and the other members of the
21 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
22 constituting a failure to pay all earned wages.

23 90. DEFENDANTS failed to accurately pay the PLAINTIFF and the other members of
24 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
25 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
26 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
27 and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay as
28 evidenced by DEFENDANTS' business records and witnessed by employees.

1 91. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
2 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
3 amount of time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS
4 have suffered and will continue to suffer an economic injury in amounts which are presently
5 unknown to them and which will be ascertained according to proof at trial.

6 92. DEFENDANTS knew or should have known that PLAINTIFF and the other
7 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
8 DEFENDANT systematically elected, either through intentional malfeasance or gross
9 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
10 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
11 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

12 93. In performing the acts and practices herein alleged in violation of California labor
13 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
14 worked and provide them with the requisite overtime compensation, DEFENDANTS acted and
15 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
16 members of the CALIFORNIA CLASS with a conscious of and utter disregard for their legal
17 rights, or the consequences to them, and with the despicable intent of depriving them of their
18 property and legal rights, and otherwise causing them injury in order to increase company profits
19 at the expense of these employees.

20 94. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
21 recovery of all overtime wages, according to proof, interest, statutory costs, as well as the
22 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
23 California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime
24 compensation is determined to be owed to the CALIFORNIA CLASS members who have
25 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
26 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
27 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
28 members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good

1 faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are entitled to seek and
2 recover statutory costs.

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6 **SIXTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code § 226]**

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

10 95. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

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

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

8. the name and address of the legal entity that is the employer, and

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

97. When PLAINTIFF and the other CALIFORNIA CLASS members were not compensated for all wages due to them for their off-the-clock work, and for their missed meal and rest breaks, and for overtime, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. As a result, DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violate Cal. Lab. Code § 226. Aside, from the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

98. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime hours worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS.

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6 **SEVENTH CAUSE OF ACTION**

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

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

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

10 99. PLAINTIFF and the members of the CALIFORNIA CLASS reallege and
11 incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

12 100. Cal. Lab. Code § 200 provides, in relevant part, that:

13 As used in this article:

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

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

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

23 102. Cal. Lab. Code § 202 provides, in relevant part, that: "If an employee not having a
24 written contract for a definite period quits his or her employment, his or her wages shall become
25 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
26 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
27 wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits
28 without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so

1 requests and designates a mailing address. The date of the mailing shall constitute the date of
2 payment for purposes of the requirement to provide payment within 72 hours of the notice of
3 quitting.”

4 103. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
5 Members' employment contract. Cal. Lab. Code § 203 provides, in relevant part, that: “If an
6 employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201,
7 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of
8 the employee shall continue as a penalty from the due date thereof at the same rate until paid or
9 until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

10 104. The employment of PLAINTIFF and many CALIFORNIA CLASS Members has
11 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

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

18 **EIGHTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE SUITABLE SEATING**

20 **(Cal. Lab. Code §§1198 *et seq.* & California Code of Regulations, Title 8, Section**
21 **11070(14))**

22 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

23 106. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
24 incorporate by this reference, as though fully set forth herein, all paragraphs of this Complaint.

25 107. California Labor Code section 1198 makes it illegal to employ an employee
26 under conditions of labor that are prohibited by the applicable wage order.

27 108. California Labor Code section 1198 requires that “. . . the standard conditions
28 of labor fixed by the commission shall be the . . . standard conditions of labor for employees.

1 The employment of any employee . . . under conditions of labor prohibited by the order is
2 unlawful. California Code of Regulations, Title 8, section 11070(14)(A) provides that "[a]ll
3 working employees shall be provided with suitable seats when the nature of the work reasonably
4 permits the use of seats."

5 109. California Code of Regulations, Title 8, section 11070(14)(B) provides that
6 "[w]hen employees are not engaged in the active duties of their employment and the nature of
7 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
8 proximity to the work area and employees shall be permitted to use such seats when it does not
9 interfere with the performance of their duties."

10 110. DEFENDANT violated California Labor Code section 1198 and California Code
11 of Regulations, Title 8, section 11070(14) because PLAINTIFF and members of the
12 CALIFORNIA CLASS were not permitted to sit, even if they were not engaged in active duties.
13 They were not permitted to sit, even when it would not interfere with the performance of their
14 duties, nor were they provided with suitable seats.

15 111. PLAINTIFF and members of the CALIFORNIA CLASS are entitled to recover
16 all remedies available for violations of California Labor Code section 1198 and California Code
17 of Regulations, Title 8, section 11070(14)

18 112. Pursuant to the civil penalties provided for in California Labor Code sections
19 2699 (f) and (g), the State of California, PLAINTIFF and other members of the CALIFORNIA
20 CLASS are entitled to recover civil penalties of one hundred dollars (\$100) for each member of
21 the CALIFORNIA CLASS per pay period for the initial violation and two hundred dollars (\$200)
22 for each member of the CALIFORNIA CLASS per pay period for each subsequent violation,
23 plus costs and attorneys' fees for violation of California Labor Code section 1198.

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

1 113. PLAINTIFF reallege and incorporates by this reference, as though fully set forth
2 herein, the prior paragraphs of this Complaint.

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

13 115. PLAINTIFF, and such persons that may be added from time to time who satisfy
14 the requirements and exhaust the administrative procedures under the Private Attorney General
15 Act, bring this Representative Action on behalf of the State of California with respect to
16 themselves and all individuals who are or previously were employed by Defendant in California
17 during the time period of August 3, 2020 until the present (the "AGGRIEVED EMPLOYEES").

18 116. On August 3, 2021, PLAINTIFF gave written notice by certified mail to the Labor
19 and Workforce Development Agency (the "Agency") and the employer of the specific
20 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
21 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
22 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
23 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
24 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
25 EMPLOYEES as herein defined.

26 117. The policies, acts and practices heretofore described were and are an unlawful
27 business act or practice because DEFENDANTS (a) failed to properly record and pay
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1 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
2 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
3 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, (d) failed to timely
4 pay wages, and (e) failed to provide suitable seating, all in violation of the applicable Labor
5 Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201,
6 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d),
7 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, Cal. Code of Regulations, Title
8 8, Section 1 1070(14) (Failure to Provide Suitable Seating) and the applicable Industrial Wage
9 Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF
10 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
11 General Act of 2004 as the representative of the State of California for the illegal conduct
12 perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

13 118. To the extent that any of the conduct and violations alleged herein did not affect
14 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
15 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
16 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
17 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor
18 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
19 committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

20 **PRAYER FOR RELIEF**

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

23 1. On behalf of the CALIFORNIA CLASS:

24 A) That the Court certify the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
25 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to
26 Cal. Code of Civ. Proc. § 382;

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

- 1 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld
2 from compensation due to PLAINTIFF and the other members of the CALIFORNIA
3 CLASS; and,
- 4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
5 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and
6 to the other members of the CALIFORNIA CLASS.
- 7 E) Compensatory damages, according to proof at trial, including compensatory damages
8 for minimum and overtime compensation due PLAINTIFF and the other members of
9 the CALIFORNIA CLASS, during the applicable CALIFORNIA LABOR SUB-
10 CLASS PERIOD plus interest thereon at the statutory rate;
- 11 F) Meal and rest period compensation pursuant to California Labor Code Section 226.7
12 and the applicable IWC Wage Order;
- 13 G) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
14 a violation occurs and one hundred dollars (\$100) per each member of the
15 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an
16 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation
17 of Cal. Lab. Code § 226;
- 18 H) The wages of all terminated employees from the CALIFORNIA CLASS as a penalty
19 from the due date thereof at the same rate until paid or until an action therefore is
20 commenced, in accordance with Cal. Lab. Code § 203;

21 2. On all claims:

- 22 A) An award of interest, including prejudgment interest at the legal rate;
- 23 B) Such other and further relief as the Court deems just and equitable; and,
- 24 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
25 including, but not limited to, pursuant to Labor Code §218.5, §226, and/or §1194.

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

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

1 Dated: October 8, 2021

2 Respectfully Submitted
3 JCL LAW FIRM, APC

4 
5 Jean-Claude Lapuyade
6 Attorney for PLAINTIFF

7 **DEMAND FOR JURY TRIAL**

8 PLAINTIFF demands a jury trial on all issues triable to a jury.

9
10 Dated: October 8, 2021

11 Respectfully Submitted,
12 JCL LAW FIRM, A.P.C.

13 By: 
14 Jean-Claude Lapuyade
15 Attorneys for PLAINTIFF

EXHIBIT 1



shani@zakaylaw.com

ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client # 40501

August 3, 2021

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

FIVE J'S FAMILY ENTERPRISES L.P.

c/o JEFFREY M. MARTINEZ

55770 Santa Fe Trail

Yucca Valley, CA 92284

Via Certified Mail with Return Receipt No. 7021 0950 0001 6369 9460

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, Cal. Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Suitable Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.3

Dear Sir/Madam:

Our offices represent Plaintiff ALISSA WHITNEY ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against FIVE J'S FAMILY ENTERPRISES L.P. ("Defendant"). Plaintiff was employed by Defendant in California between October 7, 2020 to November 20, 2020 as a non-exempt employee paid on an hourly basis and entitled to payment of all wages and the legally required meal and rest breaks. Defendant, however, unlawfully failed to provide legally complaint meal and rest breaks, failed to accurately compensate Plaintiff and other aggrieved employees for missed meal and rest periods, failed to pay Plaintiff and other aggrieved employees for all time worked. Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. Further, Defendant failed to provide suitable seating for Plaintiff and other aggrieved employees.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, Cal. Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Suitable Seating), violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

JCL LAW FIRM

Jean-Claude Lapuyade, Esq.
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San Diego, CA 92110
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
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ZAKAY LAW GROUP, APLC

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Website: www.zakaylaw.com

ATTORNEYS FOR PLAINTIFF ALISSA WHITNEY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

ALISSA WHITNEY, an individual, on behalf
of herself, and on behalf of all persons
similarly situated,

PLAINTIFF,

vs.

FIVE J'S FAMILY ENTERPRISES L.P., a
California Limited Partnership; and Does 1
through 50, Inclusive,

DEFENDANTS.

Case No.: _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200, et seq.;
2. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
3. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1182.12, 1194, 1197 & 1197.1;
5. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, et seq.;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
8. VIOLATIONS OF CALIFORNIA LABOR CODE § 1198 AND CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 1 1070(14) (FAILURE TO PROVIDE SEATING)

[JURY TRIAL DEMANDED]

1 Plaintiff ALISSA WHITNEY (“PLAINTIFF”), individually and on behalf of all those
2 similarly situated, allege on information and belief, except for their own acts and knowledge, the
3 following:

4 **THE PARTIES**

5 1. Defendant FIVE J’S FAMILY ENTERPRISES L.P. (“DEFENDANT” and/or
6 “DEFENDANTS”) is a California limited partnership that at all relevant times relevant mentioned
7 owned and operated numerous McDonald’s® franchise restaurants, throughout Southern
8 California, including in the City of Temecula and County of San Bernardino.

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

18 3. The agents, servants and/or employees of the DEFENDANTS and each of them
19 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority
20 as the agent, servant and/or employee of the DEFENDANT, and personally participated in the
21 conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
22 Consequently, the acts of each of the DEFENDANTS are legally attributable to the other and all
23 DEFENDANTS are jointly and severally liable to PLAINTIFF and those similarly situated, for
24 the loss sustained as a proximate result of the conduct of the DEFENDANTS’ agents, servants
25 and/or employees.

1 4. Plaintiff worked for DEFENDANTS from approximately October 7, 2020,
2 through November 20, 2020, as a non-exempt employee, paid on an hourly basis entitled to legally
3 mandated meal and rest periods, minimum wages and overtime compensation.

4 5. PLAINTIFF brings this class action under California Code of Civil Procedure §
5 382 on behalf of herself and a California class, defined as all of DEFENDANTS' current and
6 former non-exempt employees, employed in California (the "CALIFORNIA CLASS") at any time
7 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
8 by the Court ("CLASS PERIOD"). The members of the classes are so numerous that joinder of
9 all class members is impractical. PLAINTIFF reserves the right to amend the following class
10 definitions before the Court determines whether class certification is appropriate, or thereafter
11 upon leave of Court:

12 6. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
13 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
14 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
15 which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant
16 meal and rest periods or an additional hour of pay at the regular rate of compensation in *lieu*
17 thereof in violation of California Labor Code Sections 226.7(c), 512(a) and the applicable
18 Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFF and the
19 CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code
20 Sections 510, 1194, 1197, and 1197.1, and (3) failed to provide accurate itemized wage statements
21 in violation of California Labor Code Sections 226 and 226.3.

22 7. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
23 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
24 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

25 8. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
26 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
27 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
28

1 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal
2 and equitable relief.

3 **THE CONDUCT**

4 9. In violation of the applicable sections of the California Labor Code and the
5 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
6 matter of company policy, practice and procedure, intentionally, knowingly and systematically
7 failed to provide legally compliant meal and rest periods, failed to accurately compensate
8 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
9 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
10 time worked, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS
11 with accurate itemized wage statements showing, among other things, all applicable hourly rates
12 in effect during the pay periods and the corresponding amount of time worked at each hourly rate.
13 DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate
14 and full payment for all time worked as required by California law which allows DEFENDANTS
15 to illegally profit and gain an unfair advantage over competitors who comply with the law. To
16 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
17 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

18 **A. Meal Period Violations**

19 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
20 were required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked,
21 meaning the time during which an employee is subject to the control of an employer, including
22 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
23 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work
24 without paying them for all the time they were under DEFENDANTS' control. Specifically, as
25 a result of PLAINTIFF's demanding work requirements and DEFENDANTS' under staffing,
26 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
27 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
28 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.

1 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a
2 result, the PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum wage and
3 overtime wages by regularly working without their time being accurately recorded and without
4 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform
5 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS members for all
6 time worked is evidenced by DEFENDANTS' business records.

7 10. From time-to-time during the CLASS PERIOD, because of their rigorous work
8 schedules, DEFENDANTS' inadequate staffing practices, and DEFENDANTS' policy and
9 practice requiring PLAINTIFF and the CALIFORNIA CLASS to remain on DEFENDANTS'
10 premises during meal periods, PLAINTIFF and other CALIFORNIA CLASS members were
11 from time-to-time unable to take thirty (30) minutes duty free meal periods and were not fully
12 relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS members
13 were required from time-to-time to perform work as ordered by DEFENDANTS for more than
14 five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from
15 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second
16 off-duty meal period for some workdays in which these employees were required by
17 DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work
18 performed by the PLAINTIFF and the members of the CALIFORNIA CLASS does not qualify
19 for limited and narrowly construed "on-duty" meal period exception. PLAINTIFF and other
20 members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional
21 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.
22 DEFENDANTS failed to maintain adequate staffing levels while increasing the production
23 levels for each employee.

24 **B. Rest Period Violations**

25 11. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
26 CALIFORNIA CLASS members were also required from time to time to work more than four
27 (4) hours without being provided ten (10) minute rest periods because of their rigorous work
28

1 schedule, DEFENDANTS' inadequate staffing and DEFENDANTS' policy and practice
2 requiring PLAINTIFF and the CALIFORNIA CLASS to remain on DEFENDANTS' premises
3 during rest periods. Further, for the same reasons these employees were denied their first rest
4 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
5 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked
6 of between six (6) and eight (8) hours from time to time, and a first, second and third rest period
7 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
8 PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-hour
9 wages in lieu thereof. As a result of their rigorous work schedules and DEFENDANTS'
10 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS members were from time to
11 time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

12 **B. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

13 12. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
14 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
15 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required
16 PLAINTIFF and the other members of the CALIFORNIA CLASS to perform work while off-the
17 clock during meal periods. Notwithstanding, from time-to-time DEFENDANTS failed to pay
18 PLAINTIFF and other members of the CALIFORNIA CLASS necessary wages for attending for
19 performing work at DEFENDANTS' direction, request and benefit, while off-the clock during
20 meal periods.

21 13. During the CLASS PERIOD, from time-to-time DEFENDANTS required
22 PLAINTIFF and other members of the CALIFORNIA CLASS to perform mandatory pre-shift
23 health screenings while off-the clock.

24 14. DEFENDANTS directed and directly benefited from the uncompensated off-the-
25 clock work performed by PLAINTIFF and the other members of the CALIFORNIA Class.

26 15. DEFENDANTS controlled the work schedules, duties, protocols, applications,
27 assignments and employment conditions of PLAINTIFF and the other members of the on-Exempt
28 Class.

1 16. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
2 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
3 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
4 wages earned and owed for all the work they performed, including off-the-clock work.

5 17. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
6 exempt employees, subject to the requirements of the California Labor Code.

7 18. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
8 members of the CALIFORNIA CLASS of all minimum, regular and overtime wages owed for
9 the off-the-clock work activities and their required meal periods. Because PLAINTIFF and the
10 other members of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and
11 more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of
12 overtime pay.

13 19. DEFENDANTS knew or should have known that PLAINTIFF and the other
14 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

15 20. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
16 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
17 for the time spent attending required meetings and sales trainings. DEFENDANTS' uniform
18 policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages
19 for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
20 records.

21 **C. Wage Statement Violation**

22 21. California Labor Code Section 226 requires an employer to furnish its employees
23 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
24 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
25 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
26 of the employee and only the last four digits of the employee's social security number or an
27 employee identification number other than a social security number, (8) the name and address of
28

the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

22. From time-to-time during the CLAIM PERIOD, predicated on the conduct described herein, DEFENDANTS issued inaccurate itemized wage statements to PLAINTIFF and the CALIFORNIA CLASS that failed to accurately show (1) gross wages earned, (2) total hours worked, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (8) the name and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

23. As a result, DEFENDANTS issued PLAINTIFF and the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

D. Suitable Seating Violation

24. PLAINTIFF further alleges that the station counters in DEFENDANTS' stores provide ample space behind each counter area to allow for the presence and use of a stool or seat by DEFENDANTS' employees' during the performance of their work duties. DEFENDANTS' employees' working at DEFENDANTS' stores spend a very substantial portion, and, in many workdays, the vast majority of their working time behind these counters. The nature of the position can reasonably be accomplished while using a seat/stool.

25. In violation of the applicable sections of the California Labor Code and the requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS suitable seating when the nature of these employees' work reasonably permitted sitting.

26. DEFENDANTS knew or should have known that PLAINTIFF and other CALIFORNIA CLASS members were entitled to suitable seating and/or were entitled to sit when it did not interfere with the performance of their duties, and that DEFENDANTS did not provide

1 suitable seating and/or did not allow them to sit when it did not interfere with the performance of
2 their duties. By reason of this conduct applicable to PLAINTIFF and all CALIFORNIA CLASS
3 members, DEFENDANTS violated California Labor Code Section 1198 and Wage Order 4-2001,
4 Section 14 by failing to provide suitable seats.

5 **E. Class Action Allegations**

6 27. PLAINTIFF brings the First through Eighth Causes of Action as a class action
7 pursuant to California Code of Civil Procedure § 382 on behalf the CALIFORNIA CLASS,
8 defined *supra*, that worked for DEFENDANT in California at any time beginning four (4) years
9 prior to the filing of this Complaint and ending on the date as determined by the Court (“CLASS
10 PERIOD”).

11 28. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been
12 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
13 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
14 illegal meal and rest period policies, failure to separately compensate rest periods, failure to
15 separately compensate, failure to provide accurate itemized wage statements, failure to maintain
16 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

17 29. The members of the class are so numerous that joinder of all class members is
18 impractical.

19 30. Common questions of law and fact regarding DEFENDANTS’ conduct, including
20 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to
21 provide legally compliant meal and rest periods, failure to provide accurate itemized wage
22 statements accurate, and failure ensure they are paid at least minimum wage and overtime, exist
23 as to all members of the class and predominate over any questions affecting solely any individual
24 members of the class. Among the questions of law and fact common to the class are:

- 25 a. Whether DEFENDANTS maintained legally compliant meal period policies
26 and practices;
27 b. Whether DEFENDANTS maintained legally compliant rest period policies
28 and practices;

- 1 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
2 CLASS members accurate premium payments for missed meal and rest
3 periods;
4 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
5 CLASS members accurate overtime wages and sick pay;
6 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
7 CLASS members at least minimum wage for all hours worked;
8 f. Whether DEFENDANTS issued legally compliant wage statements;
9 g. Whether DEFENDANTS committed an act of unfair competition by
10 systematically failing to record and pay PLAINTIFF and the other members
11 of the CALIFORNIA CLASS for all time worked;
12 h. Whether DEFENDANTS committed an act of unfair competition by
13 systematically failing to record all meal and rest breaks missed by
14 PLAINTIFF and other CALIFORNIA CLASS members, even though
15 DEFENDANTS enjoyed the benefit of this work, required employees to
16 perform this work and permits or suffers to permit this work;
17 i. Whether DEFENDANTS committed an act of unfair competition in violation
18 of the UCL, by failing to provide the PLAINTIFF and the other members of
19 the CALIFORNIA CLASS with the legally required meal and rest periods.

20 31. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
21 a result of DEFENDANTS' conduct and actions alleged herein.

22 32. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
23 the same interests as the other members of the class.

24 33. PLAINTIFF will fairly and adequately represent and protect the interests of the
25 CALIFORNIA CLASS members.

26 34. PLAINTIFF retained able class counsel with extensive experience in class action
27 litigation.
28

1 35. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
2 interests of the other CALIFORNIA CLASS members.

3 36. There is a strong community of interest among PLAINTIFF and the members of the
4 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are
5 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
6 sustained;

7 37. The questions of law and fact common to the CALIFORNIA CLASS members
8 predominate over any questions affecting only individual members, including legal and factual
9 issues relating to liability and damages.

10 38. A class action is superior to other available methods for the fair and efficient
11 adjudication of this controversy because joinder of all class members is impractical. Moreover,
12 since the damages suffered by individual members of the class may be relatively small, the
13 expense and burden of individual litigation makes it practically impossible for the members of
14 the class individually to redress the wrongs done to them. Without class certification and
15 determination of declaratory, injunctive, statutory and other legal questions within the class
16 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS
17 will create the risk of:

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

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

25 39. Class treatment provides manageable judicial treatment calculated to bring an
26 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
27 the conduct of DEFENDANTS.

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

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

42. PLAINTIFF, and the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may

1 be necessary to restore to any person in interest any money or
2 property, real or personal, which may have been acquired by means
3 of such unfair competition. Cal. Bus. & Prof. Code § 17203.

4 45. By the conduct alleged herein, DEFENDANTS have engaged and continues to
5 engage in a business practice which violates California law, including but not limited to, the
6 applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor
7 Code including Sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 515, 558, 1194, 1197,
8 1197.1, 1198, and 1198.5 for which this Court should issue declaratory and other equitable relief
9 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the
10 conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

16 47. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
17 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
18 other members of the CALIFORNIA CLASS, all wages due to them for all hours worked, and
19 premiums for their missed meal and rest periods, pursuant to the applicable Cal. Lab. Code, and
20 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
21 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof.
22 Code § 17203, including restitution of wages wrongfully withheld.

23 48. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
24 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
25 other members of the CALIFORNIA CLASS to be underpaid during their employment with
26 DEFENDANTS.

27 49. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
28 unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to

1 provide legally required uninterrupted duty-free meal breaks to PLAINTIFF and the other
2 members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

3 50. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
4 CALIFORNIA CLASS member, all unpaid wages resulting from working off-the-clock, one (1)
5 hour of pay at the regular rate of compensation for each workday in which an off-duty meal period
6 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each
7 workday in which a second off-duty meal period was not timely provided for each ten (10) hours
8 of work.

9 51. PLAINTIFF further demands on behalf of themselves and on behalf of each
10 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
11 not timely provided and/or paid as required by law.

12 52. By and through the unlawful and unfair business practices described herein,
13 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
14 other members of the CALIFORNIA CLASS, including earned wages for time worked, including
15 overtime worked, and has deprived them of valuable rights and benefits guaranteed by law and
16 contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as to
17 allow DEFENDANTS to unfairly compete against competitors who comply with the law.

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

23 54. PLAINTIFF and the other members of the CALIFORNIA CLASS were further
24 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair
25 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
26 engaging in any unlawful and unfair business practices in the future.

27 55. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
28 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of

1 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As
2 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
3 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
4 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
5 unlawful and unfair business practices.

6 **SECOND CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

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

10 56. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 57. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
14 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS members as
15 required by the applicable Wage Order and Labor Code. The nature of the work performed by
16 PLAINTIFF and the CALIFORNIA CLASS members did not prevent these employees from
17 being relieved of all of their duties for the legally required off-duty meal periods. As a result of
18 their rigorous work schedules and understaffing in the case of the CALIFORNIA CLASS
19 Members, PLAINTIFF and other CALIFORNIA CLASS members were often not fully relieved
20 of duty by DEFENDANTS during their meal periods. Additionally, DEFENDANTS' failure to
21 provide PLAINTIFF and the CALIFORNIA CLASS members with legally required meal breaks
22 prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records. As a
23 result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal
24 breaks without additional compensation and in accordance with DEFENDANTS' strict corporate
25 policy and practice.

26 58. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS members
28 who were not provided a meal period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that a
2 meal period was not provided.

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

6 **THIRD CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

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

10 60. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

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

23 62. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable
24 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS members
25 who were not provided a rest period, in accordance with the applicable Wage Order, one
26 additional hour of compensation at each employee's regular rate of pay for each workday that rest
27 period was not provided.
28

1 63. As a proximate result of the aforementioned violations, PLAINTIFF and
2 CALIFORNIA CLASS members have been damaged in an amount according to proof at trial,
3 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

4 **FOURTH CAUSE OF ACTION**

5 **For Failure to Pay Minimum Wages**

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

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

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

11 65. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
12 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
13 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay PLAINTIFF and
14 the members of the CALIFORNIA CLASS for all hours worked and, as a result, not paying
15 minimum wages for all hours worked by PLAINTIFF and CALIFORNIA CLASS Members.

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

18 67. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
19 commission is the minimum wage to be paid to employees, and the payment of a less wage than
20 the minimum so fixed is unlawful.

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

23 69. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
24 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
25 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
26 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
27 the CALIFORNIA CLASS.
28

1 70. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

5 71. In committing these violations of the California Labor Code, DEFENDANTS
6 inaccurately calculated the correct time worked and consequently underpaid the actual time
7 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS
8 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
9 of the California Labor Code, the Industrial Welfare Commission requirements and other
10 applicable laws and regulations.

11 72. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
12 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
13 minimum wage compensation for their time worked for DEFENDANTS.

14 73. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
16 failure to pay all earned wages.

17 74. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
18 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
19 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
20 suffered and will continue to suffer an economic injury in amounts which are presently unknown
21 to them and which will be ascertained according to proof at trial.

22 75. DEFENDANTS knew or should have known that PLAINTIFF and the other
23 members of the CALIFORNIA CLASS were under compensated for their time worked.
24 DEFENDANTS systematically elected, either through intentional malfeasance or gross
25 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
26 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
27 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
28 for their time worked.

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

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

20 **FIFTH CAUSE OF ACTION**

21 **For Failure to Pay Overtime Compensation**

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

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

24 78. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
25 incorporate by this reference, as though full set forth herein, the prior paragraphs of this
26 Complaint.

27 79. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
28 for DEFENDANTS' willful and intentional violations of the California Labor Code and the

1 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees
2 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
3 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

13 83. Cal. Lab. Code § 1198 further states that the employment of an employee for longer
14 hours than those fixed by the Industrial Welfare Commission is unlawful.

15 84. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
16 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
17 they worked, including overtime work.

18 85. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
19 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
20 implementing a uniform policy and practice that failed to accurately record overtime worked by
21 PLAINTIFF and other CALIFORNIA CLASS members and denied accurate compensation to
22 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
23 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
24 (12) hours in a workday, and/or forty (40) hours in any workweek.

25 86. In committing these violations of the California Labor Code, DEFENDANTS
26 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
27 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
28 attempt to avoid the payment of all earned wages, and other benefits in violation of the California

1 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
2 regulations.

3 87. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
4 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
5 compensation for overtime worked.

6 88. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
7 from the overtime requirements of the law. None of these exemptions are applicable to the
8 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
9 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
10 agreement that would preclude the causes of action contained herein this Complaint. Rather,
11 PLAINTIFF brings this action on behalf of herself and the CALIFORNIA CLASS based on
12 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
13 California.

14 89. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
16 constituting a failure to pay all earned wages.

17 90. DEFENDANTS failed to accurately pay the PLAINTIFF and the other members of
18 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
19 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
20 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
21 and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay as
22 evidenced by DEFENDANTS' business records and witnessed by employees.

23 91. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
24 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
25 amount of time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS
26 have suffered and will continue to suffer an economic injury in amounts which are presently
27 unknown to them and which will be ascertained according to proof at trial.
28

1 92. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
3 DEFENDANT systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
5 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

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1 97. When PLAINTIFF and the other CALIFORNIA CLASS members were not
2 compensated for all wages due to them for their off-the-clock work, and for their missed meal
3 and rest breaks, and for overtime, DEFENDANTS also failed to provide PLAINTIFF and the
4 other members of the CALIFORNIA CLASS with complete and accurate wage statements. Cal.
5 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an
6 accurate itemized wage statement in writing showing, among other things, gross wages earned
7 and all applicable hourly rates in effect during the pay period and the corresponding amount of
8 time worked at each hourly rate. As a result, DEFENDANTS provided PLAINTIFF and the other
9 members of the CALIFORNIA CLASS with wage statements which violate Cal. Lab. Code §
10 226. Aside, from the violations listed above in this paragraph, DEFENDANTS failed to issue to
11 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
12 Code 226 *et seq.*

13 98. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
14 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
15 CLASS. These damages include, but are not limited to, costs expended calculating the correct
16 rates for the overtime hours worked and the amount of employment taxes which were not properly
17 paid to state and federal tax authorities. These damages are difficult to estimate. Therefore,
18 PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated
19 damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and
20 one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab.
21 Code § 226, in an amount according to proof at the time of trial (but in no event more than four
22 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA
23 CLASS.

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1 **SEVENTH CAUSE OF ACTION**

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

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

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

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

7 100. Cal. Lab. Code § 200 provides, in relevant part, that:

8 As used in this article:

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

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

15 101. Cal. Lab. Code § 201 provides, in relevant part, "that if an employer discharges an
16 employee, the wages earned and unpaid at the time of discharge are due and payable
17 immediately."

18 102. Cal. Lab. Code § 202 provides, in relevant part, that: "If an employee not having a
19 written contract for a definite period quits his or her employment, his or her wages shall become
20 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
21 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
22 wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits
23 without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so
24 requests and designates a mailing address. The date of the mailing shall constitute the date of
25 payment for purposes of the requirement to provide payment within 72 hours of the notice of
26 quitting."

27 103. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
28 Members' employment contract. Cal. Lab. Code § 203 provides, in relevant part, that: "If an

1 employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201,
2 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of
3 the employee shall continue as a penalty from the due date thereof at the same rate until paid or
4 until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

5 104. The employment of PLAINTIFF and many CALIFORNIA CLASS Members has
6 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

7 105. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
8 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
9 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of
10 termination for all employees who terminated employment during the CALIFORNIA CLASS
11 PERIOD and demands an accounting and payment of all wages due, plus interest and statutory
12 costs as allowed by law.

13 **EIGHTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE SUITABLE SEATING**

15 **(Cal. Lab. Code §§1198 *et seq.* & California Code of Regulations, Title 8, Section**
16 **11070(14))**

17 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

18 106. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
19 incorporate by this reference, as though fully set forth herein, all paragraphs of this Complaint.

20 107. California Labor Code section 1198 makes it illegal to employ an employee
21 under conditions of labor that are prohibited by the applicable wage order.

22 108. California Labor Code section 1198 requires that “. . . the standard conditions
23 of labor fixed by the commission shall be the . . . standard conditions of labor for employees.
24 The employment of any employee . . . under conditions of labor prohibited by the order is
25 unlawful. California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll
26 working employees shall be provided with suitable seats when the nature of the work reasonably
27 permits the use of seats.”
28

- 1 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld
2 from compensation due to PLAINTIFF and the other members of the CALIFORNIA
3 CLASS; and,
- 4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
5 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and
6 to the other members of the CALIFORNIA CLASS.
- 7 E) Compensatory damages, according to proof at trial, including compensatory damages
8 for minimum and overtime compensation due PLAINTIFF and the other members of
9 the CALIFORNIA CLASS, during the applicable CALIFORNIA LABOR SUB-
10 CLASS PERIOD plus interest thereon at the statutory rate;
- 11 F) Meal and rest period compensation pursuant to California Labor Code Section 226.7
12 and the applicable IWC Wage Order;
- 13 G) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
14 a violation occurs and one hundred dollars (\$100) per each member of the
15 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an
16 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation
17 of Cal. Lab. Code § 226;
- 18 H) The wages of all terminated employees from the CALIFORNIA CLASS as a penalty
19 from the due date thereof at the same rate until paid or until an action therefore is
20 commenced, in accordance with Cal. Lab. Code § 203;

21 On all claims:

- 22 A) An award of interest, including prejudgment interest at the legal rate;
- 23 B) Such other and further relief as the Court deems just and equitable; and,
- 24 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
25 including, but not limited to, pursuant to Labor Code §218.5, §226, and/or §1194.

26 Dated: October 8, 2021

JCL LAW FIRM, APC

27 

Jean-Claude Lapuyade
Attorney for PLAINTIFF

DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on all issues triable to a jury.

Dated: October 8, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FIVE JS FAMILY ENTERPRISES LP
40 JEFFREY MARTINEZ
55770 SANTA FE TRAIL
YUCCA VALLEY, CA 92284



9590 9402 6744 1060 3007 31

2. Article Number (Transfer from service label)

7021 0950 0001 6369 9460

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X S. Bruch

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

S. BRUCH

C. Date of Delivery

8-9-21

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

08-03-21 Whitney

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Mail Restricted Delivery | |

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt