

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

AERIEL DE GUZMAN, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

GHC OF SAN RAFAEL, LLC, a California
limited liability company; LIFE
GENERATIONS HEALTHCARE LLC, a
California limited liability company; and DOES
1-50, Inclusive,

Defendants.

ELECTRONICALLY FILED

Superior Court of California
County of Marin

9/6/2023

James M. Kim, Clerk of the Court

J. Chen, Deputy

Case No: CV0000349

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 9) UNPAID SICK PAY IN VIOLATION OF CAL. LAB. CODE § 246.
- 10) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT AT LABOR CODE SECTIONS 2698 *ET SEQ*

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant GHC OF SAN RAFAEL, LLC (“Defendant GHC of San Rafael”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant LIFE GENERATIONS HEALTHCARE LLC (“Defendant Life Generations Healthcare”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant GHC of San Rafael and Defendant Life Generations Healthcare were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

4. DEFENDANTS operates skilled nursing and rehabilitation facilities in the state of California, including in the county of Marin, where PLAINTIFF worked.

///

1 5. PLAINTIFF was employed by DEFENDANTS in California from September of
2 2022 to May of 2023 as a non-exempt employee, paid on an hourly basis, and entitled to the
3 legally required meal and rest periods and payment of minimum and overtime wages due for all
4 time worked.

5 6. PLAINTIFF brings this Class Action on behalf of herself and a California class,
6 defined as all persons who are or previously were employed by Defendant GHC of San Rafael
7 and/or Defendant Life Generations Healthcare in California and classified as non-exempt
8 employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years
9 prior to the filing of this Complaint and ending on the date as determined by the Court (the
10 "CLASS PERIOD"). The amount in controversy for the aggregate claim of the CALIFORNIA
11 CLASS Members is under five million dollars (\$5,000,000.00).

12 7. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
13 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
14 the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which failed to
15 lawfully compensate these employees. DEFENDANTS' uniform policy and practice alleged
16 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS retained
17 and continue to retain wages due PLAINTIFF and the other members of the CALIFORNIA
18 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
19 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and
20 the other members of the CALIFORNIA CLASS who have been economically injured by
21 DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable
22 relief.

23 8. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
25 presently unknown to PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious
26 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
27 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
28 ascertained. PLAINTIFFS is informed and believes, and based upon that information and belief

1 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
2 inclusive, are responsible in some manner for one or more of the events and happenings that
3 proximately caused the injuries and damages hereinafter alleged.

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

12 10. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of the
13 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or
14 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
15 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
16 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
17 at all relevant times.

18 11. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
19 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
20 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
21 employee a wage less than the minimum fixed by California state law, and as such, are subject to
22 civil penalties for each underpaid employee.

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

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

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

3 **JURISDICTION AND VENUE**

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

8 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ
10 the CALIFORNIA CLASS across California, including in this County, and committed the
11 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

12 **THE CONDUCT**

13 16. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
15 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
16 failed to provide legally compliant meal and rest periods, failed to accurately compensate
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
18 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
19 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
20 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
21 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal and rest
22 premiums at the regular rate of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS
23 Members redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFF and other
24 CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and
25 the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,
26 among other things, all applicable hourly rates in effect during the pay periods and the
27 corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and
28 practices are intended to purposefully avoid the accurate and full payment for all time worked as

1 required by California law which allows DEFENDANTS to illegally profit and gain an unfair
2 advantage over competitors who comply with the law. To the extent equitable tolling operates to
3 toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should
4 be adjusted accordingly.

5 **A. Meal Period Violations**

6 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
7 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
8 meaning the time during which an employee is subject to the control of an employer, including
9 all the time the employee is suffered or permitted to work. From time to time during the CLASS
10 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
11 without paying them for all the time they were under DEFENDANTS' control. Specifically,
12 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
13 be PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
14 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
15 Members forfeited minimum wage and overtime compensation by regularly working without their
16 time being accurately recorded and without compensation at the applicable minimum wage and
17 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
18 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
19 records.

20 18. From time to time during the CLASS PERIOD, as a result of their rigorous work
21 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
22 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
23 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
24 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for
25 more than five (5) hours during some shifts without receiving a meal break. Further,
26 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
27 second off-duty meal period for some workdays in which these employees are required by
28 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by

1 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and
2 narrowly construed “on-duty” meal period exception. When they were provided with meal
3 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
4 required to remain on premises, on duty and on call. Further, DEFENDANTS from time to time
5 required PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless
6 communication devices in order to receive and respond to work-related communications during
7 what was supposed to be their off-duty meal breaks. DEFENDANTS’ failure to provide
8 PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is
9 evidenced by DEFENDANTS’ business records. As a result of their rigorous work schedules and
10 DEFENDANTS’ inadequate staffing, PLAINTIFF and other members of the CALIFORNIA
11 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
12 DEFENDANTS’ strict corporate policy and practice.

13 **B. Rest Period Violations**

14 19. From time to time during the CLASS PERIOD, PLAINTIFF and other
15 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
16 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
17 DEFENDANTS’ inadequate staffing. Further, for the same reasons, these employees were denied
18 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
19 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
20 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
21 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
22 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
23 CLASS Members were, from time to time, required to on premises, on duty and/or on call.
24 Further, DEFENDANTS from time to time required PLAINTIFF and other CALIFORNIA
25 CLASS Members to maintain cordless communication devices in order to receive and respond to
26 work-related communications during what was supposed to be their off-duty rest breaks.
27 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
28 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS’

1 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
2 time denied their proper rest periods by DEFENDANT and DEFENDANTS' managers.

3 **C. Unreimbursed Business Expenses**

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

15 21. In the course of their employment, DEFENDANTS required PLAINTIFF and
16 other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal
17 cell phones and personal vehicles as a result of and in furtherance of their job duties. Specifically,
18 PLAINTIFF and other CALIFORNIA CLASS Members were required to use their personal cell
19 phones and personal vehicles in order to perform work related tasks. However, DEFENDANTS
20 unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the
21 use of their personal cell phones and personal vehicles. As a result, in the course of their
22 employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members
23 incurred unreimbursed business expenses that included, but were not limited to, costs related to
24 the use of their personal cell phones, all on behalf of and for the benefit of DEFENDANT.

25 **D. Wage Statement Violations**

26 22. California Labor Code Section 226 required an employer to furnish its employees
27 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
28 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,

1 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
2 name of the employee and only the last four digits of the employee's social security number or an
3 employee identification number other than a social security number, (8) the name and address of
4 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate by the employee.

6 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
7 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
8 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
9 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
10 accurate wage statements which failed to show, among other things, all deductions, the total hours
11 worked and all applicable hourly rates in effect during the pay period and the corresponding
12 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
13 meal and rest periods.

14 24. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
15 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
16 Cal. Lab. Code § 226.

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

21 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

22 26. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
23 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
24 for all hours worked.

25 27. During the CLASS PERIOD, from time-to-time DEFENDANTS required
26 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
27 work, including but not limited to, time spent assisting DEFENDANTS' patients and assisting
28 DEFENDANTS with work-related tasks and submitting to pre-shift Covid-19 health screenings.

1 This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work
2 while off-the-clock.

3 28. DEFENDANTS directed and directly benefited from the undercompensated off-
4 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

5 29. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
6 assignments, and employment conditions of PLAINTIFF and the other members of the
7 CALIFORNIA CLASS.

8 30. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
9 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
10 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
11 wages earned and owed for all the work they performed.

12 31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
13 exempt employees, subject to the requirements of the California Labor Code.

14 32. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
15 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
16 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
17 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
18 eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime
19 pay.

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

22 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
23 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and
24 benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and
25 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
26 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
27 records.

28 ///

1 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
2 **and Redeemed Sick Pay**

3 35. From time to time during the CLASS PERIOD, DEFENDANTS failed and
4 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
5 Members for their overtime and double time hours worked, meal and rest period premiums, and
6 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
7 forfeited wages due to them for working overtime without compensation at the correct overtime
8 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
9 DEFENDANTS' uniform policy and practice not to pay the CALIFORNIA CLASS Members at
10 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick
11 pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

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

16 37. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
17 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
18 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
19 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
20 paid on an hourly basis with bonus compensation when the employees met the various
21 performance goals set by DEFENDANTS.

22 38. However, from time to time, when calculating the regular rate of pay in those pay
23 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
24 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
25 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
26 compensation as part of the employee's "regular rate of pay" and/or calculated all hours worked
27 rather than just all non-overtime hours worked. Management and supervisors described the
28 incentive/bonus program to potential and new employees as part of the compensation package.

1 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
2 CLASS Members must be included in the “regular rate of pay.” The failure to do so has resulted
3 in a systematic underpayment of overtime and double time compensation, meal and rest period
4 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
5 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that
6 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
7 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
8 not the employee actually works overtime in that workweek. DEFENDANTS’ conduct, as
9 articulated herein, by failing to include the incentive compensation as part of the “regular rate of
10 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
11 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

12 39. In violation of the applicable sections of the California Labor Code and the
13 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a
14 matter of company policy, practice, and procedure, intentionally and knowingly failed to
15 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
16 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
17 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
18 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
19 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the
20 CLASS PERIOD should be adjusted accordingly.

21 **G. Unlawful Deductions**

22 40. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
23 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
24 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
25 DEFENDANTS violated Labor Code § 221.

26 **H. Timekeeping Manipulation**

27 41. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
28 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of

1 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
2 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
3 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
4 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and
5 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
6 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
7 missed rest breaks.

8 42. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
9 time-to-time, forfeited time worked by working without their time being accurately recorded and
10 without compensation at the applicable pay rates.

11 43. The mutability of the timekeeping system also allowed DEFENDANTS to alter
12 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
13 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
14 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
15 were not at all times provided an off-duty meal break. This practice is a direct result of
16 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
17 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

18 44. 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 the timekeeping system was inoperable. DEFENDANTS' uniform policy and
21 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
22 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
23 records.

24 **I. Unlawful Rounding Practices**

25 45. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
26 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
27 CALIFORNIA CLASS Members for the actual time these employees worked each day,
28 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding

1 policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
2 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
3 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
4 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
5 these employees for all their time worked, including the applicable overtime compensation for
6 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
7 time to time, forfeited compensation for their time worked by working without their time being
8 accurately recorded and without compensation at the applicable overtime rates.

9 46. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
10 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
11 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
12 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
13 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
14 receiving an off-duty meal break.

15 **J. Violations for Untimely Payment of Wages**

16 47. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the
17 wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant
18 to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall
19 become due and payable not later than 72 hours thereafter, unless the employee has given 72
20 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
21 or her wages at the time of quitting." PLAINTIFF and the CALIFORNIA CLASS Members
22 were, from time to time, not timely provided the wages earned and unpaid at the time of their
23 discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202. Further,
24 pursuant to California Labor Code section 204, PLAINTIFF and the CALIFORNIA CLASS
25 members were entitled to timely payment of wages during their employment. PLAINTIFF and
26 the CALIFORNIA CLASS members, from time to time, did not receive payment of all wages,
27 including, but not limited to, overtime wages, minimum wages, meal period premium wages,
28 and rest period premium wages within permissible time periods.

1 48. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
2 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
3 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
4 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
5 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
6 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
7 PLAINTIFF with a rest break, they required PLAINTIFF to remain on premises, on-duty and
8 on-call for the rest break. DEFENDANTS policy caused PLAINTIFF to remain on premises, on-
9 call and on-duty during what was supposed to be her off-duty meal periods. PLAINTIFF
10 therefore forfeited meal and rest breaks without additional compensation and in accordance with
11 DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided
12 PLAINTIFF with paystubs that failed to comply with Cal. Lab. Code § 226. Further,
13 DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to
14 the personal expenses incurred for the use of her personal cell phone and personal vehicle, on
15 behalf of and in furtherance of her employment with DEFENDANTS. To date, DEFENDANTS
16 have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed
17 to her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy
18 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

19 **CLASS ACTION ALLEGATIONS**

20 49. PLAINTIFF brings this Class Action on behalf of herself, and a California class
21 defined as all persons who are or previously were employed by Defendant GHC of San Rafael
22 and/or Defendant Life Generations Healthcare in California and classified as non-exempt
23 employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years
24 prior to the filing of this Complaint and ending on the date as determined by the Court (the
25 "CLASS PERIOD").

26 50. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
27 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
28 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,

1 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
2 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
3 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

4 51. The members of the class are so numerous that joinder of all class members is
5 impractical.

6 52. Common questions of law and fact regarding DEFENDANTS' conduct, including
7 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
8 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
9 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
10 compliant meal and rest periods, failure to reimburse for business expenses, failure to provide
11 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum
12 wage and overtime, exist as to all members of the class and predominate over any questions
13 affecting solely any individual members of the class. Among the questions of law and fact
14 common to the class are:

- 15 a. Whether DEFENDANT maintained legally compliant meal period policies and
16 practices;
- 17 b. Whether DEFENDANT maintained legally compliant rest period policies and
18 practices;
- 19 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
20 Members accurate premium payments for missed meal and rest periods;
- 21 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
22 Members accurate overtime wages;
- 23 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
24 Members at least minimum wage for all hours worked;
- 25 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
26 CLASS Members for required business expenses;
- 27 g. Whether DEFENDANT issued legally compliant wage statements;

28 ///

- 1 h. Whether DEFENDANT committed an act of unfair competition by systematically
- 2 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
- 3 CLASS for all time worked;
- 4 i. Whether DEFENDANT committed an act of unfair competition by systematically
- 5 failing to record all meal and rest breaks missed by PLAINTIFF and other
- 6 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
- 7 of this work, required employees to perform this work and permits or suffers to
- 8 permit this work;
- 9 j. Whether DEFENDANT committed an act of unfair competition in violation of the
- 10 UCL, by failing to provide the PLAINTIFF and the other members of the
- 11 CALIFORNIA CLASS with the legally required meal and rest periods.
- 12 53. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
- 13 a result of DEFENDANTS’ conduct and actions alleged herein.
- 14 54. PLAINTIFF’S claims are typical of the claims of the CALIFORNIA CLASS, and
- 15 PLAINTIFF has the same interests as the other members of the class.
- 16 55. PLAINTIFF will fairly and adequately represent and protect the interests of the
- 17 CALIFORNIA CLASS Members.
- 18 56. PLAINTIFF retained able class counsel with extensive experience in class action
- 19 litigation.
- 20 57. Further, PLAINTIFF’s interests are coincident with, and not antagonistic to, the
- 21 interest of the other CALIFORNIA CLASS Members.
- 22 58. There is a strong community of interest among PLAINTIFF and the members of
- 23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
- 24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
- 25 sustained.
- 26 59. The questions of law and fact common to the CALIFORNIA CLASS Members
- 27 predominate over any questions affecting only individual members, including legal and factual
- 28 issues relating to liability and damages.

- 9 a. Inconsistent or varying adjudications with respect to individual members of the
10 CALIFORNIA CLASS which would establish incompatible standards of conduct
11 for the parties opposing the CALIFORNIA CLASS; and/or,
12 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
13 which would as a practical matter be dispositive of the interests of the other
14 members not party to the adjudication or substantially impair or impeded their
15 ability to protect their interests.

61. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

20 **Unlawful Business Practices**

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

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

62. 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.

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

28 |||

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

5 Any person who engages, has engaged, or proposes to engage in unfair competition may
6 be enjoined in any court of competent jurisdiction. The court may make such orders or
7 judgments, including the appointment of a receiver, as may be necessary to prevent the
8 use or employment by any person of any practice which constitutes unfair competition, as
9 defined in this chapter, or as may be necessary to restore to any person in interest any
10 money or property, real or personal, which may have been acquired by means of such
11 unfair competition. (Cal. Bus. & Prof. Code § 17203).

12 65. By the conduct alleged herein, DEFENDANTS have engaged and continue to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
16 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
17 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
18 constitute unfair competition, including restitution of wages wrongfully withheld.

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

25 67. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
26 fraudulent in that DEFENDANTS’ uniform policy and practice failed to provide the legally
27 mandated meal and rest periods and the required amount of compensation for missed meal and
28 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
necessary business expenses incurred, due to a systematic business practice that cannot be
justified, 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

1 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

3 68. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
4 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANTS.

7 69. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
8 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
9 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
10 required by Cal. Lab. Code §§ 226.7 and 512.

11 70. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
12 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
13 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
14 each workday in which a second off-duty meal period was not timely provided for each ten (10)
15 hours of work.

16 71. PLAINTIFF further demands on behalf of herself and on behalf of each
17 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
18 not timely provided as required by law.

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

25 73. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
27 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
28

1 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

3 74. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
4 and do, seek such relief as may be necessary to restore to them the money and property which
5 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
6 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
7 business practices, including earned but unpaid wages for all time worked.

8 75. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
10 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
11 engaging in any unlawful and unfair business practices in the future.

12 PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
13 and/or adequate remedy at law that will end the unlawful and unfair business practices of
14 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
15 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
16 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
17 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
18 unlawful and unfair business practices.

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

21 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

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

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

26 77. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
27 for DEFENDANT's willful and intentional violations of the California Labor Code and the
28

1 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate
2 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

5 79. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a less wage than
7 the minimum so fixed is unlawful.

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

10 81. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
11 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
12 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
13 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
14 the CALIFORNIA CLASS.

15 82. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
17 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
18 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

19 83. In committing these violations of the California Labor Code, DEFENDANTS
20 inaccurately calculated the correct time worked and consequently underpaid the actual time
21 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted
22 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
23 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
24 laws and regulations.

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

28 ///

1 85. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
3 failure to pay all earned wages.

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

9 87. DEFENDANTS knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA CLASS were under-compensated for their time worked.
11 DEFENDANTS systematically elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
13 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
14 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
15 for their time worked.

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

24 89. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
25 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
26 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
27 California Labor Code and/or other applicable statutes. To the extent minimum wage
28 compensation is determined to be owed to the CALIFORNIA CLASS Members who have

1 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
2 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
3 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
4 Members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
5 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
6 recover statutory costs.

7 **THIRD CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

9 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

10 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

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

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

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

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

28 ///

1 95. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
2 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
3 they worked, including overtime work.

4 96. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
5 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
6 implementing a uniform policy and practice that failed to accurately record overtime worked by
7 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
8 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
9 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
10 (12) hours in a workday, and/or forty (40) hours in any workweek.

11 97. In committing these violations of the California Labor Code, DEFENDANTS
12 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
13 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
14 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
15 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
16 regulations.

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

20 99. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
21 from the overtime requirements of the law. None of these exemptions are applicable to
22 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
23 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
24 agreement that would preclude the causes of action contained herein this Complaint. Rather,
25 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA CLASS based on
26 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
27 California.

28 ///

1 100. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
3 a failure to pay all earned wages.

4 101. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
5 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
6 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
7 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
8 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANTS
9 failed to accurately record and pay as evidenced by DEFENDANTS' business records and
10 witnessed by employees.

11 102. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
12 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
13 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA
14 CLASS have suffered and will continue to suffer an economic injury in amounts which are
15 presently unknown to them, and which will be ascertained according to proof at trial.

16 103. DEFENDANTS knew or should have known that PLAINTIFF and the other
17 members of the CALIFORNIA CLASS were undercompensated for their time worked.
18 DEFENDANTS systematically elected, either through intentional malfeasance or gross
19 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
20 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
21 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
22 their overtime worked.

23 104. In performing the acts and practices herein alleged in violation of California labor
24 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
25 and provide them with the requisite compensation, DEFENDANTS acted and continue to act
26 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
28 consequences to them, and with the despicable intent of depriving them of their property and legal

1 rights, and otherwise causing them injury in order to increase company profits at the expense of
2 these employees.

3 105. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
4 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
5 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
6 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
7 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
8 employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore
9 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
10 penalties are sought herein. DEFENDANTS' conduct as alleged herein was willful, intentional,
11 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
12 entitled to seek and recover statutory costs.

13 **FOURTH CAUSE OF ACTION**

14 **Failure To Provide Required Meal Periods**

15 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

20 107. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
21 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
22 required by the applicable Wage Order and Labor Code. The nature of the work performed by
23 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
24 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
25 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
26 fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS'
27 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
28 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business

1 records. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS
2 Members with a second off-duty meal period in some workdays in which these employees were
3 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
4 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
5 and in accordance with DEFENDANTS' strict corporate policy and practice.

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

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

14 **FIFTH CAUSE OF ACTION**

15 **Failure To Provide Required Rest Periods**

16 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

21 111. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
22 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
23 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
24 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
25 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
26 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
27 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
28 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other

1 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
2 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
3 compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as
4 required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to
5 provide PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid
6 rest periods is evidenced by DEFENDANTS' business records.

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

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

15 **SIXTH CAUSE OF ACTION**

16 **Failure To Provide Accurate Itemized Statements**

17 **(Cal. Lab. Code § 226)**

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

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

22 115. Cal. Labor Code § 226 provides that an employer must furnish employees with an
23 "accurate itemized" statement in writing showing:

- 24 a. Gross wages earned,
- 25 b. (2) total hours worked by the employee, except for any employee whose
26 compensation is solely based on a salary and who is exempt from payment of
27 overtime under subdivision (a) of Section 515 or any applicable order of the
28 Industrial Welfare Commission,

- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

116. When DEFENDANTS did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

117. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

118. 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

1 wages for all missed meal and rest breaks and the amount of employment taxes which were not
2 properly paid to state and federal tax authorities. These damages are difficult to estimate.
3 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
4 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
5 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
6 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
7 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
8 of the CALIFORNIA CLASS herein).

9 **SEVENTH CAUSE OF ACTION**

10 **Failure To Pay Wages When Due**

11 **(Cal. Lab. Code § 203)**

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

13 119. 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.

16 120. Cal. Lab. Code § 200 provides that:

17 As used in this article:

- 18 (d) "Wages" includes all amounts for labor performed by employees of every
description, whether the amount is fixed or ascertained by the standard of time,
19 task, piece, Commission basis, or other method of calculation.
20 (e) "Labor" includes labor, work, or service whether rendered or performed under
contract, subcontract, partnership, station plan, or other agreement if the to be
21 paid for is performed personally by the person demanding payment.

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

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

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

designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

123. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS Members' employment contract.

124. Cal. Lab. Code § 203 provides:

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

125. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated, and DEFENDANTS have not tendered payment of wages to these employees who missed meal and rest breaks, as required by law.

126. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD and demand an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

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

127. 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.

128. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

129. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS

1 members for required expenses incurred in the discharge of their job duties for DEFENDANTS’
2 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
3 members for expenses which included, but were not limited to, the use of their personal cell
4 phones, all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and
5 other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal
6 cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS’
7 uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA
8 CLASS members for expenses resulting from the use of their personal cell phones within the
9 course and scope of their employment for DEFENDANTS. These expenses were necessary to
10 complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS’ conduct
11 to assert any waiver of this expectation. Although these expenses were necessary expenses
12 incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANTS failed to
13 indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these
14 expenses as an employer is required to do under the laws and regulations of California.

15 130. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
16 by her and the CALIFORNIA CLASS members in the discharge of their job duties for
17 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
18 statutory rate and costs under Cal. Lab. Code § 2802.

19 **NINTH CAUSE OF ACTION**

20 **UNPAID SICK PAY**

21 **(Cal. Lab. Code § 246, *et seq.*)**

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

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

26 132. Cal. Labor Code Sections 246(I)(1) mandates that “[p]aid sick time for nonexempt
27 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
28

1 which the employee uses paid sick time, whether or not the employee actually works overtime in
2 that workweek.”

3 133. From time-to-time, during the PLAINTIFF and other members of the
4 CALIFORNIA CLASS were compensated at an hourly rate plus either non-discretionary incentive
5 pay. As a matter of law, the non-discretionary incentive compensation received by PLAINTIFF
6 and other members of the CALIFORNIA CLASS must be included in the “regular rate of pay.”

7 134. From time-to-time during the CLASS PERIOD, in those pay periods where
8 PLAINTIFF and other members of the CALIFORNIA CLASS earned hourly compensation and
9 either non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to
10 properly calculate the regular rate of pay for purposes of compensating paid sick time by omitting
11 non-discretionary incentive pay from the regular rate of pay.

12 135. DEFENDANT’s uniform policy and practice of omitting non-discretionary
13 incentive pay and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick
14 pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the
15 CALIFORNIA CLASS. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
16 request recovery of all unpaid wages, including sick pay wages, according to proof, interest,
17 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
18 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
19 overtime compensation is determined to be owed to other members of the CALIFORNIA CLASS
20 who have terminated their employment, DEFENDANT’s conduct also violates Labor Code §§
21 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
22 Cal. Lab. Code § 203, which penalties are sought herein on behalf of other members of the
23 CALIFORNIA CLASS. DEFENDANT’S conduct as alleged herein was willful, intentional and
24 not in good faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are
25 entitled to seek and recover statutory costs.

26 136. Cal. Lab. Code § 246(i) provides that:

27 An employer shall provide an employee with written notice that sets forth the
28 amount of paid sick leave available, or paid time off leave an employer provides in
lieu of sick leave, for use on either the employee’s itemized wage statement
described in Section 226 or in a separate writing provided on the designated pay

1 date with the employee's payment of wages. If an employer provides unlimited paid
2 sick leave or unlimited paid time off to an employee, the employer may satisfy this
3 section by indicating on the notice or the employee's itemized wage statement
4 "unlimited."

5 137. From time to time, DEFENDANT failed to furnish PLAINTIFF and other
6 members of the CALIFORNIA CLASS with written wage statements setting forth the amount of
7 paid sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.* As a result,
8 PLAINTIFF and other members of the CALIFORNIA CLASS are entitled to seek and recover
9 statutory costs.

10 **TENTH CAUSE OF ACTION**

11 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

12 **(Cal. Lab. Code §§2698 *et seq.*)**

13 **(Alleged by PLAINTIFF against all Defendants)**

14 138. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
15 herein, the prior paragraphs of this First Amended Complaint.

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

26 140. PLAINTIFF, and such persons that may be added from time to time who satisfy
27 the requirements and exhaust the administrative procedures under the Private Attorney General
28 Act, bring this individual PAGA and Representative PAGA Action on behalf of the State of
California with respect to herself and all persons who are or previously were employed by

1 DEFENDANT in California and classified as non-exempt during the time period of June 14,
2 2022 until the present (the "AGGRIEVED EMPLOYEES").

3 141. On June 14, 2023, PLAINTIFF gave written notice by certified mail to the Labor
4 and Workforce Development Agency (the "Agency") and the employer of the specific provisions
5 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,
6 attached hereto and incorporated by this reference herein. The statutory waiting period for
7 Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section
8 2699.3, Plaintiff may now commence an individual and representative civil action under PAGA
9 pursuant to Section 2699 as the proxy of the State of California with respect to herself and all
10 AGGRIEVED EMPLOYEES as herein defined.

11 142. The policies, acts and practices heretofore described were and are an unlawful
12 business act or practice because DEFENDANTS (a) failed to pay PLAINTIFF and the
13 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide
14 PLAINTIFF and the AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)
15 failed to pay PLAINTIFF and the AGGRIEVED EMPLOYEES at the correct regular rate of
16 pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e) failed to timely
17 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
18 including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221,
19 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14,
20 1198, 1198.5, 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby
21 gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery
22 of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 on her
23 own behalf and as the representative of the State of California for the illegal conduct perpetrated
24 on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

25 143. For all provisions of the Labor Code for which civil penalty is not specifically
26 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100)
27 for each AGGRIEVED EMPLOYEE, including PLAINTIFF, per pay period for the initial
28 violation and two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE, including

1 PLAINTIFF, per pay period for each subsequent violation. PLAINTIFF and the AGGRIEVED
2 EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with
3 their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

4 144. To the extent that any of the conduct and violations alleged herein did not affect
5 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
6 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
7 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
8 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor
9 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
10 committed by that employer."], Emphasis added, reh'g denied (June 13, 2018).)

11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the CALIFORNIA CLASS:

- 15 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
16 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
17 b. An order temporarily, preliminarily and permanently enjoining and restraining
18 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
19 c. An order requiring DEFENDANTS to pay all overtime wages and all sums
20 unlawfully withheld from compensation due to PLAINTIFF and the other members
21 of the CALIFORNIA CLASS; and
22 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
23 for restitution of the sums incidental to DEFENDANTS' violations due to
24 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

25 2. On behalf of the CALIFORNIA CLASS:

- 26 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
27 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
28 pursuant to Cal. Code of Civ. Proc. § 382;

- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. As to PLAINTIFF and on behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004;

4. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys’ fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or § 1194.

DATED: September 6, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay, Esq.
Attorney for PLAINTIFFS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

DATED: September 6, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay, Esq.
Attorney for PLAINTIFFS

EXHIBIT 1



Client # 63101

June 14, 2023

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

GHC OF SAN RAFAEL, LLC

c/o Thomas Olds Jr
6 Hutton Centre Drive, Suite 400
Santa Ana, CA 92707

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0625 6789 64

LIFE GENERATIONS HEALTHCARE LLC

c/o Thomas Olds Jr
6 Hutton Centre Drive, Suite 400
Santa Ana, CA 92707

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0625 6789 71

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 232, 246, 510, 512, 558, 1102.5, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff AERIEL DE GUZMAN ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant GHC OF SAN RAFAEL, LLC ("Defendant GHC of San Rafael") and Defendant LIFE GENERATIONS HEALTHCARE LLC ("Defendant Life Generations Healthcare") (hereinafter, collectively, "Defendants"). Plaintiff was employed by Defendants from September of 2022 to May of 2023, 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. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her and other aggrieved employees, which among other violations 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, 221, 226, 226.2, 226.3, 226.7, 227.3, 232, 246, 510, 512, 558, 1102.5, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for by Defendant GHC of San Rafael and/or Defendant Life Generations Healthcare in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, 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 Defendants, 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.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants 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, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

AERIEL DE GUZMAN, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

GHC OF SAN RAFAEL, LLC, a California
limited liability company; LIFE
GENERATIONS HEALTHCARE LLC, a
California limited liability company; and DOES
1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

- 1 6) FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN
3 VIOLATION OF CAL. LAB. CODE § 226;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO REIMBURSE EMPLOYEES
8 FOR REQUIRED EXPENSES IN
9 VIOLATION OF CAL. LAB. CODE § 2802;
10 9) UNPAID SICK PAY IN VIOLATION OF
11 CAL. LAB. CODE § 246.

12 **DEMAND FOR A JURY TRIAL**

13
14 PLAINTIFF AERIEL DE GUZMAN (“PLAINTIFF”), an individual, on behalf of herself
15 and all other similarly situated current and former employees, alleges on information and belief,
16 except for her own acts and knowledge which are based on personal knowledge, the following:

17 **PRELIMINARY ALLEGATIONS**

18 1. Defendant GHC OF SAN RAFAEL, LLC (“Defendant GHC of San Rafael”) is a
19 California limited liability company that at all relevant times mentioned herein conducted and
20 continues to conduct substantial and regular business throughout California.

21 2. Defendant LIFE GENERATIONS HEALTHCARE LLC (“Defendant Life
22 Generations Healthcare”) is a California limited liability company that at all relevant times
23 mentioned herein conducted and continues to conduct substantial and regular business throughout
24 California.

25 3. Defendant GHC of San Rafael and Defendant Life Generations Healthcare were
26 the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by
27 the company PLAINTIFF performed work for respectively and are therefore jointly responsible
28 as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

4. DEFENDANTS operates skilled nursing and rehabilitation facilities in the state of
California, including in the county of Marin, where PLAINTIFF worked.

5. PLAINTIFF was employed by DEFENDANTS in California from September of
2022 to May of 2023 as a non-exempt employee, paid on an hourly basis, and entitled to the

1 legally required meal and rest periods and payment of minimum and overtime wages due for all
2 time worked.

3 6. PLAINTIFF brings this Class Action on behalf of herself and a California class,
4 defined as all persons who are or previously were employed by Defendant GHC of San Rafael
5 and/or Defendant Life Generations Healthcare in California and classified as non-exempt
6 employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years
7 prior to the filing of this Complaint and ending on the date as determined by the Court (the
8 "CLASS PERIOD"). The amount in controversy for the aggregate claim of the CALIFORNIA
9 CLASS Members is under five million dollars (\$5,000,000.00).

10 7. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
11 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
12 the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which failed to
13 lawfully compensate these employees. DEFENDANTS' uniform policy and practice alleged
14 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS retained
15 and continue to retain wages due PLAINTIFF and the other members of the CALIFORNIA
16 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
17 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and
18 the other members of the CALIFORNIA CLASS who have been economically injured by
19 DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable
20 relief.

21 8. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
23 presently unknown to PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious
24 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
25 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
26 ascertained. PLAINTIFFS is informed and believes, and based upon that information and belief
27 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
28

1 inclusive, are responsible in some manner for one or more of the events and happenings that
2 proximately caused the injuries and damages hereinafter alleged.

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

11 10. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of the
12 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or
13 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
14 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
15 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
16 at all relevant times.

17 11. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
18 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
19 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
20 employee a wage less than the minimum fixed by California state law, and as such, are subject to
21 civil penalties for each underpaid employee.

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

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

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

3 **JURISDICTION AND VENUE**

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

8 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ
10 the CALIFORNIA CLASS across California, including in this County, and committed the
11 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

12 **THE CONDUCT**

13 16. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a
15 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
16 failed to provide legally compliant meal and rest periods, failed to accurately compensate
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
18 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
19 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
20 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
21 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal and rest
22 premiums at the regular rate of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS
23 Members redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFF and other
24 CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and
25 the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,
26 among other things, all applicable hourly rates in effect during the pay periods and the
27 corresponding amount of time worked at each hourly rate. DEFENDANTS’ uniform policies and
28 practices are intended to purposefully avoid the accurate and full payment for all time worked as

1 required by California law which allows DEFENDANTS to illegally profit and gain an unfair
2 advantage over competitors who comply with the law. To the extent equitable tolling operates to
3 toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should
4 be adjusted accordingly.

5 **A. Meal Period Violations**

6 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
7 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
8 meaning the time during which an employee is subject to the control of an employer, including
9 all the time the employee is suffered or permitted to work. From time to time during the CLASS
10 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
11 without paying them for all the time they were under DEFENDANTS' control. Specifically,
12 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
13 be PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
14 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
15 Members forfeited minimum wage and overtime compensation by regularly working without their
16 time being accurately recorded and without compensation at the applicable minimum wage and
17 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
18 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
19 records.

20 18. From time to time during the CLASS PERIOD, as a result of their rigorous work
21 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
22 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
23 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
24 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for
25 more than five (5) hours during some shifts without receiving a meal break. Further,
26 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
27 second off-duty meal period for some workdays in which these employees are required by
28 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by

1 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and
2 narrowly construed “on-duty” meal period exception. When they were provided with meal
3 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
4 required to remain on premises, on duty and on call. Further, DEFENDANTS from time to time
5 required PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless
6 communication devices in order to receive and respond to work-related communications during
7 what was supposed to be their off-duty meal breaks. DEFENDANTS’ failure to provide
8 PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is
9 evidenced by DEFENDANTS’ business records. As a result of their rigorous work schedules and
10 DEFENDANTS’ inadequate staffing, PLAINTIFF and other members of the CALIFORNIA
11 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
12 DEFENDANTS’ strict corporate policy and practice.

13 **B. Rest Period Violations**

14 19. From time to time during the CLASS PERIOD, PLAINTIFF and other
15 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
16 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
17 DEFENDANTS’ inadequate staffing. Further, for the same reasons, these employees were denied
18 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
19 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
20 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
21 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
22 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
23 CLASS Members were, from time to time, required to on premises, on duty and/or on call.
24 Further, DEFENDANTS from time to time required PLAINTIFF and other CALIFORNIA
25 CLASS Members to maintain cordless communication devices in order to receive and respond to
26 work-related communications during what was supposed to be their off-duty rest breaks.
27 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
28 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS’

1 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
2 time denied their proper rest periods by DEFENDANT and DEFENDANTS' managers.

3 **C. Unreimbursed Business Expenses**

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

15 21. In the course of their employment, DEFENDANTS required PLAINTIFF and
16 other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal
17 cell phones and personal vehicles as a result of and in furtherance of their job duties. Specifically,
18 PLAINTIFF and other CALIFORNIA CLASS Members were required to use their personal cell
19 phones and personal vehicles in order to perform work related tasks. However, DEFENDANTS
20 unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the
21 use of their personal cell phones and personal vehicles. As a result, in the course of their
22 employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members
23 incurred unreimbursed business expenses that included, but were not limited to, costs related to
24 the use of their personal cell phones, all on behalf of and for the benefit of DEFENDANT.

25 **D. Wage Statement Violations**

26 22. California Labor Code Section 226 required an employer to furnish its employees
27 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
28 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,

(5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (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. From time to time during the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

24. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.

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

E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

26. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS for all hours worked.

27. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift work, including but not limited to, time spent assisting DEFENDANTS' patients and assisting DEFENDANTS with work-related tasks and submitting to pre-shift Covid-19 health screenings.

1 This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work
2 while off-the-clock.

3 28. DEFENDANTS directed and directly benefited from the undercompensated off-
4 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

5 29. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
6 assignments, and employment conditions of PLAINTIFF and the other members of the
7 CALIFORNIA CLASS.

8 30. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
9 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
10 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
11 wages earned and owed for all the work they performed.

12 31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
13 exempt employees, subject to the requirements of the California Labor Code.

14 32. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
15 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
16 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
17 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
18 eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime
19 pay.

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

22 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
23 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and
24 benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and
25 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
26 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
27 records.

28

1 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
2 **and Redeemed Sick Pay**

3 35. From time to time during the CLASS PERIOD, DEFENDANTS failed and
4 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
5 Members for their overtime and double time hours worked, meal and rest period premiums, and
6 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
7 forfeited wages due to them for working overtime without compensation at the correct overtime
8 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
9 DEFENDANTS' uniform policy and practice not to pay the CALIFORNIA CLASS Members at
10 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick
11 pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

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

16 37. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
17 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
18 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
19 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
20 paid on an hourly basis with bonus compensation when the employees met the various
21 performance goals set by DEFENDANTS.

22 38. However, from time to time, when calculating the regular rate of pay in those pay
23 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
24 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
25 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
26 compensation as part of the employee's "regular rate of pay" and/or calculated all hours worked
27 rather than just all non-overtime hours worked. Management and supervisors described the
28 incentive/bonus program to potential and new employees as part of the compensation package.

1 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
2 CLASS Members must be included in the “regular rate of pay.” The failure to do so has resulted
3 in a systematic underpayment of overtime and double time compensation, meal and rest period
4 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
5 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that
6 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
7 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
8 not the employee actually works overtime in that workweek. DEFENDANTS’ conduct, as
9 articulated herein, by failing to include the incentive compensation as part of the “regular rate of
10 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
11 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

12 39. In violation of the applicable sections of the California Labor Code and the
13 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a
14 matter of company policy, practice, and procedure, intentionally and knowingly failed to
15 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
16 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
17 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
18 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
19 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the
20 CLASS PERIOD should be adjusted accordingly.

21 **G. Unlawful Deductions**

22 40. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
23 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
24 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
25 DEFENDANTS violated Labor Code § 221.

26 **H. Timekeeping Manipulation**

27 41. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
28 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of

1 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
2 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
3 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
4 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and
5 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
6 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
7 missed rest breaks.

8 42. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
9 time-to-time, forfeited time worked by working without their time being accurately recorded and
10 without compensation at the applicable pay rates.

11 43. The mutability of the timekeeping system also allowed DEFENDANTS to alter
12 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
13 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
14 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
15 were not at all times provided an off-duty meal break. This practice is a direct result of
16 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
17 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

18 44. 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 the timekeeping system was inoperable. DEFENDANTS' uniform policy and
21 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
22 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
23 records.

24 **I. Unlawful Rounding Practices**

25 45. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
26 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
27 CALIFORNIA CLASS Members for the actual time these employees worked each day,
28 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding

1 policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
2 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
3 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
4 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
5 these employees for all their time worked, including the applicable overtime compensation for
6 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
7 time to time, forfeited compensation for their time worked by working without their time being
8 accurately recorded and without compensation at the applicable overtime rates.

9 46. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
10 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
11 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
12 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
13 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
14 receiving an off-duty meal break.

15 **J. Violations for Untimely Payment of Wages**

16 47. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the
17 wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant
18 to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall
19 become due and payable not later than 72 hours thereafter, unless the employee has given 72
20 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
21 or her wages at the time of quitting." PLAINTIFF and the CALIFORNIA CLASS Members
22 were, from time to time, not timely provided the wages earned and unpaid at the time of their
23 discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202. Further,
24 pursuant to California Labor Code section 204, PLAINTIFF and the CALIFORNIA CLASS
25 members were entitled to timely payment of wages during their employment. PLAINTIFF and
26 the CALIFORNIA CLASS members, from time to time, did not receive payment of all wages,
27 including, but not limited to, overtime wages, minimum wages, meal period premium wages,
28 and rest period premium wages within permissible time periods.

48. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF with a second off-duty meal period each workday in which she was required by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF with a rest break, they required PLAINTIFF to remain on premises, on-duty and on-call for the rest break. DEFENDANTS policy caused PLAINTIFF to remain on premises, on-call and on-duty during what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to the personal expenses incurred for the use of her personal cell phone and personal vehicle, on behalf of and in furtherance of her employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

CLASS ACTION ALLEGATIONS

49. PLAINTIFF brings this Class Action on behalf of herself, and a California class defined as all persons who are or previously were employed by Defendant GHC of San Rafael and/or Defendant Life Generations Healthcare in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD").

50. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,

1 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
2 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
3 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

4 51. The members of the class are so numerous that joinder of all class members is
5 impractical.

6 52. Common questions of law and fact regarding DEFENDANTS' conduct, including
7 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
8 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
9 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
10 compliant meal and rest periods, failure to reimburse for business expenses, failure to provide
11 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum
12 wage and overtime, exist as to all members of the class and predominate over any questions
13 affecting solely any individual members of the class. Among the questions of law and fact
14 common to the class are:

- 15 a. Whether DEFENDANT maintained legally compliant meal period policies and
16 practices;
- 17 b. Whether DEFENDANT maintained legally compliant rest period policies and
18 practices;
- 19 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
20 Members accurate premium payments for missed meal and rest periods;
- 21 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
22 Members accurate overtime wages;
- 23 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
24 Members at least minimum wage for all hours worked;
- 25 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
26 CLASS Members for required business expenses;
- 27 g. Whether DEFENDANT issued legally compliant wage statements;
- 28

- h. Whether DEFENDANT 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;
- i. Whether DEFENDANT 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 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- j. Whether DEFENDANT 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.

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

54. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and PLAINTIFF has the same interests as the other members of the class.

55. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

56. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

57. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interest of the other CALIFORNIA CLASS Members.

58. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained.

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

- 9 a. Inconsistent or varying adjudications with respect to individual members of the
10 CALIFORNIA CLASS which would establish incompatible standards of conduct
11 for the parties opposing the CALIFORNIA CLASS; and/or,
12 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
13 which would as a practical matter be dispositive of the interests of the other
14 members not party to the adjudication or substantially impair or impeded their
15 ability to protect their interests.

61. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

FIRST CAUSE OF ACTION

Unlawful Business Practices

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

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

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

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

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

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

65. By the conduct alleged herein, DEFENDANTS have engaged and continue to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802, 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.

66. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that these practices violated 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.

67. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent in that DEFENDANTS’ uniform policy and practice failed to provide the legally mandated meal and rest periods and the required amount of compensation for missed meal and rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all necessary business expenses incurred, due to a systematic business practice that cannot be justified, 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

1 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

3 68. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
4 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANTS.

7 69. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
8 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
9 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
10 required by Cal. Lab. Code §§ 226.7 and 512.

11 70. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
12 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
13 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
14 each workday in which a second off-duty meal period was not timely provided for each ten (10)
15 hours of work.

16 71. PLAINTIFF further demands on behalf of herself and on behalf of each
17 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
18 not timely provided as required by law.

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

25 73. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
27 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
28

1 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

3 74. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
4 and do, seek such relief as may be necessary to restore to them the money and property which
5 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
6 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
7 business practices, including earned but unpaid wages for all time worked.

8 75. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
10 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
11 engaging in any unlawful and unfair business practices in the future.

12 PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
13 and/or adequate remedy at law that will end the unlawful and unfair business practices of
14 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
15 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
16 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
17 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
18 unlawful and unfair business practices.

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

21 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

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

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

26 77. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
27 for DEFENDANT's willful and intentional violations of the California Labor Code and the
28

1 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate
2 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

5 79. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a less wage than
7 the minimum so fixed is unlawful.

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

10 81. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
11 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
12 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
13 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
14 the CALIFORNIA CLASS.

15 82. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
17 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
18 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

19 83. In committing these violations of the California Labor Code, DEFENDANTS
20 inaccurately calculated the correct time worked and consequently underpaid the actual time
21 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted
22 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
23 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
24 laws and regulations.

25 84. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
26 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
27 minimum wage compensation for their time worked for DEFENDANTS.
28

1 85. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
3 failure to pay all earned wages.

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

9 87. DEFENDANTS knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA CLASS were under-compensated for their time worked.
11 DEFENDANTS systematically elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
13 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
14 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
15 for their time worked.

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

24 89. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
25 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
26 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
27 California Labor Code and/or other applicable statutes. To the extent minimum wage
28 compensation is determined to be owed to the CALIFORNIA CLASS Members who have

1 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
2 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
3 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
4 Members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
5 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
6 recover statutory costs.

7 **THIRD CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

9 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

10 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

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

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

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

24 94. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
25 including minimum and overtime compensation and interest thereon, together with the costs of
26 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
27 than those fixed by the Industrial Welfare Commission is unlawful.
28

1 95. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
2 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
3 they worked, including overtime work.

4 96. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
5 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
6 implementing a uniform policy and practice that failed to accurately record overtime worked by
7 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
8 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
9 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
10 (12) hours in a workday, and/or forty (40) hours in any workweek.

11 97. In committing these violations of the California Labor Code, DEFENDANTS
12 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
13 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
14 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
15 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
16 regulations.

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

20 99. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
21 from the overtime requirements of the law. None of these exemptions are applicable to
22 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
23 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
24 agreement that would preclude the causes of action contained herein this Complaint. Rather,
25 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA CLASS based on
26 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
27 California.

28

1 100. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
3 a failure to pay all earned wages.

4 101. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
5 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
6 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
7 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
8 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANTS
9 failed to accurately record and pay as evidenced by DEFENDANTS' business records and
10 witnessed by employees.

11 102. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
12 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
13 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA
14 CLASS have suffered and will continue to suffer an economic injury in amounts which are
15 presently unknown to them, and which will be ascertained according to proof at trial.

16 103. DEFENDANTS knew or should have known that PLAINTIFF and the other
17 members of the CALIFORNIA CLASS were undercompensated for their time worked.
18 DEFENDANTS systematically elected, either through intentional malfeasance or gross
19 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
20 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
21 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
22 their overtime worked.

23 104. In performing the acts and practices herein alleged in violation of California labor
24 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
25 and provide them with the requisite compensation, DEFENDANTS acted and continue to act
26 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
28 consequences to them, and with the despicable intent of depriving them of their property and legal

1 rights, and otherwise causing them injury in order to increase company profits at the expense of
2 these employees.

3 105. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
4 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
5 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
6 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
7 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
8 employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore
9 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
10 penalties are sought herein. DEFENDANTS' conduct as alleged herein was willful, intentional,
11 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
12 entitled to seek and recover statutory costs.

13 **FOURTH CAUSE OF ACTION**

14 **Failure To Provide Required Meal Periods**

15 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

20 107. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
21 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
22 required by the applicable Wage Order and Labor Code. The nature of the work performed by
23 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
24 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
25 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
26 fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS'
27 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
28 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business

1 records. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS
2 Members with a second off-duty meal period in some workdays in which these employees were
3 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
4 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
5 and in accordance with DEFENDANTS' strict corporate policy and practice.

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

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

14 **FIFTH CAUSE OF ACTION**

15 **Failure To Provide Required Rest Periods**

16 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

21 111. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
22 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
23 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
24 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
25 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
26 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
27 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
28 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other

1 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
2 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
3 compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as
4 required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to
5 provide PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid
6 rest periods is evidenced by DEFENDANTS' business records.

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

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

15 **SIXTH CAUSE OF ACTION**

16 **Failure To Provide Accurate Itemized Statements**

17 **(Cal. Lab. Code § 226)**

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

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

22 115. Cal. Labor Code § 226 provides that an employer must furnish employees with an
23 "accurate itemized" statement in writing showing:

- 24 a. Gross wages earned,
- 25 b. (2) total hours worked by the employee, except for any employee whose
26 compensation is solely based on a salary and who is exempt from payment of
27 overtime under subdivision (a) of Section 515 or any applicable order of the
28 Industrial Welfare Commission,

- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

116. When DEFENDANTS did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

117. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

118. 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

1 wages for all missed meal and rest breaks and the amount of employment taxes which were not
2 properly paid to state and federal tax authorities. These damages are difficult to estimate.
3 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
4 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
5 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
6 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
7 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
8 of the CALIFORNIA CLASS herein).

9 **SEVENTH CAUSE OF ACTION**

10 **Failure To Pay Wages When Due**

11 **(Cal. Lab. Code § 203)**

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

13 119. 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.

16 120. Cal. Lab. Code § 200 provides that:

17 As used in this article:

- 18 (d) "Wages" includes all amounts for labor performed by employees of every
19 description, whether the amount is fixed or ascertained by the standard of time,
20 task, piece, Commission basis, or other method of calculation.
21 (e) "Labor" includes labor, work, or service whether rendered or performed under
22 contract, subcontract, partnership, station plan, or other agreement if the to be
23 paid for is performed personally by the person demanding payment.

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

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

28 If an employee not having a written contract for a definite period quits his or her
employment, his or her wages shall become due and payable not later than 72 hours
thereafter, unless the employee has given 72 hours previous notice of his or her intention
to quit, in which case the employee is entitled to his or her wages at the time of quitting.
Notwithstanding any other provision of law, an employee who quits without providing a
72-hour notice shall be entitled to receive payment by mail if he or she so requests and

designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

123. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS Members' employment contract.

124. Cal. Lab. Code § 203 provides:

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

///

125. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated, and DEFENDANTS have not tendered payment of wages to these employees who missed meal and rest breaks, as required by law.

126. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD and demand an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

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

127. 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.

128. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

1 129. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
2 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
3 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
4 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
5 members for expenses which included, but were not limited to, the use of their personal cell
6 phones, all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and
7 other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal
8 cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS'
9 uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA
10 CLASS members for expenses resulting from the use of their personal cell phones within the
11 course and scope of their employment for DEFENDANTS. These expenses were necessary to
12 complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct
13 to assert any waiver of this expectation. Although these expenses were necessary expenses
14 incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANTS failed to
15 indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these
16 expenses as an employer is required to do under the laws and regulations of California.

17 130. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
18 by her and the CALIFORNIA CLASS members in the discharge of their job duties for
19 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
20 statutory rate and costs under Cal. Lab. Code § 2802.

21 **NINTH CAUSE OF ACTION**

22 **UNPAID SICK PAY**

23 **(Cal. Lab. Code § 246, *et seq.*)**

24 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all DEFENDANT)**

25 131. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
26 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
27 Complaint.
28

1 132. Cal. Labor Code Sections 246(I)(1) mandates that “[p]aid sick time for nonexempt
2 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
3 which the employee uses paid sick time, whether or not the employee actually works overtime in
4 that workweek.”

5 133. From time-to-time, during the PLAINTIFF and other members of the
6 CALIFORNIA CLASS were compensated at an hourly rate plus either non-discretionary incentive
7 pay. As a matter of law, the non-discretionary incentive compensation received by PLAINTIFF
8 and other members of the CALIFORNIA CLASS must be included in the “regular rate of pay.”

9 134. From time-to-time during the CLASS PERIOD, in those pay periods where
10 PLAINTIFF and other members of the CALIFORNIA CLASS earned hourly compensation and
11 either non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to
12 properly calculate the regular rate of pay for purposes of compensating paid sick time by omitting
13 non-discretionary incentive pay from the regular rate of pay.

14 135. DEFENDANT’s uniform policy and practice of omitting non-discretionary
15 incentive pay and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick
16 pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the
17 CALIFORNIA CLASS. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
18 request recovery of all unpaid wages, including sick pay wages, according to proof, interest,
19 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
20 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
21 overtime compensation is determined to be owed to other members of the CALIFORNIA CLASS
22 who have terminated their employment, DEFENDANT’s conduct also violates Labor Code §§
23 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
24 Cal. Lab. Code § 203, which penalties are sought herein on behalf of other members of the
25 CALIFORNIA CLASS. DEFENDANT’S conduct as alleged herein was willful, intentional and
26 not in good faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are
27 entitled to seek and recover statutory costs.

28 136. Cal. Lab. Code § 246(i) provides that:

1 An employer shall provide an employee with written notice that sets forth the
2 amount of paid sick leave available, or paid time off leave an employer provides in
3 lieu of sick leave, for use on either the employee's itemized wage statement
4 described in Section 226 or in a separate writing provided on the designated pay
5 date with the employee's payment of wages. If an employer provides unlimited paid
6 sick leave or unlimited paid time off to an employee, the employer may satisfy this
7 section by indicating on the notice or the employee's itemized wage statement
8 "unlimited."

9 137. From time to time, DEFENDANT failed to furnish PLAINTIFF and other
10 members of the CALIFORNIA CLASS with written wage statements setting forth the amount of
11 paid sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.* As a result,
12 PLAINTIFF and other members of the CALIFORNIA CLASS are entitled to seek and recover
13 statutory costs.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
16 severally, as follows:

17 1. On behalf of the CALIFORNIA CLASS:

- 18 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
19 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
20 b. An order temporarily, preliminarily and permanently enjoining and restraining
21 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
22 c. An order requiring DEFENDANTS to pay all overtime wages and all sums
23 unlawfully withheld from compensation due to PLAINTIFF and the other members
24 of the CALIFORNIA CLASS; and
25 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
26 for restitution of the sums incidental to DEFENDANTS' violations due to
27 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

28 2. On behalf of the CALIFORNIA CLASS:

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

- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
 - e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
 - f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.
3. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or § 1194.

DATED: June 14, 2023

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay, Esq.
Attorney for PLAINTIFFS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

DATED: June 14, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay, Esq.
Attorney for PLAINTIFFS

EXHIBIT