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Attorneys for Plaintiff SAMANTNTHA MILLER,
on behalf of herself and others similarly situated

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN**

SAMANTHA MILLER, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

WIBARGAIN LLC, a
California limited liability company, and DOES
to 10, inclusive

Defendant.

CASE NO.

CLASS ACTION COMPLAINT FOR:

- 1. Failure to pay all Wages, Overtime, and Regular Rate of Pay in Violation of Cal. Labor Code §§ 500, 510, 1194;**
- 2. Failure to Provide Meal Periods in Violation of Cal. Labor Code §§ 226.7, 512;**
- 3. Failure to Provide Rest Periods in Violation of Cal. Labor Code §§ 226.7, 512;**
- 4. Failure to Reimburse for Business Expenses in Violation of Cal. Labor Code § 2802;**
- 5. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Cal. Labor Code §226;**
- 6. Waiting Time Penalties Pursuant to Cal. Labor Code §§ 201, 203; and**
- 7. Violations of California Business & Professions Code §§ 17200, et seq.**

DEMAND FOR JURY TRIAL

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Attorneys for Plaintiff SAMANTHA MILLER,
on behalf of herself and others similarly situated

1 Plaintiff, SAMANTHA MILLER (hereinafter "Plaintiff"), on behalf of herself and all others
2 similarly situated, and all aggrieved employees, hereby files this Complaint against Defendant
3 WIBARGAIN LLC, a California limited liability company, (hereinafter referred to as
4 "Defendant"). Plaintiff is informed and believes, and on the basis of that information alleges, as
5 follows:

6 INTRODUCTION

7 1. This Complaint asserts claims against Defendant for violations of California *Labor*
8 *Code*, the California *Business & Professions Code* §§ 17200, *et seq.*, and Industrial Welfare
9 Commission Wage Order ("IWC Wage Order").

10 2. This complaint challenges systemic illegal employment practices resulting in
11 violations of the California *Labor Code*, and California *Business and Professions Code* against
12 employees of Defendant.

13 3. Plaintiff seeks relief on behalf of herself and the members of the Plaintiff Class as a
14 result of employment policies, practices and procedures more specifically described below, which
15 violate the California *Labor Code*, and the orders and standards promulgated by the California
16 Department of Industrial Relations, Industrial Welfare Commission, and Division of Labor
17 Standards, and which have resulted in the failure of Defendant to pay Plaintiff and members of the
18 Plaintiff Class all wages due to them. Said employment policies, practices and procedures are
19 generally described as follows:

- 20 a. Failed to pay Plaintiff and members of the Plaintiff Class all wages including
21 overtime and regular rate of pay;
- 22 b. Failed to provide Plaintiff and members of the Plaintiff Class with a first meal
23 period of not less than thirty (30) minutes during which they are relieved of all
24 duties before working more than five (5) hours;
- 25 c. Failed to pay Plaintiff and members of the Plaintiff Class one hour of pay at their
26 regular rate of compensation for each workday that a meal period was not provided.
- 27 d. Failed to provide paid rest periods of ten (10) minutes during Plaintiff and members
28 of the Plaintiff Class are relieved of all duty for each four (4) hours of work;

- e. Failed to reimburse business expenses;
- f. Failed to furnish an accurate, itemized wage statement; and
- g. Failed to timely pay all wages due to Plaintiff and members of the Plaintiff Class upon termination or within 72 hours of resignation.

4. Plaintiff is informed and believes, and based thereon alleges, that Defendant has engaged in, among other things a system of willful violations of the California *Labor Code*, California *Business and Professions Code*, and applicable IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

5. The policies, practices and customs of Defendant described above and below have resulted in unjust enrichment of Defendant and an unfair business advantage over businesses that routinely adhere to the structures of the California *Labor Code*, and California *Business and Professions Code*.

6. This matter is brought as a class action pursuant to California *Code of Civil Procedure* § 382, on behalf of Plaintiff and the Plaintiff Class, which is defined more specifically below, but which is comprised, generally, of all former and current employees of Defendant WIBARGAIN LLC, a California limited liability company; who hold or held the job positions which Defendant classified as “non-exempt” at any of Defendant’s facilities in California.

7. This Complaint alleges systematic violations of the California *Labor Code* (hereinafter, “*Labor Code*,”) and the California *Business & Professions Code* and is brought by Plaintiff on her own behalf and on behalf of the members of the Plaintiff class.

8. The California Plaintiff “Class Period” is defined as the period from four years prior to the filing of this action through and including the date judgment is rendered in this matter. Plaintiff herein reserves the right to amend this Complaint to reflect a different Class Period as discovery in this matter proceeds.

9. The actions of Defendant are in violation of the California *Labor Code* as well as the wage orders of the Industrial Wage Commission of the State of California and, as a result, are unlawful and unfair acts, thus constituting a violation of California *Business & Professions Code* §

17200, et seq. (Unfair Practices Act).

10. The policies, practices and customs of Defendant described above and herein have resulted in unjust enrichment of Defendant and an unfair business advantage over businesses that routinely adhere to the requirements of the California *Labor Code* and of the *Business & Professions Code*.

PARTIES

11. Plaintiff, Samantha Miller is an individual over the age of eighteen (18) and is now, and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of California. During the relevant time period, Plaintiff worked for Defendant in Bakersfield, California from approximately February 19, 2021 through approximately June 15, 2021. Plaintiff was hired as a human resources specialist and in May 2021, became employed as a safety officer.

12. Plaintiff is informed and believes, and based thereon alleges, that Defendant WIBARGAIN LLC, is a California limited liability company. Plaintiff is further informed and believes that at all times relevant hereto, Defendant has transacted, and continues to transact, business throughout the State of California, and maintains corporate headquarters at 2100 Panama Lane, Bakersfield, California, 93304.

13. Plaintiff is informed and believes that Defendant WIBARGAIN is a seller of wholesale liquidation lots and pallets. It describes itself as “the best way to find liquidation goods from the top retailers worldwide.”¹

14. Plaintiff is informed and believes, and based upon such information and belief alleges, that Defendant is, and each of them, now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

15. Plaintiff is further informed and believes, and based upon such information and belief alleges, that at all times herein mentioned, Defendant proximately caused Plaintiff, all others similarly situated, and the general public to be subjected to the unlawful practices, wrongs,

¹ <https://wibargain.com/pages/about-us> (last visited August 12, 2021)

1 complaints, injuries and/or damages alleged in this Complaint.

2 16. Plaintiff is informed and believes and based thereon alleges that at all times herein
3 mentioned Defendant and DOES 1 through 10, are and were corporations, business entities,
4 individuals, and partnerships, licensed to do business and actually doing business in the State of
5 California.

6 17. Plaintiff does not know the true names or capacities, whether individual, partner or
7 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
8 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
9 complaint when the true names and capacities are known. Plaintiff is informed and believes and
10 based thereon alleges that each of said fictitious Defendants were responsible in some way for the
11 matters alleged herein and proximately caused Plaintiff and members of the general public and
12 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

13 18. At all times herein mentioned, each of said Defendants participated in the doing of
14 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
15 Defendants, and each of them, were the agents, servants and employees of each of the other
16 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
17 within the course and scope of said agency and employment.

18 19. Plaintiff is informed and believes and based thereon alleges that at all times material
19 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint
20 venturer of, or working in concert with each of the other co-Defendants and were acting within the
21 course and scope of such agency, employment, joint venture, or concerted activity. To the extent
22 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
23 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

24 20. At all times herein mentioned, Defendants, and each of them, were members of, and
25 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
26 scope of, and in pursuance of, said joint venture, partnership and common enterprise

27 21. At all times herein mentioned, the acts and omissions of various Defendants, and
28 each of them, concurred and contributed to the various acts and omissions of each and all of the

1 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
2 herein mentioned, Defendants, and each of them, ratified each and every act or omission
3 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and
4 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
5 damages as herein alleged.

6 22. The members of the classes (as defined below), including the representative Plaintiff
7 named herein, have been employed during the Class Period in California. The practices and policies
8 which are complained of by way of this Complaint are enforced throughout the State of California.

9 JURISDICTION AND VENUE

10 23. On information and belief, Defendant is either a citizen of California, has sufficient
11 minimum contacts in California, or otherwise intentionally avails itself of the California market so
12 as to render the exercise of jurisdiction over it by the California courts consistent with traditional
13 notions of fair play and substantial justice.

14 24. Venue is proper in Kern County because the acts which give rise to this litigation
15 occurred in this county and Defendant does business in Kern County.

16 FACTUAL ALLEGATIONS

17 25. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

18 26. Defendant has engaged in, and continues to engage in, unfair business practices in
19 California by practicing, employing and utilizing the employment practices and policies outlined
20 above.

21 27. Defendant's utilization of such unfair business practices deprives Plaintiff and other
22 Class members of the general minimum working standards and entitlements due to them under
23 California law and the Industrial Welfare Commission wage orders as described herein.

24 **A. Defendant's Failure to Pay All Wages**

25 ***Off the Clock***

26 28. The applicable IWC Wage Order defines "hours worked" to mean "the time during
27 which an employee is subject to the control of an employer and includes all the time the employee
28 is suffered or permitted to work, whether or not required to do so."

1 29. Defendant suffered or permitted Plaintiff and members of the Plaintiff Class to work
2 portions of the day for which Defendant failed to compensate them. The non-exempt employees
3 were subject to Defendant's control during this time.

4 30. California *Labor Code* §1182.12 and the applicable IWC Wage Order section 4
5 provide that on and after July 1, 2014, the minimum wage for all industries shall not be less than
6 nine dollars (\$9) per hour, on and after January 1, 2016, the minimum wage for all industries shall
7 not be less than ten dollars (\$10) per hour, on and after January 1, 2017, the minimum wage for all
8 industries shall not be less than ten dollars and fifty cents (\$10.50) per hour, on and after January 1,
9 2018, the minimum wage for all industries shall not be less than eleven dollars (\$11) per hour.

10 31. California *Labor Code* § 1194(a) provides in relevant part: "Notwithstanding any
11 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage []
12 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
13 [], including interest thereon, reasonable attorney's fees, and costs of suit."

14 32. California *Labor Code* § 1194.2(a) provides in relevant part: "In any action under
15 section 1193.6 or section 1194 to recover wages because of the payment of a wage less than the
16 minimum wage fixed by an order of the commission, an employee shall be entitled to recover
17 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

18 33. California *Labor Code* § 1197 provides: "The minimum wage for employees fixed
19 by the commission is the minimum wage to be paid to employees, and the payment of a less wage
20 than the minimum so fixed is unlawful."

21 34. Plaintiff is informed and believes, and therefore alleges, that Defendant's
22 compensation schemes do not fairly compensate Plaintiff and other Class Members for all hours
23 spent performing their job duties.

24 35. For example, Defendant required Plaintiff and Class Members to consistently work
25 off the clock, including during their meal breaks. The failure to pay at least minimum wages to
26 Plaintiff and members of the Plaintiff Class for each and every hour worked violates California
27 *Labor Code* §§ 1182.11-1182.12, 1194, 1194.2, and 1197; the applicable IWC Wage Order, section
28 4; and California *Business & Professions Code*.

1 36. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class
2 for each and every hour worked violates California *Labor Code* §§ 221 and 223; IWC Wage Order;
3 and California *Business & Professions Code*.

4 ***Overtime***

5 37. Defendant has had a policy and/or practice of not paying its employees, including
6 Plaintiff, overtime pay, when they work more than 8 hours a day, or double time pay when they
7 work more than 12 hours a day, as required under California overtime laws.

8 ***Regular Rate***

9 38. Plaintiff and Class members were not compensated at the regular rate of pay.
10 Employees were typically given non-compensatory bonuses and performed overtime, which were
11 not factored into the regular rate of pay for missed/short/late/ meal or rest breaks.

12 39. For purposes of this complaint, “regular rate of compensation,” requires an
13 employer to pay one additional hour of pay at an employee's regular rate of compensation as
14 remedy for failure to provide mandatory meal, rest, or recovery period, equivalent with “regular
15 rate of pay”.

16 40. Plaintiff alleges that overtime payments and nondiscretionary payments for work
17 performed by Plaintiff and the class were to be included when determining compensation for
18 failure to provide a meal, rest, or recovery period, but were not paid correctly by Defendants as
19 required by *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 489 P.3d 1166 (2021).

20 41. Plaintiff alleges that on a routine basis she and Class members received paychecks
21 that miscalculated all wages owed, in violation of the Labor Code

22 42. During the applicable time period, Defendant has had a pattern and practice of not
23 providing its employees the correct rate of overtime by failing to include bonus rate into the regular
24 rate, when paying meal and rest premiums.

25 **B. Failure to Provide Meal Periods**

26 43. At all times relevant hereto, California *Labor Code* §§ 226.7 and 512 and IWC
27 Wage Order, section 11 required employers to provide employees with a first meal period of not
28 less than thirty (30) minutes during which they are relieved of all duty before working more than

1 five (5) hours and a second meal period of not less than thirty (30) minutes during which they are
2 relieved of all duty before working more than ten (10) hours per day.

3 44. At all times relevant hereto, California *Labor Code* §226.7(b) and IWC Wage Order
4 section 11 required employers to pay one hour of additional pay at the regular rate of compensation
5 for each employee and each workday that a proper meal period is not provided.

6 45. Defendant regularly failed to provide a timely thirty (30) minute off-duty meal
7 period to Plaintiff and Class Members when working more than five (5) hours in a day.

8 46. Defendant further regularly failed to provide a second timely thirty (30) minute
9 meal period to Class Members who worked more than ten (10) hours in a day.

10 47. Plaintiff alleges that meal breaks were missed, short and often late. Further,
11 Defendant failed to pay the regular rate of pay for meal break premiums. Rather, Defendant paid
12 Plaintiff and other Class Members at the base rate and did not factor in the overtime rate.

13 **C. Failure to Provide Rest Periods**

14 48. At all times relevant hereto, California *Labor Code* § 226.7 and the applicable IWC
15 Wage Order, section 12 required employers to authorize, permit, and provide a ten (10) minute
16 paid rest for each four (4) hours of work, during which employees are relieved of all duty.

17 49. At all times relevant hereto, California *Labor Code* § 226.7(b) and IWC Wage
18 Order section 12 required employers to pay one hour of additional pay at the regular rate of
19 compensation for each employee and each workday that a proper rest period is not provided.

20 50. Defendant regularly failed to provide a ten (10) minute paid rest period for each four
21 (4) hours of work, during which Plaintiff and members of the Plaintiff Class were relieved of all
22 duties.

23 51. Throughout the statutory period, Plaintiff and members of the Plaintiff Class
24 frequently experienced late and missed rest breaks due to the amount of work.

25 **D. Failure to Reimburse for All Work-Related Expenses**

26 52. At all times relevant hereto, California *Labor Code* § 2802 and IWC Wage Order
27 require an employer to indemnify employees for all necessary expenditures or losses incurred by
28 the employees in direct consequence of the discharge of the employees' duties, or the employees'

1 obedience to the directions of the employer. Further, an employer shall not collect or receive from
2 an employee any part of wages theretofore paid by employer to employee.

3 53. Defendant has a continuous policy and/or practice of failing to reimburse and/or
4 indemnify Plaintiff and the members of the Classes defined below for, including, but not limited to
5 mileage. Specifically, Plaintiff was required to frequently travel between locations.

6 **E. Defendant's Failure to Provide Accurate Itemized Wage Statements**

7 54. At all times relevant hereto, California *Labor Code* § 226 and IWC Wage Order
8 section 7 required employers to maintain adequate employment records and provide employees
9 with accurate itemized wage statements showing gross wages, total hours worked/pieces, all
10 applicable hourly/piece rates worked during each pay period, the corresponding number of hours
11 worked at each hourly/piece rate, and meal breaks taken.

12 55. Wage statements provided to Plaintiff and other Class Members by Defendant does
13 not show all wages earned, all hours worked, or all applicable rates, in violation of the California
14 *Labor Code* § 226, applicable IWC Wage Order, section 7, and the California *Business &*
15 *Professions Code*.

16 56. Specifically, wage statements did not accurately depict all hours worked, and failed
17 to include correct meal and rest break premiums.

18 **F. Defendant's Failure to Pay all Accrued Wages and Wages Due Upon**
19 **Termination**

20 57. At all times, relevant hereto, California *Labor Code* § 201 required an employer that
21 discharges an employee to pay compensation due and owing to said employee immediately upon
22 discharge. California *Labor Code* § 202 requires an employer to pay an employee who quits any
23 compensation due and owing to said employee within seventy-two (72) hours of an employee's
24 resignation. California *Labor Code* § 203 provides that if an employer willfully fails to pay
25 compensation promptly upon discharge or resignation, as required under Sections 201 and 202,
26 then the employer is liable for waiting time penalties in the form of continued compensation for up
27 to thirty (30) work days.

28 58. Defendant willfully and knowingly failed to pay Plaintiff and other members of the

1 Plaintiff Class, upon termination of employment, all accrued compensation.

2 59. Specifically, Plaintiff and members of the Plaintiff Class were entitled to meal and
3 rest break premiums, and were entitled to all wages that should have been paid as a result of off-the
4 clock work and overtime.

5 **G. Unfair Business Practices**

6 60. Defendant has engaged in, and continues to engage in, unfair business practices in
7 California by practicing, employing and utilizing the employment practices and policies outlined
8 above.

9 61. Defendant's utilization of such unfair business practices constitutes unfair
10 competition and provides an unfair advantage over Defendant's competitors.

11 62. Defendant's utilization of such unfair business practices deprives Plaintiff and Class
12 Members of the general minimum working standards and entitlements due them under California
13 law and the Industrial Welfare Commission wage orders as described herein.

14 63. As a direct result of the wage and hour violations herein alleged, Plaintiff and
15 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the
16 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in
17 seeking to compel Defendant to fully perform its obligations under state law, all to Plaintiff's
18 respective damage in amounts according to proof at the time of trial.

19 **H. Facts Regarding Willfulness**

20 64. Plaintiff is informed and believes and based thereon alleges that Defendant is and
21 was advised by skilled lawyers, other professionals, employees with human resources background
22 and advisors with knowledge of the requirements of California wage and hour laws.

23 65. Plaintiff is informed and believes and based thereon alleges that at all relevant
24 times, Defendant had a consistent policy or practice of failing to compensate Plaintiff and the
25 members of the Putative Class, including Plaintiff.

26 66. Plaintiff is informed and believes and based thereon alleges that at all relevant
27 times, Defendant knew or should have known that the members of the Putative Class, including
28 Plaintiff and all other aggrieved employees were entitled to receive duty-free meal periods within

1 the first five (5) hours of any shift of six (6) or more hours worked, and that any failure to do so
2 requires Defendant to pay Plaintiff and all other aggrieved employees and the members of the
3 Putative Class one (1) hour of wages per day for untimely, missed, or on-duty meal periods.

4 **I. Plaintiff's Exhaustion of Administrative Remedies**

5 67. Plaintiff is currently complying with the procedures for bringing suit specified in
6 California *Labor Code* § 2699.3.

7 68. By letter dated August 13, 2021, required notice to the Labor and Workforce
8 Development Agency ("LWDA") and Defendant of the specific provisions of the California *Labor*
9 *Code* alleged to have been violated, including the facts and theories to support the alleged
10 violations.

11 69. Assuming that the LWDA declines to investigate or fails to respond to such notice,
12 this Complaint will be amended when more than sixty-five (65) days have passed since the date the
13 notice was mailed to Defendant and the LWDA fails to respond to Plaintiff's notice letter.

14 **CLASS ACTION ALLEGATIONS**

15 70. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

16 71. Pursuant to California *Code of Civil Procedure* §382, this action is brought and may
17 be properly maintained as a class action. This action satisfies the ascertainability, numerosity,
18 commonality, typicality, adequacy, predominance, and superiority requirements of those
19 provisions.

20 72. Plaintiff bring this suit as a class action on behalf of two classes of individuals
21 defined as follows (collectively the "Classes"):

22 **Plaintiff Class**

23 All persons who have been, or currently are, employed by Defendants and
24 who held, or hold, job positions which Defendant has classified as "non-
25 exempt" employees in the State of California.

26 **Terminated Sub Class**

27 All members of the Plaintiff Class whose employment ended during the
28 Class Period.

(Collectively, "Class Members" or "Plaintiff Class")

73. Plaintiff is informed and believes, and on that basis alleges, that during the class period thousands of class members have been employed by Defendants as non-exempt employees in the State of California. Because so many persons have been employed by Defendants in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is impossible and/or impracticable.

74. Common questions of law, in fact, exist as to all members of the Plaintiff Class and predominate over any questions affecting solely individual members of the Plaintiff Class. Among the questions of law and fact, that are relevant to the adjudication of class members claims are as follows:

- a. Whether Plaintiff and Class Members are subject to and entitled to the benefits of California wage and hour statutes;
- b. Whether Defendant failed to pay Plaintiff and Class Members for all hours worked and for all overtime;
- c. Whether Defendant had a standard policy of not providing compliant meal breaks and premiums to Plaintiff and members of the Plaintiff Class;
- d. Whether Defendant had a standard policy of not providing compliant rest breaks and premiums to Plaintiff and members of the Plaintiff Class;
- e. Whether Defendant failed to reimburse Plaintiff and the Plaintiff Class for all business-related expenses;
- f. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and members of the Plaintiff Class with true and proper wage statements upon payment of wages, in violation of California *Labor Code* § 226;
- g. Whether Defendant unlawfully/or willingly failed to timely pay Plaintiff and the Terminated Sub Class upon termination;
- h. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief;

1 i. Whether Defendants conduct as alleged herein violates the Unfair Business
2 Practices Act of California, *Bus. & Prof. Code* § 17200, *et seq.*

3 75. The claims of the named Plaintiff are typical of the claims of the members of the
4 Plaintiff Class. Plaintiff and the members of the Plaintiff Class sustained losses, injuries and
5 damages arising from Defendant's common policies, practices, procedures, protocols, routines, and
6 rules which were applied to other class members as well as Plaintiff. Plaintiff seeks recovery for
7 the same type of losses, injuries, and damages as were suffered by other members of the proposed
8 class.

9 76. Plaintiff is an adequate representative of the proposed classes because she is a
10 member of the class, and her interests do not conflict with the interests of the members he seeks to
11 represent. Plaintiff has retained competent counsel, experienced in the prosecution of complex
12 class actions, and together Plaintiff and her counsel intend to prosecute this action vigorously for
13 the benefit of the classes. The interests of the Class Members will fairly and adequately be
14 protected by Plaintiff and her attorneys.

15 77. A class action is superior to other available methods for the fair and efficient
16 adjudication of this litigation since individual litigation of the claims of all Class Members is
17 impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an
18 individual basis, because this would potentially result in hundreds of individuals, repetitive
19 lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory
20 judgments, and the prospect of a "race to the courthouse," and an inequitable allocation of recovery
21 among those with equally meritorious claims. By contrast, the class action device presents far
22 fewer management difficulties, and provides the benefit of a single adjudication, economics of
23 scale, and comprehensive supervision by a single court.

24 78. The various claims asserted in this action are additionally or alternatively certifiable
25 under the provisions of the California *Code of Civil Procedure* § 382 because:

26 a. The prosecution of separate actions by hundreds of individual class members
27 would create a risk of varying adjudications with respect to individual class
28 members, thus establishing incompatible standards of conduct for Defendants, and

1 b. The prosecution of separate actions by individual class members would also
2 create the risk of adjudications with respect to them that, as a practical matter,
3 would be dispositive of the interest of the other class members who are not a party
4 to such adjudications and would substantially impair or impede the ability of such
5 non-party class members to protect their interests

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY ALL WAGES**

8 **(By Plaintiff and Members of the Putative Class Against Defendant)**

9 79. Plaintiff incorporates herein by reference the allegations set forth above.

10 80. At all times relevant herein, which comprise the time period not less than four (4)
11 years preceding the filing of this action, Defendant was required to compensate their hourly
12 employees at the correct regular rate of pay.

13 81. For at least the four (4) years preceding the filing of this action, Defendant failed to
14 compensate employees for all hours worked. Defendant implemented policies that actively
15 prevented employees from being compensated for all time worked by rounding all hours worked.

16 82. Under the above-mentioned wage order and state regulations, Plaintiff and the
17 Plaintiff Class are entitled to recover compensation for all hours worked, but not paid, for the four
18 (4) years preceding the filing of this action, in addition to reasonable attorney's fees and costs of
19 suit in accordance with California *Labor Code* § 218.5, and penalties pursuant to California *Labor*
20 *Code* §203 and 206.

21 83. The applicable IWC Wage Order defines “hours worked” to mean “the time during
22 which an employee is subject to the control of an employer and includes all the time the employee
23 is suffered or permitted to work, whether or not required to do so.”

24 84. Defendant suffered or permitted Plaintiff and members of the Plaintiff Class to work
25 portions of the day for which Defendant failed to compensate them. The non-exempt employees
26 were subject to Defendant’s control during this time.

27 85. California *Labor Code* §1182.12 and the applicable IWC Wage Order section 4
28 provide that on and after July 1, 2014, the minimum wage for all industries shall not be less than

1 nine dollars (\$9) per hour, on and after January 1, 2016, the minimum wage for all industries shall
2 not be less than ten dollars (\$10) per hour, on and after January 1, 2017, the minimum wage for all
3 industries shall not be less than ten dollars and fifty cents (\$10.50) per hour, on and after January 1,
4 2018, the minimum wage for all industries shall not be less than eleven dollars (\$11) per hour.

5 86. California *Labor Code* § 1194(a) provides in relevant part: “Notwithstanding any
6 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage []
7 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
8 [], including interest thereon, reasonable attorney’s fees, and costs of suit.”

9 87. California *Labor Code* § 1194.2(a) provides in relevant part: “In any action under
10 section 1193.6 or section 1194 to recover wages because of the payment of a wage less than the
11 minimum wage fixed by an order of the commission, an employee shall be entitled to recover
12 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

13 88. California *Labor Code* § 1197 provides: “The minimum wage for employees fixed
14 by the commission is the minimum wage to be paid to employees, and the payment of a less wage
15 than the minimum so fixed is unlawful.”

16 89. Plaintiff is informed and believes, and therefore alleges, that Defendant’s
17 compensation schemes do not fairly compensate Plaintiff and other Class Members for all hours
18 spent performing their job duties.

19 90. For example, Defendant required Plaintiff and Class Members to consistently work
20 off the clock, including during their meal breaks. The failure to pay at least minimum wages to
21 Plaintiff and members of the Plaintiff Class for each and every hour worked violates California
22 *Labor Code* §§ 1182.11-1182.12, 1194, 1194.2, and 1197; the applicable IWC Wage Order, section
23 4; and California *Business & Professions Code*.

24 91. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class
25 for each and every hour worked violates California *Labor Code* §§ 221 and 223; IWC Wage Order;
26 and California *Business & Professions Code*.

27 92. Further, Defendant violated *Labor Code* §510, by failing to pay Plaintiff and
28 members of the Plaintiff Class overtime wages.

1 93. *Labor Code* §510(a) states “Eight hours of labor constitutes a day’s work. Any work
2 in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek
3 and the first eight hours worked on the seventh day of work in any one workweek shall be
4 compensated at the rate of no less than one and one-half times the regular rate of pay for an
5 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less
6 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours
7 on any seventh day of a workweek shall be compensated at the rate of no less than twice the
8 regular rate of pay of an employee. Nothing in this section requires an employer to combine more
9 than one rate of overtime compensation in order to calculate the amount to be paid to an employee
10 for any hour of overtime work.”

11 94. Defendant has failed to comply with *Labor Code* §510.

12 95. Plaintiff and the Plaintiff Class are thus entitled to recover nominal, actual,
13 compensatory, punitive, and exemplary damages in amounts according to proof at the time of trial.

14 96. Plaintiff also alleges she and the class were not compensated at the regular rate of
15 pay. Specifically, employees were typically paid overtime or given non-compensatory bonuses,
16 which were not factored into the regular rate of pay for missed/short/late/ meal or rest breaks.

17 97. For purposes of this complaint, “regular rate of compensation,” requires an
18 employer to pay one additional hour of pay at an employee's regular rate of compensation as
19 remedy for failure to provide mandatory meal, rest, or recovery period, equivalent with “regular
20 rate of pay”.

21 98. Plaintiff alleges that overtime and nondiscretionary payments for work performed
22 by Plaintiff and the class were to be included when determining compensation for failure to
23 provide a meal, rest, or recovery period, but were not paid correctly by Defendants as required by
24 *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 489 P.3d 1166.

25 99. Plaintiff alleges that on a routine basis she and Class members received paychecks
26 that miscalculated all wages owed, in violation of the Labor Code

27 100. During the applicable time period, Defendant has and continues to have a pattern
28 and practice of not providing its employees the correct rate of overtime by failing to include all

1 compensable time, including bonus rates and regular overtime into the regular rate, when paying
2 meal and rest premiums.

3 101. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff
4 Class have been damaged in an amount according to proof at time of trial.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PROVIDE MEAL PERIODS**

7 **(By Plaintiff and Members of the Putative Class Against Defendant)**

8 102. Plaintiff hereby incorporates by reference each and every one of the allegations
9 contained in the preceding paragraphs as if the same were fully set forth herein.

10 103. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the Class
11 Members regularly worked more than five (5) hours per shift and were entitled to a meal period of
12 not less than thirty (30) minutes without duty.

13 104. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that
14 Defendant routinely failed to provide Plaintiff and the members of the Classes with such meal
15 periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not
16 waived their right to the same. Thus, Defendant failed to provide Plaintiff and the members of the
17 Classes with meal periods required by California *Labor Code* §§ 226.7, 512, 516 and IWC Wage
18 Order, section 11 and categorically failed to pay any and all meal period wages due.

19 105. Plaintiff and Class Members seek damages pursuant to California *Labor Code* §§
20 226.7(b) and IWC Wage Order section 11(D), in the amount of one additional hour of pay at the
21 regular rate for each work day that the meal period is/was not provided to Plaintiff and any member
22 of members of the Classes, the cumulative sum of which is to be determined at trial.

23 106. Defendant failed to correctly pay Plaintiff and members of the Plaintiff Class meal
24 period wages, as it did not incorporate overtime into the rate of pay.

25 107. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*
26 *Hollywood Hotel, LLC*, where the court unanimously held that employers must pay premium
27 payments to employees for missed meal, rest, and recovery breaks at the employee's "regular rate
28 of pay" instead of their base hourly rate. The regular rate of pay may be higher than the base hourly

1 rate because the regular rate of pay must include all nondiscretionary incentive payments, including
2 overtime rates.

3 108. Defendant has continuously paid Plaintiff and members of the Plaintiff Class at the
4 regular base rate of pay for all missed meal periods, and thus, are liable for the missing wages as it
5 did not include the rates of overtime.

6 109. Plaintiff and the members of the Classes seek prejudgment interest on all amounts
7 recovered herein pursuant to California *Labor Code* §§ 218.6, 1194(a) and the California *Civil*
8 *Code* §§3287(b) and 3289.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REST PERIODS**

11 **(By Plaintiff and Members of the Putative Class Against Defendant)**

12 110. Plaintiff hereby incorporates by reference each and every one of the allegations
13 contained in the preceding paragraphs as if the same were fully set forth herein.

14 111. Plaintiff is informed and believes, and thereon allege, that Plaintiff and Class
15 Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each
16 and every four (4) hours worked during the workday.

17 112. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that
18 Defendant routinely failed to provide Plaintiff and the members of the Classes with such paid rest
19 periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not
20 waived their right to the same. Thus, Defendant failed to provide Plaintiff and Class Members with
21 rest periods required by California *Labor Code* §§ 226.7, 512, and 516, IWC Wage Order, section
22 12 and categorically failed to pay any and all rest period wages due.

23 113. Plaintiff and Class Members seek damages pursuant to California *Labor Code*
24 §226.7(b) and the applicable IWC Wage Order section 12(B), in the amount of one additional hour
25 of pay at the regular rate for each work day that the rest period is/was not provided to Plaintiff and
26 any member of the Classes, the cumulative sum of which is to be determined at trial.

27 114. Plaintiff and the members of the Classes seek prejudgment interest on all amounts
28 recovered herein pursuant to California *Labor Code* §§ 218.6 and 1194(a) and the California *Civil*

1 Code §§ 3287(b) and 3289.

2 **FOURTH CAUSE OF ACTION**

3 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

4 **(By Plaintiff and Members of the Putative Class Against Defendant)**

5 115. Plaintiff hereby incorporates by reference each and every one of the allegations
6 contained in the preceding paragraphs as if the same were fully set forth herein.

7 116. An employer shall indemnify employees for all necessary expenditures or losses
8 incurred by the employees in direct consequence of the discharge of the employees' duties, or the
9 employees' obedience to the directions of the employer. Further, an employer shall not collect or
10 receive from an employee any part of wages theretofore paid by employer to employee.

11 117. Defendant has a continuous policy and/or practice of failing to reimburse and/or
12 indemnify Plaintiff and Class Members for, including, but not limited to mileage and travel costs.

13 118. Said continuous policy and/or practice of failing to reimburse Plaintiff and Class
14 Members and deducting wages from employees is illegal under California *Labor Code* Section
15 2802 and *Cal. Code Regs.* Title 8, § 11090(8).

16 119. As a direct result of Defendant's policy of failing to reimburse Plaintiff and Class
17 Members, Plaintiff and the Putative Class have been damaged in an amount to be proven at trial.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

20 **(By Plaintiff and Members of the Putative Class Against Defendant)**

21 120. Plaintiff hereby incorporates by reference each and every one of the allegations
22 contained in the preceding paragraphs as if the same were fully set forth herein.

23 121. California *Labor Code* § 226(a) and IWC Wage Order, section 7(B) requires
24 employers to furnish each employee with a statement itemizing, among other things, the total hours
25 worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

26 122. Defendant knowingly and intentionally failed to furnish Plaintiff and the members
27 of the Classes with timely, itemized statements in compliance with California *Labor Code* § 226(a)
28 and IWC Wage Order section 7(B).

1 123. Plaintiff is informed and believes, and thereon alleges, that Defendant knowingly
2 and intentionally failed to furnish Plaintiff and the Class Members with timely, itemized statements
3 showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all applicable hourly
4 rates in effect during each respective pay period and the corresponding number of hours worked at
5 each hourly rate by each respective individual.

6 124. Plaintiff is informed and believes, and thereon alleges, that Defendant did not
7 maintain accurate business records pertaining to the total hours worked for Defendant by Plaintiff
8 and the members of the Classes as required under California *Labor Code* § 1174.5. This is a result
9 of missing overtime pay, incorrect rates of pay, and missed meal and rest-break premiums.

10 125. As a result of not having kept accurate records, Plaintiff and the Class Members
11 suffered injuries in the form of confusion over whether they received all wages owed to them, and
12 difficulty and expense in reconstructing pay records in addition to other injuries which may come
13 to light during the discovery process.

14 126. Plaintiff and the members of the Classes herein seek damages and penalties
15 pursuant to California *Labor Code* § 226(e) for Defendant's violations of California *Labor Code* §
16 226(a).

17 127. Plaintiff and Class Members also seek preliminary and permanent injunctive relief
18 and an award of reasonable attorneys' fees and costs pursuant to California *Labor Code* § 226(h).

19 128. Plaintiff and the members of members of the Classes also request relief as
20 described below.

21 **SIXTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES AT TIME OF**

23 **TERMINATION**

24 **(By Plaintiff and Members of the Terminated Sub Class Against Defendant)**

25 129. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
26 forth herein.

27 130. At all times, relevant herein, Defendant was required to pay their employees all
28 wages owed in a timely fashion during and at the end of their employment, pursuant to California

1 *Labor Code* §§ 201-203.

2 131. As a pattern and practice, Defendant regularly failed to pay Plaintiff and the
3 members of the Terminated Sub Class their final wages pursuant to California *Labor Code* §§ 201-
4 203, and accordingly owe waiting time penalties pursuant to California *Labor Code* § 203.

5 132. This includes missing compensation as a result of meal break premiums and for
6 failing to pay for all worked hours.

7 133. The conduct of Defendant and its agents and managerial employees as described
8 herein was willful, and in violation of the rights of Plaintiff and the individual members of the
9 Terminated Sub Class.

10 134. Plaintiff is informed and believes, and based thereon alleges, that Defendant's
11 willful failure to pay wages due and owing them upon separation from employment results in a
12 continued payment of wages up to thirty (30) days from the time the wages were due. Therefore,
13 Plaintiff and Class Members who have separated from employment are entitled to compensation
14 pursuant to California *Labor Code* § 203.

15 **SEVENTH CAUSE OF ACTION**

16 **VIOLATIONS OF CALIFORNIA**

17 **BUSINESS AND PROFESSIONS CODE SECTION 17200, et seq.**

18 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

19 135. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
20 forth herein.

21 136. Section 17200 of the California *Business and Professions Code* prohibits any
22 unlawful, unfair or fraudulent business act or practice.

23 137. Plaintiff brings this cause of action in a representative capacity on behalf of the
24 general public and the persons affected by the unlawful and unfair conduct described herein.
25 Plaintiff and members of the Plaintiff Class have suffered, and continue to suffer, injury in fact and
26 monetary damages because of Defendant's actions.

27 138. The actions by Defendant as herein alleged amount to conduct which is unlawful
28 and a violation of law. As such, said conduct amounts to unfair business practices in violation of

1 California *Business and Professions Code* § 17200, *et seq.*

2 139. Defendant's conduct as herein alleged has damaged Plaintiff and the members of the
3 Plaintiff Class by denying them wages due and payable, by failing to provide proper meal breaks,
4 by failing to pay for all hours worked and by failing to pay all wages due in a timely manner at the
5 time of termination (for the Terminated Sub Class). Defendant's actions are thus substantially
6 injurious to Plaintiff and the members of the Plaintiff Class, causing them injury in fact and loss of
7 money.

8 140. Because of such conduct, Defendant has unlawfully and unfairly obtained monies
9 due to the Plaintiff and the members of the Plaintiff Class.

10 141. All members of the Plaintiff Class can be identified by reference to payroll and
11 related records in the possession of the Defendant. The amount of wages due to Plaintiff and
12 members of the Plaintiff Class can be readily determined from Defendant's records. The Class
13 Members are entitled to restitution of monies due and obtained by Defendant's during the Class
14 Period as a result of Defendant's unlawful and unfair conduct.

15 142. During the Class Period, Defendant committed, and continues to commit, acts of
16 unfair competition as defined by § 17200, *et seq.*, of the *Business and Professions Code*, by and
17 among other things, engaging in the acts and practices described above.

18 143. Defendant's course of conduct, acts, and practices in violation of the California law
19 as mentioned in each paragraph above constitutes a separate and independent violation of § 17200,
20 etc., of the *Business and Professions Code*.

21 144. The harm to Plaintiff and the members of the Plaintiff Class of being wrongfully
22 denied lawfully earned and unpaid wages outweighs the utility, if any, of Defendant's policies and
23 practices and, therefore, Defendant's actions described herein constitute an unfair business practice
24 or act within the meaning of *Business and Professions Code* § 17200.

25 145. Defendant's conduct described herein threatens an incipient violation of California's
26 wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly
27 threatens or harms competition.

28 146. Defendant's course of conduct described herein further violates California *Business*

1 *and Professions Code* § 17200 in that it is fraudulent, improper, and unfair.

2 147. The unlawful, unfair, and fraudulent business practices and acts of Defendant as
3 described herein-above have injured Plaintiff and members of the Plaintiff Class in that they were
4 wrongfully denied the timely and full payment of wages due to them.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff and Class Members pray for judgment as follows:

- 7 1. For an order certifying the proposed Plaintiff and Terminated Sub-Class;
- 8 2. For an order that counsel for Plaintiff be appointed class counsel
- 9 3. Certification of this class action on behalf of the proposed Plaintiff and Terminated
10 Sub-Class;
- 11 4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated
12 Sub Class;
- 13 5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class
14 and disgorgement of all profits from the unlawful business practices of Defendant
15 An order appointing Plaintiff's counsel as class counsel;
- 16 6. Prejudgment and post judgment interest on all sums awarded;
- 17 7. For compensatory damages;
- 18 8. For penalties pursuant to California *Labor Code* §§ 200, 226, 226.7, 226.3, 226.7;
- 19 9. For interest accrued to date;
- 20 10. For costs of suit and expenses incurred herein pursuant to California *Labor Code* §§
21 226 and 1194;
- 22 11. A declaratory judgment that Defendant has knowingly and intentionally violated the
23 following provisions of law;
 - 24 a. California *Labor Code* §§ 1182, 1194, 1197, 221, 223 for failing to
25 pay minimum wages for all hours worked;
 - 26 b. California *Labor Code* §510 for failing to pay overtime wages;
 - 27 c. California *Labor Code* §§ 226.7 and 512 for failing to provide meal
28 periods;

- 1 d. California *Labor Code* §§ 226.7 and 512 for failing to provide meal
2 periods;
3 e. California *Labor Code* § 2802 for failing to reimburse business
4 expenses;
5 f. California *Labor Code* §§ 226.7 and 512 for failing to provide rest
6 periods;
7 g. California *Labor Code* §§ 201, 203 for failing to furnish accurate
8 itemized wage statements;
9 h. California *Labor Code* §§ 201 and 203 for waiting time penalties;
10 and
11 i. California Business & Professions Code §§ 17200-08 by violating
12 the provisions set forth herein above.

13 12. For all such other and further relief that the Court may deem just and proper.

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1 DATED: August 13, 2021

2 **BRADLEY/GROMBACHER, LLP**

3
4 By: 

5 Marcus Bradley, Esq.
6 Kiley Grombacher, Esq.
7 Lirit King, Esq.

8 Attorneys for Plaintiff

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands trial of Plaintiff's and the members of the Classes' claims by jury
11 to the extent authorized by law.

12
13
14 DATED: August 13, 2021

15 **BRADLEY/GROMBACHER, LLP**

16
17 By: 

18 Marcus Bradley, Esq.
19 Kiley Grombacher, Esq.
20 Lirit King, Esq.

21 Attorneys for Plaintiff