

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

THE WHOLE CHILD – MENTAL HEALTH & HOUSING SERVICES,
a California Corporation; and DOES 1-50, Inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

CLAUDIA NUNEZ PORCAYO, on behalf of herself and on behalf of all
persons similarly situated

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

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 08 2021

Sherril R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

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

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

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Spring Street Courthouse
312 North Spring Street
Los Angeles, 90012

CASE NUMBER
(Número de Caso)

21STCV25160

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203

Zakay Law Group, APLC - 3990 Old Town Avenue, C204 San Diego, CA 92110

DATE:
(Fecha) JUL 08 2021

SHERRI R. CARTER

Clerk, by

(Secretario)

Kristina Vargas

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

VIA FAX

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10 Attorneys for Plaintiffs

11 *[Counsel Continued on Next Page]*

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14
15 **IN AND FOR THE COUNTY OF LOS ANGELES**

16 CLAUDIA NUNEZ PORCAYO, on behalf
17 of herself and on behalf of all persons
18 similarly situated,

19 Plaintiffs,

20 v.

21 THE WHOLE CHILD – MENTAL
22 HEALTH & HOUSING SERVICES, a
23 California Corporation; and DOES 1-50,
24 Inclusive,

25 DEFENDANTS.

Case No: **21STCV251-0**

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 and 226.2;
- 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) UNPAID SICK PAY IN VIOLATION OF CAL. LAB. CODE § 246;
- 10) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 08 2021

Sharrl R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

VIA FAX

1 **JCL LAW FIRM, APC**

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8 Attorneys for Plaintiff

1 Plaintiff Claudia Nunez Porcayo, an individual, (“PLAINTIFF”), on behalf of herself and all
2 other similarly situated current and former employees, allege on information and belief, except for
3 their own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant THE WHOLE CHILD – MENTAL HEALTH & HOUSING
6 SERVICES, (“DEFENDANT and/or DEFENDANTS”) is a California Corporation and at all
7 relevant times mentioned herein conducted and continues to conduct substantial and regular
8 business throughout California.

9 2. DEFENDANT provides mental health, family housing, parent enrichment, and
10 nutrition education services to families and children of vulnerable communities, including at the
11 Los Angeles County, California location where PLAINTIFF worked.

12 3. PLAINTIFF was employed by DEFENDANTS in California as a non-exempt
13 employee entitled to minimum wages, overtime pay and meal and rest periods from October of
14 2020 to February of 2021.

15 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in California
17 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
18 period beginning four (4) years prior to the filing of the Complaint and ending on the date as
19 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
20 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
21 (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy and practice
25 which failed to lawfully compensate these employees for all their time worked. DEFENDANT’S
26 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice
27 whereby DEFENDANT retained and continues to retain wages due to PLAINTIFF and the other
28 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the

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

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

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

21 **THE CONDUCT**

22 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
23 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
24 meaning the time during which an employee is subject to the control of an employer, including
25 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT
26 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
27 the time they were under DEFENDANT'S control. Specifically, PLAINTIFF performed work
28 before and after the beginning of her shift, spending time under the DEFENDANT'S control for

1 which she was not compensated. Further, PLAINTIFF from time to time performed work during
2 her shift by traveling to and from DEFENDANT'S different work locations for which
3 PLAINTIFF was not fully compensated. As a result, the PLAINTIFF and other CALIFORNIA
4 CLASS Members forfeited minimum wage and overtime compensation by regularly working
5 without their time being accurately recorded and without compensation at the applicable
6 minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay
7 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
8 DEFENDANTS' business records.

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

13 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
14 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
15 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages, including but not
16 limited to "bilingual pay," based on their performance for DEFENDANTS. The non-discretionary
17 incentive program provided all employees paid on an hourly basis with incentive compensation
18 when the employees met the various performance goals set by DEFENDANTS. However, when
19 calculating the regular rate of pay in order to pay overtime to PLAINTIFF and other
20 CALIFORNIA CLASS Members, DEFENDANTS failed to include the incentive compensation
21 as part of the employees' "regular rate of pay" for purposes of calculating overtime pay.
22 Management and supervisors described the incentive program to potential and new employees as
23 part of the compensation package. However, DEFENDANTS failed to include incentive
24 compensation into the "regular rate of pay" for purposes of calculating overtime pay. As a matter
25 of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS
26 Members must be included in the "regular rate of pay." The failure to do so has resulted in a
27 systematic underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA
28 CLASS Members by DEFENDANTS.

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

14 12. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
15 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
16 without being provided ten (10) minute rest periods. Further, these employees were denied their
17 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
18 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
19 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
20 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
21 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and
22 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity
23 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
24 remain on-duty and on-call, and subject to DEFENDANTS' control in accordance with
25 DEFENDANTS' policy. PLAINTIFF and other CALIFORNIA CLASS Members were also not
26 provided with one-hour wages in lieu thereof. DEFENDANTS' policy caused PLAINTIFF and
27 other CALIFORNIA CLASS Members to remain on-call and on-duty during what was supposed
28 to be their off-duty rest periods. As a result of their rigorous work schedules, PLAINTIFF and

1 other CALIFORNIA CLASS Members were periodically denied their proper rest periods by
2 DEFENDANTS and DEFENDANTS' managers.

3 13. Under California law, every employer shall pay to each employee, on the
4 established payday for the period involved, not less than the applicable minimum wage for all
5 hours worked in the payroll period, whether the remuneration is measured by time, piece,
6 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
7 during which an employee is subject to the control of an employer and includes all the time the
8 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFF and
9 other CALIFORNIA CLASS Members were from time to time required to perform work for
10 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal
11 breaks. DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS
12 Members for any of the time spent under DEFENDANTS' control while working off-the-clock.
13 As such, DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA CLASS Members
14 the applicable minimum wage for all hours worked in a payroll period.

15 14. In violation of the applicable sections of the California Labor Code and the
16 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
17 matter of company policy, practice and procedure, intentionally and knowingly failed to
18 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for all time
19 worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
20 the payment of the correct compensation as required by California law which allowed
21 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
22 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
23 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

24 15. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members
25 worked during what was supposed to be their meal breaks or otherwise off the clock, and/or when
26 DEFENDANT miscalculated PLAINTIFF's and other CALIFORNIA CLASS Members' regular
27 rate of pay, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
28 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among

1 other things, the correct rate of pay and/or the correct time worked, including, work performed in
2 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the gross
3 wages paid for those periods during the pay period, and the correct penalty payments or missed
4 meal and rest periods in violation of California Labor Code Sections 226 and 226.2.

5 16. California Labor Code Section 226 requires an employer to furnish its employees
6 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
7 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
8 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
9 of the employee and only the last four digits of the employee's social security number or an
10 employee identification number other than a social security number, (8) the name and address of
11 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
12 period and the corresponding number of hours worked at each hourly rate by the employee.

13 17. Aside from the violations listed herein, DEFENDANTS failed to issue to
14 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
15 Code 226 *et seq.* Specifically, for example, DEFENDANTS violated California Labor Code
16 226(a)(2) by failing to provide the total hours worked on itemized wage statements issued to
17 PLAINTIFF and the other members of the CALIFORNIA CLASS. As a result, from time to time
18 DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
19 wage statements which violated Cal. Lab. Code § 226.

20 18. DEFENDANTS as a matter of corporate policy, practice and procedure,
21 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
22 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
23 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
24 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
25 are required to indemnify employees for all expenses incurred in the course and scope of their
26 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
27 employee for all necessary expenditures or losses incurred by the employee in direct consequence
28 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,

1 even though unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful."

3 19. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
4 Members as a business expense, were required by DEFENDANTS to use their own personal
5 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
6 employees for DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for
7 the cost associated with the use of their personal cellular phones or personal vehicles for
8 DEFENDANTS' benefit. Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members
9 were required by DEFENDANTS to use their personal cell phones and personal vehicles for work
10 related issues. As a result, in the course of their employment with DEFENDANTS the
11 PLAINTIFFS and other members of the CALIFORNIA CLASS incurred unreimbursed business
12 expenses which included, but were not limited to, costs related to the use of their personal cellular
13 phones and personal vehicles all on behalf of and for the benefit of DEFENDANTS.

14 20. California Labor Code Section 246(I)(1) mandates that "[p]aid sick time for
15 nonexempt employees shall be calculated in the same manner as the regular rate of pay for the
16 workweek in which the employee uses paid sick time, whether or not the employee actually works
17 overtime in that workweek." From time-to-time during the CALIFORNIA CLASS PERIOD,
18 PLAINTIFF, and other CALIFORNIA CLASS Members were compensated at an hourly rate plus
19 non-discretionary incentive pay. The non-discretionary bonus program provided PLAINTIFF and
20 the CALIFORNIA CLASS Members with bonus compensation when the employees met the
21 various performance goals set by DEFENDANTS. Management and supervisors described the
22 incentive/bonus compensation to PLAINTIFF and the CALIFORNIA CLASS Members as part of
23 the compensation package. As a matter of law, the incentive compensation received by
24 PLAINTIFF and other CALIFORNIA CLASS Members must be included in the "regular rate of
25 pay."

26 21. From time-to-time during the CALIFORNIA CLASS PERIOD, in those pay
27 periods where PLAINTIFF and the CALIFORNIA CLASS Members earned hourly
28 compensation non-discretionary incentive compensation, and took paid sick time,

1 DEFENDANTS failed to properly calculate the regular rate of pay for purposes of compensating
2 paid sick time. Rather than paying PLAINTIFF and the CALIFORNIA CLASS Members paid
3 sick time at the regular rate of pay, DEFENDANTS compensated paid sick time at PLAINTIFF's
4 and the CALIFORNIA CLASS Members' base hourly rate which exclude all non-discretionary
5 incentive compensation. As a result, DEFENDANTS systematically under compensated paid
6 sick days and caused PLAINTIFF and the other CALIFORNIA CLASS Members to forfeit sick
7 pay wages due them. DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA
8 CLASS Members the correct rate of pay for all paid sick time in accordance with Labor Code
9 Section 246 is evidenced by DEFENDANTS' business records

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

20 23. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
21 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
22 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
23 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
24 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
25 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
26 with a rest break, they required PLAINTIFF to remain on-duty and on-call, for the rest break.
27 DEFENDANTS' policy caused PLAINTIFF to remain on-call and on-duty during what was
28 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks

1 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
2 and practice. Moreover, DEFENDANTS also provided PLAINTIFF with a paystub that failed to
3 accurately display PLAINTIFF's correct time worked and wages, as well as payments for missed
4 meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a). To date,
5 DEFENDANTS have not fully paid PLAINTIFF the overtime compensation still owed to her or
6 any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy for
7 PLAINTIFF individually does not exceed the sum or value of \$75,000.

8 **JURISDICTION AND VENUE**

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

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

18 **THE CALIFORNIA CLASS**

19 26. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
20 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
21 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
22 individuals who are or previously were employed by DEFENDANT in California and classified
23 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
24 four (4) years prior to the filing of the original complaint and ending on the date as determined by
25 the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate
26 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

4 28. DEFENDANTS, as a matter of company policy, practice and procedure, and in
5 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
6 requirements, and the applicable provisions of California law, intentionally, knowingly, and
7 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal
8 and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS,
9 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform
10 this work and permitted or suffered to permit this work.

11 29. DEFENDANTS have the legal burden to establish that each and every
12 CALIFORNIA CLASS Member was paid accurately and was provided all meal and rest breaks
13 missed as required by California laws. DEFENDANTS, however, as a matter of uniform and
14 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
15 PERIOD and still fails to have in place a policy or practice to ensure that each and every
16 CALIFORNIA CLASS Member is paid as required by law, so as to satisfy its burden. This
17 common business practice applicable to each and every CALIFORNIA CLASS Member can be
18 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
19 Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not
20 elements of this claim.

21 30. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
22 CLASS Members is impracticable.

23 31. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
24 California law by:

- 25 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
26 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
27 policies, practices and procedures that failed to pay all wages due the
28 CALIFORNIA CLASS for all time worked;

- b. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members;
- c. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly and systematically failed to record and pay PLAINTIFF and other members of the CALIFORNIA CLASS for all time worked, including minimum wages owed and overtime wages owed for work performed by these employees.

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

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an hourly basis who was subjected to the DEFENDANTS' deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to

1 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
2 as a result of DEFENDANTS' employment practices. PLAINTIFF, like all the
3 other members of the CALIFORNIA CLASS, were subjected to the uniform
4 employment practices of DEFENDANTS and was a non-exempt employee paid
5 on an hourly basis and paid additional non-discretionary incentive wages who was
6 subjected to the DEFENDANTS' practice and policy which failed to pay the
7 correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime
8 worked by the CALIFORNIA CLASS and thereby systematically under pays
9 overtime compensation to the CALIFORNIA CLASS. PLAINTIFF and the
10 members of the CALIFORNIA CLASS were and are similarly or identically
11 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
12 misconduct engaged in by DEFENDANTS; and

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

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

- 22 a. Without class certification and determination of declaratory, injunctive, statutory
23 and other legal questions within the class format, prosecution of separate actions
24 by individual members of the CALIFORNIA CLASS will create the risk of:
- 25 i. Inconsistent or varying adjudications with respect to individual members
26 of the CALIFORNIA CLASS which would establish incompatible
27 standards of conduct for the parties opposing the CALIFORNIA CLASS;
28 and/or;

1 ii. Adjudication with respect to individual members of the CALIFORNIA
2 CLASS which would as a practical matter be dispositive of interests of the
3 other members not party to the adjudication or substantially impair or
4 impede their ability to protect their interests.

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

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

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

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

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

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

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

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

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

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

24 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
25 over any question affecting only individual CALIFORNIA CLASS Members
26 because the DEFENDANTS' employment practices are uniform and
27 systematically applied with respect to the CALIFORNIA CLASS.
28

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

27 35. DEFENDANTS maintain records from which the Court can ascertain and identify
28 by job title each of DEFENDANTS' employees who as have been systematically, intentionally

1 and uniformly subjected to DEFENDANTS' company policy, practices and procedures as herein
2 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
3 of similarly situated employees when they have been identified.

4 **THE CALIFORNIA LABOR SUB-CLASS**

5 36. PLAINTIFF further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
6 and Ninth causes of Action on behalf of a California sub-class, defined as all members of the
7 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-
8 CLASS") at any time during the period three (3) years prior to the filing of the original complaint
9 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
10 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
11 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
12 (\$5,000,000.00).

13 37. DEFENDANTS, as a matter of company policy, practice and procedure, and in
14 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
15 requirements, and the applicable provisions of California law, intentionally, knowingly, and
16 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time
17 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
18 other wages and premiums owed to these employees, even though DEFENDANTS enjoyed the
19 benefit of this work, required employees to perform this work and permitted or suffered to permit
20 this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-
21 CLASS Members wages to which these employees are entitled in order to unfairly cheat the
22 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
23 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-
24 CLASS PERIOD should be adjusted accordingly.

25 38. DEFENDANTS maintain records from which the Court can ascertain and identify
26 by name and job title, each of DEFENDANTS' employees who have been systematically,
27 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and
28

1 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any
2 additional job titles of similarly situated employees when they have been identified.

3 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
4 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 7 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
8 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
9 missed meal and rest breaks in violation of the California Labor Code and
10 California regulations and the applicable California Wage Order;
- 11 b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
12 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
13 thirty (30) minute meal breaks and rest periods;
- 14 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
15 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
16 statements;
- 17 d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to
18 members of the CALIFORNIA LABOR SUB-CLASS in violation of the
19 California Labor Code and California regulations and the applicable California
20 Wage Order;
- 21 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
22 compensation for time worked, including overtime worked, under the overtime
23 pay requirements of California law;
- 24 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
25 conduct;
- 26 g. The proper measure of damages and penalties owed to the members of the
27 CALIFORNIA LABOR SUB-CLASS; and
- 28 h. Whether DEFENDANTS' conduct was willful.

1 41. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
2 under California law by:

- 3 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
4 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
5 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
6 § 1194;
- 7 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
8 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
9 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
10 Cal. Lab. Code §§ 1194 and 1197;
- 11 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
12 the other members of the CALIFORNIA CLASS with all legally required off-duty,
13 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 14 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
15 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
16 statement in writing showing all accurate rates in effect during the pay period and
17 the corresponding amount of time worked at each overtime rate by the employee;
- 18 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
19 CALIFORNIA CLASS members with necessary expenses incurred in the
20 discharge of their job duties;
- 21 f. Violating Cal. Lab. Code § 246 by failing to pay PLAINTIFF and the
22 CALIFORNIA CLASS members sick time at the regular rate of pay;
- 23 g. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
24 employee is discharged or quits from employment, the employer must pay the
25 employee all wages due without abatement, by failing to tender full payment
26 and/or restitution of wages owed or in the manner required by California law to
27 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
28 their employment.

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

3 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
4 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
5 is impracticable and the disposition of their claims as a class will benefit the parties
6 and the Court;

7 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
8 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
9 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
10 CLASS;

11 c. The claims of the representative PLAINTIFF are typical of the claims of each
12 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
13 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
14 employee paid on an hourly basis and paid additional non-discretionary incentive
15 wages who was subjected to the DEFENDANTS' practice and policy which failed
16 to pay the correct rate of overtime wages and total amount of wages due to the
17 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
18 a result of DEFENDANTS' employment practices. PLAINTIFF and the members
19 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
20 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
21 misconduct engaged in by DEFENDANTS; and

22 d. The representative PLAINTIFF will fairly and adequately represent and protect
23 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel
24 who are competent and experienced in Class Action litigation. There are no
25 material conflicts between the claims of the representative PLAINTIFF and the
26 members of the CALIFORNIA LABOR SUB-CLASS that would make class
27 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
28

1 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
2 Members.

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

5 a. Without class certification and determination of declaratory, injunctive, statutory
6 and other legal questions within the class format, prosecution of separate actions
7 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
8 the risk of:

9 i. Inconsistent or varying adjudications with respect to individual members
10 of the CALIFORNIA LABOR SUB-CLASS which would establish
11 incompatible standards of conduct for the parties opposing the
12 CALIFORNIA LABOR SUB-CLASS; or

13 ii. Adjudication with respect to individual members of the CALIFORNIA
14 LABOR SUB-CLASS which would as a practical matter be dispositive of
15 interests of the other members not party to the adjudication or substantially
16 impair or impede their ability to protect their interests.

17 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
18 refused to act on grounds generally applicable to the CALIFORNIA LABOR
19 SUB-CLASS, making appropriate class-wide relief with respect to the
20 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
21 failed to pay all wages due for all time worked by the members of the
22 CALIFORNIA LABOR SUB-CLASS as required by law;

23 c. Common questions of law and fact predominate as to the members of the
24 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
25 of California Law as listed above, and predominate over any question affecting
26 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
27 Action is superior to other available methods for the fair and efficient adjudication
28 of the controversy, including consideration of:

- i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or,
 2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- iii. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

- 1 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
3 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
4 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
5 PERIOD; and
- 6 i. Class treatment provides manageable judicial treatment calculated to bring an
7 efficient and rapid conclusion to all litigation of all wage and hour related claims
8 arising out of the conduct of DEFENDANTS as to the members of the
9 CALIFORNIA LABOR SUB-CLASS.

10 **FIRST CAUSE OF ACTION**

11 **UNLAWFUL BUSINESS PRACTICES**

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

13 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

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

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

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

23 Any person who engages, has engaged, or proposes to engage in unfair competition may
24 be enjoined in any court of competent jurisdiction. The court may make such orders or
25 judgments, including the appointment of a receiver, as may be necessary to prevent the
26 use or employment by any person of any practice which constitutes unfair competition, as
27 defined in this chapter, or as may be necessary to restore to any person in interest any
28

1 money or property, real or personal, which may have been acquired by means of such
2 unfair competition. (Cal. Bus. & Prof. Code § 17203).

3 48. By the conduct alleged herein, DEFENDANTS have engaged and continues to
4 engage in a business practice which violates California law, including but not limited to, the
5 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
6 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
7 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
8 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
9 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

16 50. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
17 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
18 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
19 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,
20 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
21 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
22 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
23 wrongfully withheld.

24 51. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
25 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
26 other members of the CALIFORNIA CLASS to be underpaid during their employment with
27 DEFENDANTS.
28

1 52. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
2 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
3 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

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

23 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
24 and do, seek such relief as may be necessary to restore to them the money and property which
25 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
26 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
27 business practices, including earned but unpaid wages.
28

1 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
2 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
3 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
4 engaging in any unlawful and unfair business practices in the future.

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

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

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

15 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
16 **DEFENDANTS)**

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

20 61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
22 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
23 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

26 63. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
27 commission is the minimum wage to be paid to employees, and the payment of a wage less than
28 the minimum so fixed is unlawful.

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

3 65. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
4 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
5 amount of time they work. As set forth herein, DEFENDANT'S uniform policy and practice was
6 to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS.

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

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

19 68. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
20 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
21 the correct minimum wage compensation for their time worked for DEFENDANTS.

22 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
23 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
24 they were entitled to, constituting a failure to pay all earned wages.

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

3 71. DEFENDANTS knew or should have known that PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
5 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
6 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
7 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
9 minimum wages for their time worked.

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

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

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THIRD CAUSE OF ACTION
FAILURE TO PAY OVERTIME COMPENSATION
(Cal. Lab. Code §§ 204, 510, 1194 and 1198)
(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
DEFENDANTS)

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

75. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANTS’ failure to properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

79. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of overtime worked and correct applicable overtime rate for the amount of overtime they

1 worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and
2 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the
3 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed
4 to pay these employees the correct applicable overtime wages for all overtime worked.

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

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

17 82. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
18 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
19 full compensation for all overtime worked.

20 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
21 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
22 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the
23 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective
24 bargaining agreement that would preclude the causes of action contained herein this Complaint.
25 Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA LABOR SUB-
26 CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by
27 the State of California.
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1 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
3 they were entitled to, constituting a failure to pay all earned wages.

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

11 86. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
12 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
13 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
14 SUB-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 87. DEFENDANTS knew or should have known that PLAINTIFF and the other
17 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
18 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
19 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
20 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
21 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable
22 overtime rate.

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

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

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

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

17 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
18 **DEFENDANTS)**

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

22 91. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
23 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
24 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of
25 the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did
26 not prevent these employees from being relieved of all of their duties for the legally required off-
27 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
28 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by

1 DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide
2 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
3 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.
4 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
5 therefore forfeited meal breaks without additional compensation and in accordance with
6 DEFENDANTS' strict corporate policy and practice.

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

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

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

18 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
19 **DEFENDANTS)**

20 94. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
21 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
22 this Complaint.

23 95. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
24 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
25 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
26 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
27 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
28 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.

1 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided
2 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
3 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper
4 rest periods by DEFENDANTS and DEFENDANTS' managers. When DEFENDANTS provided
5 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with rest break, they
6 required PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members to stay on
7 DEFENDANTS' premises for those rest breaks.

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

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

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

18 **(Cal. Lab. Code §§ 226 and 226.2)**

19 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
20 **DEFENDANTS)**

21 98. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
22 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
23 this Complaint.

24 99. Cal. Labor Code § 226 provides that an employer must furnish employees with an
25 "accurate itemized" statement in writing showing:

- 26 a. Gross wages earned;
- 27 b. Total hours worked by the employee, except for any employee whose
- 28 compensation is solely based on a salary and who is exempt from payment of

overtime under subdivision (a) of Section 515 or any applicable order of the 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 or an employee identification number other than a 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.

100. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate employees with an “accurate itemized” statement in writing showing:

- a. The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and
- b. The total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

101. When DEFENDANTS did not accurately record PLAINTIFF’S and other CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct overtime rate, the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFF and other

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

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

20 **SEVENTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

22 **(Cal. Lab. Code §§ 2802)**

23 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
24 **DEFENDANTS)**

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

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

1
2 An employer shall indemnify his or her employee for all necessary expenditures
3 or losses incurred by the employee in direct consequence of the discharge of his
4 or her duties, or of his or her obedience to the directions of the employer, even
5 though unlawful, unless the employee, at the time of obeying the directions,
6 believed them to be unlawful.

7 105. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
8 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
9 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
10 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
11 CLASS members for expenses which included, but were not limited to, costs related to using their
12 personal cellular phones and personal vehicles all on behalf of and for the benefit of
13 DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were
14 required by DEFENDANTS to use their personal cell phones and personal vehicles for work
15 related issues. DEFENDANTS' uniform policy, practice and procedure was to not reimburse
16 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from
17 using their personal cellular phones and personal vehicles for DEFENDANTS within the course
18 and scope of their employment for DEFENDANTS. These expenses were necessary to complete
19 their principal job duties. DEFENDANTS is estopped by DEFENDANTS' conduct to assert any
20 waiver of this expectation. Although these expenses were necessary expenses incurred by
21 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANTS failed to
22 indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members
23 for these expenses as an employer is required to do under the laws and regulations of California.

24 106. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
25 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
26 duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest
27 at the statutory rate and costs under Cal. Lab. Code § 2802.
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EIGHTH CAUSE OF ACTION
FAILURE TO PAY WAGES WHEN DUE
(Cal. Lab. Code §§201, 202, 203)
(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
DEFENDANTS)

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

108. Cal. Lab. Code § 200 provides that:

As used in this article:(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

109. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

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

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

1 mailing shall constitute the date of payment for purposes of the requirement to
2 provide payment within 72 hours of the notice of quitting.

3 111. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
4 CLASS Members' employment contract.

5 112. Cal. Lab. Code § 203 provides:

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

12 113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
13 Members terminated and DEFENDANTS have not tendered payment of wages, to these
14 employees who missed meal and rest breaks, as required by law.

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

21 **NINTH CAUSE OF ACTION**

22 **UNPAID SICK PAY AND FAILURE TO PROVIDE PAID SICK LEAVE BALANCE**

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

24 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
25 **DEFENDANT)**

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

1 116. 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.”

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

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

15 119. DEFENDANT’s uniform policy and practice of omitting non-discretionary
16 incentive pay from the regular rate of pay for purposes of paying paid sick pay, resulted in the
17 underpayment of sick pay wages to PLAINTIFF and other members of the CALIFORNIA
18 LABOR SUB-CLASS. PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
19 CLASS therefore request recovery of all unpaid wages, including sick pay wages, according to
20 proof, interest, statutory costs, as well as the assessment of any statutory penalties against
21 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
22 statutes. To the extent overtime compensation is determined to be owed to other members of the
23 CALIFORNIA LABOR SUB-CLASS who have terminated their employment, DEFENDANT’s
24 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be
25 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein
26 on behalf of other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT’S
27 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and
28

1 other members of the CALIFORNIA LABOR SUB-CLASS are entitled to seek and recover
2 statutory costs.

3 **TENTH CAUSE OF ACTION**

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

5 **(Cal. Lab. Code §§2698 et seq.)**

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

7 120. PLAINTIFF reallege and incorporates by this reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

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

18 122. PLAINTIFF, and such persons that may be added from time to time who satisfy
19 the requirements and exhaust the administrative procedures under the Private Attorney General
20 Act, bring this Representative Action on behalf of the State of California with respect to
21 themselves and all individuals who are or previously were employed by DEFENDANT and
22 classified as non-exempt employees in California during the time period of April 30, 2020 until
23 the present (the "AGGRIEVED EMPLOYEES").

24 123. On April 30, 2021, PLAINTIFF gave written notice by certified mail to the Labor
25 and Workforce Development Agency (the "Agency") and the employer of the specific
26 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
27 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
28 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant

1 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
2 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
3 EMPLOYEES as herein defined.

4 124. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANTS (a) failed to properly record and pay
6 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
7 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
8 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to
9 timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
10 §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246,
11 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, and the applicable Industrial Wage Order(s), and
12 thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks
13 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
14 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
15 and the other AGGRIEVED EMPLOYEES.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANTS, jointly
18 and severally, as follows:

19 1. On behalf of the CALIFORNIA CLASS:

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

1 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 3 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and
4 Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
5 class action pursuant to Cal. Code of Civ. Proc. § 382;
- 6 b. Compensatory damages, according to proof at trial, including compensatory
7 damages for minimum wages, overtime wages, unreimbursed expenses, and other
8 compensation due to PLAINTIFF and the other members of the CALIFORNIA
9 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
10 CLASS PERIOD plus interest thereon at the statutory rate;
- 11 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
12 the applicable IWC Wage Order;
- 13 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
14 which a violation occurs and one hundred dollars (\$100) per member of the
15 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
16 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
17 an award of costs for violation of Cal. Lab. Code § 226; and,
- 18 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
19 CLASS as a penalty from the due date thereof at the same rate until paid or until an
20 action therefore is commenced, in accordance with Cal. Lab. Code § 203.

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

- 23 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
24 General Act of 2004

25 4. On all claims:

- 26 a. An award of interest, including prejudgment interest at the legal rate;
- 27 b. Such other and further relief as the Court deems just and equitable; and
- 28 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,

1 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197
2 and/or §2802.

3
4 DATED: July 6, 2021

5 **ZAKAY LAW GROUP, APLC**

6
7 By: 

8 Shani O. Zakay
9 Attorney for Plaintiffs

10 **DEMAND FOR A JURY TRIAL**

11
12 PLAINTIFF demands a jury trial on issues triable to a jury.

13 DATED: July 6, 2021

14 **ZAKAY LAW GROUP, APLC**

15
16 By: 

17
18 Shani O. Zakay
19 Attorney for Plaintiffs

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client # 37701

April 30, 2021

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

**THE WHOLE CHILD – MENTAL
HEALTH & HOUSING SERVICES**
c/o LUZ CONSTANZA PACHON
10155 COLIMA RD
WHITTIER CA 90603
Via Certified Mail with Return Receipt
No. 7021 0350 0001 8165 1798

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, 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 CLAUDIA NUNEZ PORCAYO (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against THE WHOLE CHILD – MENTAL HEALTH & HOUSING SERVICES (“Defendant”). Plaintiff was employed by Defendant in California between October of 2020 to February of 2021 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks. Defendant, 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, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, 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 and exempt employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged

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

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

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

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC
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Telephone: (619)599-8292
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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

CLAUDIA NUNEZ PORCAYO, on behalf
of herself and on behalf of all persons
similarly situated,

Plaintiffs,

v.

THE WHOLE CHILD – MENTAL
HEALTH & HOUSING SERVICES, a
California Corporation; 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;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) UNPAID SICK PAY IN VIOLATION OF CAL. LAB. CODE § 246.

DEMAND FOR A JURY TRIAL

1 Plaintiff Claudia Nunez Porcayo, an individual, (“PLAINTIFF”), on behalf of herself and all
2 other similarly situated current and former employees, allege on information and belief, except for
3 their own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant THE WHOLE CHILD – MENTAL HEALTH & HOUSING
6 SERVICES, (“DEFENDANT and/or DEFENDANTS”) is a California Corporation and at all
7 relevant times mentioned herein conducted and continues to conduct substantial and regular
8 business throughout California.

9 2. DEFENDANT provides mental health, family housing, parent enrichment, and
10 nutrition education services to families and children of vulnerable communities, including at the
11 Los Angeles County, California location where PLAINTIFF worked.

12 3. PLAINTIFF was employed by DEFENDANTS in California as a non-exempt
13 employee entitled to minimum wages, overtime pay and meal and rest periods from October of
14 2020 to February of 2021.

15 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in California
17 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
18 period beginning four (4) years prior to the filing of the Complaint and ending on the date as
19 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
20 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
21 (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy and practice
25 which failed to lawfully compensate these employees for all their time worked. DEFENDANT’S
26 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice
27 whereby DEFENDANT retained and continues to retain wages due to PLAINTIFF and the other
28 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future,

1 relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have
2 been economically injured by DEFENDANT'S past and current unlawful conduct, and all other
3 appropriate legal and equitable relief.

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

13 7. The agents, servants and/or employees of the DEFENDANT and each of them
14 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority
15 as the agent, servant and/or employee of the DEFENDANT, and personally participated in the
16 conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
17 Consequently, the acts of the Defendant are legally attributable and severally liable to
18 PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as a
19 proximate result of the conduct of the DEFENDANT agents, servants and/or employees.

20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
22 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
23 meaning the time during which an employee is subject to the control of an employer, including
24 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT
25 required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all
26 the time they were under DEFENDANT'S control. Specifically, PLAINTIFF performed work
27 before and after the beginning of her shift, spending time under the DEFENDANT'S control for
28 which she was not compensated. Further, PLAINTIFF from time to time performed work during

1 her shift by traveling to and from DEFENDANT’S different work locations for which
2 PLAINTIFF was not fully compensated. As a result, the PLAINTIFF and other CALIFORNIA
3 CLASS Members forfeited minimum wage and overtime compensation by regularly working
4 without their time being accurately recorded and without compensation at the applicable
5 minimum wage and overtime rates. DEFENDANTS’ uniform policy and practice not to pay
6 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
7 DEFENDANTS’ business records.

8 9. State law provides that employees must be paid overtime at one-and-one-half times
9 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
10 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
11 employee’s performance.

12 10. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
13 Members’ compensation was DEFENDANT’s non-discretionary incentive program that paid
14 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages, including but not
15 limited to “bilingual pay,” based on their performance for DEFENDANTS. The non-discretionary
16 incentive program provided all employees paid on an hourly basis with incentive compensation
17 when the employees met the various performance goals set by DEFENDANTS. However, when
18 calculating the regular rate of pay in order to pay overtime to PLAINTIFF and other
19 CALIFORNIA CLASS Members, DEFENDANTS failed to include the incentive compensation
20 as part of the employees’ “regular rate of pay” for purposes of calculating overtime pay.
21 Management and supervisors described the incentive program to potential and new employees as
22 part of the compensation package. However, DEFENDANTS failed to include incentive
23 compensation into the “regular rate of pay” for purposes of calculating overtime pay. As a matter
24 of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS
25 Members must be included in the “regular rate of pay.” The failure to do so has resulted in a
26 systematic underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA
27 CLASS Members by DEFENDANTS.
28

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

14 12. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
15 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
16 without being provided ten (10) minute rest periods. Further, these employees were denied their
17 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
18 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
19 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
20 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
21 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and
22 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity
23 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
24 remain on-duty and on-call, and subject to DEFENDANTS' control in accordance with
25 DEFENDANTS' policy. PLAINTIFF and other CALIFORNIA CLASS Members were also not
26 provided with one-hour wages in lieu thereof. DEFENDANTS' policy caused PLAINTIFF and
27 other CALIFORNIA CLASS Members to remain on-call and on-duty during what was supposed
28 to be their off-duty rest periods. As a result of their rigorous work schedules, PLAINTIFF and

1 other CALIFORNIA CLASS Members were periodically denied their proper rest periods by
2 DEFENDANTS and DEFENDANTS' managers.

3 13. Under California law, every employer shall pay to each employee, on the
4 established payday for the period involved, not less than the applicable minimum wage for all
5 hours worked in the payroll period, whether the remuneration is measured by time, piece,
6 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
7 during which an employee is subject to the control of an employer and includes all the time the
8 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFF and
9 other CALIFORNIA CLASS Members were from time to time required to perform work for
10 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal
11 breaks. DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS
12 Members for any of the time spent under DEFENDANTS' control while working off-the-clock.
13 As such, DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA CLASS Members
14 the applicable minimum wage for all hours worked in a payroll period.

15 14. In violation of the applicable sections of the California Labor Code and the
16 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
17 matter of company policy, practice and procedure, intentionally and knowingly failed to
18 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for all time
19 worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
20 the payment of the correct compensation as required by California law which allowed
21 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
22 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
23 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

24 15. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members
25 worked during what was supposed to be their meal breaks or otherwise off the clock, and/or when
26 DEFENDANT miscalculated PLAINTIFF's and other CALIFORNIA CLASS Members' regular
27 rate of pay, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
28 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among

1 other things, the correct rate of pay and/or the correct time worked, including, work performed in
2 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the gross
3 wages paid for those periods during the pay period, and the correct penalty payments or missed
4 meal and rest periods in violation of California Labor Code Sections 226 and 226.2.

5 16. California Labor Code Section 226 requires an employer to furnish its employees
6 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
7 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
8 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
9 of the employee and only the last four digits of the employee's social security number or an
10 employee identification number other than a social security number, (8) the name and address of
11 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
12 period and the corresponding number of hours worked at each hourly rate by the employee.

13 17. Aside from the violations listed herein, DEFENDANTS failed to issue to
14 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
15 Code 226 *et seq.* Specifically, for example, DEFENDANTS violated California Labor Code
16 226(a)(2) by failing to provide the total hours worked on itemized wage statements issued to
17 PLAINTIFF and the other members of the CALIFORNIA CLASS. As a result, from time to time
18 DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
19 wage statements which violated Cal. Lab. Code § 226.

20 18. DEFENDANTS as a matter of corporate policy, practice and procedure,
21 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
22 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
23 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
24 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
25 are required to indemnify employees for all expenses incurred in the course and scope of their
26 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
27 employee for all necessary expenditures or losses incurred by the employee in direct consequence
28 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,

1 even though unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful."

3 19. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
4 Members as a business expense, were required by DEFENDANTS to use their own personal
5 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
6 employees for DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for
7 the cost associated with the use of their personal cellular phones or personal vehicles for
8 DEFENDANTS' benefit. Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members
9 were required by DEFENDANTS to use their personal cell phones and personal vehicles for work
10 related issues. As a result, in the course of their employment with DEFENDANTS the
11 PLAINTIFFS and other members of the CALIFORNIA CLASS incurred unreimbursed business
12 expenses which included, but were not limited to, costs related to the use of their personal cellular
13 phones and personal vehicles all on behalf of and for the benefit of DEFENDANTS.

14 20. California Labor Code Section 246(I)(1) mandates that "[p]aid sick time for
15 nonexempt employees shall be calculated in the same manner as the regular rate of pay for the
16 workweek in which the employee uses paid sick time, whether or not the employee actually works
17 overtime in that workweek." From time-to-time during the CALIFORNIA CLASS PERIOD,
18 PLAINTIFF, and other CALIFORNIA CLASS Members were compensated at an hourly rate plus
19 non-discretionary incentive pay. The non-discretionary bonus program provided PLAINTIFF and
20 the CALIFORNIA CLASS Members with bonus compensation when the employees met the
21 various performance goals set by DEFENDANTS. Management and supervisors described the
22 incentive/bonus compensation to PLAINTIFF and the CALIFORNIA CLASS Members as part of
23 the compensation package. As a matter of law, the incentive compensation received by
24 PLAINTIFF and other CALIFORNIA CLASS Members must be included in the "regular rate of
25 pay."

26 21. From time-to-time during the CALIFORNIA CLASS PERIOD, in those pay
27 periods where PLAINTIFF and the CALIFORNIA CLASS Members earned hourly
28 compensation non-discretionary incentive compensation, and took paid sick time,

1 DEFENDANTS failed to properly calculate the regular rate of pay for purposes of compensating
2 paid sick time. Rather than paying PLAINTIFF and the CALIFORNIA CLASS Members paid
3 sick time at the regular rate of pay, DEFENDANTS compensated paid sick time at PLAINTIFF's
4 and the CALIFORNIA CLASS Members' base hourly rate which exclude all non-discretionary
5 incentive compensation. As a result, DEFENDANTS systematically under compensated paid
6 sick days and caused PLAINTIFF and the other CALIFORNIA CLASS Members to forfeit sick
7 pay wages due them. DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA
8 CLASS Members the correct rate of pay for all paid sick time in accordance with Labor Code
9 Section 246 is evidenced by DEFENDANTS' business records

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

20 23. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
21 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
22 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
23 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
24 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
25 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
26 with a rest break, they required PLAINTIFF to remain on-duty and on-call, for the rest break.
27 DEFENDANTS' policy caused PLAINTIFF to remain on-call and on-duty during what was
28 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks

1 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
2 and practice. Moreover, DEFENDANTS also provided PLAINTIFF with a paystub that failed to
3 accurately display PLAINTIFF's correct time worked and wages, as well as payments for missed
4 meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a). To date,
5 DEFENDANTS have not fully paid PLAINTIFF the overtime compensation still owed to her or
6 any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy for
7 PLAINTIFF individually does not exceed the sum or value of \$75,000.

8 **JURISDICTION AND VENUE**

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

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

18 **THE CALIFORNIA CLASS**

19 26. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
20 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
21 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
22 individuals who are or previously were employed by DEFENDANT in California and classified
23 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
24 four (4) years prior to the filing of the original complaint and ending on the date as determined by
25 the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate
26 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

4 28. DEFENDANTS, as a matter of company policy, practice and procedure, and in
5 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
6 requirements, and the applicable provisions of California law, intentionally, knowingly, and
7 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal
8 and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS,
9 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform
10 this work and permitted or suffered to permit this work.

11 29. DEFENDANTS have the legal burden to establish that each and every
12 CALIFORNIA CLASS Member was paid accurately and was provided all meal and rest breaks
13 missed as required by California laws. DEFENDANTS, however, as a matter of uniform and
14 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
15 PERIOD and still fails to have in place a policy or practice to ensure that each and every
16 CALIFORNIA CLASS Member is paid as required by law, so as to satisfy its burden. This
17 common business practice applicable to each and every CALIFORNIA CLASS Member can be
18 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
19 Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not
20 elements of this claim.

21 30. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
22 CLASS Members is impracticable.

23 31. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
24 California law by:

- 25 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
26 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
27 policies, practices and procedures that failed to pay all wages due the
28 CALIFORNIA CLASS for all time worked;

- b. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members;
- c. Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly and systematically failed to record and pay PLAINTIFF and other members of the CALIFORNIA CLASS for all time worked, including minimum wages owed and overtime wages owed for work performed by these employees.

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

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an hourly basis who was subjected to the DEFENDANTS' deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to

1 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
2 as a result of DEFENDANTS' employment practices. PLAINTIFF, like all the
3 other members of the CALIFORNIA CLASS, were subjected to the uniform
4 employment practices of DEFENDANTS and was a non-exempt employee paid
5 on an hourly basis and paid additional non-discretionary incentive wages who was
6 subjected to the DEFENDANTS' practice and policy which failed to pay the
7 correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime
8 worked by the CALIFORNIA CLASS and thereby systematically under pays
9 overtime compensation to the CALIFORNIA CLASS. PLAINTIFF and the
10 members of the CALIFORNIA CLASS were and are similarly or identically
11 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
12 misconduct engaged in by DEFENDANTS; and

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

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

- 22 a. Without class certification and determination of declaratory, injunctive, statutory
23 and other legal questions within the class format, prosecution of separate actions
24 by individual members of the CALIFORNIA CLASS will create the risk of:
- 25 i. Inconsistent or varying adjudications with respect to individual members
26 of the CALIFORNIA CLASS which would establish incompatible
27 standards of conduct for the parties opposing the CALIFORNIA CLASS;
28 and/or;

1 ii. Adjudication with respect to individual members of the CALIFORNIA
2 CLASS which would as a practical matter be dispositive of interests of the
3 other members not party to the adjudication or substantially impair or
4 impede their ability to protect their interests.

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

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

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

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

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

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

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

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

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

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

24 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
25 over any question affecting only individual CALIFORNIA CLASS Members
26 because the DEFENDANTS' employment practices are uniform and
27 systematically applied with respect to the CALIFORNIA CLASS.
28

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

35. DEFENDANTS maintain records from which the Court can ascertain and identify by job title each of DEFENDANTS' employees who as have been systematically, intentionally

1 and uniformly subjected to DEFENDANTS' company policy, practices and procedures as herein
2 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
3 of similarly situated employees when they have been identified.

4 **THE CALIFORNIA LABOR SUB-CLASS**

5 36. PLAINTIFF further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
6 and Ninth causes of Action on behalf of a California sub-class, defined as all members of the
7 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-
8 CLASS") at any time during the period three (3) years prior to the filing of the original complaint
9 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
10 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
11 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
12 (\$5,000,000.00).

13 37. DEFENDANTS, as a matter of company policy, practice and procedure, and in
14 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
15 requirements, and the applicable provisions of California law, intentionally, knowingly, and
16 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time
17 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
18 other wages and premiums owed to these employees, even though DEFENDANTS enjoyed the
19 benefit of this work, required employees to perform this work and permitted or suffered to permit
20 this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-
21 CLASS Members wages to which these employees are entitled in order to unfairly cheat the
22 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
23 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-
24 CLASS PERIOD should be adjusted accordingly.

25 38. DEFENDANTS maintain records from which the Court can ascertain and identify
26 by name and job title, each of DEFENDANTS' employees who have been systematically,
27 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and
28

1 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any
2 additional job titles of similarly situated employees when they have been identified.

3 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
4 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 7 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
8 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
9 missed meal and rest breaks in violation of the California Labor Code and
10 California regulations and the applicable California Wage Order;
- 11 b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
12 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
13 thirty (30) minute meal breaks and rest periods;
- 14 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
15 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
16 statements;
- 17 d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to
18 members of the CALIFORNIA LABOR SUB-CLASS in violation of the
19 California Labor Code and California regulations and the applicable California
20 Wage Order;
- 21 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
22 compensation for time worked, including overtime worked, under the overtime
23 pay requirements of California law;
- 24 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
25 conduct;
- 26 g. The proper measure of damages and penalties owed to the members of the
27 CALIFORNIA LABOR SUB-CLASS; and
- 28 h. Whether DEFENDANTS' conduct was willful.

1 41. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
2 under California law by:

- 3 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
4 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
5 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
6 § 1194;
- 7 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
8 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
9 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
10 Cal. Lab. Code §§ 1194 and 1197;
- 11 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
12 the other members of the CALIFORNIA CLASS with all legally required off-duty,
13 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 14 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
15 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
16 statement in writing showing all accurate rates in effect during the pay period and
17 the corresponding amount of time worked at each overtime rate by the employee;
- 18 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
19 CALIFORNIA CLASS members with necessary expenses incurred in the
20 discharge of their job duties;
- 21 f. Violating Cal. Lab. Code § 246 by failing to pay PLAINTIFF and the
22 CALIFORNIA CLASS members sick time at the regular rate of pay;
- 23 g. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
24 employee is discharged or quits from employment, the employer must pay the
25 employee all wages due without abatement, by failing to tender full payment
26 and/or restitution of wages owed or in the manner required by California law to
27 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
28 their employment.

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

- 3 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
4 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
5 is impracticable and the disposition of their claims as a class will benefit the parties
6 and the Court;
- 7 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
8 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
9 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
10 CLASS;
- 11 c. The claims of the representative PLAINTIFF are typical of the claims of each
12 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
13 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
14 employee paid on an hourly basis and paid additional non-discretionary incentive
15 wages who was subjected to the DEFENDANTS' practice and policy which failed
16 to pay the correct rate of overtime wages and total amount of wages due to the
17 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
18 a result of DEFENDANTS' employment practices. PLAINTIFF and the members
19 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
20 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
21 misconduct engaged in by DEFENDANTS; and
- 22 d. The representative PLAINTIFF will fairly and adequately represent and protect
23 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel
24 who are competent and experienced in Class Action litigation. There are no
25 material conflicts between the claims of the representative PLAINTIFF and the
26 members of the CALIFORNIA LABOR SUB-CLASS that would make class
27 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
28

1 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
2 Members.

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

5 a. Without class certification and determination of declaratory, injunctive, statutory
6 and other legal questions within the class format, prosecution of separate actions
7 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
8 the risk of:

9 i. Inconsistent or varying adjudications with respect to individual members
10 of the CALIFORNIA LABOR SUB-CLASS which would establish
11 incompatible standards of conduct for the parties opposing the
12 CALIFORNIA LABOR SUB-CLASS; or

13 ii. Adjudication with respect to individual members of the CALIFORNIA
14 LABOR SUB-CLASS which would as a practical matter be dispositive of
15 interests of the other members not party to the adjudication or substantially
16 impair or impede their ability to protect their interests.

17 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
18 refused to act on grounds generally applicable to the CALIFORNIA LABOR
19 SUB-CLASS, making appropriate class-wide relief with respect to the
20 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
21 failed to pay all wages due for all time worked by the members of the
22 CALIFORNIA LABOR SUB-CLASS as required by law;

23 c. Common questions of law and fact predominate as to the members of the
24 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
25 of California Law as listed above, and predominate over any question affecting
26 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
27 Action is superior to other available methods for the fair and efficient adjudication
28 of the controversy, including consideration of:

- i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or,
 2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- iii. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

- 1 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
3 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
4 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
5 PERIOD; and
- 6 i. Class treatment provides manageable judicial treatment calculated to bring an
7 efficient and rapid conclusion to all litigation of all wage and hour related claims
8 arising out of the conduct of DEFENDANTS as to the members of the
9 CALIFORNIA LABOR SUB-CLASS.

10 **FIRST CAUSE OF ACTION**

11 **UNLAWFUL BUSINESS PRACTICES**

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

13 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

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

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

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

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

48. By the conduct alleged herein, DEFENDANTS have engaged and continues to
engage in a business practice which violates California law, including but not limited to, the

1 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
2 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
3 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
4 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
5 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

12 50. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
13 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
14 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
15 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,
16 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
17 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
18 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
19 wrongfully withheld.

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

24 52. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
25 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
26 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

27 53. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
28 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal

1 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
2 each workday in which a second off-duty meal period was not timely provided for each ten (10)
3 hours of work.

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

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

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

18 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
19 and do, seek such relief as may be necessary to restore to them the money and property which
20 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
21 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
22 business practices, including earned but unpaid wages.

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

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

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

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM WAGES**
8 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

9 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
10 **DEFENDANTS)**

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

14 61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
15 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
16 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
17 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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

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

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

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

15 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
17 they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**
22 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

23 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
24 **DEFENDANTS)**

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

28 75. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately

1 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
2 CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly compensate the
3 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
4 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

15 79. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
16 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
17 amount of overtime worked and correct applicable overtime rate for the amount of overtime they
18 worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and
19 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the
20 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed
21 to pay these employees the correct applicable overtime wages for all overtime worked.

22 80. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
23 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
24 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
25 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
26 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
27 in any workweek.

28 81. In committing these violations of the California Labor Code, DEFENDANTS
inaccurately calculated the amount of overtime worked and the applicable overtime rates and
consequently underpaid the actual time worked by PLAINTIFF and other members of the

1 CALIFORNIA LABOR SUB-CLASS. DEFENDANTS acted in an illegal attempt to avoid the
2 payment of all earned wages, and other benefits in violation of the California Labor Code, the
3 Industrial Welfare Commission requirements and other applicable laws and regulations.

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

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

15 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
17 they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

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

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FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all DEFENDANTS)

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

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

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

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

1
2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

4 **(Cal. Lab. Code §§ 226.7 & 512)**

5 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
6 **DEFENDANTS)**

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

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

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

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

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

6 **(Cal. Lab. Code §§ 226 and 226.2)**

7 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
8 **DEFENDANTS)**

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

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

- 14 a. Gross wages earned;
- 15 b. Total hours worked by the employee, except for any employee whose
16 compensation is solely based on a salary and who is exempt from payment of
17 overtime under subdivision (a) of Section 515 or any applicable order of the
18 Industrial Welfare Commission;
- 19 c. The number of piece rate units earned and any applicable piece rate if the employee
20 is paid on a piece-rate basis;
- 21 d. All deductions, provided that all deductions made on written orders of the
22 employee may be aggregated and shown as one item;
- 23 e. Net wages earned;
- 24 f. The inclusive dates of the period for which the employee is paid;
- 25 g. The name of the employee and his or her social security number, except that by
26 January 1, 2008, only the last four digits of his or her social security number or an
27 employee identification number other than a social security number may be shown
28 on the itemized statement;
- h. The name and address of the legal entity that is the employer; and

- 1 i. All applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate by the employee.

3 100. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate
4 employees with an “accurate itemized” statement in writing showing:

- 5 a. The total hours of compensable rest and recovery periods, the rate of
6 compensation, and the gross wages paid for those periods during the
7 pay period; and
8 b. The total hours of other nonproductive time, the rate of
9 compensation, and the gross wages paid for that time during the pay
10 period.

11 101. When DEFENDANTS did not accurately record PLAINTIFF’S and other
12 CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS also
13 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete
14 and accurate wage statements which failed to show, among other things, the correct overtime rate,
15 the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFF and other
16 CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall
17 furnish each of his or her employees with an accurate itemized wage statement in writing showing,
18 among other things, gross wages earned and all applicable hourly rates in effect during the pay
19 period and the corresponding amount of time worked at each hourly rate. Aside from the
20 violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an
21 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
22 As a result, from time to time DEFENDANTS provided PLAINTIFF and the other members of
23 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

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

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

9 **(Cal. Lab. Code §§ 2802)**

10 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
11 **DEFENDANTS)**

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

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

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

21 105. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
22 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
23 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
24 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
25 CLASS members for expenses which included, but were not limited to, costs related to using their
26 personal cellular phones and personal vehicles all on behalf of and for the benefit of
27 DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were
28 required by DEFENDANTS to use their personal cell phones and personal vehicles for work
related issues. DEFENDANTS' uniform policy, practice and procedure was to not reimburse
PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from

1 using their personal cellular phones and personal vehicles for DEFENDANTS within the course
2 and scope of their employment for DEFENDANTS. These expenses were necessary to complete
3 their principal job duties. DEFENDANTS is estopped by DEFENDANTS' conduct to assert any
4 waiver of this expectation. Although these expenses were necessary expenses incurred by
5 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANTS failed to
6 indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members
7 for these expenses as an employer is required to do under the laws and regulations of California.

8 106. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
9 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
10 duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest
11 at the statutory rate and costs under Cal. Lab. Code § 2802.

12 **EIGHTH CAUSE OF ACTION**
13 **FAILURE TO PAY WAGES WHEN DUE**
14 **(Cal. Lab. Code §§201, 202, 203)**

15 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
16 **DEFENDANTS)**

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

20 108. Cal. Lab. Code § 200 provides that:

21 As used in this article:(a) "Wages" includes all amounts for labor performed by
22 employees of every description, whether the amount is fixed or ascertained by the
23 standard of time, task, piece, Commission basis, or other method of calculation. (b)
24 "Labor" includes labor, work, or service whether rendered or performed under
contract, subcontract, partnership, station plan, or other agreement if the labor to be
paid for is performed personally by the person demanding payment.

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

28 110. Cal. Lab. Code § 202 provides, in relevant part, that:

1 If an employee not having a written contract for a definite period quits his or her
2 employment, his or her wages shall become due and payable not later than 72 hours
3 thereafter, unless the employee has given 72 hours previous notice of his or her
4 intention to quit, in which case the employee is entitled to his or her wages at the
5 time of quitting. Notwithstanding any other provision of law, an employee who
6 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.

7 111. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
8 CLASS Members' employment contract.

9 112. Cal. Lab. Code § 203 provides:

10 If an employer willfully fails to pay, without abatement or reduction, in accordance
11 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
12 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.

13 113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
14 Members terminated and DEFENDANTS have not tendered payment of wages, to these
15 employees who missed meal and rest breaks, as required by law.

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

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1 **NINTH CAUSE OF ACTION**

2 **UNPAID SICK PAY AND FAILURE TO PROVIDE PAID SICK LEAVE BALANCE**

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

4 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
5 **DEFENDANT)**

6 115. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
7 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
8 this Complaint.

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

13 117. From time-to-time, during the PLAINTIFF and other members of the
14 CALIFORNIA LABOR SUB-CLASS were compensated at an hourly rate plus either non-
15 discretionary incentive pay. As a matter of law, the incentive compensation compensation received
16 by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS must be included
17 in the “regular rate of pay.”

18 118. From time-to-time during the CLASS PERIOD, in those pay periods where
19 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS earned hourly
20 compensation and either non-discretionary incentive compensation, and took paid sick time,
21 DEFENDANT failed to properly calculate the regular rate of pay for purposes of compensating
22 paid sick time by omitting non-discretionary incentive pay from the regular rate of pay.

23 119. DEFENDANT’s uniform policy and practice of omitting non-discretionary
24 incentive pay from the regular rate of pay for purposes of paying paid sick pay, resulted in the
25 underpayment of sick pay wages to PLAINTIFF and other members of the CALIFORNIA
26 LABOR SUB-CLASS. PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
27 CLASS therefore request recovery of all unpaid wages, including sick pay wages, according to
28 proof, interest, statutory costs, as well as the assessment of any statutory penalties against

1 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
2 statutes. To the extent overtime compensation is determined to be owed to other members of the
3 CALIFORNIA LABOR SUB-CLASS who have terminated their employment, DEFENDANT's
4 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be
5 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein
6 on behalf of other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT'S
7 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and
8 other members of the CALIFORNIA LABOR SUB-CLASS are entitled to seek and recover
9 statutory costs.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANTS, jointly
12 and severally, as follows:

13 1. On behalf of the CALIFORNIA CLASS:

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

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

- 25 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and
26 Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
27 class action pursuant to Cal. Code of Civ. Proc. § 382;
28 b. Compensatory damages, according to proof at trial, including compensatory

1 damages for minimum wages, overtime wages, unreimbursed expenses, and other
2 compensation due to PLAINTIFF and the other members of the CALIFORNIA
3 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
4 CLASS PERIOD plus interest thereon at the statutory rate;

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

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

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

15 3. On all claims:

16 a. An award of interest, including prejudgment interest at the legal rate;

17 b. Such other and further relief as the Court deems just and equitable; and

18 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
19 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197
20 and/or §2802.

21
22 DATED: _____, 2021

23
24 **ZAKAY LAW GROUP, APLC**

25 By: _____

26 Shani O. Zakay
27 Attorney for Plaintiffs
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DEMAND FOR A JURY TRIAL

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

DATED: _____, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs