

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

POP SELLS, LLC, a Florida limited liability company; and DOES 1 through 30, Inclusive;

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

TERESA MATHANY, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Electronically FILED by
Superior Court of California,
County of Los Angeles
8/07/2023 2:03 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Nunez, Deputy Clerk

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):

Superior Court of California - Los Angeles - Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER: 23STCV18636
(Número del Caso):

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 - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 08/07/2023
(Fecha)

Clerk, by David W. Slayton, Executive Officer/Clerk of Court, Deputy
(Secretario) J. Nunez (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)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

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

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

SUMMONS

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For your protection and privacy, please

Clear This Form

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By J. Nunez, Deputy Clerk

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Attorneys for PLAINTIFF

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

TERESA MATHANY, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

POP SELLS, LLC, a Florida limited liability
company; and DOES 1 through 30, Inclusive;

Defendant.

Case No. 23STCV18636

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 WAGE STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES

FO 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. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT
LABOR CODE §§ 2698 *et seq.*

DEMAND FOR JURY TRIAL

Plaintiff TERESA MATHANY ("PLAINTIFF"), an individual, on behalf of herself and all other similarly situated current and former similarly situated individuals alleges on information and belief, except her own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFF is an individual who works as a salesperson in California for defendant POP SELLS, LLC ("DEFENDANT" and/or "DEFENDANTS"). PLAINTIFF alleges that DEFENDANT has violated and continues to violate the California Labor Code protections applicable to California employees because DEFENDANT has misclassified its California employees as independent contractors. In order to provide services to their customers, DEFENDANT hires California workers to aid DEFENDANT in providing services in the usual course of DEFENDANT's recreational vehicles sales business to their clients. DEFENDANT controlled and directed the work performed by PLAINTIFF and the other similarly situated misclassified California workers by, among other things, scheduling hours of work, providing job site information, and issuing written policies and procedures for the performance of work and conduct in the workplace. PLAINTIFF and the other similarly situated misclassified California workers are not and were not engaged in a customarily independently established trade, occupation or business as the same nature of the work performed. The costs, as proscribed by law, of the personnel hired to work for DEFENDANT, includes not only the pay of these employees but the cost of the employer's share of tax payments to the federal and state governments for income taxes, social security taxes, Medicare insurance, unemployment insurance and payments for workers' compensation insurance. To avoid the payment of these legally proscribed expenses to the fullest extent possible, DEFENDANT devised a scheme to place the

responsibility for the payment of these costs and expenses of DEFENDANT on the shoulders of PLAINTIFF and other similarly situated California employees. As an employer, DEFENDANT is legally responsible for the payment of all these expenses. This lawsuit is brought in order to collect the wages due to PLAINTIFF and all those similarly situated misclassified independent contractors as DEFENDANT's employees, the cost of the employer's share of payments to the federal and state governments for income taxes, social security taxes, Medicare insurance, unemployment insurance and payments for workers' compensation insurance, plus penalties and interest.

THE PARTIES

2. DEFENDANT is a Florida limited liability company, that at all relevant times mentioned herein conducted and continues to conduct substantial business in the State of California, County of Los Angeles, and operates a recreational vehicles sales business.

3. DEFENDANT utilizes independent contractors, rather than employees, to operate its recreational vehicles sales business.

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

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

1 are jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
2 proximate result of the conduct of the DEFENDANT's agents, servants and/or employees.

3 6. DEFENDANT was PLAINTIFF's employer or persons acting on behalf of
4 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused
5 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
6 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
7 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

8 7. DEFENDANT was PLAINTIFF's employer or persons acting on behalf of
9 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
10 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
11 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
12 for each underpaid employee.

13 8. PLAINTIFF has worked as an account representative for DEFENDANT since February
14 of 2017 and was at all times during her employment classified by DEFENDANT as an independent
15 contractor.

16 9. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
17 individuals who worked for DEFENDANT in California as independent contractors ("CALIFORNIA
18 CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint
19 and ending on the date as determined by the Court (the "CLASS PERIOD"). The amount in
20 controversy for the aggregate claim of CALIFORNIA CLASS members is under five million dollars
21 (\$5,000,000.00).

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

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

2 **THE CONDUCT**

3 **A. Misclassification**

4 12. DEFENDANT engaged in a pattern and practice of misclassifying California workers
5 as independent contractors, hired to perform work and services core to DEFENDANT's businesses, in
6 violation of California Labor Code Section 226.8. California Labor Code Section 226.8 provides that
7 "[i]t is unlawful for any person or employer to engage in ...[w]illful misclassification of an individual
8 as an independent contractor." The penalty for willful misclassification of employees is a "civil penalty
9 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
10 each violation, in addition to any other penalties or fines permitted by law." It is further provided that,
11 in the event that an employer is found to have engaged in "a pattern or practice of these violations," the
12 penalties increase to "not less than ten thousand dollars (\$10,000) and not more than twenty-five
13 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by
14 law." Cal. Labor Code § 226.8.

15 13. Similarly, PLAINTIFF and other members of the CALIFORNIA CLASS were not
16 compensated overtime wages for any of their time spent working in excess of eight (8) hours in a
17 workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF and
18 other members of the CALIFORNIA CLASS were paid the commission and/or hourly rate to perform
19 labor services on DEFENDANT's behalf. PLAINTIFF and other workers were not compensated any
20 other wages besides the non-negotiable commission and/or hourly rate, and they were not allowed to
21 record their time while they waited for DEFENDANT to give them work. DEFENDANT did not pay
22 PLAINTIFF and other CALIFORNIA CLASS members for the time spent performing the following
23 non-exhaustive list of tasks, including but not limited to, initiating sales, closing sales, talking to
24 DEFENDANT'S potential and current clientele, filling out paperwork. The finite set of tasks required
25 to be performed by the workers is to perform all tasks necessary to initiate and close sales of
26 DEFENDANT'S recreational vehicles, all in accordance with DEFENDANT's business practices and
27 policies.

1
2 14. As a result, stripped of all the legal fictions and artificial barriers to an honest
3 classification of the relationship between PLAINTIFF and all the other members of the CALIFORNIA
4 CLASS on the one hand, and DEFENDANT on the other hand, PLAINTIFF and all the other members
5 of the CALIFORNIA CLASS are and were employees of DEFENDANT and not independent
6 contractors of DEFENDANT and should therefore be properly classified as non-exempt, hourly
7 employees.

8 15. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA CLASS
9 members as defined by DEFENDANT was executed by them through the performance of non-exempt
10 labor.

11 16. Although PLAINTIFF and the other CALIFORNIA CLASS members performed non-
12 exempt labor subject to DEFENDANT's complete control over the manner and means of performance,
13 DEFENDANT instituted a blanket classification policy, practice and procedure by which all of these
14 CALIFORNIA CLASS Members were classified as "independent contractors" exempt from
15 compensation for overtime worked, meal breaks and rest breaks, and reimbursement for business
16 related expenses. By reason of this uniform misclassification, the CALIFORNIA CLASS Members
17 were also required to pay DEFENDANT's share of payroll taxes and mandatory insurance premiums.
18 As a result of this uniform misclassification practice, policy and procedure applicable to PLAINTIFF
19 and the other CALIFORNIA CLASS Members who performed this work for DEFENDANT,
20 DEFENDANT committed acts of unfair competition in violation of the California Unfair Competition
21 law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy,
22 practice and procedure which failed to properly classify PLAINTIFF and the other CALIFORNIA
23 CLASS members as employees and thereby failed to pay them wages for all time worked,
24 reimbursement of business related expenses, failed to provide them with meal and rest breaks, and
25 failed to reimburse these employees for the employer's share of payroll taxes and mandatory insurance.

26 17. DEFENDANT, as a matter of law, has the burden of proving that employees are
27 properly classified and that DEFENDANT otherwise complies with applicable laws. DEFENDANT,
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1 as a matter of corporate policy, erroneously and unilaterally classified all the CALIFORNIA CLASS
2 Members as independent contractors in violation of the California Labor Code and regulations
3 promulgated thereunder.

4 i. **Plaintiff and Other Members of the California Class Were Not Free from**
5 **the Control and Direction of Defendant**

6 18. DEFENDANT controlled and directed the work performed by PLAINTIFF and the
7 other similarly situated misclassified California workers by, among other things, scheduling hours of
8 work, providing job site information, and issuing written policies and procedures for the performance
9 of work and conduct in the workplace. Upon hire, the position was represented by DEFENDANT to
10 PLAINTIFF and the other workers as an independent contractor position in exchange for a commission
11 and/or hourly rate of pay for the time they spend providing labor and services to DEFENDANT's third-
12 party customers.

13 19. To perform their job duties, PLAINTIFF and the other members of the CALIFORNIA
14 CLASS perform work subject to the control of DEFENDANT in that DEFENDANT had the authority
15 to exercise complete control over the work performed and the manner and means in which the work
16 was performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
17 as to how to perform their work.

18 20. California Labor Code § 3357 defines "employee" as "every person in the service of an
19 employer under any appointment or contract of hire or apprenticeship, express or implied, oral or
20 written, whether lawfully or unlawfully employed." Additionally, to the California Labor Code's
21 presumption that workers are employees, the California Supreme Court has determined the most
22 significant factor to be considered in distinguishing an independent contractor from an employee is
23 whether the *employer or principal has control or the right to control the work both as to the work*
24 *performed and the manner and means in which the work is performed*. DEFENDANT heavily
25 controlled both the work performed and the manner and means in which the PLAINTIFF and other
26 workers performed their work in that:

27 (a) PLAINTIFF and other members of the CALIFORNIA CLASS were not
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involved in a distinct business, but instead were provided with instructions as to how to perform their work and the manner and means in which the work was to be performed by means of DEFENDANT and DEFENDANT's manuals and written instructions;

(b) PLAINTIFF and other members of the CALIFORNIA CLASS were continuously provided with training and supervision, including following DEFENDANT's company documents, and received training from DEFENDANT as to how and in what way to perform the services;

(c) DEFENDANT set the requirements as to what policies and procedures all of the workers were to follow, including but not limited to, commission and/or hourly rates and location of assignment;

(d) PLAINTIFF and other members of the CALIFORNIA CLASS had no opportunity for profit or loss because DEFENDANT only paid these workers a commission and/or an hourly rate. DEFENDANT controlled and assigned the workers which tasks were to be performed;

(e) PLAINTIFF and other members of the CALIFORNIA CLASS performed services and labor which are part of the core of DEFENDANT's principal business and is closely integrated with and essential to the employer's business of services and labor to their customers;

(f) PLAINTIFF and other members of the CALIFORNIA CLASS performed the work themselves and did not hire others to perform their work for them;

(g) PLAINTIFF and other members of the CALIFORNIA CLASS did not have the authority to make employment-related personnel decisions;

(h) PLAINTIFF and other members of the CALIFORNIA CLASS performed their work in a particular order and sequence in accordance with DEFENDANT and DEFENDANT customers company policies; and,

(i) DEFENDANT had the "right" to control every critical aspect of DEFENDANT labor operation in that DEFENDANT provided the customer, assigned how

1 PLAINTIFF and other members of the CALIFORNIA CLASS were to perform the
2 jobs, assigned the hourly rate or commission-based pay, and step by step instructions to
3 PLAINTIFF and other members of the CALIFORNIA CLASS as to the entire process
4 of initiating and closing sales. PLAINTIFF and other workers provided services and
5 labor for DEFENDANT customers and were not actually in business for themselves.

6 ii. **Plaintiff and Other Members of the California Class Did Not Perform Work**
7 **Outside the Usual Course of Defendant's Business**

8 21. DEFENDANT willfully misclassified PLAINTIFF and other members of the
9 CALIFORNIA CLASS who provided DEFENDANT with recreational vehicle sales services for
10 DEFENDANT's clients. In other words, PLAINTIFF and other similarly situated California workers
11 provided DEFENDANT with work and services within the usual course of DEFENDANT's business.

12 22. DEFENDANT markets itself to the public, PLAINTIFF and other members of the
13 CALIFORNIA CLASS as a broker and retailer of recreational vehicles. As a result, DEFENDANT
14 unquestionably holds itself out to the public, PLAINTIFF and other members of the CALIFORNIA
15 CLASS as a broker and retailer of recreational vehicles. Therefore, the performance of DEFENDANT's
16 recreational vehicles sales services by PLAINTIFF and other members of the CALIFORNIA CLASS
17 is not outside DEFENDANT'S usual course of business.

18 iii. **Plaintiff and Other Members of the California Class Were Not Engaged in**
19 **an Independently Established Trade, Occupation, or Business of the Same**
20 **Nature as the Work Performed for Defendant**

21 23. PLAINTIFF and the other members of the CALIFORNIA CLASS are not and were not
22 engaged in a customarily independently established trade, occupation or business as the same nature of
23 the work performed.

24 **B. Meal Period Violations**

25 24. In California, an employer may not employ an employee for a work period of more than
26 five hours per day without providing the employee with a duty-free meal period of not less than thirty
27 minutes, except that if the total work period per day of the employee is no more than six hours, the
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meal period may be waived by mutual consent of both the employer and employee. A second duty-free meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than 12 hours, the second duty-free meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived. Labor Code Section 512.

25. If an employer fails to provide an employee with a duty-free meal period in accordance with an applicable IWC Order, the employer must pay one additional hour of pay at the employee's regular rate of pay for each workday that the meal period is not provided. IWC Orders and Labor Code Section 226.7. This additional hour is not counted as hours worked for the purposes of overtime calculations.

26. From time-to-time during the CLASS PERIOD, as a result of their misclassification as independent contractors and their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were not provided with a thirty (30) minute duty-free meal period and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS members were required from time-to-time to perform work as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second duty-free meal period for some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice. Moreover, PLAINTIFF and other members of the CALIFORNIA CLASS were not provided with one-hour wages in lieu of their legally mandated duty-free meal and rest periods.

C. Rest Period Violations

27. The applicable IWC Wage Order requires that employers must authorize and permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. The

1 Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a
2 “major fraction” of four. A rest period is not required for employees whose total daily work time is less
3 than three and one-half hours. The rest period is counted as time worked and therefore, the employer
4 must pay for such periods.

5 28. If an employer fails to provide an employee a rest period in accordance with an applicable
6 IWC Order, the employer shall pay the employee one additional hour of pay at the employee’s regular
7 rate of pay for each workday that the rest period is not provided. Labor Code Section 226.7. Thus, if
8 an employer does not provide all of the rest periods required in a workday, the employee is entitled to
9 one additional hour of pay for that workday, not one additional hour of pay for each rest period that
10 was not provided during that workday.

11 29. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
12 independent contractors and their rigorous work schedules PLAINTIFF and other CALIFORNIA
13 CLASS members were also required to work in excess of four (4) hours without being provided ten
14 (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
15 (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and
16 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
17 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
18 (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS members were also not provided
19 with one-hour wages in lieu thereof. As a result of their misclassification and rigorous work schedules,
20 PLAINTIFF and other CALIFORNIA CLASS members were from time-to-time denied their proper
21 rest periods by DEFENDANT and DEFENDANT’S managers.

22 **D. Failure to Pay Minimum, Regular and Overtime Wages**

23 30. From time-to-time during the CLASS PERIOD, DEFENDANT failed to accurately
24 record and pay PLAINTIFF and other CALIFORNIA CLASS members for the actual amount of time
25 these employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
26 is required to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked, meaning
27 the time during which an employee was subject to the control of an employer, including all the time
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1 the employee was permitted or suffered to permit this work. DEFENDANT required PLAINTIFF and
2 CALIFORNIA CLASS members to work off the clock without paying them for all the time they were
3 under DEFENDANT's control. PLAINTIFF and other CALIFORNIA CLASS Members also worked
4 more than eight hours in a workday and/or forty hours in a workweek, but DEFENDANT failed to pay
5 these employees overtime pay as DEFENDANT only paid a commission and/or a flat hourly rate for
6 all time worked. Consequently, PLAINTIFF and other CALIFORNIA CLASS members forfeited
7 minimum wages and overtime wage compensation by working without their time being correctly
8 recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to
9 pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by
10 DEFENDANT's business records. As a result, DEFENDANT failed to compensate PLAINTIFF and
11 the members of the CALIFORNIA CLASS all minimum, regular and overtime wages for all hours
12 worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and 510.

13 **E. Failure to Reimburse Necessary and Required Business Expenses**

14 31. Under California Labor Code Section 2802, employers are required to indemnify
15 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
16 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
17 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
18 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
19 employee, at the time of obeying the directions, believed them to be unlawful."

20 32. From time-to-time during the CLASS PERIOD, DEFENDANT as a matter of corporate
21 policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and
22 indemnify PLAINTIFF and the other CLASS MEMBERS for required business expenses incurred by
23 PLAINTIFF and other the CLASS MEMBERS in direct consequence of discharging their duties on
24 behalf of DEFENDANT.

25 33. From time-to-time during the CLASS PERIOD, in the course of their employment
26 PLAINTIFF and other CALIFORNIA CLASS members as a business expense, were required by
27 DEFENDANT to use personal cellular phones, personal vehicles, personal home internet and personal
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1 equipment as a result of and in furtherance of their job duties as employees for DEFENDANT but were
2 not reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal
3 cellular phones, personal equipment, personal home internet and personal vehicles for DEFENDANT's
4 benefit. In order to work for DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members
5 were required to use their personal vehicles to travel to various locations and were also required to use
6 their personal cell phones to receive and/or respond to work-related communications and as such it is
7 mandatory to have a cell phone. Additionally, PLAINTIFF and other CALIFORNIA CLASS Members
8 were required to use their own personal home internet and provide their own personal equipment and
9 supplies needed to perform the essential sales duties. As a result, in the course of their employment
10 with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
11 unreimbursed business expenses which included, but were not limited to, costs related to the use of
12 their personal cellular phones, personal equipment, personal home internet and personal vehicle on
13 behalf of and for the benefit of DEFENDANT.

14 **F. Wage Statement Violations**

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

23 35. From time-to-time during the CLASS PERIOD, as a result of, *inter alia*, of
24 DEFENDANT's intentional and willful misclassification of PLAINTIFF and the members of the
25 CALIFORNIA CLASS as independent contractors rather than employees, DEFENDANT issued
26 inaccurate itemized wages statements to PLAINTIFF and the members of the CALIFORNIA CLASS
27 that failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the number of
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1 piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the
2 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
3 last four digits of the employee's social security number or an employee identification number other
4 than a social security number, (8) the name and address of the legal entity that is the employer and, (9)
5 all applicable hourly rates in effect during the pay period and the corresponding number of hours
6 worked at each hourly rate by the employee.

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

11 **G. Unfair Competition**

12 37. By reason of this conduct applicable to PLAINTIFF and all the CALIFORNIA CLASS
13 members, DEFENDANT committed acts of unfair competition in violation of the California Unfair
14 Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-
15 wide policy, practice and procedure which failed to correctly classify PLAINTIFF and the
16 CALIFORNIA CLASS members as employees. The proper classification of these employees is
17 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet
18 this burden, DEFENDANT failed to pay all required wages for work performed by PLAINTIFF and
19 other CALIFORNIA CLASS Members and violated the California Labor Code and regulations
20 promulgated thereunder as herein alleged.

21 38. PLAINTIFF as a worker for DEFENDANT, was classified by DEFENDANT as an
22 independent contractor and thus did not receive pay for all time worked, including minimum and
23 overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also required to
24 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving
25 a meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF therefore forfeited
26 meal and rest breaks without additional compensation and in accordance with DEFENDANT's strict
27 corporate policy and practice which did not provide for mandatory meal and rest breaks. To date,
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1 DEFENDANT has not fully paid PLAINTIFF all wages still owed to her or any penalty wages owed
2 to her under California Labor Code § 203. The amount in controversy for PLAINTIFF individually
3 does not exceed the sum or value of \$75,000.

4 **THE CALIFORNIA CLASS**

5 39. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
6 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
7 pursuant to Cal. Code of Civ. Proc. § 382, for violations during the CLASS PERIOD on behalf of the
8 CALIFORNIA CLASS. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
9 Members is under five million dollars (\$5,000,000.00).

10 40. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
11 against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

12 41. All CALIFORNIA CLASS members who performed and continue to perform this work
13 for DEFENDANT during the CLASS PERIOD are similarly situated in that they are subject to
14 DEFENDANT's policy and practice that required them to perform work without compensation as
15 required by law.

16 42. During the CLASS PERIOD, DEFENDANT violated the rights of the PLAINTIFF and
17 the CALIFORNIA CLASS members under California law, without limitation, in the following
18 manners:

19 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
20 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as employer, devised and implemented
21 a scheme whereby PLAINTIFF and the CALIFORNIA CLASS members are forced to unlawfully,
22 unfairly and deceptively shoulder the cost of DEFENDANT'S wages for all unpaid wages, business
23 related expenses, and DEFENDANT's share of employment taxes, social security taxes, unemployment
24 insurance and workers' compensation insurance;

25 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
26 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively having in place company policies,
27 practices and procedures that uniformly misclassified PLAINTIFF and the CALIFORNIA CLASS
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1 members as independent contractors;

2 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
3 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively failing to have in place a company
4 policy, practice and procedure that accurately determined the amount of working time spent by
5 PLAINTIFF and the CALIFORNIA CLASS members performing non-exempt employee labor;

6 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
7 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the other members of the
8 CALIFORNIA CLASS with all legally required meal and rest breaks;

9 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
10 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
11 the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job
12 duties; and,

13 (f) Committing an act of unfair competition in violation of the UCL, by violating
14 Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFF and the
15 members of the CALIFORNIA CLASS who were improperly classified as exempt, and retaining the
16 unpaid overtime to the benefit of DEFENDANT.

17 43. As a result of DEFENDANT's policies, practices and procedures, there are numerous
18 questions of law and fact common to all CALIFORNIA CLASS members who worked for during the
19 CLASS PERIOD. These questions include, but are not limited, to the following:

20 (a) Whether PLAINTIFF and other CALIFORNIA CLASS members were
21 misclassified as independent contractors by DEFENDANT;

22 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS members all afforded
23 all the protections of the California Labor Code that apply when properly classified as non-exempt
24 employees;

25 (c) Whether DEFENDANT's policies, practices and pattern of conduct described in
26 this Complaint was and is unlawful;

27 (d) Whether DEFENDANT unlawfully failed to pay their share of state and federal
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employment taxes as required by state and federal tax laws;

(e) Whether DEFENDANT's policy, practice and procedure of classifying the CALIFORNIA CLASS members as independent contractors exempt from hourly wages laws for all time worked and failing to pay the CALIFORNIA CLASS members all amounts due violates applicable provisions of California State law;

(f) Whether DEFENDANT unlawfully failed to keep and furnish the CALIFORNIA CLASS members with accurate records of all time worked;

(g) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct; and,

(h) Whether DEFENDANT's conduct was willful.

44. This 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 and will apply to every CALIFORNIA CLASS member;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS members, was classified as an independent contractor upon hiring based on the defined corporate policies and practices and labors under DEFENDANT'S procedure that failed to properly classify the PLAINTIFF and the CALIFORNIA CLASS members. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the CALIFORNIA CLASS members were and are similarly or identically harmed by the same unlawful, unfair, deceptive and persuasive pattern of misconduct engaged in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS members that they were not entitled to minimum wages, the employer's share of payment of payroll taxes and mandatory

1 insurance, and reimbursement for business expenses based on the defined corporate policies and
2 practices, and unfairly failed to pay these employees who were improperly classified as independent
3 contractors; and,

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

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

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

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

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

21 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds generally
22 applicable to the CALIFORNIA CLASS making appropriate class-wide relief with respect to the
23 CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the
24 CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take
25 proper steps to determine whether the CALIFORNIA CLASS members were properly classified as
26 independent contractors, and thereby denied these employees' wages and payments for business
27 expenses and the employer's share of payroll taxes and mandatory insurance as required by law.

1 (i) With respect to the First Cause of Action, the final relief on behalf of the
2 CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim the
3 PLAINTIFF seeks declaratory relief holding that DEFENDANT's policies and practices constitute
4 unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct
5 declared to constitute unfair competition.

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

11 (i) The interest of the CALIFORNIA CLASS members in individually
12 controlling the prosecution or defense of separate actions;

13 (ii) The extent and nature of any litigation concerning the controversy already
14 commenced by or against members of the CALIFORNIA CLASS;

15 (iii) In the context of wage litigation because as a practical matter a substantial
16 number of individual CALIFORNIA CLASS members will avoid asserting their legal rights out of fear
17 of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or
18 with a subsequent employer, the Class Action is the only means to assert their claims through a
19 representative;

20 (iv) The desirability or undesirability of concentration the litigation of the
21 claims in the particular forum;

22 (v) The difficulties likely to be encountered in the management of a Class
23 Action; and,

24 (vi) The basis of DEFENDANT'S policies and practices applied to all the
25 CALIFORNIA CLASS members.

26 46. The Court should permit this Action to be maintained as a Class Action pursuant to Cal.
27 Code of Civ. Proc. § 382 because:
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1 (a) The questions of law and fact common to the CALIFORNIA CLASS
2 predominate over any question affecting only individual members;

3 (b) A Class Action is superior to any other available method for the fair and efficient
4 adjudication of the claims of the members of the CALIFORNIA CLASS;

5 (c) The CALIFORNIA CLASS members are so numerous that it is impractical to
6 bring all CALIFORNIA CLASS members before the Court;

7 (d) PLAINTIFF, and the CALIFORNIA CLASS Members, will not be able to obtain
8 effective and economic legal redress unless the action is maintained as a Class Action;

9 (e) There is a community of interest in obtaining appropriate legal and equitable
10 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
11 adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon
12 the CALIFORNIA CLASS;

13 (f) There is a community of interest in ensuring that the combined assets and
14 available insurance of DEFENDANT are sufficient to adequately compensate the CALIFORNIA
15 CLASS members for any injuries sustained;

16 (g) DEFENDANT has acted or has refused to act on grounds generally applicable to
17 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the
18 CLASS as a whole;

19 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
20 business records of DEFENDANT; and,

21 (i) Class treatment provides manageable judicial treatment calculated to bring an
22 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
23 DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

24 47. DEFENDANT maintain records from which the Court can ascertain and identify by
25 name and job title, each of DEFENDANT's employees who have been intentionally subjected to
26 DEFENDANT's corporate policies, practices and procedures as herein alleged. PLAINTIFF will seek
27 leave to amend the complaint to include any additional job titles of similarly situated employees when
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1 they have been identified.

2 **THE CALIFORNIA LABOR SUB-CLASS**

3 48. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
4 Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
5 CLASS who are or previously were employed by DEFENDANT in California as independent
6 contractors (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years
7 prior to the filing of the Complaint and ending on the date as determined by the Court (the
8 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc § 382. The
9 amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is
10 under five million dollars (\$5,000,000.00).

11 49. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation
12 of the applicable California Labor Code (“Labor Code”), and Industrial Welfare Commission (“IWC”)
13 Wage Order requirements intentionally, knowingly, and willfully, on the basis of job title alone and
14 without regard to the actual overall requirements of the job, systematically classified PLAINTIFF and
15 the other members of the CALIFORNIA LABOR SUBCLASS as independent contractors in order to
16 avoid the payment of all wages, and in order to avoid the obligations under the applicable California
17 Labor Code provisions. To the extent equitable tolling operates to toll claims by the CALIFORNIA
18 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
19 should be adjusted accordingly.

20 50. DEFENDANT maintain records from which the Court can ascertain and identify by job
21 title each of DEFENDANT’S employees who as CALIFORNIA LABOR SUB-CLASS Members
22 have been systematically, intentionally and uniformly misclassified as independent contractors as a
23 matter of DEFENDANT’s corporate policy, practices and procedures. PLAINTIFF will seek leave to
24 amend the complaint to include these additional job titles when they have been identified.

25 51. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
26 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

27 52. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
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1 California law by:

2 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by misclassifying and
3 thereby failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
4 correct minimum wages for which DEFENDANT is liable;

5 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby failing
6 to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
7 pay for a workday longer than eight (8) hours and/or a workweek longer than forty (40) hours for which
8 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

9 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
10 and the other members of the CALIFORNIA LABOR SUBCLASS with all legally required off-duty,
11 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

12 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
13 members of the CALIFORNIA LABOR SUB-CLASS who were improperly classified as independent
14 contractors with an accurate itemized statement in writing showing the gross wages earned, the net
15 wages earned, all applicable hourly rates in effect during the pay period and the corresponding amount
16 of time worked at each hourly rate by the employee;

17 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
18 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of
19 their job duties; and,

20 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
21 employee is discharged or quits from employment, the employer must pay the employee all wages due
22 without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner
23 required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have
24 terminated their employment.

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

27 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
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1 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and
2 the disposition of their claims as a class will benefit the parties and the Court;

3 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
4 are raised in this Complaint are common to the CALIFORNIA LABOR 19 SUB-CLASS and will apply
5 to every member of the CALIFORNIA LABOR SUB-CLASS;

6 (c) The claims of the representative PLAINTIFF are typical of the claims of each
7 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all other members of the
8 CALIFORNIA LABOR SUB-CLASS was improperly classified as an independent contractor and was
9 thus denied minimum wage pay and meal and rest breaks, among other things, as a result of
10 DEFENDANT's systematic classification practices. PLAINTIFF and all other members of the
11 CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT's
12 violations of the laws of California; and,

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

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

21 (a) Without class certification and determination of declaratory, injunctive,
22 statutory and other legal questions within the class format, prosecution of separate actions by individual
23 members of the CALIFORNIA LABOR SUBCLASS will create the risk of: 1) Inconsistent or varying
24 adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which
25 would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR
26 SUB-CLASS; or, 2) Adjudication with respect to individual members of the CALIFORNIA LABOR
27 SUB-CLASS which would as a practical matter be dispositive of interests of the other members not
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1 party to the adjudication or substantially impair or impede their ability to protect their interests.

2 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
3 refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making
4 appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in
5 that the DEFENDANT uniformly classified and treated the members of the CALIFORNIA LABOR
6 SUB-CLASS as independent contractors and, thereafter, uniformly failed to take proper steps to
7 determine whether the CALIFORNIA LABOR SUBCLASS Members were properly classified as
8 independent contractors, and thereby denied these employees the protections afforded to them under
9 the California Labor Code;

10 (c) Common questions of law and fact predominate as to the members of the
11 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California law as
12 listed above, and predominate over any question affecting only individual CALIFORNIA LABOR
13 SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and
14 efficient adjudication of the controversy, including consideration of:

15 i) The interests of the members of the CALIFORNIA LABOR SUB-
16 CLASS in individually controlling the prosecution or defense of separate actions in that the substantial
17 expense of individual actions will be avoided to recover the relatively small amount of economic losses
18 sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the
19 substantial expense and burden of individual prosecution of this litigation;

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

22 A. Inconsistent or varying adjudications with respect to individual
23 members of the CALIFORNIA LABOR SUBCLASS, which would establish incompatible standards
24 of conduct for the DEFENDANT; and/or,

25 B. Adjudications with respect to individual members of the
26 CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the
27 other members not parties to the adjudication or substantially impair or impede their ability to protect
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1 their interests;

2 iii) In the context of wage litigation because a substantial number of
3 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of
4 fear of retaliation by DEFENDANT, which may adversely affect an individual's job with
5 DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims
6 through a representative; and,

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

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

13 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-
14 CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS
15 Members;

16 b) A Class Action is superior to any other available method for the fair and efficient
17 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the
18 context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-
19 CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse
20 impact on their employment;

21 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
22 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

23 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members,
24 will not be able to obtain effective and economic legal redress unless the action is maintained as a Class
25 Action;

26 (e) There is a community of interest in obtaining appropriate legal and equitable
27 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
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adequate compensation for the damages and injuries which DEFENDANT'S actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;

(f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

(g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

(h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT; and,

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

JURISDICTION AND VENUE

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

57. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained its principal offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful, Unfair and Deceptive Business Practices**

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

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

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

7 59. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code §
8 17021.

9 60. Section 17200 of the California Business & Professions Code defines unfair competition
10 as any unlawful, unfair or fraudulent business act or practice. Section 17200 applies to violations of
11 labor laws in the employment context. Section 17203 authorizes injunctive, declaratory and/or other
12 equitable relief with respect to unfair competition as follows:

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

21 California Business & Professions Code § 17203.

22 61. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
23 business practice which violates California law, including but not limited to the applicable Industrial
24 Wage Orders, the California Labor Code including Sections 204, 210, 221, 226.7, 226.8, 510, 512,
25 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations § 11090, for which this Court
26 should issue declaratory, injunctive, and other equitable relief, pursuant to Cal. Bus. & Prof § 17203,
27 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including
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1 restitution of wages wrongfully withheld, business expenses wrongfully withheld and for the payment
2 of the employer's share of income taxes, social security taxes, unemployment insurance and workers'
3 compensation insurance.

4 62. By the conduct alleged herein DEFENDANT has obtained valuable property, money,
5 and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived
6 them of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of
7 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and injunctive relief is
8 necessary to prevent and remedy this unfair competition, and pecuniary compensation alone would not
9 afford adequate and complete relief.

10 63. All the acts described herein as violations of, among other things, the California Labor
11 Code, California Code of Regulations and the Industrial Welfare Commission Wage Orders, were
12 unlawful, were in violation of public policy, were immoral, unethical, oppressive, and unscrupulous,
13 and were likely to deceive employees, and thereby constitute deceptive, unfair and unlawful business
14 practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*

15 64. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent
16 in that DEFENDANT's policy and practice was to represent to the CALIFORNIA CLASS Members
17 that they were not entitled to overtime and minimum wages, payment for payroll taxes or mandatory
18 insurance and other benefits as required by California law, when in fact these representations were false
19 and likely to deceive and for which this Court should issue injunctive and equitable relief, pursuant to
20 Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

6 68. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
7 deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally
8 required meal and rest breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as
9 required by Cal. Lab. Code §§ 226.7 and 512.

10 69. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
11 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll taxes
12 and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty meal period
13 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday
14 in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

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

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

24 72. All the acts described herein as violations of, among other things, the Industrial Welfare
25 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, are
26 unlawful and in violation of public policy, are immoral, unethical, oppressive and unscrupulous, are
27 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.

1 Bus. & Prof. Code §§ 17200 *et seq.*

2 73. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
3 do, seek such relief as may be necessary to restore to them the money and property which
4 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
5 CLASS have been deprived, by means of the above described unlawful and unfair business practices.

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

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

17 **SECOND CAUSE OF ACTION**

18 **For Failure to Pay Minimum Wages**

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

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

21 76. 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 this
23 Complaint.

24 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring
25 a claim for DEFENDANT'S willful and intentional violations of the California Labor Code and the
26 Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately calculate and
27 pay minimum wages to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

8 81. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members
9 of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked.
10 As set forth herein, DEFENDANT'S policy and practice was to unlawfully and intentionally deny
11 timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR
12 SUB-CLASS.

13 82. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
15 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the other
16 members of the CALIFORNIA LABOR SUB-CLASS regarding minimum wage pay.

17 83. In committing these violations of the California Labor Code, DEFENDANT inaccurately
18 calculate the correct time worked and consequently underpays the actual time worked by PLAINTIFF
19 and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal
20 attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor
21 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

22 84. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive the
24 correct minimum wage compensation for their time worked for DEFENDANT.

25 85. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than they were
27 entitled to, constituting a failure to pay all earned wages.
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1 86. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned compensation
2 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for the true time
3 they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS have
4 suffered and will continue to suffer an economic injury in amounts which are presently unknown to
5 them and which will be ascertained according to proof at trial.

6 87. DEFENDANT knew or should have known that PLAINTIFF and the other members of
7 the CALIFORNIA LABOR SUB-CLASS are under compensated for their time worked.
8 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
9 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor and
10 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the
11 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

4 **THIRD CAUSE OF ACTION**

5 **For Failure to Pay Overtime Wages**

6 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

7 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

10 91. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed to pay
11 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for the time they
12 worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 &
13 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members were regularly
14 required to work, and did in fact work, overtime that DEFENDANT never recorded as evidenced by
15 DEFENDANT’S business records and witnessed by DEFENDANT’S employees.

16 92. By virtue of DEFENDANT’S unlawful failure to pay compensation to PLAINTIFF and
17 the CALIFORNIA CLASS Members for all overtime worked by these employees, PLAINTIFF and
18 CALIFORNIA LABOR SUB-CLASS Members have suffered, and will continue to suffer, an
19 economic in amounts which are presently unknown to them and which can be ascertained according to
20 proof at trial.

21 93. DEFENDANT knew or should have known that PLAINTIFF and the CALIFORNIA
22 CLASS Members were misclassified as independent contractors and DEFENDANT elected, either
23 through intentional malfeasance or gross nonfeasance, not to pay them for their labor as a matter of
24 corporate policy, practice and procedure.

25 94. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members therefore request
26 recovery of all compensation according to proof, interest, costs, as well as the assessment of any
27 statutory penalties against DEFENDANT in a sum as provided by the California Labor Code and/or
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1 other statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
2 LABOR SUB-CLASS Members who have terminated their employment, these employees would also
3 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein.
4 Further, PLAINTIFF and the CALIFORNIA LABOR SUBCLASS Members are entitled to seek and
5 recover statutory costs.

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

14 **FOURTH CAUSE OF ACTION**

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

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

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
18 **DEFENDANT)**

19 96. 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 this
21 Complaint.

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

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

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

16 **FIFTH CAUSE OF ACTION**

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

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

19 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

20 100. 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 this
22 Complaint.

23 101. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
24 Members were required to work in excess of four (4) hours without being provided ten (10) minute rest
25 periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for
26 some 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 third rest
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1 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and
2 other CALIFORNIA LABOR SUBCLASS Members were also not provided with one-hour wages in
3 lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
4 LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT
5 and DEFENDANT'S managers.

6 102. 88. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
7 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
8 Members who were not provided a rest period, in accordance with the applicable Wage Order, one
9 additional hour of compensation at each employee's regular rate of pay for each workday that rest
10 period was not provided.

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

14 **SIXTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code § 226]**

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

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

1 106. From time-to-time during the CALIFORNIA LABOR SUB-CLASS PERIOD,
2 DEFENDANT issued inaccurate itemized wages statements to PLAINTIFF and the members of the
3 CALIFORNIA LABOR SUB-CLASS that failed to accurately showing (1) gross wages earned, (2)
4 total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
5 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,
6 (7) the name of the employee and only the last four digits of the employee's social security number or
7 an employee identification number other than a social security number, (8) the name and address of the
8 legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and
9 the corresponding number of hours worked at each hourly rate by the employee.

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

14 108. DEFENDANT knowingly and intentionally failed to comply with Labor Code § 226,
15 causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS.
16 These damages include, but are not limited to, costs expended calculating the true amount of time
17 worked and the amount of employment taxes which were not properly paid to state and federal tax
18 authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members
19 of the CALIFORNIA LABOR SUB-CLASS elect to recover liquidated damages of \$50.00 for the
20 initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay
21 period pursuant to Labor Code § 226, in an amount according to proof at the time of trial (but in no
22 event more than \$4,000.00 for PLAINTIFF and each respective member of the CALIFORNIA LABOR
23 SUB-CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

2 **For Failure to Reimburse Employees for Required Expenses**

3 **[Cal. Lab. Code § 2802]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

5 109. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and
6 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 79 of this Complaint.

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

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

13 111. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to
14 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
15 required expenses incurred in the discharge of their job duties for DEFENDANT'S benefit. Specifically,
16 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
17 for expenses which included, but were not limited to, the cost associated with the use of their personal
18 cellular phones, personal equipment, and personal vehicles for DEFENDANT'S benefit. In order to
19 work for DEFENDANT, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
20 required to use their personal vehicles to travel and to use DEFENDANT'S mobile application and as
21 such it is mandatory to have a cell phone that is compatible with DEFENDANT'S mobile application.
22 As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other members of
23 the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which included,
24 but were not limited to, the costs related to the use of their personal cellular phones, personal equipment,
25 and personal vehicles all on behalf of and for the benefit of DEFENDANT. Further, PLAINTIFF and
26 other CALIFORNIA LABOR SUB-CLASS Members are also not reimbursed or indemnified by
27 DEFENDANT for the cost associated with using their personal vehicles while driving for
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1 DEFENDANT. Moreover, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
2 were also required to use their personal home internet and to provide their own equipment necessary to
3 perform the essential job duties. As a result, in the course of their employment with DEFENDANT,
4 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed
5 business expenses which included, but were not limited to, costs related to travel all on behalf of and
6 for the benefit of DEFENDANT. These expenses are necessary to complete their principal job duties.
7 DEFENDANT is estopped by DEFENDANT'S conduct to assert any waiver of this expectation.
8 Although these expenses are necessary expenses incurred by PLAINTIFF and the CALIFORNIA
9 LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
10 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do
11 under the laws and regulations of California.

12 112. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by
13 them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for
14 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate
15 and costs under Cal. Lab. Code § 2802.

16 **EIGHTH CAUSE OF ACTION**

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

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

19 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

23 114. Cal. Lab. Code § 200 states that:

24 As used in this article:

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

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

6 115. Cal. Lab. Code § 201 states, in relevant part, that "If an employer discharges an
7 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

8 116. Cal. Lab. Code § 202 states, in relevant part, that:

9 If an employee not having a written contract for a definite period quits his
10 or her employment, his or her wages shall become due and payable not later
11 than 72 hours thereafter, unless the employee has given 72 hours previous
12 notice of his or her intention to quit, in which case the employee is entitled
13 to his or her wages at the time of quitting. Notwithstanding any other
14 provision of law, an employee who quits without providing a 72-hour notice
15 shall be entitled to receive payment by mail if he or she so requests and
16 designates a mailing address. The date of the mailing shall constitute the
17 date of payment for purposes of the requirement to provide payment
18 within 72 hours of the notice of quitting.

19 117. There was no definite term in PLAINTIFF's or any other CALIFORNIA LABOR SUB-
20 CLASS Members' employment contract.

21 118. Cal. Lab. Code § 203 states:

22 If an employer willfully fails to pay, without abatement or reduction, in
23 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
24 employee who is discharged or who quits, the wages of the employee shall
25 continue as a penalty from the due date thereof at the same rate until paid
26 or until an action therefor is commenced; but the wages shall not continue
27 for more than 30 days.
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119. The employment of PLAINTIFF and many other CALIFORNIA LABOR SUB-CLASS Members has terminated, yet as to those individuals whose employment terminated, DEFENDANT did not timely tender payment of all wages owed as required by law.

120. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated, PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and statutory costs as allowed.

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§ 2698 et seq.)

(By PLAINTIFF and Against All DEFENDANT)

121. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

123. Plaintiff, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals classified as independent contractors who worked for Defendant in California during

1 the time period of June 1, 2022, until the present (the “AGGRIEVED EMPLOYEES”).

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

9 125. The policies, acts and practices heretofore described were and are an unlawful
10 business act or practice because DEFENDANT (a) failed to pay AGGRIEVED EMPLOYEES
11 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
12 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES for all time worked,
13 (d) failed to timely pay wages, and (e) failed to reimburse AGGRIEVED EMPLOYEES for
14 necessary and required business expenses, all in violation of the applicable Labor Code sections
15 listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203,
16 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 226.8, 246, 510, 512, 558, 1174(d), 1174.5,
17 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and 3357 and the applicable
18 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
19 Plaintiff hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
20 General Act of 2004 as the representative of the State of California for the illegal conduct
21 perpetrated on Plaintiff and the other AGGRIEVED EMPLOYEES.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANT, jointly and
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

- 5 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
6 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
7 b. An order temporarily, preliminarily and permanently enjoining and restraining
8 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
9 c. An order requiring DEFENDANT to pay minimum and overtime wages and all sums
10 unlawfully withheld from compensation due to PLAINTIFF and the other members
11 of the CALIFORNIA CLASS; and,
12 d. Restitutionary disgorgement of DEFENDANT'S ill-gotten gains into a fluid fund for
13 restitution of the sums incidental to DEFENDANT'S violations due to PLAINTIFF
14 and to the other members of the CALIFORNIA CLASS.

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

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
17 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
18 action pursuant to Cal. Code of Civ. Proc. § 382;
19 b. Compensatory damages, according to proof at trial, including compensation due
20 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
21 during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest
22 thereon at the statutory rate;
23 c. The wages of all terminated individuals in the CALIFORNIA LABOR SUB-CLASS
24 as a penalty from the due date thereof at the same rate until paid or until an action
25 therefore is commenced, in accordance with Cal. Lab. Code § 203;
26 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
27 which a violation occurs and one hundred dollars (\$100) per each member of the
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1 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period,
2 not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award
3 of costs for violation of Cal. Lab. Code § 226;

4 e. Meal and rest period compensation pursuant to California Labor Code Section 226.7
5 and the applicable IWC Wage Order;

6 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
7 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
8 costs of suit; and,

9 g. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

10 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
11 Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of
12 2004;

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4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and,
- c. An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or §2802.

DATED: August 7, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: August 7, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



Client # 62501

May 31, 2023

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

POP SELLS, LLC

c/o Scott Wild
448 Main Street
Tulelake, CA 96134

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 0625 6784 90

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 226.8, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and 3357, and 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 TERESA MATHANY ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant POP SELLS, LLC ("Defendant"). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff has worked for Defendant in California since February of 2017. Plaintiff was classified by Defendant as an independent contractor, however Plaintiff or any of the other workers who were classified as independent contractors were: (1) not free from Defendant's control, (2) the work performed was not outside of Defendant's usual course of business and (3) not engaged in an independently established trade, occupation or business. As a result, Plaintiff and other aggrieved employees worked time for which they were unlawfully not paid the correct minimum wage and overtime compensation. Further, Plaintiff and other aggrieved employees were not provided with the legally required meal and rest breaks in accordance with California law. Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period

As a consequence, Plaintiff contend that Defendant failed to fully compensate her and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 226.8, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,

1197.14, 1198, 1199, 2802, 2804, and 3357, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as individuals classified as independent contractors who worked for Defendant in California during the relevant claim period.

A true and correct copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) 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.

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

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

This notice is provided to enable Plaintiff to proceed with the Complaint against 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 Act 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

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

TERESA MATHANY, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

POP SELLS, LLC, a Florida limited liability
company; and DOES 1 through 30, Inclusive;

Defendant.

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 WAGE STATEMENTS IN

- 1 VIOLATION OF CAL. LAB. CODE § 226;
2 7. FAILURE TO REIMBURSE EMPLOYEES FOR
3 REQUIRED EXPENSES IN VIOLATION OF
4 CAL. LAB. CODE § 2802;
5 8. FAILURE TO PROVIDE WAGES WHEN DUE
6 IN VIOLATION OF CAL. LAB. CODE §§ 201,
7 202 AND 203.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff TERESA MATHANY ("PLAINTIFF"), an individual, on behalf of herself and all
10 other similarly situated current and former similarly situated individuals alleges on information and
11 belief, except her own acts and knowledge which are based on personal knowledge, the following:

12 **INTRODUCTION**

13 1. PLAINTIFF is an individual who works as a salesperson in California for defendant
14 POP SELLS, LLC ("DEFENDANT" and/or "DEFENDANTS"). PLAINTIFF alleges that
15 DEFENDANT has violated and continues to violate the California Labor Code protections applicable
16 to California employees because DEFENDANT has misclassified its California employees as
17 independent contractors. In order to provide services to their customers, DEFENDANT hires
18 California workers to aid DEFENDANT in providing services in the usual course of DEFENDANT's
19 recreational vehicles sales business to their clients. DEFENDANT controlled and directed the work
20 performed by PLAINTIFF and the other similarly situated misclassified California workers by, among
21 other things, scheduling hours of work, providing job site information, and issuing written policies
22 and procedures for the performance of work and conduct in the workplace. PLAINTIFF and the other
23 similarly situated misclassified California workers are not and were not engaged in a customarily
24 independently established trade, occupation or business as the same nature of the work performed.
25 The costs, as proscribed by law, of the personnel hired to work for DEFENDANT, includes not only
26 the pay of these employees but the cost of the employer's share of tax payments to the federal and
27 state governments for income taxes, social security taxes, Medicare insurance, unemployment
28 insurance and payments for workers' compensation insurance. To avoid the payment of these legally
proscribed expenses to the fullest extent possible, DEFENDANT devised a scheme to place the
responsibility for the payment of these costs and expenses of DEFENDANT on the shoulders of
PLAINTIFF and other similarly situated California employees. As employer, DEFENDANT is legally

1 responsible for the payment of all these expenses. This lawsuit is brought in order to collect the wages
2 due to PLAINTIFF and all those similarly situated misclassified independent contractors as
3 DEFENDANT's employees, the cost of the employer's share of payments to the federal and state
4 governments for income taxes, social security taxes, Medicare insurance, unemployment insurance
5 and payments for workers' compensation insurance, plus penalties and interest.

6 THE PARTIES

7 2. DEFENDANT is a Florida limited liability company, that at all relevant times
8 mentioned herein conducted and continues to conduct substantial business in the State of California,
9 County of Los Angeles, and operates a recreational vehicles sales business.

10 3. DEFENDANT utilizes independent contractors, rather than employees, to operate its
11 recreational vehicles sales business.

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

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

28 6. DEFENDANT was PLAINTIFF's employer or persons acting on behalf of

1 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused
2 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
3 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
4 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

5 7. DEFENDANT was PLAINTIFF's employer or persons acting on behalf of
6 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
7 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
8 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
9 for each underpaid employee.

10 8. PLAINTIFF has worked as an account representative for DEFENDANT since February
11 of 2017 and was at all times during her employment classified by DEFENDANT as an independent
12 contractor.

13 9. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
14 individuals who worked for DEFENDANT in California as independent contractors ("CALIFORNIA
15 CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint
16 and ending on the date as determined by the Court (the "CLASS PERIOD"). The amount in
17 controversy for the aggregate claim of CALIFORNIA CLASS members is under five million dollars
18 (\$5,000,000.00).

19 10. DEFENDANT's uniform policies and practices alleged herein were unlawful, unfair
20 and deceptive business practices whereby DEFENDANT retained and continues to retain wages and
21 other benefits due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

22 11. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
23 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other
24 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past
25 and current unlawful conduct, and all other appropriate legal and equitable relief.

26 **THE CONDUCT**

27 **A. Misclassification**

28 12. DEFENDANT engaged in a pattern and practice of misclassifying California workers

1 as independent contractors, hired to perform work and services core to DEFENDANT's businesses, in
2 violation of California Labor Code Section 226.8. California Labor Code Section 226.8 provides that
3 "[i]t is unlawful for any person or employer to engage in ...[w]illful misclassification of an individual
4 as an independent contractor." The penalty for willful misclassification of employees is a "civil penalty
5 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
6 each violation, in addition to any other penalties or fines permitted by law." It is further provided that,
7 in the event that an employer is found to have engaged in "a pattern or practice of these violations," the
8 penalties increase to "not less than ten thousand dollars (\$10,000) and not more than twenty-five
9 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by
10 law." Cal. Labor Code § 226.8.

11 13. Similarly, PLAINTIFF and other members of the CALIFORNIA CLASS were not
12 compensated overtime wages for any of their time spent working in excess of eight (8) hours in a
13 workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF and
14 other members of the CALIFORNIA CLASS were paid the commission and/or hourly rate to perform
15 labor services on DEFENDANT's behalf. PLAINTIFF and other workers were not compensated any
16 other wages besides the non-negotiable commission and/or hourly rate, and they were not allowed to
17 record their time while they waited for DEFENDANT to give them work. DEFENDANT did not pay
18 PLAINTIFF and other CALIFORNIA CLASS members for the time spent performing the following
19 non-exhaustive list of tasks, including but not limited to, initiating sales, closing sales, talking to
20 DEFENDANT'S potential and current clientele, filling out paperwork. The finite set of tasks required
21 to be performed by the workers is to perform all tasks necessary to initiate and close sales of
22 DEFENDANT'S recreational vehicles, all in accordance with DEFENDANT's business practices and
23 policies.

24 14. As a result, stripped of all the legal fictions and artificial barriers to an honest
25 classification of the relationship between PLAINTIFF and all the other members of the CALIFORNIA
26 CLASS on the one hand, and DEFENDANT on the other hand, PLAINTIFF and all the other members
27 of the CALIFORNIA CLASS are and were employees of DEFENDANT and not independent
28 contractors of DEFENDANT and should therefore be properly classified as non-exempt, hourly

1 employees.

2 15. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA CLASS
3 members as defined by DEFENDANT was executed by them through the performance of non-exempt
4 labor.

5 16. Although PLAINTIFF and the other CALIFORNIA CLASS members performed non-
6 exempt labor subject to DEFENDANT's complete control over the manner and means of performance,
7 DEFENDANT instituted a blanket classification policy, practice and procedure by which all of these
8 CALIFORNIA CLASS Members were classified as "independent contractors" exempt from
9 compensation for overtime worked, meal breaks and rest breaks, and reimbursement for business
10 related expenses. By reason of this uniform misclassification, the CALIFORNIA CLASS Members
11 were also required to pay DEFENDANT's share of payroll taxes and mandatory insurance premiums.
12 As a result of this uniform misclassification practice, policy and procedure applicable to PLAINTIFF
13 and the other CALIFORNIA CLASS Members who performed this work for DEFENDANT,
14 DEFENDANT committed acts of unfair competition in violation of the California Unfair Competition
15 law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy,
16 practice and procedure which failed to properly classify PLAINTIFF and the other CALIFORNIA
17 CLASS members as employees and thereby failed to pay them wages for all time worked,
18 reimbursement of business related expenses, failed to provide them with meal and rest breaks, and
19 failed to reimburse these employees for the employer's share of payroll taxes and mandatory insurance.

20 17. DEFENDANT, as a matter of law, has the burden of proving that employees are
21 properly classified and that DEFENDANT otherwise complies with applicable laws. DEFENDANT,
22 as a matter of corporate policy, erroneously and unilaterally classified all the CALIFORNIA CLASS
23 Members as independent contractors in violation of the California Labor Code and regulations
24 promulgated thereunder.

25 i. **Plaintiff and Other Members of the California Class Were Not Free from**
26 **the Control and Direction of Defendant**

27 18. DEFENDANT controlled and directed the work performed by PLAINTIFF and the
28 other similarly situated misclassified California workers by, among other things, scheduling hours of

1 work, providing job site information, and issuing written policies and procedures for the performance
2 of work and conduct in the workplace. Upon hire, the position was represented by DEFENDANT to
3 PLAINTIFF and the other workers as an independent contractor position in exchange for a commission
4 and/or hourly rate of pay for the time they spend providing labor and services to DEFENDANT's third-
5 party customers.

6 19. To perform their job duties, PLAINTIFF and the other members of the CALIFORNIA
7 CLASS perform work subject to the control of DEFENDANT in that DEFENDANT had the authority
8 to exercise complete control over the work performed and the manner and means in which the work
9 was performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
10 as to how to perform their work.

11 20. California Labor Code § 3357 defines "employee" as "every person in the service of an
12 employer under any appointment or contract of hire or apprenticeship, express or implied, oral or
13 written, whether lawfully or unlawfully employed." Additionally, to the California Labor Code's
14 presumption that workers are employees, the California Supreme Court has determined the most
15 significant factor to be considered in distinguishing an independent contractor from an employee is
16 whether the *employer or principal has control or the right to control the work both as to the work*
17 *performed and the manner and means in which the work is performed.* DEFENDANT heavily
18 controlled both the work performed and the manner and means in which the PLAINTIFF and other
19 workers performed their work in that:

20 (a) PLAINTIFF and other members of the CALIFORNIA CLASS were not
21 involved in a distinct business, but instead were provided with instructions as to how to
22 perform their work and the manner and means in which the work was to be performed
23 by means of DEFENDANT and DEFENDANT's manuals and written instructions;

24 (b) PLAINTIFF and other members of the CALIFORNIA CLASS were
25 continuously provided with training and supervision, including following
26 DEFENDANT's company documents, and received training from DEFENDANT as to
27 how and in what way to perform the services;

28 (c) DEFENDANT set the requirements as to what policies and procedures all of the

workers were to follow, including but not limited to, commission and/or hourly rates and location of assignment;

(d) PLAINTIFF and other members of the CALIFORNIA CLASS had no opportunity for profit or loss because DEFENDANT only paid these workers a commission and/or an hourly rate. DEFENDANT controlled and assigned the workers which tasks were to be performed;

(e) PLAINTIFF and other members of the CALIFORNIA CLASS performed services and labor which are part of the core of DEFENDANT's principal business and is closely integrated with and essential to the employer's business of services and labor to their customers;

(f) PLAINTIFF and other members of the CALIFORNIA CLASS performed the work themselves and did not hire others to perform their work for them;

(g) PLAINTIFF and other members of the CALIFORNIA CLASS did not have the authority to make employment-related personnel decisions;

(h) PLAINTIFF and other members of the CALIFORNIA CLASS performed their work in a particular order and sequence in accordance with DEFENDANT and DEFENDANT customers company policies; and,

(i) DEFENDANT had the "right" to control every critical aspect of DEFENDANT labor operation in that DEFENDANT provided the customer, assigned how PLAINTIFF and other members of the CALIFORNIA CLASS were to perform the jobs, assigned the hourly rate or commission-based pay, and step by step instructions to PLAINTIFF and other members of the CALIFORNIA CLASS as to the entire process of initiating and closing sales. PLAINTIFF and other workers provided services and labor for DEFENDANT customers and were not actually in business for themselves.

ii. **Plaintiff and Other Members of the California Class Did Not Perform Work Outside the Usual Course of Defendant's Business**

21. DEFENDANT willfully misclassified PLAINTIFF and other members of the CALIFORNIA CLASS who provided DEFENDANT with recreational vehicle sales services for

1 DEFENDANT's clients. In other words, PLAINTIFF and other similarly situated California workers
2 provided DEFENDANT with work and services within the usual course of DEFENDANT's business.

3 22. DEFENDANT markets itself to the public, PLAINTIFF and other members of the
4 CALIFORNIA CLASS as a broker and retailer of recreational vehicles. As a result, DEFENDANT
5 unquestionably holds itself out to the public, PLAINTIFF and other members of the CALIFORNIA
6 CLASS as a broker and retailer of recreational vehicles. Therefore, the performance of DEFENDANT's
7 recreational vehicles sales services by PLAINTIFF and other members of the CALIFORNIA CLASS
8 is not outside DEFENDANT'S usual course of business.

9 **iii. Plaintiff and Other Members of the California Class Were Not Engaged in**
10 **an Independently Established Trade, Occupation, or Business of the Same**
11 **Nature as the Work Performed for Defendant**

12 23. PLAINTIFF and the other members of the CALIFORNIA CLASS are not and were not
13 engaged in a customarily independently established trade, occupation or business as the same nature of
14 the work performed.

15 **B. Meal Period Violations**

16 24. In California, an employer may not employ an employee for a work period of more than
17 five hours per day without providing the employee with a duty-free meal period of not less than thirty
18 minutes, except that if the total work period per day of the employee is no more than six hours, the
19 meal period may be waived by mutual consent of both the employer and employee. A second duty-free
20 meal period of not less than thirty minutes is required if an employee works more than ten hours per
21 day, except that if the total hours worked is no more than 12 hours, the second duty-free meal period
22 may be waived by mutual consent of the employer and employee only if the first meal period was not
23 waived. Labor Code Section 512.

24 25. If an employer fails to provide an employee a duty-free meal period in accordance with
25 an applicable IWC Order, the employer must pay one additional hour of pay at the employee's regular
26 rate of pay for each workday that the meal period is not provided. IWC Orders and Labor Code Section
27 226.7. This additional hour is not counted as hours worked for purposes of overtime calculations.

28 26. From time-to-time during the CLASS PERIOD, as a result of their misclassification as

1 independent contractors and their rigorous work schedules, PLAINTIFF and other CALIFORNIA
2 CLASS members were not provided with a thirty (30) minute duty-free meal period and were not fully
3 relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS members were
4 required from time-to-time to perform work as ordered by DEFENDANT for more than five (5) hours
5 during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to
6 provide PLAINTIFF and CALIFORNIA CLASS members with a second duty-free meal period for
7 some workdays in which these employees were required by DEFENDANT to work ten (10) hours of
8 work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
9 without additional compensation and in accordance with DEFENDANT's strict corporate policy and
10 practice. Moreover, PLAINTIFF and other members of the CALIFORNIA CLASS were not provided
11 with one-hour wages in lieu of their legally mandated duty-free meal and rest periods.

12 **C. Rest Period Violations**

13 27. The applicable IWC Wage Order requires that employers must authorize and permit
14 nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of
15 each work period. The rest period is based on the total hours worked daily and must be at the minimum
16 rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. The
17 Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a
18 "major fraction" of four. A rest period is not required for employees whose total daily work time is less
19 than three and one-half hours. The rest period is counted as time worked and therefore, the employer
20 must pay for such periods.

21 28. If an employer fails to provide an employee a rest period in accordance with an applicable
22 IWC Order, the employer shall pay the employee one additional hour of pay at the employee's regular
23 rate of pay for each workday that the rest period is not provided. Labor Code Section 226.7. Thus, if
24 an employer does not provide all of the rest periods required in a workday, the employee is entitled to
25 one additional hour of pay for that workday, not one additional hour of pay for each rest period that
26 was not provided during that workday.

27 29. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
28 independent contractors and their rigorous work schedules PLAINTIFF and other CALIFORNIA

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

10 **D. Failure to Pay Minimum, Regular and Overtime Wages**

11 30. From time-to-time during the CLASS PERIOD, DEFENDANT failed to accurately
12 record and pay PLAINTIFF and other CALIFORNIA CLASS members for the actual amount of time
13 these employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
14 is required to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked, meaning
15 the time during which an employee was subject to the control of an employer, including all the time
16 the employee was permitted or suffered to permit this work. DEFENDANT required PLAINTIFF and
17 CALIFORNIA CLASS members to work off the clock without paying them for all the time they were
18 under DEFENDANT's control. PLAINTIFF and other CALIFORNIA CLASS Members also worked
19 more than eight hours in a workday and/or forty hours in a workweek, but DEFENDANT failed to pay
20 these employees overtime pay as DEFENDANT only paid a commission and/or a flat hourly rate for
21 all time worked. Consequently, PLAINTIFF and other CALIFORNIA CLASS members forfeited
22 minimum wages and overtime wage compensation by working without their time being correctly
23 recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to
24 pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by
25 DEFENDANT's business records. As a result, DEFENDANT failed to compensate PLAINTIFF and
26 the members of the CALIFORNIA CLASS all minimum, regular and overtime wages for all hours
27 worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and 510.

28 ///

1 **E. Failure to Reimburse Necessary and Required Business Expenses**

2 31. Under California Labor Code Section 2802, employers are required to indemnify
3 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
4 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
5 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
6 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
7 employee, at the time of obeying the directions, believed them to be unlawful."

8 32. From time-to-time during the CLASS PERIOD, DEFENDANT as a matter of corporate
9 policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and
10 indemnify PLAINTIFF and the other CLASS MEMBERS for required business expenses incurred by
11 PLAINTIFF and other the CLASS MEMBERS in direct consequence of discharging their duties on
12 behalf of DEFENDANT.

13 33. From time-to-time during the CLASS PERIOD, in the course of their employment
14 PLAINTIFF and other CALIFORNIA CLASS members as a business expense, were required by
15 DEFENDANT to use personal cellular phones, personal vehicles, personal home internet and personal
16 equipment as a result of and in furtherance of their job duties as employees for DEFENDANT but were
17 not reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal
18 cellular phones, personal equipment, personal home internet and personal vehicles for DEFENDANT's
19 benefit. In order to work for DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members
20 were required to use their personal vehicles to travel to various locations and were also required to use
21 their personal cell phones to receive and/or respond to work-related communications and as such it is
22 mandatory to have a cell phone. Additionally, PLAINTIFF and other CALIFORNIA CLASS Members
23 were required to use their own personal home internet and provide their own personal equipment and
24 supplies needed to perform the essential sales duties. As a result, in the course of their employment
25 with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
26 unreimbursed business expenses which included, but were not limited to, costs related to the use of
27 their personal cellular phones, personal equipment, personal home internet and personal vehicle on
28 behalf of and for the benefit of DEFENDANT.

1 **F. Wage Statement Violations**

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

10 35. From time-to-time during the CLASS PERIOD, as a result of, *inter alia*, of
11 DEFENDANT's intentional and willful misclassification of PLAINTIFF and the members of the
12 CALIFORNIA CLASS as independent contractors rather than employees, DEFENDANT issued
13 inaccurate itemized wages statements to PLAINTIFF and the members of the CALIFORNIA CLASS
14 that failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the number of
15 piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the
16 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
17 last four digits of the employee's social security number or an employee identification number other
18 than a social security number, (8) the name and address of the legal entity that is the employer and, (9)
19 all applicable hourly rates in effect during the pay period and the corresponding number of hours
20 worked at each hourly rate by the employee.

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

25 **G. Unfair Competition**

26 37. By reason of this conduct applicable to PLAINTIFF and all the CALIFORNIA CLASS
27 members, DEFENDANT committed acts of unfair competition in violation of the California Unfair
28 Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-

1 wide policy, practice and procedure which failed to correctly classify PLAINTIFF and the
2 CALIFORNIA CLASS members as employees. The proper classification of these employees is
3 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet
4 this burden, DEFENDANT failed to pay all required wages for work performed by PLAINTIFF and
5 other CALIFORNIA CLASS Members and violated the California Labor Code and regulations
6 promulgated thereunder as herein alleged.

7 38. PLAINTIFF as a worker for DEFENDANT, was classified by DEFENDANT as an
8 independent contractor and thus did not receive pay for all time worked, including minimum and
9 overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also required to
10 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving
11 a meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF therefore forfeited
12 meal and rest breaks without additional compensation and in accordance with DEFENDANT's strict
13 corporate policy and practice which did not provide for mandatory meal and rest breaks. To date,
14 DEFENDANT has not fully paid PLAINTIFF all wages still owed to her or any penalty wages owed
15 to her under California Labor Code § 203. The amount in controversy for PLAINTIFF individually
16 does not exceed the sum or value of \$75,000.

17 **THE CALIFORNIA CLASS**

18 39. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
19 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
20 pursuant to Cal. Code of Civ. Proc. § 382, for violations during the CLASS PERIOD on behalf of the
21 CALIFORNIA CLASS. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
22 Members is under five million dollars (\$5,000,000.00).

23 40. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
24 against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

25 41. All CALIFORNIA CLASS members who performed and continue to perform this work
26 for DEFENDANT during the CLASS PERIOD are similarly situated in that they are subject to
27 DEFENDANT's policy and practice that required them to perform work without compensation as
28 required by law.

1 42. During the CLASS PERIOD, DEFENDANT violated the rights of the PLAINTIFF and
2 the CALIFORNIA CLASS members under California law, without limitation, in the following
3 manners:

4 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
5 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as employer, devised and implemented
6 a scheme whereby PLAINTIFF and the CALIFORNIA CLASS members are forced to unlawfully,
7 unfairly and deceptively shoulder the cost of DEFENDANT'S wages for all unpaid wages, business
8 related expenses, and DEFENDANT's share of employment taxes, social security taxes, unemployment
9 insurance and workers' compensation insurance;

10 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
11 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively having in place company policies,
12 practices and procedures that uniformly misclassified PLAINTIFF and the CALIFORNIA CLASS
13 members as independent contractors;

14 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
15 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively failing to have in place a company
16 policy, practice and procedure that accurately determined the amount of working time spent by
17 PLAINTIFF and the CALIFORNIA CLASS members performing non-exempt employee labor;

18 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
19 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the other members of the
20 CALIFORNIA CLASS with all legally required meal and rest breaks;

21 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
22 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
23 the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job
24 duties; and,

25 (f) Committing an act of unfair competition in violation of the UCL, by violating
26 Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFF and the
27 members of the CALIFORNIA CLASS who were improperly classified as exempt, and retaining the
28 unpaid overtime to the benefit of DEFENDANT.

1 43. As a result of DEFENDANT's policies, practices and procedures, there are numerous
2 questions of law and fact common to all CALIFORNIA CLASS members who worked for during the
3 CLASS PERIOD. These questions include, but are not limited, to the following:

4 (a) Whether PLAINTIFF and other CALIFORNIA CLASS members were
5 misclassified as independent contractors by DEFENDANT;

6 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS members all afforded
7 all the protections of the California Labor Code that apply when properly classified as non-exempt
8 employees;

9 (c) Whether DEFENDANT's policies, practices and pattern of conduct described in
10 this Complaint was and is unlawful;

11 (d) Whether DEFENDANT unlawfully failed to pay their share of state and federal
12 employment taxes as required by state and federal tax laws;

13 (e) Whether DEFENDANT's policy, practice and procedure of classifying the
14 CALIFORNIA CLASS members as independent contractors exempt from hourly wages laws for all
15 time worked and failing to pay the CALIFORNIA CLASS members all amounts due violates applicable
16 provisions of California State law;

17 (f) Whether DEFENDANT unlawfully failed to keep and furnish the CALIFORNIA
18 CLASS members with accurate records of all time worked;

19 (g) Whether DEFENDANT has engaged in unfair competition by the above-listed
20 conduct; and,

21 (h) Whether DEFENDANT's conduct was willful.

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

24 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the
25 joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the
26 parties and the Court;

27 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
28 raised in this Complaint are common to the CALIFORNIA CLASS and will apply to every

1 CALIFORNIA CLASS member;

2 (c) The claims of the representative PLAINTIFF are typical of the claims of each
3 member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS members, was
4 classified as an independent contractor upon hiring based on the defined corporate policies and practices
5 and labors under DEFENDANT'S procedure that failed to properly classify the PLAINTIFF and the
6 CALIFORNIA CLASS members. PLAINTIFF sustained economic injury as a result of DEFENDANT's
7 employment practices. PLAINTIFF and the CALIFORNIA CLASS members were and are similarly or
8 identically harmed by the same unlawful, unfair, deceptive and persuasive pattern of misconduct
9 engaged in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS members that they
10 were not entitled to minimum wages, the employer's share of payment of payroll taxes and mandatory
11 insurance, and reimbursement for business expenses based on the defined corporate policies and
12 practices, and unfairly failed to pay these employees who were improperly classified as independent
13 contractors; and,

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

20 45. In addition to meeting the statutory prerequisites to a Class Action, this Action is properly
21 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 by individual members
24 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 standards of conduct for the parties
27 opposing the CALIFORNIA CLASS; and/or,

28 (ii) Adjudication with respect to individual members of the CALIFORNIA

1 CLASS which would as a practical matter be dispositive of the interests of the other members not party
2 to the adjudication or substantially impair or impeded their ability to protect their interests.

3 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds generally
4 applicable to the CALIFORNIA CLASS making appropriate class-wide relief with respect to the
5 CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the
6 CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take
7 proper steps to determine whether the CALIFORNIA CLASS members were properly classified as
8 independent contractors, and thereby denied these employees' wages and payments for business
9 expenses and the employer's share of payroll taxes and mandatory insurance 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 because through this claim the
12 PLAINTIFF seeks declaratory relief holding that DEFENDANT's policies and practices constitute
13 unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct
14 declared to constitute unfair competition.

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

20 (i) The interest of the CALIFORNIA CLASS members in individually
21 controlling the prosecution or defense of separate actions;

22 (ii) The extent and nature of any litigation concerning the controversy already
23 commenced by or against members of the CALIFORNIA CLASS;

24 (iii) In the context of wage litigation because as a practical matter a substantial
25 number of individual CALIFORNIA CLASS members will avoid asserting their legal rights out of fear
26 of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or
27 with a subsequent employer, the Class Action is the only means to assert their claims through a
28 representative;

1 (iv) The desirability or undesirability of concentration the litigation of the
2 claims in the particular forum;

3 (v) The difficulties likely to be encountered in the management of a Class
4 Action; and,

5 (vi) The basis of DEFENDANT'S policies and practices applied to all the
6 CALIFORNIA CLASS members.

7 46. The Court should permit this Action to be maintained as a Class Action pursuant to Cal.
8 Code of Civ. Proc. § 382 because:

9 (a) The questions of law and fact common to the CALIFORNIA CLASS
10 predominate over any question affecting only individual members;

11 (b) A Class Action is superior to any other available method for the fair and efficient
12 adjudication of the claims of the members of the CALIFORNIA CLASS;

13 (c) The CALIFORNIA CLASS members are so numerous that it is impractical to
14 bring all CALIFORNIA CLASS members before the Court;

15 (d) PLAINTIFF, and the CALIFORNIA CLASS Members, will not be able to obtain
16 effective and economic legal redress unless the action is maintained as a Class Action;

17 (e) There is a community of interest in obtaining appropriate legal and equitable
18 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
19 adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon
20 the CALIFORNIA CLASS;

21 (f) There is a community of interest in ensuring that the combined assets and
22 available insurance of DEFENDANT are sufficient to adequately compensate the CALIFORNIA
23 CLASS members for any injuries sustained;

24 (g) DEFENDANT has acted or has refused to act on grounds generally applicable to
25 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the
26 CLASS as a whole;

27 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
28 business records of DEFENDANT; and,

1 (i) Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
3 DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

4 47. DEFENDANT maintain records from which the Court can ascertain and identify by
5 name and job title, each of DEFENDANT's employees who have been intentionally subjected to
6 DEFENDANT's corporate policies, practices and procedures as herein alleged. PLAINTIFF will seek
7 leave to amend the complaint to include any additional job titles of similarly situated employees when
8 they have been identified.

9 **THE CALIFORNIA LABOR SUB-CLASS**

10 48. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
11 Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
12 CLASS who are or previously were employed by DEFENDANT in California as independent
13 contractors (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years
14 prior to the filing of the Complaint and ending on the date as determined by the Court (the
15 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc § 382. The
16 amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is
17 under five million dollars (\$5,000,000.00).

18 49. DEFENDANT, as a matter of corporate policy, practice and procedure, and in violation
19 of the applicable California Labor Code ("Labor Code"), and Industrial Welfare Commission ("IWC")
20 Wage Order requirements intentionally, knowingly, and willfully, on the basis of job title alone and
21 without regard to the actual overall requirements of the job, systematically classified PLAINTIFF and
22 the other members of the CALIFORNIA LABOR SUBCLASS as independent contractors in order to
23 avoid the payment of all wages, and in order to avoid the obligations under the applicable California
24 Labor Code provisions. To the extent equitable tolling operates to toll claims by the CALIFORNIA
25 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
26 should be adjusted accordingly.

27 50. DEFENDANT maintain records from which the Court can ascertain and identify by job
28 title each of DEFENDANT'S employees who as CALIFORNIA LABOR SUB-CLASS Members

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

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

6 52. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
7 California law by:

8 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by misclassifying and
9 thereby failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
10 correct minimum wages for which DEFENDANT is liable;

11 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby failing
12 to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
13 pay for a workday longer than eight (8) hours and/or a workweek longer than forty (40) hours for which
14 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

15 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
16 and the other members of the CALIFORNIA LABOR SUBCLASS with all legally required off-duty,
17 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

18 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
19 members of the CALIFORNIA LABOR SUB-CLASS who were improperly classified as independent
20 contractors with an accurate itemized statement in writing showing the gross wages earned, the net
21 wages earned, all applicable hourly rates in effect during the pay period and the corresponding amount
22 of time worked at each hourly rate by the employee;

23 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
24 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of
25 their job duties; and,

26 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
27 employee is discharged or quits from employment, the employer must pay the employee all wages due
28 without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner

1 required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have
2 terminated their employment.

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

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

8 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
9 are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply
10 to every member of the CALIFORNIA LABOR SUB-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 other members of the
13 CALIFORNIA LABOR SUB-CLASS was improperly classified as an independent contractor and was
14 thus denied minimum wage pay and meal and rest breaks, among other things, as a result of
15 DEFENDANT's systematic classification practices. PLAINTIFF and all other members of the
16 CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT's
17 violations of the laws of California; and,

18 (d) The representative PLAINTIFF will fairly and adequately represent and protect
19 the interest of the CALIFORNIA LABOR SUB-CLASS and has retained counsel who are competent
20 and experienced in Class Action litigation. There are no material conflicts between the claims of the
21 representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would
22 make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will
23 vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

26 (a) Without class certification and determination of declaratory, injunctive,
27 statutory and other legal questions within the class format, prosecution of separate actions by individual
28 members of the CALIFORNIA LABOR SUBCLASS will create the risk of: 1) Inconsistent or varying

1 adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which
2 would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR
3 SUB-CLASS; or, 2) Adjudication with respect to individual members of the CALIFORNIA LABOR
4 SUB-CLASS which would as a practical matter be dispositive of interests of the other members not
5 party to the adjudication or substantially impair or impede their ability to protect their interests.

6 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
7 refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making
8 appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in
9 that the DEFENDANT uniformly classified and treated the members of the CALIFORNIA LABOR
10 SUB-CLASS as independent contractors and, thereafter, uniformly failed to take proper steps to
11 determine whether the CALIFORNIA LABOR SUBCLASS Members were properly classified as
12 independent contractors, and thereby denied these employees the protections afforded to them under
13 the California Labor Code;

14 (c) Common questions of law and fact predominate as to the members of the
15 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California law as
16 listed above, and predominate over any question affecting only individual CALIFORNIA LABOR
17 SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and
18 efficient adjudication of the controversy, including consideration of:

19 i) The interests of the members of the CALIFORNIA LABOR SUB-
20 CLASS in individually controlling the prosecution or defense of separate actions in that the substantial
21 expense of individual actions will be avoided to recover the relatively small amount of economic losses
22 sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the
23 substantial expense and burden of individual prosecution of this litigation;

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

26 A. Inconsistent or varying adjudications with respect to individual
27 members of the CALIFORNIA LABOR SUBCLASS, which would establish incompatible standards
28 of conduct for the DEFENDANT; and/or,

1 B. Adjudications with respect to individual members of the
2 CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the
3 other members not parties to the adjudication or substantially impair or impede their ability to protect
4 their interests;

5 iii) In the context of wage litigation because a substantial number of
6 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of
7 fear of retaliation by DEFENDANT, which may adversely affect an individual's job with
8 DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims
9 through a representative; and,

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

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

16 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-
17 CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS
18 Members;

19 b) A Class Action is superior to any other available method for the fair and efficient
20 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the
21 context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-
22 CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse
23 impact on their employment;

24 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
25 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

26 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members,
27 will not be able to obtain effective and economic legal redress unless the action is maintained as a Class
28 Action;

1 (e) There is a community of interest in obtaining appropriate legal and equitable
2 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
3 adequate compensation for the damages and injuries which DEFENDANT'S actions have inflicted
4 upon the CALIFORNIA LABOR SUB-CLASS;

5 (f) There is a community of interest in ensuring that the combined assets of
6 DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR
7 SUB-CLASS for the injuries sustained;

8 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
9 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect
10 to the CALIFORNIA LABOR SUB-CLASS as a whole;

11 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
12 ascertainable from the business records of DEFENDANT; and,

13 (i) Class treatment provides manageable judicial treatment calculated to bring a
14 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the
15 conduct of DEFENDANT.

16 **JURISDICTION AND VENUE**

17 56. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Action is
19 brought as a Class Action on behalf PLAINTIFF and on behalf of similarly situated employees of
20 DEFENDANT pursuant to Cal. Code of Civ. Proc. Section 382.

21 57. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and 395.5,
22 because DEFENDANT (i) currently maintains and at all relevant times maintained its principal offices
23 and facilities in this County and/or conducts substantial business in this County, and (ii) committed the
24 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and
25 CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful, Unfair and Deceptive Business Practices**

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

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

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

7 59. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code §
8 17021.

9 60. Section 17200 of the California Business & Professions Code defines unfair competition
10 as any unlawful, unfair or fraudulent business act or practice. Section 17200 applies to violations of
11 labor laws in the employment context. Section 17203 authorizes injunctive, declaratory and/or other
12 equitable relief with respect to unfair competition as follows:

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

21 California Business & Professions Code § 17203.

22 61. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
23 business practice which violates California law, including but not limited to the applicable Industrial
24 Wage Orders, the California Labor Code including Sections 204, 210, 221, 226.7, 226.8, 510, 512,
25 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations § 11090, for which this Court
26 should issue declaratory, injunctive, and other equitable relief, pursuant to Cal. Bus. & Prof § 17203,
27 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including
28 restitution of wages wrongfully withheld, business expenses wrongfully withheld and for the payment

1 of the employer's share of income taxes, social security taxes, unemployment insurance and workers'
2 compensation insurance.

3 62. By the conduct alleged herein DEFENDANT has obtained valuable property, money,
4 and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived
5 them of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of
6 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and injunctive relief is
7 necessary to prevent and remedy this unfair competition, and pecuniary compensation alone would not
8 afford adequate and complete relief.

9 63. All the acts described herein as violations of, among other things, the California Labor
10 Code, California Code of Regulations and the Industrial Welfare Commission Wage Orders, were
11 unlawful, were in violation of public policy, were immoral, unethical, oppressive, and unscrupulous,
12 and were likely to deceive employees, and thereby constitute deceptive, unfair and unlawful business
13 practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*

14 64. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent
15 in that DEFENDANT's policy and practice was to represent to the CALIFORNIA CLASS Members
16 that they were not entitled to overtime and minimum wages, payment for payroll taxes or mandatory
17 insurance and other benefits as required by California law, when in fact these representations were false
18 and likely to deceive and for which this Court should issue injunctive and equitable relief, pursuant to
19 Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

28 67. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,

1 and do, seek a declaration that the described business practices were unlawful, unfair and deceptive,
2 and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful
3 and unfair business practices in the future.

4 68. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
5 deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally
6 required meal and rest breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as
7 required by Cal. Lab. Code §§ 226.7 and 512.

8 69. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
9 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll taxes
10 and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty meal period
11 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday
12 in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

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

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

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

27 73. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
28 do, seek such relief as may be necessary to restore to them the money and property which

1 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
2 CLASS have been deprived, by means of the above described unlawful and unfair business practices.

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

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

14 **SECOND CAUSE OF ACTION**

15 **For Failure to Pay Minimum Wages**

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

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

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

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

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

1 minimum so fixed in unlawful.

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

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

9 82. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
10 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
11 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS regarding minimum wage pay.

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

18 84. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
19 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive the
20 correct minimum wage compensation for their time worked for DEFENDANT.

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

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

1 87. DEFENDANT knew or should have known that PLAINTIFF and the other members of
2 the CALIFORNIA LABOR SUB-CLASS are under compensated for their time worked.
3 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
4 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor and
5 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the
6 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

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

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1 **THIRD CAUSE OF ACTION**

2 **For Failure to Pay Overtime Wages**

3 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

7 91. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed to pay
8 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for the time they
9 worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 &
10 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members were regularly
11 required to work, and did in fact work, overtime that DEFENDANT never recorded as evidenced by
12 DEFENDANT'S business records and witnessed by DEFENDANT'S employees.

13 92. By virtue of DEFENDANT'S unlawful failure to pay compensation to PLAINTIFF and
14 the CALIFORNIA CLASS Members for all overtime worked by these employees, PLAINTIFF and
15 CALIFORNIA LABOR SUB-CLASS Members have suffered, and will continue to suffer, an
16 economic in amounts which are presently unknown to them and which can be ascertained according to
17 proof at trial.

18 93. DEFENDANT knew or should have known that PLAINTIFF and the CALIFORNIA
19 CLASS Members were misclassified as independent contractors and DEFENDANT elected, either
20 through intentional malfeasance or gross nonfeasance, not to pay them for their labor as a matter of
21 corporate policy, practice and procedure.

22 94. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members therefore request
23 recovery of all compensation according to proof, interest, costs, as well as the assessment of any
24 statutory penalties against DEFENDANT in a sum as provided by the California Labor Code and/or
25 other statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
26 LABOR SUB-CLASS Members who have terminated their employment, these employees would also
27 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein.
28 Further, PLAINTIFF and the CALIFORNIA LABOR SUBCLASS Members are entitled to seek and

1 recover statutory costs.

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

10 **FOURTH CAUSE OF ACTION**

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

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

13 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
14 **DEFENDANT)**

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

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

1 forfeited meal breaks without additional compensation and in accordance with DEFENDANT’S strict
2 corporate policy and practice.

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

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

11 **FIFTH CAUSE OF ACTION**

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

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

14 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

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

28 102. 88. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable

1 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
2 Members who were not provided a rest period, in accordance with the applicable Wage Order, one
3 additional hour of compensation at each employee's regular rate of pay for each workday that rest
4 period was not provided.

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

8 **SIXTH CAUSE OF ACTION**

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

10 **[Cal. Lab. Code § 226]**

11 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

12 104. 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 of this Complaint.

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

22 106. From time-to-time during the CALIFORNIA LABOR SUB-CLASS PERIOD,
23 DEFENDANT issued inaccurate itemized wages statements to PLAINTIFF and the members of the
24 CALIFORNIA LABOR SUB-CLASS that failed to accurately showing (1) gross wages earned, (2)
25 total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
26 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,
27 (7) the name of the employee and only the last four digits of the employee's social security number or
28 an employee identification number other than a social security number, (8) the name and address of the

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

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

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

17 **SEVENTH CAUSE OF ACTION**

18 **For Failure to Reimburse Employees for Required Expenses**

19 **[Cal. Lab. Code § 2802]**

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

21 109. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and
22 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 79 of this Complaint.

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

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

1 111. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to
2 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
3 required expenses incurred in the discharge of their job duties for DEFENDANT'S benefit. Specifically,
4 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
5 for expenses which included, but were not limited to, the cost associated with the use of their personal
6 cellular phones, personal equipment, and personal vehicles for DEFENDANT'S benefit. In order to
7 work for DEFENDANT, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
8 required to use their personal vehicles to travel and to use DEFENDANT'S mobile application and as
9 such it is mandatory to have a cell phone that is compatible with DEFENDANT'S mobile application.
10 As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other members of
11 the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which included,
12 but were not limited to, the costs related to the use of their personal cellular phones, personal equipment,
13 and personal vehicles all on behalf of and for the benefit of DEFENDANT. Further, PLAINTIFF and
14 other CALIFORNIA LABOR SUB-CLASS Members are also not reimbursed or indemnified by
15 DEFENDANT for the cost associated with using their personal vehicles while driving for
16 DEFENDANT. Moreover, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
17 were also required to use their personal home internet and to provide their own equipment necessary to
18 perform the essential job duties. As a result, in the course of their employment with DEFENDANT,
19 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed
20 business expenses which included, but were not limited to, costs related to travel all on behalf of and
21 for the benefit of DEFENDANT. These expenses are necessary to complete their principal job duties.
22 DEFENDANT is estopped by DEFENDANT'S conduct to assert any waiver of this expectation.
23 Although these expenses are necessary expenses incurred by PLAINTIFF and the CALIFORNIA
24 LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
25 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do
26 under the laws and regulations of California.

27 112. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by
28 them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for

1 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate
2 and costs under Cal. Lab. Code § 2802.

3 **EIGHTH CAUSE OF ACTION**

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

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

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

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

10 114. Cal. Lab. Code § 200 states that:

11 As used in this article:

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

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

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

22 116. Cal. Lab. Code § 202 states, in relevant part, that:

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

1 shall be entitled to receive payment by mail if he or she so requests and
2 designates a mailing address. The date of the mailing shall constitute the
3 date of payment for purposes of the requirement to provide payment
4 within 72 hours of the notice of quitting.

5 117. There was no definite term in PLAINTIFF's or any other CALIFORNIA LABOR SUB-
6 CLASS Members' employment contract.

7 118. Cal. Lab. Code § 203 states:

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

14 119. The employment of PLAINTIFF and many other CALIFORNIA LABOR SUB-CLASS
15 Members has terminated, yet as to those individuals whose employment terminated, DEFENDANT did
16 not timely tender payment of all wages owed as required by law.

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

22 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANT, jointly and
24 severally, as follows:

25 1. On behalf of the CALIFORNIA CLASS:

26 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
27 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

28 B) An order temporarily, preliminarily and permanently enjoining and restraining

1 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

2 C) An order requiring DEFENDANT to pay minimum and overtime wages and all
3 sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the
4 CALIFORNIA CLASS; and,

5 D) Restitutionary disgorgement of DEFENDANT'S ill-gotten gains into a fluid fund
6 for restitution of the sums incidental to DEFENDANT'S violations due to PLAINTIFF and to the other
7 members of the CALIFORNIA CLASS.

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

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

12 B) Compensatory damages, according to proof at trial, including compensation due
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
14 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

15 C) The wages of all terminated individuals in the CALIFORNIA LABOR SUB-
16 CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is
17 commenced, in accordance with Cal. Lab. Code § 203;

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

22 E) Meal and rest period compensation pursuant to California Labor Code Section
23 226.7 and the applicable IWC Wage Order;

24 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
25 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit; and,

26 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

27 3. On all claims:

28 A) An award of interest, including prejudgment interest at the legal rate;

1 B) Such other and further relief as the Court deems just and equitable; and,

2 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
3 law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or §2802.

4
5 Dated: May 31, 2023

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

8 By: 
9 Jean-Claude Lapuyade
10 Attorneys for PLAINTIFF

11
12
13 **DEMAND FOR JURY TRIAL**

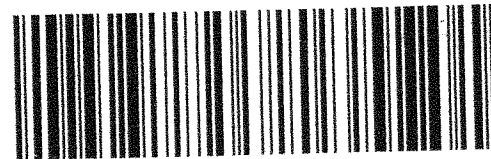
14 PLAINTIFF demands a jury trial on all issues triable to a jury.

15
16 Dated: May 31, 2023

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

19 By: 
20 Jean-Claude Lapuyade
21 Attorneys for PLAINTIFF

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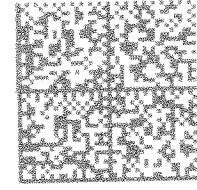
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POP SELLS, LLC
c/o Scott Wild
448 Main Street
Tulelake, CA

Exhibit

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Maria Watters](#)
Subject: Thank you for submission of your PAGA Case.
Date: Thursday, June 1, 2023 8:57:36 AM

6/1/2023

LWDA Case No. LWDA-CM-958812-23
Law Firm : Zakay Law Group, APLC
Plaintiff Name : TERESA MATHANY
Employer: POP SELLS, LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm