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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/03/2022 at 05:12:07 PM
Clerk of the Superior Court
By Vanessa Sezenol, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 BRIANNA HALLOR, an individual, on
11 behalf of herself and on behalf of all
12 persons similarly situated,

13 Plaintiff,

14 v.

15 OS PACIFIC, LLC, a Limited Liability
16 Company; and DOES 1-50, Inclusive,

17 Defendant(s).

Case No. 37-2022-00000074-CU-OE-CTL

COMPLAINT FOR:

1. CIVIL PENALTIES PURSUANT TO
LABOR CODE §2699, *ET SEQ.*, FOR
VIOLATIONS OF LABOR CODE §§ 201,
202, 203, 204, 210, 226(A), 226.3, 226.7,
227.3, 246, 351, 510, 512, 558, 1194, 1197,
1197.1, 1198, 2802, AND THE
CALIFORNIA CODE OF
REGULATIONS

Judge:

Dept:

Date Action Filed:

DEMAND FOR TRIAL BY JURY

20 Plaintiff BRIANNA HALLOR ("PLAINTIFF"), as an individually, on behalf of the
21 people of the State of California and as "Aggrieved Employees" acting as a private attorney
22 general under the Labor Code Private Attorney General Action of 2004, § 2699, *et seq.*
23 ("PAGA") only, alleges on information and belief, except for her own acts and knowledge
24 which are based on personal knowledge, the following:

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1 6. PLAINTIFF was employed by DEFENDANT in California as a non-
2 exempt employee entitled to minimum wages, overtime pay and meal and rest periods
3 from May 2019 to July 5, 2021. PLAINTIFF was at all times during her employment
4 with DEFENDANT entitled to be paid minimum wages and entitled to the legally
5 required off-duty meal and rest periods. PLAINTIFF from time to time was unable to
6 take off duty meal and rest periods as a result of DEFENDANT's work obligations.
7 DEFENDANT did not separately and/or properly compensate PLAINTIFF for her rest
8 periods, as well as certain non-discretionary incentive payments under DEFENDANT'S
9 control. PLAINTIFF was at all times relevant mentioned herein classified by
10 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis.

11 7. PLAINTIFF, and such persons that may be added from time to time who satisfy the
12 requirements and exhaust the administrative procedures under the Private Attorney General
13 Act, bring this Representative Action on behalf of the State of California with respect to
14 herself and all individuals who are or previously were employed by DEFENDANT in
15 California (the "AGGRIEVED EMPLOYEES") during the time period of September 22,
16 2020 until the present (the "PAGA PERIOD").

17 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently or
18 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
19 action pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S
20 violation of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226(a), 226.3, 226.7,
21 246, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, and the applicable Wage Order(s).
22 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
23 employees within the meaning of Labor Code § 2699, *et seq.*

24 9. The true names and capacities, whether individual, corporate, subsidiary, partnership,
25 associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently unknown
to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to
Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.

1 PLAINTIFF is informed and believes, and based upon that information and belief alleges,
2 that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
3 responsible in some manner for one or more of the events and happenings that proximately
4 caused the injuries and damages hereinafter alleged.

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

13 THE CONDUCT

14 11. During the PAGA PERIOD, DEFENDANT failed to accurately calculate and pay
15 PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked, including
16 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to
17 accurately calculate wages for time worked and penalties for meal and rest periods owed to
18 PLAINTIFF and other AGGRIEVED EMPLOYEES in order to avoid paying these
19 employees the correct compensation. As a result, PLAINTIFF and other AGGRIEVED
20 EMPLOYEES forfeited wages due to them for working without compensation at the correct
21 minimum wage and overtime rates. DEFENDANT'S uniform policy and practice to not pay
22 the AGGRIEVED EMPLOYEES the correct compensation for all time worked in
23 accordance with applicable law is evidence by DEFENDANT's business records.

24 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
25 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
meaning the time during which an employee is subject to the control of an employer,
including all the time the employee is suffered or permitted to work. DEFENDANT required
PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time

1 they are under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF
2 to work while clocked out. As a result, the PLAINTIFF and other AGGRIEVED
3 EMPLOYEES forfeited minimum wage and overtime compensation by regularly working
4 without their time being accurately recorded and without compensation at the applicable
5 minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay
6 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
7 DEFENDANT's business records.

8 13. In violation of the applicable sections of the California Labor Code and the
9 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
10 as a matter of company policy, practice and procedure, intentionally and knowingly failed
11 to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate
12 of pay for all overtime worked and correct meal premium pay for all meal period violations.
13 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the
14 payment of the correct overtime compensation as required by California law which allowed
15 DEFENDANT to illegally profit and gain an unfair advantage over competitors who
16 complied with the law. To the extent equitable tolling operates to toll claims by the
17 AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be
18 adjusted accordingly.

19 14. During the PAGA PERIOD, DEFENDANT failed to provide all the legally required
20 off-duty meal breaks to PLAINTIFF and the other Aggrieved Employees as required by the
21 applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF
22 and Aggrieved Employees did not prevent these employees from being relieved of all of
23 their duties for the legally required off-duty meal periods. DEFENDANT'S meal period
24 policies and practices were unlawful because PLAINTIFF and other Aggrieved Employees
25 were far too over-booked and overworked to take a timely off-duty thirty (30) minute meal
period. As a result of their rigorous work schedules, PLAINTIFF and other Aggrieved
Employees were often not fully relieved of duty by DEFENDANT for their meal periods.
Additionally, DEFENDANT's failure to provide PLAINTIFF and the Aggrieved Employees

1 with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
2 DEFENDANT's business records. As a result, PLAINTIFF and other members of the
3 Aggrieved Employees forfeited meal breaks without additional compensation and in
4 accordance with DEFENDANT's strict corporate policy and practice.

5 15. Further, DEFENDANT failed to provide PLAINTIFF and Aggrieved Employees
6 with a second off-duty meal period on workdays in which these employees were required by
7 DEFENDANT to work ten (10) hours of work from time to time. As a result,
8 DEFENDANT'S failure to provide PLAINTIFF and the Aggrieved Employees with legally
9 required meal breaks is evidenced by DEFENDANT's business records which contain no
10 record of these breaks.

11 16. In addition, DEFENDANT failed to compensate PLAINTIFF and Aggrieved
12 Employees for their rest periods as required by the applicable Wage Order and Labor Code.
13 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
14 PLAINTIFF and the other Aggrieved Employees. As a result, DEFENDANT's failure to
15 provide PLAINTIFF and the Aggrieved Employees with all the legally required paid rest
16 periods is evidenced by DEFENDANT's business records.

17 17. On numerous occasions, PLAINTIFF and other Aggrieved Employees were required
18 to work while not clocked in. DEFENDANT maintained a company-wide policy of refusing
19 to pay Aggrieved Employees, like PLAINTIFF, for all hours worked. Specifically,
20 DEFENDANT maintained a company-wide pattern and practice of altering employees'
21 timecards to eliminate numerous hours worked. As a result, DEFENDANT failed to
22 compensate PLAINTIFF and the Aggrieved Employees wages for all hours worked.

23 18. Under California law, every employer shall pay to each employee, on the established
24 payday for the period involved, not less than the applicable minimum wage for all hours
25 worked in the payroll period, whether the remuneration is measured by time, piece,
commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the
time during which an employee is subject to the control of an employer, and includes all the
time the employee is suffered or permitted to work, whether or not required to do so.

1 19. From time to time, when DEFENDANT did not accurately record PLAINTIFF'S and
2 other Aggrieved Employees' missed meal and rest breaks and/or also failed to pay the proper
3 minimum wages, the wage statements issued to PLAINTIFF and other Aggrieved
4 Employees by DEFENDANT violated California law, and in particular, Labor Code Section
5 226(a). Aside, from the violations listed above in this paragraph, DEFENDANT failed to
6 issue PLAINTIFF and Aggrieved Employees an itemized wage statement that lists all the
requirements under California Labor Code 226 *et seq.*

7 20. In violation of the applicable sections of the California Labor Code and the
8 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
9 as a matter of company policy, practice and procedure, intentionally, knowingly and
10 systematically failed to compensate PLAINTIFF and the other Aggrieved Employees for
11 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended
12 to purposefully avoid the payment for all time worked as required by California law which
13 allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who
14 complied with the law. To the extent equitable tolling operates to toll claims by the
15 Aggrieved Employees against DEFENDANT, the PAGA PERIOD should be adjusted
accordingly.

16 21. As a result of DEFENDANT's intentional disregard of the obligation to meet this
17 burden, DEFENDANT failed to properly calculate and/or pay all required compensation for
18 work performed by the members of the CALIFORNIA CLASS and violated the California
Labor Code and regulations promulgated thereunder as herein alleged.

19 22. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
20 required off-duty meal breaks to her and paid rest periods to her as required by the applicable
21 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his
22 missed meal and rest breaks. The nature of the work performed by PLAINTIFF did not
23 prevent her from being relieved of all of her duties for the legally required off-duty meal
24 periods. Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal
period each workday in which PLAINTIFF was required by DEFENDANT to work ten (10)

1 hours of work. As a result, DEFENDANT’S failure to provide PLAINTIFFS with the
2 legally required second off-duty meal period is evidenced by DEFENDANT’s business
3 records. From time to time, and as a result of DEFENDANT not accurately recording all
4 missed meal and rest periods, and failing to pay minimum wages due for all time worked,
5 the wage statements issued to PLAINTIFF by DEFENDANT violated California law, and
6 in particular, Labor Code Section 226(a). To date, DEFENDANT has yet to pay
7 PLAINTIFF all of his wages due to him and all premiums due to him for missed meal and
8 rest breaks and DEFENDANT has failed to pay any penalty wages owed to her under
9 California Labor Code Section 203.

10 23. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
11 employees with an accurate itemized wage statement in writing showing, among other
12 things, gross wages earned and all applicable hourly rates in effect during the pay period and
13 the corresponding amount of time worked at each hourly rate. From time to time,
14 DEFENDANT violated Cal. Lab. Code § 226 by failing to provide accurate wage
15 statements. DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
16 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT
17 provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements
18 which violate Cal. Lab. Code § 226.

19 24. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
20 employment are due and payable twice during each calendar month, on days designated in
21 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
22 requires employers to pay employees all wages owed within seven (7) days of the close of
23 the payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
24 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of
25 the payroll period.

26 25. California Labor Code § 351 establishes the requirements for an employer regarding
27 the payment of gratuities. Specifically, gratuities are the sole property of the employees.
28 California Labor Code § 351 expressly prohibits employers and their agents from collecting,

1 taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the
2 term “gratuity” as including any money that has been paid or given or left for an employee
3 by a patron of a business over and above the actual amount due the business for services
4 rendered or for goods, food, drink or articles sold or served to such patron. Labor Code §
5 353 requires employers to keep accurate records of all gratuities they receive, directly or
indirectly.

6 26. Although tip pooling is not expressly prohibited by the Labor Code, employees who
7 mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
8 By distributing tips to DEFENDANT directly and to their agents who were not in the “chain
9 of service,” DEFENDANT has violated and continue to violate the legal requirements for
10 handling pooled tips and violated the holding in *O’Grady v. Merchant Exchange*
11 *Productions, Inc.*, No. A148513 (Court of Appeals of California, First District, Division
Two.)

12 27. DEFENDANT’s conduct, as set forth above, in failing to remit to non-
13 managerial banquet service employees the total proceeds of gratuities added to banquet
14 customers’ bills constitutes a violation of California Labor Code Section 351. This violation
15 is enforceable pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code
16 17200 *et seq.* DEFENDANT’s conduct constitutes unlawful, unfair, and/or fraudulent
17 business acts or practices, in that DEFENDANT has violated California Labor Code Section
18 351 in not remitting to the non-managerial service employees the total gratuities that were
19 charged to customers. PLAINTIFF and the AGGRIEVED EMPLOYEES have been
20 damaged in an amount according to proof at trial, including the loss of gratuities to which
they were entitled and seek all penalties, fees and costs of suit.

21 28. By reason of this uniform conduct applicable to PLAINTIFF and all AGGRIEVED
22 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which
23 fails to accurately calculate and record the correct compensation for all time worked by
24 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
employees’ compensation is the DEFENDANT’s burden. As a result of DEFENDANT’s

1 intentional disregard of the obligation to meet this burden, DEFENDANT fails to properly
2 calculate and/or pay all required compensation for work performed by the AGGRIEVED
3 EMPLOYEES and violated the California Labor Code and regulations promulgated
4 thereunder as herein alleged.

5 29. All of the conduct and violations alleged herein occurred during the PAGA PERIOD.
6 To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF
7 during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected
8 other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR
9 12157 (Certified for Publication 12/19/18).

10 **JURISDICTION AND VENUE**

11 30. This Court has jurisdiction over this Action pursuant to California Code of
12 Civil Procedure, Section 410.10.

13 31. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant
15 times maintained offices and facilities in this County and/or conducts substantial business
16 in this County, and (ii) committed the wrongful conduct herein alleged in this County
17 against AGGRIEVED EMPLOYEES.

18 **FIRST CAUSE OF ACTION**

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

20 **[Cal. Lab. Code §§ 2698 et seq.]**

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

22 32. PLAINTIFF realleges and incorporates by this reference, as though fully set
23 forth herein, the prior paragraphs of this Complaint.

24 33. PAGA is a mechanism by which the State of California itself can enforce
25 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

1 restitution, but to create a means of "deputizing" citizens as private attorneys general to
2 enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it
3 was ... in the public interest to allow aggrieved employees, acting as private attorneys
4 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1).
Accordingly, PAGA claims cannot be subject to arbitration.

5 34. PLAINTIFF, and such persons that may be added from time to time who
6 satisfy the requirements and exhaust the administrative procedures under the Private
7 Attorney General Act, bring this Representative Action on behalf of the State of California
8 with respect to herself and all individuals who are or previously were employed by
9 DEFENDANT in California during the time period of September 22, 2020 until the present
(the "AGGRIEVED EMPLOYEES").

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

17 36. The policies, acts and practices heretofore described were and are an
18 unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and
19 other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to
20 provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and
21 rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
22 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
23 §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 221, 226(a),
24 226.7, 227.3, 246, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802 and the applicable
Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such

1 conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
2 Code Private Attorney General Act of 2004 as the representative of the State of California
3 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
EMPLOYEES.

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

12 **PRAYER FOR RELIEF**

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

- 15 1. On behalf of the State of California and with respect to all AGGRIEVED
EMPLOYEES:
- 16 a. Recovery of civil penalties as prescribed by the Labor Code Private
17 Attorneys General Act of 2004; and
- 18 b. An award of penalties, attorneys’ fees and costs of suit, as allowable under
19 the law, including, but not limited to, pursuant to Labor Code § 226 and or
§1194.

20 Dated: December 29, 2021

21 **BARVIÉ LAW, APC**

22 By



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NICOLE BARVIÉ

24 Attorneys for Plaintiff

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EXHIBIT 1

September 22, 2021

VIA ONLINE FILING TO LWDA and CERTIFIED MAIL TO DEFENDANT

Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov <i>Via Online Submission</i>	OS Pacific, LLC Attn: Human Resources Department 13355 Noel Rd. Ste 1645 Dallas, TX 75240 <i>Via Certified Mail</i>
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Re: **Notice of Violation of California Labor Code Sections 201, 202, 203, 204 et seq., 210, 221, 226(a), 226.7, 227.3, 246 et seq., 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, Violations of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or were previously employed by Defendant OS Pacific, LLC in California and classified as non-exempt employees during the time period of September 18, 2020 until a date as determined by the Court. Our offices represent Plaintiff Brianna Hallor (“Plaintiff”), and other Aggrieved Employees in a proposed lawsuit against OS Pacific, LLC., a Texan Limited Liability Corporation (“Defendant”). Plaintiff has been employed by Defendant in California beginning May 2019 to July 5, 2021 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive payments under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, and for all of their missed meal breaks and rest breaks, and for all of their time spent working off the clock. Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. See *Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 et seq., Defendant fails to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section





226(a). Specifically, Plaintiff and Aggrieved Employees are paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the correct total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). Further, Defendant failed to provide gratuities in violation of Cal. Lab. Code §351. Defendant also failed to correctly calculate Plaintiff's regular rate of pay for purposes of payment of overtime and sick time pay. Further, Defendant unlawfully failed to timely pay Plaintiff and other Aggrieved Employees for earned wages. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates § § 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *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 Statute of 2004 on behalf of Plaintiffs 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.

Respectfully,

Nicole Barvié
Attorney for Plaintiff

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8 Attorney for Plaintiff Brianna Hallor

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SAN DIEGO**
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13 BRIANNA HALLOR, an individual, on
14 behalf of herself and on behalf of all
15 persons similarly situated,

16 Plaintiff,

17 v.

18 OS PACIFIC, LLC, a Limited Liability
19 Company; and DOES 1-50, Inclusive,

20 Defendant(s).

Case No.

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 1700, *ET SEQ.*;
2. FAILURE TO PAY OVERTIME 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;

[Additional Causes of Action Continued on Next Page]

6. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS IN
VIOLATION OF CAL. LAB. CODE.
§226;
7. FAILURE TO PROVIDE WAGES
WHEN DUE IN VIOLATION OF CAL.
LAB CODE. §§ 201, 202, AND 203;
8. FAILURE TO PROVIDE
GRATUITIES IN VIOLATION OF CAL.
LAB. CODE § 351;
9. CIVIL PENALTIES PURSUANT TO
LABOR CODE §2699, *ET SEQ.*, FOR
VIOLATIONS OF LABOR CODE §§ 201,
202, 203, 204, 226(A), 226.3, 226.7, 510,
512, 558, 1194, 1197, 1197.1, 1198, 2802,
AND THE CALIFORNIA CODE OF
REGULATIONS;
10. HOSTILE WORK ENVIRONMENT
HARASSMENT, IN VIOLATION OF
FEHA (CALIFORNIA GOV'T CODE §
12940(j));
11. SEXUAL HARASSMENT IN
VIOLATION OF FEHA (CALIFORNIA
GOV'T CODE §12940(a));
12. FAILURE TO TAKE REASONABLE
STEPS TO PREVENT
DISCRIMINATION AND
HARASSMENT FROM OCCURRING IN
VIOLATION OF FEHA (CALIFORNIA
GOV'T CODE §12940 *ET SEQ.*);
13. NEGLIGENT HIRE, SUPERVISION
OR RETENTION OF EMPLOYEE;
14. CONSTRUCTIVE DISCHARGE IN
VIOLATION OF FEHA;
15. DISCRIMINATION BASED ON SEX
AND GENDER IN VIOLATION OF
PUBLIC POLICY;
16. DISCRIMINATION BASED ON SEX
AND GENDER IN VIOLATION OF
FEHA;

17. INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS
DEMAND FOR TRIAL BY JURY

Plaintiff BRIANNA HALLOR (“PLAINTIFF”), an individual, on behalf of herself and all other similarly situated current and former employees, and on behalf of the people of the State of California and as “Aggrieved Employees” acting as a private attorney general under the Labor Code Private Attorney General Action of 2004, § 2699, *et seq.* (“PAGA”), alleges on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. Defendant OS PACIFIC, LLC. (“DEFENDANT” or “DEFENDANTS”) is a Texas Limited Liability Company and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in California.

2. DEFENDANT OS PACIFIC, LLC operates restaurants in the Counties of San Diego and Orange.

3. DEFENDANT SEAN MACARTHUR is a manager at OS PACIFIC, LLC’s San Diego location.

4. PLAINTIFF is a woman, a protected class.

5. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee entitled to minimum wages, overtime pay and meal and rest periods from May 2019 to July 5, 2021. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and entitled to gratuities and the legally required meal and rest periods and payment of minimum and overtime wages due for all the time worked.

6. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at

1 any time between during the period beginning four (4) years prior to the filing of the
2 complaint and ending on the date as determined by the Court (the “CALIFORNIA
3 CLASS PERIOD”). The amount in controversy for the aggregate claim of
4 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

5 7. PLAINTIFF brings this Class Action on behalf of herself and a
6 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their
7 losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s
8 uniform policy and practice which failed to lawfully compensate these employees for all
9 their time worked, including overtime worked. DEFENDANT’s uniform policy and
10 practice alleged herein is an unlawful, unfair and deceptive business practice whereby
11 DEFENDANT retained and continues to retain wages due to PLAINTIFF and the other
12 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
13 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in
14 the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA
15 CLASS who have been economically injured by DEFENDANT’s past and current
16 unlawful conduct, and all other appropriate legal and equitable relief.

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

9. The agents, servants and/or employees of the Defendants and each of them
acting on behalf of the Defendants acted within the course and scope of his, her or its

1 authority as the agent, servant and/or employee of the Defendants, and personally
2 participated in the conduct alleged herein on behalf of the Defendants with respect to the
3 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable
4 to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF
5 and the other members of the CALIFORNIA CLASS, for the loss sustained as a
6 proximate result of the conduct of the Defendants' agents, servants and/or employees.

7 **THE CONDUCT**

8 10. Pursuant to the Industrial Welfare Commission Wage Orders,
9 DEFENDANT is required to pay PLAINTIFF and the CALIFORNIA CLASS Members
10 for all their time worked, meaning the time during which an employee is subject to the
11 control of an employer, including all the time the employee is suffered or permitted to
12 work. From time to time, DEFENDANT required PLAINTIFF and CALIFORNIA
13 CLASS Members to work without paying them for all the time they were under
14 DEFENDANT'S control. Specifically, DEFENDANT required PLAINTIFF to work
15 while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break, as
16 well as before her shift started and after her shift ended. DEFENDANT instructed
17 PLAINTIFF to work off the clock in order to avoid working overtime. DEFENDANT
18 required PLAINTIFF and the CALIFORNIA CLASS Members to work off the clock
19 without paying them for all the time they performed duties while on their meal break,
20 specifically by failing to provide enough labor hours to accomplish all the job tasks that
21 DEFENDANT expected PLAINTIFF and the CALIFORNIA CLASS Members to
22 complete on a daily and/or weekly basis. From time to time, PLAINTIFF was also often
23 interrupted by work assignments during his breaks. Indeed there were many days where
24 PLAINTIFF did not even receive a partial meal break. Further, during the
25 CALIFORNIA CLASS PERIOD, DEFENDANT required PLAINTIFF and other
CALIFORNIA CLASS Members to wait in line and submit to mandatory temperature
checks for COVID-19 screening and also complete a COVID -19 questionnaire regarding
whether these employees had any symptoms prior to clocking into DEFENDANT's

1 timekeeping systems for the workday. Finally, PLAINTIFF and other members of the
2 CALIFORNIA CLASS from time to time were not paid wages for all the time worked,
3 including overtime wages, such that in the aggregate employees were underpaid wages as
4 a result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
5 employees. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members,
6 from time to time, forfeited gratuities, minimum wage and overtime compensation by
7 working without their time being accurately recorded and without compensation at the
8 applicable minimum wage and overtime rates. DEFENDANT'S uniform policy and
9 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
worked is evidenced by DEFENDANT'S business records.

10 11. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have
11 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and
12 other CALIFORNIA CLASS Members for the actual time these employees worked each
13 day, including overtime hours. As a result DEFENDANT was able to and did in fact
14 unlawfully, and unilaterally alter the time recorded in DEFENDANT's timekeeping
15 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid
16 paying these employees the applicable overtime compensation for overtime worked and
17 to avoid paying these employees for missed meal breaks. As a result, PLAINTIFF and
18 other CALIFORNIA CLASS Members, from time to time, forfeited time worked by
working without their time being accurately recorded and without compensation at the
applicable overtime rates.

19 12. The mutability of the timekeeping system also allowed DEFENDANT to
20 alter employee time records by recording fictitious thirty (30) minute meal breaks in
21 DEFENDANT's timekeeping system so as to create the appearance that PLAINTIFF and
22 other CALIFORNIA CLASS Members clocked out for a thirty (30) minute meal break
23 when in fact the employees were not at all times provided an off-duty meal break. This
24 practice is a direct result of DEFENDANTS' uniform policy and practice of denying
25

1 employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise
2 compensate them for missed meal breaks

3 13. As a result of their rigorous work schedules, PLAINTIFF and other
4 CALIFORNIA CLASS Members were also from time to time unable to take off duty
5 meal breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
6 CALIFORNIA CLASS Members were required to perform work as ordered by
7 DEFENDANT for more than five (5) hours during a shift without receiving an off-duty
8 meal break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA
9 CLASS Members with a second off-duty meal period each workday in which these
10 employees were required by DEFENDANT to work ten (10) hours of work. From time to
11 time, when a meal break was provided, PLAINTIFF was required to remain on
12 DEFENDANT's premises, on-call and on-duty, and was interrupted with work.
13 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal
14 breaks without additional compensation and in accordance with DEFENDANT's strict
15 corporate policy and practice

16 14. During the CALIFORNIA CLASS PERIOD, from time to time,
17 PLAINTIFF and other CALIFORNIA CLASS Members were also required to work in
18 excess of four (4) hours without being provided ten (10) minute rest periods. Further,
19 these employees were denied their first rest period of at least ten (10) minutes for some
20 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least
21 ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a
22 first, second and third rest period of at least ten (10) minutes for some shifts worked of
23 ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members were
24 also not provided with one hour wages in lieu thereof. As a result of their rigorous work
25 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically
denied their proper rest periods by DEFENDANT and DEFENDANT's managers.
Additionally, the applicable California Wage Order requires employers to provide
employees with off-duty rest periods, which the California Supreme Court defined as

1 time during which an employee is relieved from all work related duties and free from
2 employer control. In so doing, the Court held that the requirement under California law
3 that employers authorize and permit all employees to take rest period means that
4 employers must relieve employees of all duties and relinquish control over how
5 employees spend their time which includes control over the locations where employees
6 may take their rest period. Employers cannot impose controls that prohibit an employee
7 from taking a brief walk – five minutes out, five minutes back. Here, DEFENDANT’s
8 policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from
9 unconstrained walks and was unlawful based on DEFENDANT’s rule which stated
10 PLAINTIFF and other CALIFORNIA CLASS Members could not leave the work
premises during their rest period.

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

14 16. When PLAINTIFF and other CALIFORNIA CLASS Members were not
15 paid all wages owed to them, and/or missed meal and rest breaks, DEFENDANT also
16 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
17 complete and accurate wage statements which failed to show, among other things, the
18 time worked, including, work performed in excess of eight (8) hours in a workday and/or
19 forty (40) hours in any workweek, and the correct penalty payments or missed meal and
20 rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of his
21 or her employees with an accurate itemized wage statement in writing showing, among
22 other things, gross wages earned and all applicable hourly rates in effect during the pay
23 period and the corresponding amount of time worked at each hourly rate. Aside, from the
24 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
25 itemized wage statement that lists all the requirements under California Labor Code 226
et seq., As a result, from time to time DEFENDANT provided PLAINTIFF and the other

1 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
2 Code § 226.

3 17. By reason of this uniform conduct applicable to PLAINTIFF and all
4 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition
5 in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,
6 *et seq.* (the “UCL”), by engaging in a company-wide policy and procedure which failed to
7 accurately calculate and record the correct time and overtime for the time worked by
8 PLAINTIFF and other CALIFORNIA CLASS Members. The proper recording of these
9 employees’ time is the DEFENDANT’s burden. As a result of DEFENDANT’s
10 intentional disregard of the obligation to meet this burden, DEFENDANT failed to
11 properly calculate and/or pay all required compensation for work performed by the
12 members of the CALIFORNIA CLASS and violated the California Labor Code and
13 regulations promulgated thereunder as herein alleged.

14 18. DEFENDANT as a matter of corporate policy, practice and procedure,
15 intentionally, knowingly and systematically failed to reimburse and indemnify the
16 PLAINTIFF and the other CALIFORNIA CLASS Members for required business
17 expenses incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in
18 direct consequence of discharging their duties on behalf of DEFENDANT. Under
19 California Labor Code Section 2802, employers are required to indemnify employees for
20 all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
21 2802 expressly states that "an employer shall indemnify his or her employee for all
22 necessary expenditures or losses incurred by the employee in direct consequence of the
23 discharge of his or her duties, or of his or her obedience to the directions of the employer,
24 even though unlawful, unless the employee, at the time of obeying the directions,
25 believed them to be unlawful."

26 19. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission (“IWC”) Wage Order,
28 DEFENDANT as a matter of company policy, practice and procedure, intentionally and

1 knowingly failed to compensate PLAINTIFF and the other members of the
2 CALIFORNIA CLASS for missed meal and rest periods. This uniform policy and
3 practice of DEFENDANT is intended to purposefully avoid the payment for all time
4 worked as required by California law which allows DEFENDANT to illegally profit and
5 gain an unfair advantage over competitors who complied with the law. To the extent
6 equitable tolling operates to toll claims by the CALIFORNIA CLASS against
7 DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

8 20. By reason of this uniform conduct applicable to PLAINTIFF and all
9 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition
10 in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,
11 et seq.(the “UCL”), by engaging in a company-wide policy and procedure which failed to
12 accurately calculate and record all missed meal and rest periods by PLAINTIFF and
13 other CALIFORNIA CLASS Members. The proper recording of these employees’
14 missed meal and rest breaks is the DEFENDANT’s burden. As a result of
15 DEFENDANT’s intentional disregard of the obligation to meet this burden,
16 DEFENDANT failed to properly calculate and/or pay all required compensation for work
17 performed by the members of the CALIFORNIA CLASS and violated the California
18 Labor Code and regulations promulgated thereunder as herein alleged.

19 21. Specifically as to PLAINTIFF’s pay, PLAINTIFF was from time to time
20 unable to take off duty meal and rest breaks and was not fully relieved of duty for his
21 meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT
22 for more than five (5) hours during a shift without receiving an off-duty meal break.
23 Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period
24 each workday in which she was required by DEFENDANT to work ten (10) hours of
25 work. PLAINTIFF therefore forfeited meal and rest breaks without additional
compensation and in accordance with DEFENDANT’s strict corporate policy and
practice. To date, DEFENDANT have not fully paid PLAINTIFF the minimum wage

1 and overtime compensation still owed to his or any penalty wages owed to them under
2 Cal. Lab. Code § 203.

3 22. Additionally, during the CALIFORNIA CLASS period, pursuant to
4 DEFENDANT's company policies and practices, PLAINTIFF and other CALIFORNIA
5 CLASS MEMBERS were forced to forfeit gratuities left for them by customers to
6 DEFENDANT'S agents who provided no service to the customers that resulted in the
7 gratuity. DEFENDANT has not remitted the total proceeds of these gratuities to
8 PLAINTIFF. INSTEAD, DEFENDANT has a policy and practice of retaining for itself a
9 portion of these gratuities and/or using a portion of these gratuities to pay managers or
10 other non-service employees. As a result, PLAINTIFFS and CALIFORNIA CLASS
11 Members have not received the total proceeds of the gratuities, to which they are entitled
12 to under California Law, pursuant to California Labor Code §351.

13 23. California Labor Code §351 establishes the requirements for an employer
14 regarding the payment of gratuities. Specifically, gratuities are the sole property of the
15 employees. California Labor Code §351 expressly prohibits employers and their agents
16 from collecting, taking, or receiving any portion of a gratuity. Labor Code §353 requires
17 employers to keep accurate record of all gratuities they receive, directly or indirectly.

18 24. At all times mentioned in this Complaint, DEFENDANT, OS PACIFIC,
19 LLC regularly employed 5 or more persons, bringing DEFENDANT within the
20 provisions of Gov. Code §§ 12900 *et seq.* and the corresponding regulations of the
21 California Fair Employment and Housing Commission.

22 25. On [date], PLAINTIFF filed a charge of discrimination with the California
23 Department of Fair Employment and Housing (DFEH). A true and correct copy of the
24 charge is attached to this Complaint as "Exhibit 2" and is incorporated by reference. On
25 [date] Plaintiff received a Notice of Right to Sue from the DFEH. A true and correct
copy of the notice is attached to this Complaint as "Exhibit 3" and is incorporated by
reference.

1 26. Throughout PLAINTIFF's employment DEFENDANT nurtured and
2 fostered an environment riddled with sexual harassment and inuendo from their
3 employees toward women.

4 27. Throughout PLAINTIFF's employment DEFENDANT Sean MacArthur
5 specifically created a hostile work environment, such as repeatedly made comments of a
6 sexual nature to and about PLAINTIFF in an offensive manner, touched PLAINTIFF in
7 an unwelcomed fashion, interfered with PLAINTIFF's performance of her job duties,
8 leered at PLAINTIFF in a sexually suggestive fashion, made sexually suggestive
9 comments to PLAINTIFF, all of which constituted unlawful sexual harassment.

10 28. PLAINTIFF ALLEGES THAT THE CONDUCT OF DEFENDANT
11 SEAN MACARTHUR, as described in this complaint, would have been offensive to any
12 man or woman. PLAINTIFF did not consent to such conduct, and found it unwelcomed
13 and offensive. DEFENDANTS' conduct rendered PLAINTIFF's employment
14 intolerable, and no reasonable person could have tolerated it.

15 29. PLAINTIFF complained to DEFENDANT OS PACIFIC, LLC about
16 SEAN MACARTHUR'S and other employees' harassment of PLAINTIFF. However,
17 none of the managerial employees took any action to cease the harassment and simply
18 told PLAINTIFF that was the nature of the job, and made her feel as if she was whining
19 and that she was so lucky to be employed in fine dining.

20 30. From April 2021 through the date of her constructive termination, Plaintiff
21 was a victim of continuous sexual harassment from Roy's Restaurant Manager Sean
22 MacArthur. The sexual harassment from Mr. MacArthur started with flirting and
23 progressed over time as Mr. MacArthur became more comfortable harassing
24 PLAINTIFF. Some of the sexual harassment from Mr. MacArthur consisted of, but was
25 not limited to: physically grabbing PLAINTIFF, inappropriately touching PLAINTIFF,
asking her to perform tasks where she would have to bend down wearing a dress, and
saying inappropriate things to PLAINTIFF.

1 31. The inappropriate behavior by Mr. MacArthur was witnessed by Roy's
2 Restaurant co-workers.

3 32. Due to DEFENDANT'S conduct, PLAINTIFF was forced to resign.

4 33. DEFENDANTS' conduct as described in this Complaint was malicious and
5 was intended to oppress, humiliate, and denigrate PLAINTIFF and was totally without
6 justification. PLAINTIFF further alleges that the conduct of DEFENDANTS in insulting,
7 embarrassing, and sexually harassing PLAINTIFF, was done under color of law, taken in
8 the course and scope of carrying out official duties and was made while DEFENDANT
9 SEAN MACARTHUR was on duty, was only possible due to defendant employee's
10 official status as PLAINTIFF'S superior, was related to his performance of his official
11 duties and was done in his capacity as a member of DEFENDANT employer's personnel
12 while acting pursuant to his official duty, and interfered with PLAINTIFF'S ability to
13 perform PLAINTIFF'S duties.

14 34. PLAINTIFF further alleges that DEFENDANT was aware or should have
15 been aware of such conduct by SEAN MACARTHUR and its other employees because
16 PLAINTIFF complained of his conduct to managerial employees and agents of
17 DEFENDANT OS PACIFIC LLC, as alleged above. However, no action reasonably
18 designed to remedy the situation was taken on the complaints and the harassment
19 continued.

20 **JURISDICTION AND VENUE**

21 1. This Court has jurisdiction over this Action pursuant to California Code of
22 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
23 17203. This action is brought individually and as a Class Action on behalf of
24 PLAINTIFF and similarly situated employees of DEFENDANT pursuant to Cal. Code of
25 Civ. Proc. § 382.

 2. Venue is proper in this Court pursuant to California Code of Civil Procedure,
Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant
times maintained offices and facilities in this County and/or conducts substantial business

1 in this County, and (ii) committed the wrongful conduct herein alleged in this County
2 against members of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-
3 CLASS.

4 **THE CALIFORNIA CLASS**

5 3. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
6 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
7 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
8 California class, defined as all individuals who are or previously were employed by
9 Defendant and/or Defendant in California and classified as non-exempt employees (the
10 "CALIFORNIA CLASS") at any time between November 1, 2017 and the date as
11 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
12 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
13 million dollars (\$5,000,000.00).

14 4. To the extent equitable tolling operates to toll claims by the CALIFORNIA
15 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
16 accordingly.

17 5. The CALIFORNIA CLASS is so numerous that joinder of all
18 CALIFORNIA CLASS Members is impracticable.

19 6. DEFENDANT, as a matter of company policy, practice and procedure, and
20 in violation of the applicable Labor Code, Industrial Welfare Commissions ("IWC") Wage
21 Order requirements, and the applicable provisions of California law, intentionally,
22 knowingly, and willfully, engages in practice whereby DEFENDANT fails to record all
23 meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members,
24 even though DEFENDANT enjoys the benefit of this work, requires employees to perform
25 this work and permits or suffers to permit this work.

7. DEFENDANT has the legal burden to establish that each and every
CALIFORNIA CLASS Members was paid accurately for all meal and rest breaks missed
as required by California Laws. The DEFENDANT, however, as a matter of policy and

1 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails
2 to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
3 Member is paid as required by law. This common business practice is applicable to each
4 and every CALIFORNIA CLASS Members can be adjudicated on a class-wide basis as
5 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et*
6 *seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

7 8. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS
8 under California law by:

- 9 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
10 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
11 company policies, practices and procedures that failed to pay all wages due
12 the CALIFORNIA CLASS for all minimum wages and overtime worked.
- 13 b. Committing an act of unfair competition in violation of the California Unfair
14 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
15 provide mandatory meal and/or rest breaks to PLAINTIFF and the
16 CALIFORNIA CLASS members;
- 17 c. Committing an act of unfair competition in violation of the California Unfair
18 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by violating
19 Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
20 CALIFORNIA CLASS Members with necessary expenses incurred in the
21 discharge of their job duties.

22 9. The Class Action meets the statutory prerequisites for the maintenance of a
23 Class Action 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
25 the joinder of all such persons is impracticable and the disposition of their
claims as a class will benefit the parties and the Court;

- 1 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues
2 that are raised in this Complaint are common to the CALIFORNIA CLASS
3 will apply uniformly to every member of the CALIFORNIA CLASS;
- 4 c. The claims of the representative PLAINTIFF are typical of the claims of
5 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other
6 members of the CALIFORNIA CLASS, was subjected to the uniform
7 employment practices of DEFENDANT and was a non-exempt employee
8 paid on an hourly basis and paid additional non-discretionary incentive
9 wages who was subjected to the DEFENDANT's practice and policy which
10 failed to pay the correct rate of overtime wages due to the CALIFORNIA
11 CLASS for all overtime worked by the CALIFORNIA CLASS and thereby
12 systematically under pays overtime compensation to the CALIFORNIA
13 CLASS. PLAINTIFF sustained economic injury as a result of
14 DEFENDANT's employment practices. PLAINTIFF and the members of
15 the CALIFORNIA CLASS were and are similarly or identically harmed by
16 the same unlawful, deceptive, unfair and pervasive pattern of misconduct
17 engaged in by DEFENDANT; and
- 18 d. The representative PLAINTIFF will fairly and adequately represent and
19 protect the interest of the CALIFORNIA CLASS, and has retained counsel
20 who are competent and experienced in Class Action litigation. There are no
21 material conflicts between the claims of the representative PLAINTIFF and
22 the members of the CALIFORNIA CLASS that would make class
23 certification inappropriate. Counsel for the CALIFORNIA CLASS will
24 vigorously assert the claims of all CALIFORNIA CLASS Members.

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

- 1 a. Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution of
3 separate actions by individual members of the CALIFORNIA CLASS will
4 create the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA CLASS; and/or;
 - 9 ii. Adjudication with respect to individual members of the
10 CALIFORNIA CLASS which would as a practical matter be
11 dispositive of interests of the other members not party to the
12 adjudication or substantially impair or impede their ability to protect
13 their interests.
- 14 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act
15 on grounds generally applicable to the CALIFORNIA CLASS, making
16 appropriate class-wide relief with respect to the CALIFORNIA CLASS as a
17 whole in that DEFENDANT uniformly failed to pay all wages due, including
18 the correct overtime rate, for all time worked by the members of the
19 CALIFORNIA CLASS as required by law;
- 20 i. With respect to the First Cause of Action, the final relief on behalf of
21 the CALIFORNIA CLASS sought does not relate exclusively to
22 restitution because through this claim PLAINTIFF seek declaratory
23 relief holding that the DEFENDANT's policy and practices constitute
24 unfair competition, along with declaratory relief, injunctive relief,
25 and incidental equitable relief as may be necessary to prevent and
remedy the conduct declared to constitute unfair competition;
- c. Common questions of law and fact exist as to the members of the
CALIFORNIA CLASS, with respect to the practices and violations of

1 California law as listed above, and predominate over any question affecting
2 only individual CALIFORNIA CLASS Members, and a Class Action is
3 superior to other available methods for the fair and efficient adjudication of
4 the controversy, including consideration of:

5 i. The interests of the members of the CALIFORNIA CLASS in
6 individually controlling the prosecution or defense of separate actions
7 in that the substantial expense of individual actions will be avoided
8 to recover the relatively small amount of economic losses sustained
9 by the individual CALIFORNIA CLASS Members when compared
10 to the substantial expense and burden of individual prosecution of this
11 litigation;

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

14 1. Inconsistent or varying adjudications with respect to
15 individual members of the CALIFORNIA CLASS, which
16 would establish incompatible standards of conduct for the
17 DEFENDANT; and/or;

18 2. Adjudications with respect to individual members of the
19 CALIFORNIA CLASS would as a practical matter be
20 dispositive of the interests of the other members not parties to
21 the adjudication or substantially impair or impede their ability
22 to protect their interests;

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

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

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

- 8 a. The questions of law and fact common to the CALIFORNIA CLASS
9 predominate over any question affecting only individual CALIFORNIA
10 CLASS Members because the DEFENDANT's employment practices are
11 uniform and systematically applied with respect to the CALIFORNIA
12 CLASS.
- 13 b. A Class Action is superior to any other available method for the fair and
14 efficient adjudication of the claims of the members of the CALIFORNIA
15 CLASS because in the context of employment litigation a substantial
16 number of individual CALIFORNIA CLASS Members will avoid asserting
17 their rights individually out of fear of retaliation or adverse impact on their
18 employment;
- 19 c. The members of the CALIFORNIA CLASS are so numerous that it is
20 impractical to bring all members of the CALIFORNIA CLASS before the
21 Court;
- 22 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
23 able to obtain effective and economic legal redress unless the action is
24 maintained as a Class Action;
- 25 e. There is a community of interest in obtaining appropriate legal and equitable
relief for the acts of unfair competition, statutory violations and other
improprieties, and in obtaining adequate compensation for the damages and

1 injuries which DEFENDANT's actions have inflicted upon the
2 CALIFORNIA CLASS;

- 3 f. There is a community of interest in ensuring that the combined assets of
4 DEFENDANT are sufficient to adequately compensate the members of the
5 CALIFORNIA CLASS for the injuries sustained;
- 6 g. DEFENDANT has acted or refused to act on grounds generally applicable
7 to the CALIFORNIA CLASS, thereby making final class-wide relief
8 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 9 h. The members of the CALIFORNIA CLASS are readily ascertainable from
10 the business records of DEFENDANT; and
- 11 i. Class treatment provides manageable judicial treatment calculated to bring
12 an efficient and rapid conclusion to all litigation of all wage and hour related
13 claims arising out of the conduct of DEFENDANT as to the members of the
14 CALIFORNIA CLASS.

15 12. DEFENDANT maintains records from which the Court can ascertain and
16 identify by job title each of DEFENDANT's employees who as have been systematically,
17 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
18 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to
19 include any additional job titles of similarly situated employees when they have been
20 identified.

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 13. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
20 and Eighth causes of Action on behalf of a California sub-class, defined as all members of
21 the CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA
22 LABOR SUB-CLASS") at any time during the period beginning 3 years before the filing
23 of the complaint and ending on the date as determined by the Court (the "CALIFORNIA
24 LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount

1 in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members
2 is under five million dollars (\$5,000,000.00).

3 14. DEFENDANT, as a matter of company policy, practice and procedure, and
4 in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage
5 Order requirements, and the applicable provisions of California law, intentionally,
6 knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to correctly
7 pay for all time worked by PLAINTIFF and the other members of the CALIFORNIA
8 LABOR SUB-CLASS, even though DEFENDANTS enjoyed the benefit of this work,
9 required employees to perform this work and permitted or suffered to permit this overtime
10 work. DEFENDANT have uniformly denied these CALIFORNIA LABOR SUB-CLASS
11 Members minimum and overtime wages at the correct amount to which these employees
12 are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent
13 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
14 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be
15 adjusted accordingly.

16 15. DEFENDANT maintain records from which the Court can ascertain and
17 identify by name and job title, each of DEFENDANT’s employees who have been
18 systematically, intentionally and uniformly subjected to DEFENDANT’s company policy,
19 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the
20 complaint to include any additional job titles of similarly situated employees when they
21 have been identified.

22 16. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
23 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- a. Whether DEFENDANT unlawfully failed to pay minimum and overtime
compensation to members of the CALIFORNIA LABOR SUB-CLASS in

violation of the California Labor Code and California regulations and the applicable California Wage Order;

- b. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to overtime compensation for overtime worked under the overtime pay requirements of California law;
- c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- d. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- e. Whether DEFENDANT have engaged in unfair competition by the above-listed conduct;
- f. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- g. Whether DEFENDANT's conduct was willful.

18. DEFENDANT, as a matter of company policy, practice and procedure, failed to accurately pay for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide accurate records of the time worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS Members, including PLAINTIFF, were non-exempt employees who were paid on an hourly basis by DEFENDANT according to uniform and systematic company procedures as alleged herein above. This business practice was uniformly applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

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

- a. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- b. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT are liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing time worked at by the employee;
- e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

20. 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 LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

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

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

- 1 a. Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution of
3 separate actions by individual members of the CALIFORNIA LABOR SUB-
4 CLASS will create the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUB-CLASS which would
7 establish incompatible standards of conduct for the parties opposing
8 the CALIFORNIA LABOR SUB-CLASS; or
 - 9 ii. Adjudication with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS which would as a practical
11 matter be dispositive of interests of the other members not party to
12 the adjudication or substantially impair or impede their ability to
13 protect their interests.
- 14 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
15 or refused to act on grounds generally applicable to the CALIFORNIA
16 LABOR SUB-CLASS, making appropriate class-wide relief with respect to
17 the CALIFORNIA LABOR SUB-CLASS as a whole in that
18 DEFENDANTS uniformly failed to pay all wages due, including the correct
19 overtime rate, for all overtime worked by the members of the CALIFORNIA
20 LABOR SUB-CLASS as required by law;
- 21 c. Common questions of law and fact predominate as to the members of the
22 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
23 violations of California Law as listed above, and predominate over any
24 question affecting only individual CALIFORNIA LABOR SUB-CLASS
25 Members, and a Class Action is superior to other available methods for the
fair and efficient adjudication of the controversy, including consideration of:
- i. The interests of the members of the CALIFORNIA LABOR SUB-
CLASS in individually controlling the prosecution or defense of

1 separate actions in that the substantial expense of individual actions
2 will be avoided to recover the relatively small amount of economic
3 losses sustained by the individual CALIFORNIA LABOR SUB-
4 CLASS Members when compared to the substantial expense and
burden of individual prosecution of this litigation;

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

7 1. Inconsistent or varying adjudications with respect to
8 individual members of the CALIFORNIA LABOR SUB-
9 CLASS, which would establish incompatible standards of
conduct for the DEFENDANTS; and/or,

10 2. Adjudications with respect to individual members of the
11 CALIFORNIA LABOR SUB-CLASS would as a practical
12 matter be dispositive of the interests of the other members not
13 parties to the adjudication or substantially impair or impede
14 their ability to protect their interests;

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

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

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

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

1 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
2 CLASS as a whole;

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

12 **FIRST CAUSE OF ACTION**

13 **UNLAWFUL BUSINESS PRACTICES**

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

15 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

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

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

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

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

15 28. By the conduct alleged herein, DEFENDANT's practices were deceptive
16 and fraudulent in that DEFENDANT's uniform policy and practice failed to pay
17 PLAINTIFF, and other members of the CALIFORNIA CLASS, minimum wages, wages
18 due for overtime worked, and failed to provide the required amount of overtime
19 compensation, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
20 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which
21 this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
§ 17203, including restitution of wages wrongfully withheld.

22 29. By the conduct alleged herein, DEFENDANT's practices were also
23 unlawful, unfair and deceptive in that DEFENDANT's employment practices caused
24
25

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

3 30. By the conduct alleged herein, DEFENDANT's practices were also unfair
4 and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to
5 provide all legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA
6 CLASS members as required by Cal. Lab. Code §§226.7 and 512.

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

12 32. PLAINTIFF further demands on behalf of himself and on behalf of each
13 CALIFORNIA CLASS member and CALIFORNIA LABOR SUB-CLASS, one (1) hour
14 of pay for each workday in which an off duty rest period rest period was not timely
15 provided as required by law.

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

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

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

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

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

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

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

19 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against**

20 **ALL Defendants)**

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

24 39. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
California Labor Code and the Industrial Welfare Commission requirements for

1 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF
2 and CALIFORNIA CLASS Members.

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

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

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

11 43. DEFENDANT maintains a uniform wage practice of paying PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the
13 correct amount of time they work. As set forth herein, DEFENDANT's uniform policy
14 and practice was to unlawfully and intentionally deny timely payment of wages due to
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

16 44. DEFENDANT's uniform pattern of unlawful wage and hour practices
17 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as
18 a whole, as a result of implementing a uniform policy and practice that denies accurate
19 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
20 CLASS in regards to minimum wage pay.

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

46. As a direct result of DEFENDANT's unlawful wage practices as alleged
herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

1 did not receive the correct reporting time pay and minimum wage compensation for their
2 time worked for DEFENDANT.

3 47. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
4 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
5 worked than they were entitled to, constituting a failure to pay all earned wages.
6 DEFENDANT fails to accurately pay the PLAINTIFF and members of the CALIFORNIA
7 LABOR SUB-CLASS the wages for the time they work in accordance with 1197 &
8 1197.1, even though the PLAINTIFF and the other members of the CALIFORNIA
9 LABOR SUB-CLASS are regularly required, permitted or suffered to work, and do in fact
work, off the clock time as to which DEFENDANT fails to accurately record and pay as
evidence by DEFENDANT's business records and witnessed by employees.

10 48. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
11 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
12 CLASS for the true time they worked, PLAINTIFF and the other members of the
13 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
14 economic injury in amounts which are presently unknown to them and which will be
ascertained according to proof at trial.

15 49. DEFENDANT knew or should have known that PLAINTIFFS and the other
16 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
17 time worked. DEFENDANTS systematically elected, either through intentional
18 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of
19 uniform company policy, practice and procedure, and DEFENDANTS perpetrated this
20 systematic scheme by refusing to pay PLAINTIFF and the other members of the
CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

21 50. In performing the acts and practices herein alleged in violation of California
22 labor laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-
23 CLASS for all time worked and provide them with requisite compensation,
24 DEFENDANTS acted and continue to act intentionally, oppressively, and maliciously
toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS

1 with conscious and utter disregard for their legal rights, or the consequences to them, and
2 with the despicable intent of depriving them of their property and legal rights, and
3 otherwise causing them injury in order to increase company profits at the expense of these
4 employees.

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

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PAY OVERTIME COMPENSATION**

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

20 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against**
21 **ALL Defendants)**

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

25 53. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
CLASS bring a claim for DEFENDANT's willful and intentional violations of the
California Labor Code and the Industrial Welfare Commission requirements for
DEFENDANT's failure to properly compensate the members of the CALIFORNIA
LABOR SUB-CLASS for all overtime worked, including, work performed in excess of

1 eight (8) hours in a workday and/or twelve (12) hours in a workday, and/or forty (40) hours
2 in any workweek.

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

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

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

14 57. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
15 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
16 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
17 including overtime work.

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

59. In committing these violations of the California Labor Code, DEFENDANT
inaccurately records overtime worked and consequently underpays the overtime worked
by PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members.
DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and

1 other benefits in violation of the California Labor Code, the Industrial Welfare
2 Commission requirements and other applicable laws and regulations.

3 60. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
4 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
5 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
6 including overtime work.

7 61. As a direct result of DEFENDANT'S unlawful wage practices as alleged
8 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
9 did not receive full compensation for all overtime worked.

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

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

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

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

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

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

68. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and

1 therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
2 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR
3 SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,
4 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR
SUB-CLASS Members are entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

23 71. DEFENDANT further violated California Labor Code §§ 226.7 and the
24 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA

1 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with
2 the applicable Wage Order, one additional hour of compensation at each employee's
3 regular rate of pay for each workday that a meal period was not provided.

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

8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

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

75. DEFENDANT further violated California Labor Code §§ 226.7 and the
applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
LABOR SUB-CLASS Members who were not provided a rest period, in accordance with

1 the applicable Wage Order, one additional hour of compensation at each employee's
2 regular rate of pay for each workday that rest period was not provided.

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

7 **SIXTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

9 **(Cal. Lab. Code § 226)**

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

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

15 78. Cal. Labor Code § 226 provides that an employer must furnish employees
16 within "accurate itemized" statement in writing showing:

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

1 number or an employee identification number other than a social security
2 number may be shown on the itemized statement;

3 h. The name and address of the legal entity that is the employer; and

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

6 79. When PLAINTIFF and other CALIFORNIA CLASS Members were not
7 paid all wages owed to them and/or missed meal and rest breaks, DEFENDANT also failed
8 to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
9 complete and accurate wage statements which failed to show, among other things, the
10 correct gross and net wages earned, including, work performed in excess of eight (8) hours
11 in a workday and/or forty (40) hours in any workweek, and the correct penalty payments
12 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
13 furnish each of his or her employees with an accurate itemized wage statement in writing
14 showing, among other things, gross wages earned and all applicable hourly rates in effect
15 during the pay period and the corresponding amount of time worked at each hourly rate.
16 Aside from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an
17 itemized wage statement that lists all the requirements under California Labor Code 226
18 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other
19 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
20 Code § 226.

21 80. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
22 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
23 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to,
24 costs expended calculating the time worked and the amount of employment taxes which
25 were not properly paid to state and federal tax authorities. These damages are difficult to
estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR
SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for

1 each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount
2 according to proof at the time of trial (but in no event more than four thousand dollars
3 (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR
4 SUB-CLASS herein.

5 **SEVENTH CAUSE OF ACTION**
6 **FAILURE TO PAY WAGES WHEN DUE**

7 **(Cal. Lab. Code §§201, 202, 203)**
8 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against**
9 **all Defendants)**

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

13 82. Cal. Lab. Code § 200 provides, in relevant part, that:

14 As used in this article:

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

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

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

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

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

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

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

5 86. Cal. Lab. Code § 203 provides:

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

9 87. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
10 CLASS Members terminated and DEFENDANT have not tendered payment of overtime
11 wages, to these employees who actually worked overtime, as required by law.

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

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO PAY STATUTORY GRATUITIES**

19 **(Cal. Lab. Code §§ 351, *et seq.*)**

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

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

25 90. DEFENDANT's conduct, as set forth above, in failing to remit to non-
managerial employees the total proceeds of gratuities constitutes a violation of California

1 Labor Code § 351. The violation is enforceable pursuant to the California Unfair
2 Competition Law, Cal. Bus. And Prof. Code 17200 et seq. DEFENDANT's conduct
3 constitutes unlawfully, unfair, And/or fraudulent business acts or practices, in that
4 DEFENDANT has violated California Labor Code Section 351 is not remitting to the non-
managerial service employees the total gratuities.

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

9 **NINTH CAUSE OF ACTION**
10 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**
11 **[Cal. Lab. Code §§ 2698 et seq.]**
(Alleged by PLAINTIFF against all Defendants)

12 92. PLAINTIFF realleges and incorporate by this reference, as though fully set
13 forth herein, the prior paragraphs of this Complaint.

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

24 94. PLAINTIFF, and such persons that may be added from time to time who
25 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 herself and all individuals who are or previously were employed by

1 DEFENDANT in California during the time period of September 22, 2020 until the present
2 (the "AGGRIEVED EMPLOYEES").

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

10 96. The policies, acts and practices heretofore described were and are an
11 unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and
12 other AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to
13 provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and
14 rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
15 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
16 §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
17 226(a), 226.7, 227.3, 246, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802 and the
18 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result
19 of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
20 Labor Code Private Attorney General Act of 2004 as the representative of the State of
California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
EMPLOYEES.

21 97. Some or all of the conduct and violations alleged herein occurred during the
22 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did
23 not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those
24 violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks*
Corp. (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA,*

1 *Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person
2 affected by **at least one** Labor Code violation committed by an employer—to **pursue**
3 **penalties for all the Labor Code violations committed by that employer.**”], Emphasis
4 added, reh'g denied (June 13, 2018).)

5 **TENTH CAUSE OF ACTION**
6 **HOSTILE WORK ENVIRONMENT**
7 **[Cal. Gov. Code §§ 12900 *et seq.*]**

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

9 98. PLAINTIFF realleges and incorporate by reference, as though fully set forth
10 herein, the prior paragraphs of the Complaint.

11 99. Commencing in May 2019 and continuing through her constructive
12 termination of July 5, 2021, PLAINTIFF was subjected to a pattern of sexual harassment
13 by employees of DEFENDANT, including SEAN MACARTHUR as previously alleged.

14 100. The foregoing conduct by DEFENDANTS was based on sexual harassment
15 and created an intimidating and hostile work environment. Such conduct constitutes illegal
16 harassment in violation of Government Code section 12940 *et seq* and other provisions of
17 FEHA.

18 101. DEFENDANT OS PACIFIC, LLC is strictly liable for said harassment by
19 its employees, including SEAN MACARTHUR because of his managerial position with
20 the company.

21 102. DEFENDANT OS PACIFIC, LLC is also independently liable, because they
22 knew or should have known of its illegal harassment and failed to take immediate and
23 appropriate corrective action. Such conduct violates Government Code section 12940 *et*
24 *seq.*

25 103. As a direct and proximate result of DEFENDANTS’ above described
harassment in violation of the California Fair Employment and Housing Act Government
Code Section 12900 *et seq.* PLAINTIFF has suffered and will continue to suffer actual
damages, including lost earnings, and other employment benefits, in the sum in excess of
the jurisdictional limit of this Court, the exact amount of which is not yet known, which
amount will be proved at the time of trial.

1 104. As a direct and proximate result DEFENDANTS' above described
2 harassment in violation of California Fair Employment and Housing Act government Code
3 Section 12900 *et seq.* Plaintiff was required to and did seek medical attention, and will
4 need medical attention in the future all to PLAINTIFF's damages in a sum according to
5 proof.

6 105. PLAINTIFF was required to retain counsel to bring this action and is entitled
7 to an award of attorney's fees under Government Code §12965(b) according to proof.
8 Plaintiff is presently unaware of the precise amount of these expenses and fees and prays
9 leave of court to amend this Complaint when the amounts are more fully known.

10 106. As a further direct and proximate result of DEFENDANTS' above-described
11 harassment in violation of the California Fair Employment and Housing Act Government
12 Code Section 12900 *et seq.*, PLAINTIFF has suffered and will continue to suffer non-
13 economic damages in a sum in excess of the jurisdictional limit of this Court, the exact
14 amount of which is not yet known, which amount will be proved at the time of trial

15 107. The aforementioned acts taken toward PLAINTIFF were taken, authorized
16 and ratified by DEFENDANTS' officers, directors, and managerial and supervisory
17 employees who participated in the unlawful conduct as alleged above or who failed to take
18 remedial measures after becoming aware of said unlawful acts. The aforementioned acts
19 were carried out by DEFENDANTS in a malicious, willful and oppressive manner with
20 the intent to injure and damage PLAINTIFF. The aforementioned acts of DEFENDANTS
21 were willful, oppressive, malicious and fraudulent, and were done in conscious disregard
22 of the rights of PLAINTIFF, in that DEFENDANTS' sexual harassment was done with
23 intent to injure PLAINTIFF and with the intent to prevent the exercise of her statutory
24 rights and obligations. PLAINTIFF is therefore entitled to punitive damages in an amount
25 which will be proved at the time of trial.

ELEVENTH CAUSE OF ACTION
SEXUAL HARASSMENT
[Cal. Gov. Code §§ 12940 *et seq.*]
(Alleged by PLAINTIFF against all Defendants)

1 108. PLAINTIFF realleges and incorporate by reference, as though fully set forth
2 herein, the prior paragraph of the Complaint.

3 109. Commencing in May 2019 and continuing through her constructive
4 termination of July 5, 2021, PLAINTIFF was subjected to a pattern of sexual harassment
5 by employees of DEFENDANT, including SEAN MACARTHUR as previously alleged.

6 110. The foregoing conduct by DEFENDANTS was based on sexual harassment
7 and created an intimidating and hostile work environment. Such conduct constitutes illegal
8 harassment in violation of Government Code section 12940 *et seq* and other provisions of
9 FEHA.

10 111. OS PACIFIC, LLC is strictly liable for said harassment by its employees,
11 including SEAN MACARTHUR because of his managerial position with the company.

12 112. OS PACIFIC, LLC is also independently liable, because they knew or should
13 have known of its illegal harassment and failed to take immediate and appropriate
14 corrective action. Such conduct violates Government Code section 12940 *et seq*.

15 113. As a direct and proximate result of DEFENDANTS' above described
16 harassment in violation of the California Fair Employment and Housing Act Government
17 Code Section 12900 *et seq*. PLAINTIFF has suffered and will continue to suffer actual
18 damages, including lost earnings, and other employment benefits, in the sum in excess of
19 the jurisdictional limit of this Court, the exact amount of which is not yet known, which
20 amount will be proved at the time of trial.

21 114. As a direct and proximate result DEFENDANTS' above described
22 harassment in violation of California Fair Employment and Housing Act government Code
23 Section 12900 *et seq*. Plaintiff was required to and did seek medical attention, and will
24 need medical attention in the future all to PLAINTIFF's damages in a sum according to
25 proof.

 115. PLAINTIFF was required to retain counsel to bring this action and is entitled
to an award of attorney's fees under Government Code §12965(b) according to proof.
Plaintiff is presently unaware of the precise amount of these expenses and fees and prays
leave of court to amend this Complaint when the amounts are more fully known.

1 116. As a further direct and proximate result of DEFENDANTS' above-described
2 harassment in violation of the California Fair Employment and Housing Act Government
3 Code Section 12900 et seq., PLAINTIFF has suffered and will continue to suffer non-
4 economic damages in a sum in excess of the jurisdictional limit of this Court, the exact
amount of which is not yet known, which amount will be proved at the time of trial

5 117. The aforementioned acts taken toward PLAINTIFF were taken, authorized
6 and ratified by DEFENDANTS' officers, directors, and managerial and supervisory
7 employees who participated in the unlawful conduct as alleged above or who failed to take
8 remedial measures after becoming aware of said unlawful acts. The aforementioned acts
9 were carried out by DEFENDANTS in a malicious, willful and oppressive manner with
10 the intent to injure and damage PLAINTIFF. The aforementioned acts of DEFENDANTS
11 were willful, oppressive, malicious and fraudulent, and were done in conscious disregard
12 of the rights of PLAINTIFF, in that DEFENDANTS' sexual harassment was done with
13 intent to injure PLAINTIFF and with the intent to prevent the exercise of her statutory
rights and obligations. PLAINTIFF is therefore entitled to punitive damages in an amount
which will be proved at the time of trial.

14 **TWELFTH CAUSE OF ACTION**

15 **FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT IN
VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT**

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

17 118. PLAINTIFF realleges and incorporate by reference, as though fully set forth
herein, the prior paragraph of the Complaint.

18 119. DEFENDANTS are employers in the State of California, as defined by
19 FEHA.

20 120. DEFENDANT failed to take all reasonable steps necessary to prevent sexual
21 harassment and discrimination against PLAINTIFF, because of her sex and gender,
female; and a hostile work environment in its workplace.

22 121. DEFENDANT had inadequate policies and procedures, and failed to
23 implement or enforce the policies and procedures they did have, to prevent harassment and
24 discrimination in the workplace.

1 122. As a legal and proximate result of DEFENDANTS' actions, PLAINTIFF
2 suffered special and general damages in an amount to be proven at trial.

3 123. The Conduct of DEFENDANTS and their agents and employees as
4 described herein was oppressive, fraudulent, and malicious, done in conscious disregard
5 of Plaintiff's rights, and done by managerial employees of DEFENDANTS.
6 DEFENDANT allowed and fostered an environment in which harassment flourished.
7 PLAINTIFF is thereby entitled to an award of punitive damages against DEFENDANTS,
8 in an amount appropriate to punish and make an example of DEFENDANTS, and in an
9 amount to conform to proof.

10 **THIRTEENTH CAUSE OF ACTION**
11 **NEGLIGENT HIRE, SUPERVISION OR RETENTION OF EMPLOYEE**
12 **(Alleged by PLAINTIFF against all Defendants)**

13 124. PLAINTIFF realleges and incorporate by reference, as though fully set forth
14 herein, the prior paragraph of the Complaint.

15 125. By engaging in the acts and omissions detailed herein, DEFENDANTS have
16 violated State of California's laws prohibiting the negligent hiring, supervision or retention
17 of an employee.

18 126. As a proximate result of the acts and omissions of DEFENDANTS, as detailed
19 above, PLAINTIFF has suffered and will continue to sustain substantial losses in earnings
20 and other employment benefits. PLAINTIFF is thereby entitled to an award of special
21 damages in amounts to be proven at trial.

22 127. As a proximate result of the acts and omissions of DEFENDANTS, as detailed
23 above. PLAINTIFF has suffered and will continue to suffer pain and suffering, extreme and
24 severe mental anguish and emotional distress. PLAINTIFF is thereby entitled to general and
25 compensatory damages in amounts to be proven at trial.

26 **FOURTEENTH CAUSE OF ACTION**
27 **CONSTRUCTIVE DISCHARGE IN VIOLATION OF FEHA**
28 **(Government Code §12490(f))**
29 **(Alleged by PLAINTIFF against all Defendants)**

30 128. PLAINTIFF realleges and incorporate by reference, as though fully set forth
31 herein, the prior paragraph of the Complaint.

1 129. Defendants conduct set forth in this complaint effectively forced
2 PLAINTIFF to resign from her position.

3 130. A reasonable person in PLAINTIFF's shoes and faced with the conduct set
4 forth in this Complaint would consider the working conditions intolerable and have felt
5 compelled to resign. PLAINTIFF herself felt physically ill and her health was placed in
6 jeopardy. The constant leering, physical touching, and verbal sexualization and
7 objectification of her sex and gender created an intolerable environment.

8 131. DEFENDANT'S managing agents, and each of them, had actual knowledge
9 of the intolerable conditions because PLAINTIFF informed DEFENDANT of the
10 conditions and DEFENDANT failed to remedy the situation in order to force PLAINTIFF
11 to resign.

12 132. As a proximate result of the acts and omissions of DEFENDANTS, as detailed
13 above, PLAINTIFF has suffered and will continues to sustain substantial losses in earnings
14 and other employment benefits. PLAINTIFF is thereby entitled to an award of special
15 damages in amounts to be proven at trial.

16 133. As a proximate result of the acts and omissions of DEFENDANTS, as detailed
17 above, PLAINTIFF has suffered and will continue to suffer pain and suffering, extreme and
18 severe mental anguish and emotional distress. PLAINTIFF is thereby entitled to general and
19 compensatory damages in amounts to be proven at trial.

20 134. The aforementioned conduct by DEFENDANTS was willful, wanton, and
21 malicious. At all relevant times, DEFENDANTS acted with conscious disregard of
22 PLAINTIFF's rights and feelings. DEFENDANTS also acted with the knowledge of or with
23 reckless disregard for the fact that their conduct was certain to cause injury and/or
24 humiliation to PLAINTIFF. PLAINTIFF is further informed and believes that
25 DEFENDANTS intended to cause fear, physical injury and/or pain and suffering to
PLAINTIFF. By virtue of the foregoing, PLAINTIFF is entitled to recover punitive and
exemplary damages from DEFENDANTS according to proof at trial.

FIFTEENTH CAUSE OF ACTION
DISCRIMINATION BASED ON SEX AND GENDER IN VIOLATION OF
PUBLIC POLICY

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

2 135. PLAINTIFF realleges and incorporate by reference, as though fully set forth
3 herein, the prior paragraph of the Complaint.

4 136. At all times herein mentioned, PLAINTIFF was a female person fully
5 competent to perform the duties to which she was assigned.

6 137. DEFENDANTS discriminated against PLAINTIFF on the basis of her sex
7 and gender, female, harassed PLAINTIFF on the basis of her sex and gender (female), all
8 in violation of public policy.

9 138. This discrimination to which PLAINTIFF was subjected by DEFENDANTS
10 was severe and pervasive, were an ongoing and continuous course of conduct and created a
11 hostile work environment.

12 139. As a proximate result of the acts and omissions of DEFENDANTS, as detailed
13 above, PLAINTIFF has suffered and will continues to sustain substantial losses in earnings
14 and other employment benefits. PLAINTIFF is thereby entitled to an award of special
15 damages in amounts to be proven at trial.

16 140. As a proximate result of the acts and omissions of DEFENDANTS, as detailed
17 above. PLAINTIFF has suffered and will continue to suffer pain and suffering, extreme and
18 severe mental anguish and emotional distress. PLAINTIFF is thereby entitled to general and
19 compensatory damages in amounts to be proven at trial.

20 **SIXTHTEENTH CAUSE OF ACTION**
21 **DISCRIMINATION BASED ON SEX AND GENDER IN VIOLATION OF**
22 **CALIFORNIA FEHA**

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

24 1. PLAINTIFF realleges and incorporate by reference, as though fully set forth
25 herein, the prior paragraph of the Complaint.

 2. At all times herein mentioned, PLAINTIFF was a female person fully
competent to perform the duties to which she was assigned.

 3. DEFENDANTS discriminated against PLAINTIFF on the basis of her sex
and gender, female, harassed PLAINTIFF on the basis of her sex and gender (female), all
in violation of the California Fair Employment and Housing Act (FEHA).

1 4. DEFENDANTS, discriminated against PLAINTIFF on the basis of her sex
2 and female gender all in violation of FEHA.

3 5. DEFENDANTS aided and abetted DEFENDANTS in engaging in unlawful
4 conduct on the basis of sex against female employees, including subjecting PLAINTIFF to
sexual discrimination because of her sex, female gender in violation of FEHA.

5 6. FEHA prohibits discrimination in employment based on sex, Gov. Code §§
6 12940-12941.

7 7. As a proximate result of the acts and omissions of DEFENDANTS, as detailed
8 above, PLAINTIFF has suffered and will continues to sustain substantial losses in earnings
9 and other employment benefits. PLAINTIFF is thereby entitled to an award of special
damages in amounts to be proven at trial.

10 8. As a proximate result of the acts and omissions of DEFENDANTS, as detailed
11 above. PLAINTIFF has suffered and will continue to suffer pain and suffering, extreme and
12 severe mental anguish and emotional distress. PLAINTIFF is thereby entitled to general and
compensatory damages in amounts to be proven at trial.

13 **SEVENTEENTH CAUSE OF ACTION**
14 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
15 **(Alleged by PLAINTIFF against all Defendants)**

16 9. PLAINTIFF realleges and incorporate by reference, as though fully set forth
herein, the prior paragraph of the Complaint.

17 10. By engaging in the acts and omissions detailed herein, DEFENDANTS have
18 violated State of California's laws prohibiting the negligent hiring, supervision or retention
of an employee.

19 11. DEFENDANTS conduct set forth in this Complaint was extreme and
20 outrageous and an abuse of authority and position of DEFENDANTS and each of them.
21 DEFENDANTS' conduct was intended to cause severe emotional distress or was done in
22 conscious disregard of the probability of causing such distress. DEFENDANTS' conduct
23 exceeded the inherent risks of employment and was not the sort of conduct normally
expected to occur in the workplace.

24 12. DEFENDANTS engaged in conduct intended to humiliate PLAINTIFF.

1 DEFENDANTS injured PLAINTIFF by its conduct and sexual harassment in failing to
2 protect PLAINTIFF.

3 13. DEFENDANTS intended to cause or acted in conscious disregard of
4 PLAINTIFF's safety by negligently allowing Mr. MacArthur to supervise employee's even
though it was clear he was unfit to supervise.

5 14. As a proximate result of the acts and omissions of DEFENDANTS, as detailed
6 above, PLAINTIFF has suffered and will continues to sustain substantial losses in earnings
7 and other employment benefits. PLAINTIFF is thereby entitled to an award of special
8 damages in amounts to be proven at trial.

9 15. As a proximate result of the acts and omissions of DEFENDANTS, as detailed
10 above. PLAINTIFF has suffered and will continue to suffer pain and suffering, extreme and
11 severe mental anguish and emotional distress. PLAINTIFF is thereby entitled to general and
compensatory damages in amounts to be proven at trial.

12 16. The aforementioned conduct by DEFENDANTS was willful, wanton, and
13 malicious. At all relevant times, DEFENDANTS acted with conscious disregard of
14 PLAINTIFF's rights and feelings. DEFENDANTS also acted with the knowledge of or with
15 reckless disregard for the fact that their conduct was certain to cause injury and/or
16 humiliation to PLAINTIFF. PLAINTIFF is further informed and believes that
17 DEFENDANTS intended to cause fear, physical injury and/or pain and suffering to
18 PLAINTIFF. By virtue of the foregoing, PLAINTIFF is entitled to recover punitive and
exemplary damages from DEFENDANTS according to proof at trial.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and
20 severally, as follows:

21 1. On behalf of the CALIFORNIA CLASS:

- 22 a. That the Court certify the First Cause of Action asserted by the
23 CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc.
24 § 382;

- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
 - c. An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
 - d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.
2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages and overtime compensation and unreimbursed expenses due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
 - e. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code §226; and

- 1 f. The wages of all terminated employees from the CALIFORNIA LABOR
2 SUB-CLASS as a penalty from the due date thereof at the same rate until
3 paid or until an action therefore is commenced, in accordance with Cal. Lab.
4 Code §203.
- 5 g. Penalties pursuant to Cal. Lab. Code §1198.5.
- 6 3. On behalf of the State of California and with respect to all AGGRIEVED
7 EMPLOYEES:
- 8 a. Recovery of civil penalties as prescribed by the Labor Code Private
9 Attorneys General Act of 2004; and
- 10 b. An award of penalties, attorneys' fees and costs of suit, as allowable under
11 the law.
- 12 4. On all claims:
- 13 a. An award of interest, including prejudgment interest at the legal rate;
- 14 b. For general damages in a sum according to proof;
- 15 c. For special damages in an amount to be proven at trial;
- 16 d. An award of penalties, attorneys' fees and costs of suit (§218.6), as
17 allowable under the law, including, but not limited to, pursuant to
18 Government Code §12965(b), §12940 and Labor Code §218.5, §226, §1194
19 and/or §2802.
- 20 e. For Punitive damages; and
- 21 f. Such other and further relief as the Court deems just and equitable.

22 Dated:

23 **BARVIÉ LAW, APC**

24 By

25 

NICOLE BARVIÉ

Attorneys for Plaintiff

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EXHIBIT 1