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Individually and on behalf of all other similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ALAMEDA**

SHERELLE SAVOY, an individual, on behalf  
of herself, and on behalf of all persons similarly  
situated,

Plaintiff,

v.

JAQUI' FOUNDATION, a California  
Nonprofit Corporation; ROBERT LEE  
PORTER, an individual; and DOES 1 through  
50, Inclusive;

Defendants.

Case No. **22CV006497**

**CLASS ACTION COMPLAINT FOR:**

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

**[ADDITIONAL CAUSES OF ACTION  
CONTINUED ON NEXT PAGE]**

5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§ 226 and 226.2; and
8. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203.
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

**DEMAND FOR JURY TRIAL**

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

**THE PARTIES**

1. Defendant JAQUI’ FOUNDATION (“DEFENDANT”) is a California nonprofit corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, County of Alameda. Defendant provides independent living skills program for the disabled.

2. Defendant ROBERT LEE PORTER is the Founder, President, and Chief Executive Officer of JAQUI’ FOUNDATION. ROBERT LEE PORTER resides in the state of California, County of Alameda.

3. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently

1 unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant  
2 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege  
3 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.  
4 PLAINTIFF is informed and believes, and based upon that information and belief allege, that the  
5 Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter  
6 collectively with “DEFENDANTS”), are responsible in some manner for one or more of the  
7 events and happenings that proximately caused the injuries and damages hereinafter alleged.

8 4. The agents, servants and/or employees of the DEFENDANTS and each of them  
9 acting on behalf of the DEFENDANTS acted within the course and scope of her, her or its  
10 authority as the agent, servant and/or employee of the DEFENDANTS, and personally  
11 participated in the conduct alleged herein on behalf of the DEFENDANTS with respect to the  
12 conduct alleged herein. Consequently, the acts of each of the DEFENDANTS are legally  
13 attributable to the other and all DEFENDANTS are jointly and severally liable to PLAINTIFF  
14 and those similarly situated, for the loss sustained as a proximate result of the conduct of the  
15 DEFENDANTS’ agents, servants and/or employees.

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

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

1           7.       PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on  
2 an hourly basis and entitled to minimum wages, overtime pay, and legally compliant meal and  
3 rest periods from April of 2021 to present.

4           8.       PLAINTIFF brings this Class Action under California Code of Civil Procedure §  
5 382 on behalf of herself and on behalf of all of DEFENDANTS current and former non-exempt  
6 California employees (the “CALIFORNIA CLASS”) at any time during the period beginning  
7 four years from the date of the filing of this Complaint and ending on a date determined by the  
8 Court (the “CLASS PERIOD”).

9           9.       The amount in controversy for the aggregate claim of CALIFORNIA CLASS  
10 members is under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend  
11 the following class definitions before the Court determines whether class certification is  
12 appropriate, or thereafter upon leave of Court.

13           10.      PLAINTIFF brings this Class Action on behalf of herself and on behalf of the  
14 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses  
15 incurred during the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice  
16 which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant  
17 meal and rest periods or an additional hour of pay at the regular rate of compensation in *lieu*  
18 thereof in violation of California Labor Code Sections 226.7(c), 512(a) and the applicable  
19 Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFF and the  
20 CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code  
21 Sections 510, 1194, 1197, and 1197.1, failed to reimburse PLAINTIFF and the CALIFORNIA  
22 CLASS for required expenses in violation for California Labor Code Section 2802, and (3) failed  
23 to provide accurate itemized wage statements in violation of California Labor Code Sections 226  
24 and 226.2.

25           11. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of  
26 themselves and all others similarly situated in California to recover, among other things, unpaid  
27 wages and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant to Labor  
28

Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, and 2698, *et seq.*

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

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

#### **JURISDICTION AND VENUE**

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

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

#### **THE CONDUCT**

16. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to reimburse

1 PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses and failed to  
2 issue to PLAINTIFF, and the members of the CALIFORNIA CLASS with accurate itemized  
3 wage statements showing, among other things, all applicable hourly rates in effect during the pay  
4 periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS'  
5 uniform policies and practices are intended to purposefully avoid the accurate and full payment  
6 for all time worked as required by California law which allows DEFENDANTS to illegally profit  
7 and gain an unfair advantage over competitors who comply with the law. To the extent equitable  
8 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS  
9 PERIOD should be adjusted accordingly.

10 **A. Meal Period Violations**

11 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were  
12 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,  
13 meaning the time during which an employee is subject to the control of an employer, including  
14 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS  
15 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work  
16 without paying them for all the time they were under DEFENDANTS' control. Specifically, as  
17 a result of, among other reasons, PLAINTIFF's demanding work requirements, and  
18 DEFENDANTS' under staffing, from time-to-time, DEFENDANTS required PLAINTIFF to  
19 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.  
20 Additionally, PLAINTIFF was from time-to-time interrupted by work assignments while clocked  
21 out for what should have been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF  
22 and other CALIFORNIA CLASS members forfeited minimum wage and overtime wages by  
23 regularly working without their time being accurately recorded and without compensation at the  
24 applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not  
25 to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked is evidenced  
26 by DEFENDANTS' business records.

27 18. From time-to-time during the CLASS PERIOD, as a result of their rigorous work  
28 schedules, and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other

1 CALIFORNIA CLASS members were from time-to-time unable to take thirty (30) minute off  
2 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and  
3 other members of the CALIFORNIA CLASS were required from time-to-time to perform work  
4 as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving  
5 a meal break. Further, DEFENDANTS from time-to-time failed to provide PLAINTIFF and  
6 CALIFORNIA CLASS members with a second off-duty meal period for some workdays in which  
7 these employees were required by DEFENDANTS to work ten (10) hours of work from time-to-  
8 time. The nature of the work performed by the PLAINTIFF and the members of the  
9 CALIFORNIA CLASS does not qualify for limited and narrowly construed “on-duty” meal  
10 period exception. When they were provided with meal periods, PLAINTIFF and other  
11 CALIFORNIA CLASS Members were, from time to time, required to remain on the premises,  
12 on duty and/or on call. PLAINTIFF and other members of the CALIFORNIA CLASS therefore  
13 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS’  
14 strict corporate policy and practice.

15 **B. Rest Period Violations**

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

1 CALIFORNIA CLASS members were from time-to-time denied their proper rest periods by  
2 DEFENDANTS and DEFENDANTS' managers.

3 **C. Unreimbursed Business Expenses**

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

14 21. From time-to-time during the CLASS PERIOD, PLAINTIFF and members of the  
15 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular  
16 phones, as a result of and in furtherance of their job duties as employees for DEFENDANTS.  
17 Specifically, Plaintiff and members of the CALIFORNIA CLASS, used their personal cellular  
18 phones to execute their job duties. But for the use of their personal cell phones, PLAINTIFF and  
19 the members of the CALIFORNIA CLASS could not complete their essential job duties.  
20 Notwithstanding, DEFENDANTS did not reimburse or indemnify PLAINTIFF or the members  
21 of the CALIFORNIA CLASS for the cost associated with the use of their personal cellular phones  
22 for DEFENDANTS' benefit. As a result, in the course of their employment with  
23 DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred  
24 unreimbursed business expenses which included, but were not limited to, costs related to the use  
25 of their personal cellular, all on behalf of and for the benefit of DEFENDANTS.

26 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

27 9. During the CLASS PERIOD, from time-to-time, DEFENDANTS failed and  
28 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS

1 for all hours worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the  
2 other members of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding,  
3 from time-to-time DEFENDANTS failed to pay PLAINTIFF and other members of the  
4 CALIFORNIA CLASS necessary wages for performing work at DEFENDANTS' direction,  
5 request and benefit, while off-the clock pre-shift, post-shift, and during meal periods.

6 10. During the CLASS PERIOD, from time-to-time DEFENDANTS required  
7 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work, including  
8 but not limited to, cleaning a patient's home and preparing food for the patient before clocking in  
9 to start her shift. Further, as discussed *supra*, PLAINTIFF and other members of the  
10 CALIFORNIA CLASS were from time to time interrupted with work assignments during their off-  
11 duty meal periods without additional compensation from DEFENDANTS.

12 11. DEFENDANTS directed and directly benefited from the uncompensated off-the-  
13 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

14 12. DEFENDANTS controlled the work schedules, duties, protocols, applications,  
15 assignments and employment conditions of PLAINTIFF and the other members of the  
16 CALIFORNIA CLASS.

17 13. DEFENDANTS were able to track the amount of time PLAINTIFF and the other  
18 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to  
19 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
20 wages earned and owed for all the work they performed, including off-the-clock work.

21 14. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt  
22 employees, subject to the requirements of the California Labor Code.

23 15. DEFENDANTS' policies and practices deprived PLAINTIFF and the other members  
24 of the CALIFORNIA CLASS of all minimum, regular and overtime wages owed for the off-the-  
25 clock work activities and their required meal periods. Because PLAINTIFF and the other members  
26 of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight  
27 (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

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

3           17.     As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
4 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit  
5 for the time spent working off-the-clock pre-shift, and during meal periods. DEFENDANTS'  
6 uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS  
7 wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS'  
8 business records.

9     **E. Split-Shift Premium and Overtime Violations**

10           During the CLASS PERIOD, DEFENDANT also systematically failed to record and pay  
11 PLAINTIFF and CALIFORNIA CLASS Members the correct amount of wages due for split-shift  
12 premiums. The applicable Industrial Welfare Commission Wage Orders define a "split-shift" as a  
13 "work schedule, which is interrupted by non-paid, non-working, periods established by the  
14 employer, other than bona fide rest or meal periods." The Industrial Welfare Commission Wage  
15 Orders further provide, "When an employee works a split shift, one (1) hour's pay at the minimum  
16 wage shall be paid in addition to the minimum wage for that workday, except when the employee  
17 resides at the place of employment." DEFENDANT, from time-to-time, required PLAINTIFF and  
18 CLASS Members to work split-shifts throughout the CLASS PERIOD, but intentionally and  
19 unlawfully failed to pay PLAINTIFF and the CLASS Members split-shift premium wages and  
20 failed to pay PLAINTIFF and CLASS Members the correct overtime compensation for hours  
21 worked in excess of eight (8) in a workday and forty (40) in a workweek. As a result, PLAINTIFF  
22 and the CLASS Members were underpaid during their employment with DEFENDANT

23     **F. Wage Statement Violations**

24           18.     California Labor Code Section 226 requires an employer to furnish its employees  
25 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,  
26 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net  
27 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name  
28 of the employee and only the last four digits of the employee's social security number or an

1 employee identification number other than a social security number, (8) the name and address of  
2 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay  
3 period and the corresponding number of hours worked at each hourly rate by the employee.

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

11 20. In addition to the violations described above, DEFENDANTS, from time-to-time,  
12 failed to provide PLAINTIFF and the CALIFORNIA CLASS members with wage statements that  
13 comply with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other  
14 members of the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226.  
15 Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an  
16 unintentional payroll error due to clerical or inadvertent mistake.

17 21. DEFENDANTS also failed to timely pay PLAINTIFF and the CALIFORNIA  
18 CLASS members in compliance of Cal. Lab. Code §204. DEFENDANTS' violations are knowing  
19 and intentional, were not isolated or due to an unintentional payroll error due to clerical or  
20 inadvertent mistake.

### 21 **CLASS ACTION ALLEGATIONS**

22 22. PLAINTIFF brings the First through Eighth Causes of Action as a class action  
23 pursuant to California Code of Civil Procedure § 382 on behalf the CALIFORNIA CLASS,  
24 defined *supra*, that worked for DEFENDANT in California at any time beginning four (4) years  
25 prior to the filing of this Complaint and ending on the date as determined by the Court ("CLASS  
26 PERIOD").

27 23. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been  
28 deprived of wages and penalties from unpaid wages earned and due, including but not limited to

1 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,  
2 illegal meal and rest period policies, failure to separately compensate rest periods, failure to  
3 separately compensate, failure to provide accurate itemized wage statements, failure to maintain  
4 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

5 24. The members of the class are so numerous that joinder of all class members is  
6 impractical.

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

14 a. Whether DEFENDANTS maintained legally compliant meal  
15 period policies and practices;

16 b. Whether DEFENDANTS maintained legally compliant rest  
17 period policies and practices;

18 c. Whether DEFENDANTS failed to pay PLAINTIFF and the  
19 CALIFORNIA CLASS members accurate premium payments for  
20 missed meal and rest periods;

21 d. Whether DEFENDANTS failed to pay PLAINTIFF and the  
22 CALIFORNIA CLASS members accurate overtime wages and sick  
23 pay;

24 e. Whether DEFENDANTS failed to pay PLAINTIFF and the  
25 CALIFORNIA CLASS members at least minimum wage for all hours  
26 worked;

27 f. Whether DEFENDANTS reimbursed PLAINTIFF and the  
28 CALIFORNIA CLASS members for required business expenses;

1           g.     Whether DEFENDANTS issued legally compliant wage  
2     statements;

3           h.     Whether DEFENDANTS committed an act of unfair  
4     competition by systematically failing to record and pay PLAINTIFF  
5     and the other members of the CALIFORNIA CLASS for all time  
6     worked;

7           i.     Whether DEFENDANTS committed an act of unfair  
8     competition by systematically failing to record all meal and rest  
9     breaks missed by PLAINTIFF and other CALIFORNIA CLASS  
10    members, even though DEFENDANTS enjoyed the benefit of this  
11    work, required employees to perform this work and permits or suffers  
12    to permit this work;

13          j.     Whether DEFENDANTS committed an act of unfair  
14     competition in violation of the UCL, by failing to provide the  
15     PLAINTIFF and the other members of the CALIFORNIA CLASS  
16     with the legally required meal and rest periods.

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

19          27.    PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the  
20    same interests as the other members of the class.

21          28.    PLAINTIFF will fairly and adequately represent and protect the interests of the  
22    CALIFORNIA CLASS members.

23          29.    PLAINTIFF retained able class counsel with extensive experience in class action  
24    litigation.

25          30.    Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the  
26    interests of the other CALIFORNIA CLASS members.

27          31.    There is a strong community of interest among PLAINTIFF and the members of the  
28    CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are

1 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries  
2 sustained;

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

6 33. A class action is superior to other available methods for the fair and efficient  
7 adjudication of this controversy because joinder of all class members is impractical. Moreover,  
8 since the damages suffered by individual members of the class may be relatively small, the  
9 expense and burden of individual litigation makes it practically impossible for the members of the  
10 class individually to redress the wrongs done to them. Without class certification and  
11 determination of declaratory, injunctive, statutory and other legal questions within the class  
12 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will  
13 create the risk of:

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

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

21 34. Class treatment provides manageable judicial treatment calculated to bring an  
22 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of  
23 the conduct of DEFENDANTS.

24 **FIRST CAUSE OF ACTION**

25 **For Unlawful Business Practices**

26 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

27 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

28 35. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and

1 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
2 Complaint.

3 36. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof.  
4 Code § 17021.

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

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

18 Cal. Bus. & Prof. Code § 17203.

19 38. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA  
20 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair  
21 competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§  
22 17200, *et seq.* (the “UCL”), by engaging and continuing to engage in business practices which  
23 violates California law, including but not limited to, the applicable Industrial Wage Order(s), the  
24 California Code of Regulations and the California Labor Code including Sections 201, 202, 203,  
25 204 *et seq.*, 210, 221, 226(a), 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1182.12, 1194,  
26 1194.2, 1197, 1197.1, 1198, & 2802, for which this Court should issue declaratory and other  
27 equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and  
28 remedy the conduct held to constitute unfair competition, including restitution of wages

1 wrongfully withheld.

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

7 40. By the conduct alleged herein, DEFENDANTS' practices were deceptive and  
8 fraudulent in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the  
9 legally mandated meal and rest periods, the required accurate amount of compensation for missed  
10 meal and rest periods, split shift premiums, overtime and minimum wages owed, provide accurate  
11 itemized wage statements, due to a systematic business practice that cannot be justified, pursuant  
12 to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of  
13 Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable  
14 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully  
15 withheld.

16 41. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,  
17 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the  
18 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
19 DEFENDANTS.

20 42. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,  
21 unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to,  
22 *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of  
23 compensation for missed meal and rest periods, overtime and minimum wages owed, provide  
24 accurate itemized wage statements, to PLAINTIFF and the other members of the CALIFORNIA  
25 CLASS as required by Cal. Labor Code.

26 43. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each  
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal  
28 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)  
2 hours of work.

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

6 45. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of  
7 the CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately  
8 calculated overtime and missed meal and rest periods premiums.

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

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

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

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

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

8                                   **SECOND CAUSE OF ACTION**

9                                   **For Failure to Pay Overtime Compensation**

10                                  **[Cal. Lab. Code §§ 510, *et seq.*]**

11                   **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

15           52. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period  
16 beginning four years prior to the filing of the Complaint and the present (“CLASS PERIOD”)  
17 bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code  
18 and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these  
19 employees for all overtime worked, including, work performed in excess of eight (8) hours in a  
20 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

27           55. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,  
28 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.

1 Code § 1198 further states that the employment of an employee for longer hours than those fixed  
2 by the Industrial Welfare Commission is unlawful.

3 56. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members  
4 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time  
5 they worked or were not accurately compensated for all overtime hours worked.

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

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

19 59. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
20 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full  
21 compensation for all overtime worked.

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

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

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

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

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

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

1 these employees.

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

### 13 **THIRD CAUSE OF ACTION**

#### 14 **For Failure to Pay Minimum Wages**

15 **[Cal. Lab. Code §§ 1194, 1194.2, 1197 and 1197.1]**

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

20 68. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
21 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial  
22 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and  
23 pay minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members  
24 during the CLASS PERIOD.

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

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

1 the minimum so fixed in unlawful.

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

4 72. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the  
5 other members of the CALIFORNIA CLASS without regard to the correct amount of time they  
6 work. For instance, as set forth herein, DEFENDANTS maintained a uniform policy that required  
7 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty  
8 meal break without compensation. Further, as set forth herein, DEFENDANTS' uniform policy  
9 and practice was to unlawfully and intentionally deny timely payment of wages due to  
10 PLAINTIFF and the other members of the CALIFORNIA CLASS.

11 73. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
12 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
13 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF  
14 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

24 76. During the CLASS PERIOD, PLAINTIFF and the other members of the  
25 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a  
26 failure to pay all earned wages.

27 77. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned  
28 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true

1 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have  
2 suffered and will continue to suffer an economic injury in amounts which are presently unknown  
3 to them and which will be ascertained according to proof at trial.

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

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

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

1           81. Pursuant to Labor Code § 1194.2, Plaintiff and CALIFORNIA CLASS are entitled  
2 to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest  
3 thereon.

4                                   **FOURTH CAUSE OF ACTION**

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

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

7                   **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

8           82. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
9 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
10 Complaint.

11           83. During the CLASS PERIOD, from time-to-time, DEFENDANTS failed to provide  
12 all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS  
13 members as required by the applicable Wage Order and Labor Code. The nature of the work  
14 performed by PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees  
15 from being relieved of all of their duties for the legally required off-duty meal periods. As a result  
16 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were  
17 from time-to-time not fully relieved of duty by DEFENDANTS for their meal periods.  
18 Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS  
19 members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by  
20 DEFENDANTS' business records from time-to-time. Further, DEFENDANTS failed to provide  
21 PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period in some  
22 workdays in which these employees were required by DEFENDANTS to work ten (10) hours of  
23 work. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore  
24 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS'  
25 strict corporate policy and practice.

26           84. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable  
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS members  
28 who were not provided a meal period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of compensation for each  
2 workday that a meal period was not provided.

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

6 **FIFTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

9 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

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

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

## **SIXTH CAUSE OF ACTION**

### For Failure to Reimburse Employees for Required Expenses

**[Cal. Lab. Code §§ 2800 and 2802, and the Applicable IWC Wage Order § 9]**

(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)

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

91. Cal. Labor Code §2800 provides, in pertinent part, “[a]n employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

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

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

93. Further, Cal. Labor Code §2902 additionally provides, in pertinent part: “(c) ... the term ‘necessary expenditures or losses’ shall include all reasonable costs, including but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

94. The Applicable IWC Wage Order §9 provides that “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer...”

95. California Labor Code section 2804 mandates that this statutory right cannot be waived.

96. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for

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

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

19 **SEVENTH CAUSE OF ACTION**

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

21 **[Cal. Lab. Code §§ 226 and 226.2]**

22 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

- 28 1. Gross wages earned;

2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

100. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross wages earned and (4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of California Labor Code Section 226.

101. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code

1 § 226, causing injury and damages to the PLAINTIFF and the other members of the  
2 CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS may  
3 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the  
4 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay  
5 period pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant  
6 to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no  
7 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member  
8 of the CALIFORNIA CLASS herein.

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES WHEN DUE**

11 **(Cal Lab. Code §§ 201, 202, 203, and 204)**

12 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

17 As used in this article: (a) "Wages" includes all amounts for  
18 labor performed by employees of every description, whether  
19 the amount is fixed or ascertained by the standard of time,  
20 task, piece, Commission basis, or other method of calculation.

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

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

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

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

13 106. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS  
14 Members' employment contract.

15 107. Cal. Lab. Code § 203 provides:

16 If an employer willfully fails to pay, without abatement or  
17 reduction, in accordance with Sections 201, 201.5, 202, and  
18 205.5, any wages of an employee who is discharged or who  
19 quits, the wages of the employee shall continue as a penalty  
20 from the due date thereof at the same rate until paid or until an  
21 action therefor is commenced; but the wages shall not  
22 continue for more than 30 days.

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

26 109. Cal. Lab. Code § 204 provides in part:  
27  
28

1 All wages, ...earned by any person in any employment are due and payable  
2 twice during each calendar month, on days designated in advance by the  
3 employer as the regular paydays.

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

9 **NINTH CAUSE OF ACTION**

10 **For Violation of the Private Attorneys General Act**

11 **[Cal. Lab . Code §§ 2698 ET SEQ. (“PAGA”)]**

12 **(By PLAINTIFF and Against All DEFENDANTS)**

13 111. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs  
14 as though fully set forth herein.

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

25 113. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides  
26 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency  
27 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees  
28 for violation of the Labor Code may, as an alternative, be recovered through civil action brought

1 by an aggrieved employee on behalf of himself or herself and other current or former employees  
2 pursuant to the procedures specified in Labor Code § 2699.3.

3 114. For all provisions of the Labor Code except those for which a civil penalty is  
4 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred  
5 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two  
6 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent pay  
7 period in which Defendants violated these provisions of the Labor Code.

8 115. Defendants' conduct violates numerous Wage Orders and Labor Code sections  
9 including, but not limited to, the following:

- 10 a. Violation of Labor Code § 201, 202, 203, 204, 210, 221, 226, 226.2, 226.3, 226.7,  
11 227.3, 246, 510, 512, 1182.12, 1194, 1197, 1198, 2802, 2698 for failure to timely  
12 pay all earned wages (including minimum wage and overtime wages) owed to  
13 Plaintiff and other aggrieved employees during employment and upon separation  
14 of employment as herein alleged;
- 15 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to  
16 Plaintiff and other aggrieved employees failure to pay premium wages for missed  
17 meal periods and herein alleged;
- 18 c. Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and  
19 other aggrieved employees and failure to pay premium wages for missed rest  
20 periods as herein alleged;
- 21 d. Violation of Labor Code § 226 for failure to provide accurate itemized wage  
22 statements to Plaintiff and other aggrieved employees as herein alleged;
- 23 e. Violation of Labor Code § 1174 and 1174.5 for failure to maintain accurate and  
24 complete records showing, among other things, the hours worked daily by and  
25 the wages paid to aggrieved employees; and
- 26 f. Violation of Labor Code § 2800 and 2802 for failure to reimburse Plaintiff and  
27 other aggrieved employees as herein alleged.

116. Plaintiff is an “AGGRIEVED EMPLOYEE” because she was employed by the alleged violator and had one or more of the violations committed against her, and therefore is properly suited to represent the interest of all the other AGGRIEVED EMPLOYEES.

117. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved employees under PAGA.

118. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

119. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

#### **PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFF, on her own behalf and on behalf of all other similarly situated, prays for judgment against each DEFENDANT, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS;

D) Restitutionary disgorgement of DEFENDANTS’ ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS’ violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS; and,

E) Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due PLAINTIFF and the other members of the

1 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest  
2 thereon at the statutory rate;

3 F) For economic and/or special damages in an amount according to proof with interest  
4 thereon;

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

9 H) Meal and rest period compensation pursuant to California Labor Code Sections  
10 226.7, 512 and the applicable IWC Wage Order; and

11 I) For liquidated damages pursuant to California Labor Code Sections 1194.2 and  
12 1197.

13 J) For Statutory penalties to the extent permitted by law, including those pursuant to  
14 the Labor Code and IWC Wage Orders;

15 2. 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 Attorneys  
17 General Act of 2004; and

18 b. An Award of penalties, attorneys' fees and costs of suit, as allowable under the law.

19 3. On all claims:

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

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

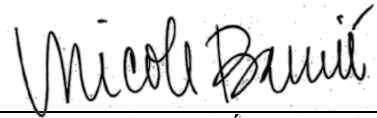
22 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,  
23 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

24 D) For prejudgment and post judgment interest on each of the foregoing at the legal  
25 rate from the date the obligation became due through the date of judgment in this matter.

26 E) For any other relief that is just and proper.  
27  
28

1 Dated: February 2, 2022

2 **BARVIÉ LAW, ACP**

3  
4 By   
5 NICOLE BARVIÉ, Esq.

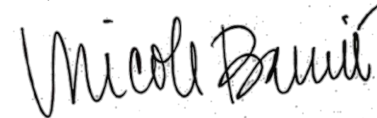
6 Attorneys for Plaintiff(s)

7  
8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demand(s) trial by jury in this action.

10  
11  
12  
13 Dated: February 2, 2022

14 **BARVIÉ LAW, ACP**

15  
16 By   
17 NICOLE BARVIÉ, Esq.

18 Attorneys for Plaintiff(s)