

ENDORSED
FILED

SEP 30 2022

SUPERIOR COURT OF CALIFORNIA
COUNTY OF DEL NORTE

BARVIE LAW, APC

NICOLE BARVIE (State Bar # 282352)
550 West B Street, 4th Floor
San Diego, CA 92101-3598
Telephone: 858.255.0928
Facsimile: 858.357.8592
nicole@barvielaw.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorney for MELISSA ALLEN

Individually and on behalf of all other similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF DEL NORTE**

MELISSA ALLEN, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

CRESCENT NORTHWOODS INN, INC., a
California Nonprofit Corporation; and DOES 1
through 50, Inclusive;

Defendants.

Case No. CVUS-2022-1192

**FIRST AMENDED 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.*

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

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;
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. WRONGFUL TERMINATION IN VIOLATION OF LABOR CODE §6311;
10. DISCRIMINATION AND WRONGFUL DISCHARGE IN VIOLATION OF LABOR CODE §6310(A)(1) AND (B);
11. WRONGFUL TERMINATION IN VIOLATION OF LABOR CODE §1102.5(C);
12. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; AND
13. Civil Penalties Pursuant to Labor Code §2699, *et seq.*, for violations of Labor Code §§ 201, 202, 203, 204 et seq., 210, 221, 226(a), 226.2, 226.3, 226.7, 227.3, 246 et seq., 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 6310, 6311, 6500, 6401, 6402, 6403, 6404, 6407, 98.6, 1102.5(b), and the California Code of Regulations

DEMAND FOR JURY TRIAL

1
2 Plaintiff MELISSA ALLEN (“PLAINTIFF”) an individual, on behalf of herself and all
3 other similarly situated current and former employees alleges on information and belief, except
4 for her own acts and knowledge which are based on personal knowledge, the following:

5 **THE PARTIES**

6 1. Defendant CRESCENT NORTHWOODS INN, INC. (“DEFENDANT”) is a
7 California Corporation that at all relevant times mentioned herein conducted and continues to
8 conduct substantial business in the state of California, County of Alameda. Defendant provides
9 hospitality services.

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

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

27 4. DEFENDANT were PLAINTIFF’s employers or persons acting on behalf of
28 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or

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

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

10 6. PLAINTIFF was employed by DEFENDANT as a non-exempt employee, paid on
11 an hourly basis and entitled to minimum wages, overtime pay, and legally compliant meal and
12 rest periods from April of 2021 to present.

13 7. PLAINTIFF brings this Class Action under California Code of Civil Procedure §
14 382 on behalf of herself and on behalf of all of DEFENDANT current and former non-exempt
15 California employees (the "CALIFORNIA CLASS") at any time during the period beginning
16 four years from the date of the filing of this Complaint and ending on a date determined by the
17 Court (the "CLASS PERIOD").

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

22 9. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
23 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
24 incurred during the CLASS PERIOD caused by DEFENDANT'S uniform policy and practice
25 which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant
26 meal and rest periods or an additional hour of pay at the regular rate of compensation in *lieu*
27 thereof in violation of California Labor Code Sections 226.7(c), 512(a) and the applicable
28 Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFF and the

1 CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code
2 Sections 510, 1194, 1197, and 1197.1, failed to reimburse PLAINTIFF and the CALIFORNIA
3 CLASS for required expenses in violation for California Labor Code Section 2802, and (3) failed
4 to provide accurate itemized wage statements in violation of California Labor Code Sections 226
5 and 226.2.

6 10. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of
7 themselves and all others similarly situated in California to recover, among other things, unpaid
8 wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant to Labor
9 Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.2, 226.3, 226.7, 227.3, 246 *et seq.*,
10 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 6310, 6311, 6500, 6401, 6402,
11 6403, 6404, 6407, 98.6, 1102.5(b) and 2698, *et seq.*

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

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

20 **JURISDICTION AND VENUE**

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

25 14. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, and
27 DEFENDANTS (i) currently maintain and at all relevant times, maintained offices and facilities
28

1 in this County and/or conducts substantial business in this County, and (ii) committed the
2 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

3 **THE CONDUCT**

4 15. In late 2019, a new coronavirus emerged, named severe acute respiratory syndrome
5 coronavirus 2 (SARS-CoV-2).¹ This virus causes coronavirus disease 2019 (“COVID”), a
6 respiratory illness that can cause serious health problems, including death. *Id.* The seriousness of
7 COVID cannot be understated. COVID is highly contagious disease. COVID most commonly
8 spreads through close interaction with an infected person that allows the virus to spread through
9 airborne particles or aerosolized droplets, which are secretions from talking, yelling, coughing,
10 and sneezing. The risk of infection increases dramatically when individuals are in proximity, *e.g.*
11 within six feet of each other, particularly indoors and for extended periods of time. The risk of
12 infection increases exponentially for those in contact with infected persons who sneeze or cough
13 or otherwise project secretions into the air. Research published by the Center of Disease Control
14 and Prevention (“CDC”) suggest that a single person with COVID is likely to infect five or six
15 other individuals absent aggressive physical distancing practices.²

16 16. Despite knowing the risks of COVID, in callous disregard of the safety and health
17 of its employees, management for Defendant’s General Manager, Patricia Coburn, knowingly, by
18 acts of deliberate and reckless commission and omission, put the lives of the employees and their
19 families at risk. Defendant failed to institute appropriate measures to prevent, mitigate, or respond
20 to the spread of COVID. Despite Plaintiff’s repeated complaints to Ms. Colburn to come into
21 compliance with the laws, orders and guidance to make the workplace safe and healthy, Ms.
22 Colburn refused, and in fact mocked Plaintiff’s concerns.

23
24
25 ¹ See Frequently Asked Questions, Centers for Disease Control and Prevention (July 15,
26 2020), <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>
(last visited July 26, 2022).

27 ² Seven Sanche, High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome
28 Coronavirus 2, Centers for Disease Control and Prevention,
https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article?deliverName=USCDC_333-DM25287
(last visited July 26, 2020).

1 17. On or about August 2021, PLAINTIFF made a complaint to Cal/OSHA regarding
2 the unsafe working conditions during COVID.

3 18. Upon information and belief, Cal/OSHA performed an investigation.

4 19. On September 3, 2021, Plaintiff was terminated. Defendant's General Manager,
5 Patricia Colburn disingenuously stated to her that the restaurant was closing for the foreseeable
6 future. However, PLAINTIFF'S last paycheck stated "position had been dissolved." Later,
7 PLAINTIFF found out the restaurant had not closed.

8 20. If DEFENDANT's stripping PLAINTIFF of her income to provide for her family,
9 including a baby, was not bad enough, Patricia Colburn kicked PLAINTIFF out of
10 DEFENDANT's hotel Best Western Plus, where PLAINTIFF was lodging with her entire family
11 of five at a reduced rate during her employment there.

12 21. On information and belief, DEFENDANT similarly terminated the employment of
13 all Class Members and Aggrieved Employees in retaliation for engaging in protected reporting
14 activities.

15 22. In violation of the applicable sections of the California Labor Code and the
16 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
17 matter of company policy, practice and procedure, intentionally, knowingly and systematically
18 failed to provide legally compliant meal and rest periods, failed to accurately compensate
19 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
20 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
21 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to reimburse
22 PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses and failed to
23 issue to PLAINTIFF, and the members of the CALIFORNIA CLASS with accurate itemized
24 wage statements showing, among other things, all applicable hourly rates in effect during the pay
25 periods and the corresponding amount of time worked at each hourly rate. DEFENDANT'S
26 uniform policies and practices are intended to purposefully avoid the accurate and full payment
27 for all time worked as required by California law which allows DEFENDANT to illegally profit
28 and gain an unfair advantage over competitors who comply with the law. To the extent equitable

1 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS
2 PERIOD should be adjusted accordingly.

3 **A. Meal Period Violations**

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

20 24. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
21 schedules, and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
22 CALIFORNIA CLASS members were from time-to-time unable to take thirty (30) minute off
23 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
24 other members of the CALIFORNIA CLASS were required from time-to-time to perform work
25 as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
26 meal break. Further, DEFENDANT from time-to-time failed to provide PLAINTIFF and
27 CALIFORNIA CLASS members with a second off-duty meal period for some workdays in which
28 these employees were required by DEFENDANT to work ten (10) hours of work from time-to-

1 time. The nature of the work performed by the PLAINTIFF and the members of the
2 CALIFORNIA CLASS does not qualify for limited and narrowly construed “on-duty” meal
3 period exception. When they were provided with meal periods, PLAINTIFF and other
4 CALIFORNIA CLASS Members were, from time to time, required to remain on the premises,
5 on duty and/or on call. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
6 forfeited meal breaks without additional compensation and in accordance with DEFENDANT’s
7 strict corporate policy and practice.

8 **B. Rest Period Violations**

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

24 **C. Unreimbursed Business Expenses**

25 26. DEFENDANT as a matter of corporate policy, practice and procedure,
26 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and
27 the members of the CALIFORNIA CLASS for required business expenses they incurred in direct
28 consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor

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

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

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

20 9. During the CLASS PERIOD, from time-to-time, DEFENDANT failed and continue
21 to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
22 hours worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other
23 members of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding, from
24 time-to-time DEFENDANT failed to pay PLAINTIFF and other members of the CALIFORNIA
25 CLASS necessary wages for performing work at DEFENDANT's direction, request and benefit,
26 while off-the clock pre-shift, post-shift, and during meal periods.

27 10. During the CLASS PERIOD, from time-to-time DEFENDANT required
28 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work, including

1 but not limited to, cleaning a patient's home and preparing food for the patient before clocking in
2 to start her shift. Further, as discussed *supra*, PLAINTIFF and other members of the
3 CALIFORNIA CLASS were from time to time interrupted with work assignments during their off-
4 duty meal periods without additional compensation from DEFENDANT.

5 11. DEFENDANT directed and directly benefited from the uncompensated off-the-clock
6 work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

7 12. DEFENDANT controlled the work schedules, duties, protocols, applications,
8 assignments and employment conditions of PLAINTIFF and the other members of the
9 CALIFORNIA CLASS.

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

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

16 15. DEFENDANT's policies and practices deprived PLAINTIFF and the other members
17 of the CALIFORNIA CLASS of all minimum, regular and overtime wages owed for the off-the-
18 clock work activities and their required meal periods. Because PLAINTIFF and the other members
19 of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight
20 (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

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

23 17. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 forfeited wages due them for all hours worked at DEFENDANT's direction, control and benefit
25 for the time spent working off-the-clock pre-shift, and during meal periods. DEFENDANT's
26 uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS
27 wages for all hours worked in accordance with applicable law is evidenced by DEFENDANT's
28 business records.

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

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

15 **F. Wage Statement Violations**

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

24 19. From time-to-time during the CLASS PERIOD, when PLAINTIFF and other
25 CALIFORNIA CLASS members missed meal and rest breaks, were paid inaccurate missed meal
26 and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to
27 provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and
28 accurate wage statements which failed to show, among other things, all applicable hourly rates in

1 effect during the pay period and the corresponding amount of time worked at each hourly rate,
2 correct rates of pay for penalty payments or missed meal and rest periods.

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

9 21. DEFENDANT also failed to timely pay PLAINTIFF and the CALIFORNIA
10 CLASS members in compliance of Cal. Lab. Code §204. DEFENDANT's violations are knowing
11 and intentional, were not isolated or due to an unintentional payroll error due to clerical or
12 inadvertent mistake.

13 **CLASS ACTION ALLEGATIONS**

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

19 23. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been
20 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
21 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
22 illegal meal and rest period policies, failure to separately compensate rest periods, failure to
23 separately compensate, failure to provide accurate itemized wage statements, failure to maintain
24 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

25 24. The members of the class are so numerous that joinder of all class members is
26 impractical.

27 25. Common questions of law and fact regarding DEFENDANT's conduct, including
28 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to provide

1 legally compliant meal and rest periods, failing to reimburse business expenses, failure to provide
2 accurate itemized wage statements accurate, and failure ensure they are paid at least minimum
3 wage and split shift premiums and overtime, exist as to all members of the class and predominate
4 over any questions affecting solely any individual members of the class. Among the questions of
5 law and fact common to the class are:

6 a. Whether DEFENDANT maintained legally compliant meal
7 period policies and practices;

8 b. Whether DEFENDANT maintained legally compliant rest
9 period policies and practices;

10 c. Whether DEFENDANT failed to pay PLAINTIFF and the
11 CALIFORNIA CLASS members accurate premium payments for
12 missed meal and rest periods;

13 d. Whether DEFENDANT failed to pay PLAINTIFF and the
14 CALIFORNIA CLASS members accurate overtime wages and sick
15 pay;

16 e. Whether DEFENDANT failed to pay PLAINTIFF and the
17 CALIFORNIA CLASS members at least minimum wage for all hours
18 worked;

19 f. Whether DEFENDANT reimbursed PLAINTIFF and the
20 CALIFORNIA CLASS members for required business expenses;

21 g. Whether DEFENDANT issued legally compliant wage
22 statements;

23 h. Whether DEFENDANT committed an act of unfair
24 competition by systematically failing to record and pay PLAINTIFF
25 and the other members of the CALIFORNIA CLASS for all time
26 worked;

27 i. Whether DEFENDANT committed an act of unfair
28 competition by systematically failing to record all meal and rest

1 breaks missed by PLAINTIFF and other CALIFORNIA CLASS
2 members, even though DEFENDANTS enjoyed the benefit of this
3 work, required employees to perform this work and permits or suffers
4 to permit this work;

5 j. Whether DEFENDANT committed an act of unfair
6 competition in violation of the UCL, by failing to provide the
7 PLAINTIFF and the other members of the CALIFORNIA CLASS
8 with the legally required meal and rest periods.

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

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

13 28. PLAINTIFF will fairly and adequately represent and protect the interests of the
14 CALIFORNIA CLASS members.

15 29. PLAINTIFF retained able class counsel with extensive experience in class action
16 litigation.

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

19 31. There is a strong community of interest among PLAINTIFF and the members of the
20 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are
21 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
22 sustained;

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

26 33. A class action is superior to other available methods for the fair and efficient
27 adjudication of this controversy because joinder of all class members is impractical. Moreover,
28 since the damages suffered by individual members of the class may be relatively small, the

1 expense and burden of individual litigation makes it practically impossible for the members of the
2 class individually to redress the wrongs done to them. Without class certification and
3 determination of declaratory, injunctive, statutory and other legal questions within the class
4 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
5 create the risk of:

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

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

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

16 **FIRST CAUSE OF ACTION**

17 **For Unlawful Business Practices**

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

19 **(By PLAINTIFF and the CALIFORNIA CLASS and Against DEFENDANT)**

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

23 36. DEFENDANT are “person[s]” as that term is defined under Cal. Bus. and Prof.
24 Code § 17021.

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

1 Any person who engages, has engaged, or proposes to engage in
2 unfair competition may be enjoined in any court of competent
3 jurisdiction. The court may make such orders or judgments,
4 including the appointment of a receiver, as may be necessary to
5 prevent the use or employment by any person of any practice which
6 constitutes unfair competition, as defined in this chapter, or as may
7 be necessary to restore to any person in interest any money or
8 property, real or personal, which may have been acquired by means
9 of such unfair competition.

10 Cal. Bus. & Prof. Code § 17203.

11 38. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
12 CLASS members, during the CLASS PERIOD, DEFENDANT commit acts of unfair competition
13 in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
14 (the “UCL”), by engaging and continuing to engage in business practices which violates California
15 law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of
16 Regulations and the California Labor Code including Sections 201, 202, 203, 204 *et seq.*, 210, 221,
17 226(a), 226.2, 226.3, 226.7, 227.3, 246 *et seq.*, 510, 512, 558, 1182.12, 1194, 1194.2, 1197,
18 1197.1, 1198, 2802, 6310, 6311, 6500, 6401, 6402, 6403, 6404, 6407, 98.6, and 1102.5(b), as
19 well as Violations of the State Health Officer guidelines, Violations of OSHA and CDC COVID-
20 related guidelines for businesses, for which this Court should issue declaratory and other equitable
21 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the
22 conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

28 40. By the conduct alleged herein, DEFENDANT’s practices were deceptive and

1 fraudulent in that DEFENDANT's uniform policy and practice failed to, *inter alia*, provide the
2 legally mandated meal and rest periods, the required accurate amount of compensation for missed
3 meal and rest periods, split shift premiums, overtime and minimum wages owed, provide accurate
4 itemized wage statements, due to a systematic business practice that cannot be justified, pursuant
5 to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of
6 Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
7 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
8 withheld.

9 41. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair
10 and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other
11 members of the CALIFORNIA CLASS to be underpaid during their employment with
12 DEFENDANTS.

13 42. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair
14 and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to, *inter*
15 *alia*, provide the legally mandated meal and rest periods, the required accurate amount of
16 compensation for missed meal and rest periods, overtime and minimum wages owed, provide
17 accurate itemized wage statements, to PLAINTIFF and the other members of the CALIFORNIA
18 CLASS as required by Cal. Labor Code.

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

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

27 45. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of
28 the CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately

1 calculated overtime and missed meal and rest periods premiums.

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

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

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

18 49. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
19 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
20 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging
21 in any unlawful and unfair business practices in the future.

22 50. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
23 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
24 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
25 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
26 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
27 and economic harm unless DEFENDANTS is restrained from continuing to engage in these
28 unlawful and unfair business practices.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

14
15
16
17
18
19
20
21
22
23
24
25
26

16
17
18
19
20
21
22
23
24
25
26

20
21
22
23
24
25
26

24

25

26

1 implementing a uniform policy and practice that failed to accurately record overtime worked by
2 PLAINTIFF and other CALIFORNIA CLASS members and denied accurate compensation to
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
4 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
5 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

12 59. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
14 compensation for all overtime worked.

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

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

25 62. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
26 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
27 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
28 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,

1 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay using
2 the applicable overtime rate as evidenced by DEFENDANT's business records and witnessed by
3 employees.

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

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

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

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

202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure to Pay Minimum Wages

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

(By PLAINTIFF and the CALIFORNIA CLASS and Against DEFENDANT)

67. 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.

68. PLAINTIFF and the other members of the CALIFORNIA 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 accurately record, calculate and pay minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the CLASS PERIOD.

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

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

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

72. DEFENDANT maintains a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For instance, as set forth herein, DEFENDANT maintained a uniform policy that required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty

1 meal break without compensation. Further, as set forth herein, DEFENDANT's uniform policy
2 and practice was to unlawfully and intentionally deny timely payment of wages due to
3 PLAINTIFF and the other members of the CALIFORNIA CLASS.

4 73. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
5 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
6 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
7 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

14 75. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
15 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
16 minimum wage compensation for their time worked for DEFENDANT.

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

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

25 78. DEFENDANT knew or should have known that PLAINTIFF and the other members
26 of the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANT
27 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
28 employees for their labor as a matter of uniform company policy, practice and procedure, and

1 DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
2 members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

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

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

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

24 **FOURTH CAUSE OF ACTION**

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

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

27 **(By PLAINTIFF and the CALIFORNIA CLASS and Against DEFENDANT)**

28 82. 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 83. During the CLASS PERIOD, from time-to-time, DEFENDANT failed to provide
4 all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS
5 members as required by the applicable Wage Order and Labor Code. The nature of the work
6 performed by PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees
7 from being relieved of all of their duties for the legally required off-duty meal periods. As a result
8 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were
9 from time-to-time not fully relieved of duty by DEFENDANT for their meal periods.
10 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS
11 members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
12 DEFENDANT's business records from time-to-time. Further, DEFENDANT failed to provide
13 PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period in some
14 workdays in which these employees were required by DEFENDANT to work ten (10) hours of
15 work. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore
16 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's
17 strict corporate policy and practice.

18 84. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
19 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS members
20 who were not provided a meal period, in accordance with the applicable Wage Order, one
21 additional hour of compensation at each employee's regular rate of compensation for each
22 workday that a meal period was not provided.

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

26 **FIFTH CAUSE OF ACTION**

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

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

1 **(By PLAINTIFF and the CALIFORNIA CLASS and Against DEFENDANT)**

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

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

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

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

24 **SIXTH CAUSE OF ACTION**

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

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

27 **(By PLAINTIFF and the CALIFORNIA CLASS and Against Defendant)**

28 90. 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 91. Cal. Labor Code §2800 provides, in pertinent part, “[a]n employer shall in all cases
4 indemnify his employee for losses caused by the employer’s want of ordinary care.”

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

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

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

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

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

18 96. From time-to-time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
19 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
20 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
21 DEFENDANT’s benefit. DEFENDANT failed to reimburse PLAINTIFF and the members of the
22 CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using
23 their personal cellular phone all on behalf of and for the benefit of DEFENDANTS. Specifically,
24 PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANTS to
25 use their personal cell phones to execute their essential job duties on behalf of DEFENDANT.
26 DEFENDANT’s uniform policy, practice and procedure was to not reimburse PLAINTIFF and the
27 members of the CALIFORNIA CLASS for expenses resulting from using their personal cellular
28 phones for DEFENDANT within the course and scope of their employment for DEFENDANT.

1 These expenses were necessary to complete their principal job duties. DEFENDANT are estopped
2 by DEFENDANT's conduct to assert any waiver of their expectation. Although these expenses
3 were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS,
4 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the members of the
5 CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and
6 regulations of California.

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

11 **SEVENTH CAUSE OF ACTION**

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

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

14 **(By PLAINTIFF and the CALIFORNIA CLASS and Against DEFENDANT)**

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

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

- 20 1. Gross wages earned;
- 21 2. Total hours worked by the employee, except for any employee
22 whose compensation is solely based on a salary and who is exempt
23 from payment of overtime under subdivision (a) of Section 515 or any
24 applicable order of the Industrial Welfare Commission;
- 25 3. The number of piece-rate units earned and any applicable
26 piece rate if the employee is paid on a piece-rate basis;
- 27 4. All deductions, provided that all deductions made on written
28 orders of the employee may be aggregated and shown as one item;

- 1 5. Net wages earned;
- 2 6. The inclusive dates of the period for which the employee is
- 3 paid;
- 4 7. The name of the employee and his or her social security
- 5 number, except that by January 1, 2008, only the last four digits of his
- 6 or her social security number or an employee identification number
- 7 other than a social security number may be shown on the itemized
- 8 statement;
- 9 8. The name and address of the legal entity that is the employer;
- 10 and
- 11 9. All applicable hourly rates in effect during the pay period and
- 12 the corresponding number of hours worked at each hourly rate by the
- 13 employee.

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

20 101. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code
21 § 226, causing injury and damages to the PLAINTIFF and the other members of the
22 CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS may
23 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
24 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
25 period pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant
26 to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no
27 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
28 of the CALIFORNIA CLASS herein.

1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

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

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

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

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

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

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

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

7 107. Cal. Lab. Code § 203 provides:

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

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

18 109. Cal. Lab. Code § 204 provides in part:

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

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

27 **NINTH CAUSE OF ACTION**

28 **Wrongful Termination in Violation of Labor Code §6311**

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

2 111. PLAINTIFF hereby re-alleges and incorporates by reference the previous
3 paragraphs as though fully set forth herein.

4 112. Labor Code §6311 provides:

5 No employee shall be laid off or discharged for refusing to perform
6 work in the performance of which this code, including section 6400,
7 any occupational safety or health standard or any safety order of the
8 division or standard board will be violated, where the violation would
create a real and apparent hazard to the employee or his or her fellow
employee.

9 113. Labor Code §6311 further provides:

10 Any employee who is laid off or discharged in violation of this section
11 or is otherwise not paid because he or she refused to perform work in
12 the performance of which this code, any occupational safety or health
13 standard or any safety order of the division or standard or any safety
14 order of the division or standards board will be violated and where the
15 violation would create a real and apparent hazard to the employee or
his or her fellow employees shall have a right of action for wages for
the time the employee is without work as a result of the layoff or
discharge.

16 114. Here, DEFENDANT through its General Manager, Patricia Colburn, terminated
17 PLAINTIFF's employment because she filed a complaint with Cal/OSHA for several occupational
18 safety and health standards, including, without limitation, Labor Code §§6400(a), 6402, 6403(a)-
19 (c), 6404, and 6407. Cf. *Fusco v. Sonoma County Junior College Dist.*, 2010 U.S. Dist. LEXIS
20 7363, *6 (N.D. Cal. Jan. 29, 2010) (finding proper a claim under Labor Code §6311 based on, inter
21 alia, an alleged violation of Labor Code §6400 alone, without a violation of any other health
22 standards or safety orders).

23 115. As a result of Defendant's wrongful conduct, PLAINTIFF has suffered, and
24 continues to suffer, substantial losses in earnings and job benefits in an amount to be determined
25 according to proof at the time of trial.

26 116. As a further proximate result of Defendant's wrongful conduct, PLAINTIFF has
27 suffered, and continues to suffer humiliation, embarrassment, emotional distress, and mental
28 anguish, all in an amount to be determined according to proof at the time of trial.

117. In doing the acts herein alleged, DEFENDANT engaged in conduct with malice, oppression, and/or fraud. DEFENDANT acted with intent to cause injury and/or its conduct was done with a willful and knowing disregard of the rights and safety of others. DEFENDANT was aware of the probable dangerous consequences of its conduct and deliberately failed to avoid those consequences. DEFENDANT's conduct was also despicable and subjected PLAINTIFF to cruel and unjust hardship in knowing disregard of her rights. DEFENDANT's conduct was reprehensible in that it caused PLAINTIFF and her family physical and emotional harm, DEFENDANT disregarded the health and safety of others, DEFENDANT's conduct involved a pattern and practice of violating ethical, moral, and safety rules. DEFENDANT is therefore entitled to punitive damages against DEFENDANT in an amount appropriate to punish and make an example of DEFENDANT.

118. PLAINTIFF is also entitled to costs and reasonable attorneys' fees pursuant to Code of Civil Procedure §1021.5, Labor Code §2699.3, and any other applicable provisions for attorneys' fees and costs.

TENTH CAUSE OF ACTION

DISCRIMINATION AND WRONGFUL TERMINATION IN VIOLATION OF LABOR

CODE §6310(a)(1) and (b)

(By PLAINTIFF and Against DEFENDANTS)

119. PLAINTIFF hereby re-alleges and incorporates by reference the previous paragraphs as though fully set forth herein.

120. “No person shall discharge or in any manner discriminate against any employee because the employee” made “any oral or written complaint [relating to employee safety or health] to ... his or her employer, or his or her representative.” Labor Code §6310(a)(1). “Any employee who is discharged, threatened with discharge ... or in any other manner discriminated against in the terms or conditions of employment” by her employer because she made a bona fide “oral or written complaint to ... his or her employer ... of unsafe working conditions, or work practices, in his or her employment or place of employment ... shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.” Labor Code

1 §6310(b). The private rights of action expressed in this statute has been repeatedly upheld by
2 numerous courts. See *Daly v. Exxon Corp.*, 55 Cal. App. 4th 39, 44 (1997) (“Section 6310,
3 subdivision (b), permits an action for damages if the employee is discharged, threatened with
4 discharge, or discriminated against by his or her employer because of the employee’s complaints
5 about unsafe working conditions.”); *Cabesuela v. Browning-Ferris Indus.*, 68 Cal. App. 4th 101,
6 109 (1998) (“We also reject defendants’ claim that plaintiff holds no direct right of action under
7 6310.”); *Sheridan v. Touchstone Productions, LLC*, 241 Cal. App. 4th 508, 510 (2015) (holding a
8 plaintiff has a private right of action to sue under Labor Code §§6310 and 6311 without exhausting
9 any administrative remedies); *Luhan v. Minagar*, 124 Cal. App. 4th 1040, 1046 (2004) (same);
10 *Bustos v. City of Fresno*, 2020 U.S. Dist. LEXIS 148144, *33 (E.D. Cal. Aug. 15, 2020) (finding a
11 claim under Labor Code §6310 is cognizable).

12 121. DEFENDANT discriminated against PLAINTIFF by discharging her because she
13 made a complaint to her employer, and Cal/OSHA for unsafe working conditions and work
14 practices in her workplace, including several occupational safety and health standards, including
15 without limitation, Labor Code Labor Code §§6400(a), 6402, 6403(a)-(c), 6404, and 6407. In
16 response, DEFENDANT discriminated against and terminated PLAINTIFF’s employment.

17 122. As a proximate result of DEFENDANT’s wrongful conduct, PLAINTIFF has
18 suffered, and continues to suffer, substantial losses in earnings and job benefits in an amount to be
19 determined according to proof at the time of trial.

20 123. As a further proximate result of DEFENDANT’s wrongful conduct, PLAINTIFF has
21 suffered, and continues to suffer humiliation, embarrassment, emotional distress, and mental
22 anguish, all in an amount to be determined according to proof at the time of trial.

23 124. In doing the acts herein alleged, DEFENDANT engaged in conduct with malice,
24 oppression, and/or fraud. DEFENDANT acted with intent to cause injury and/or its conduct was
25 done with a willful and knowing disregard of the rights and safety of others. DEFENDANT was
26 aware of the probable dangerous consequences of its conduct and deliberately failed to avoid those
27 consequences. DEFENDANT’s conduct was also despicable and subjected PLAINTIFF to cruel
28 and unjust hardship in knowing disregard of her rights. DEFENDANT’s conduct was reprehensible

1 in that it caused PLAINTIFF and her family physical and emotional harm, DEFENDANT
2 disregarded the health and safety of others, DEFENDANT's conduct involved a pattern and practice
3 of violating ethical, moral, and safety rules. DEFENDANT is therefore entitled to punitive damages
4 against DEFENDANT in an amount appropriate to punish and make an example of DEFENDANT.

5 125. PLAINTIFF is also entitled to costs and reasonable attorneys' fees pursuant to Code
6 of Civil Procedure §1021.5, Labor Code §2699.3, and any other applicable provisions for
7 attorneys' fees and costs.

8 **ELEVENTH CAUSE OF ACTION**

9 **Wrongful Termination In Violation of Labor Code §1102.5(c)**

10 **(By PLAINTIFF and Against DEFENDANT)**

11 126. PLAINTIFF hereby re-alleges and incorporates by reference the previous
12 paragraphs as though fully set forth herein.

13 127. Pursuant to Labor Code §1102.5(c), it is unlawful for any employer, or any
14 person acting on behalf of the employer, to "retaliate against an employee for refusing to
15 participate in an activity that would result in a violation of state or federal statute, or a violation
16 of or noncompliance with a local, state, or federal rule or regulation."

17 128. DEFENDANT terminated PLAINTIFF'S employment because she refused to
18 perform duties under conditions which violate statutes, including, without limitation, Labor
19 Code §§6400(a), 6402, 6403(a)-(c), 6404, and 6407. DEFENDANT also terminated
20 PLAINTIFF's employment because she refused to work under conditions which violate 29
21 U.S.C. §654(a)(1) and the orders of Governor Newsom, the State Health Officer, and local
22 orders relating to COVID, in addition to the OSHA and CDC guidelines.

23 129. As a proximate result of Defendant's wrongful conduct, PLAINTIFF has suffered,
24 and continues to suffer, substantial losses in earnings and job benefits in an amount to be
25 determined according to proof at the time of trial.

26 130. As a further proximate result of Defendant's wrongful conduct, PLAINTIFF has
27 suffered, and continues to suffer humiliation, embarrassment, emotional distress, and mental
28 anguish, all in an amount to be determined according to proof at the time of trial.

131. In doing the acts herein alleged, DEFENDANT engaged in conduct with malice, oppression, and/or fraud. DEFENDANT acted with intent to cause injury and/or its conduct was done with a willful and knowing disregard of the rights and safety of others. DEFENDANT was aware of the probable dangerous consequences of its conduct and deliberately failed to avoid those consequences. DEFENDANT's conduct was also despicable and subjected PLAINTIFF to cruel and unjust hardship in knowing disregard of her rights. DEFENDANT's conduct was reprehensible in that it caused PLAINTIFF and her family physical and emotional harm, DEFENDANT disregarded the health and safety of others, DEFENDANT's conduct involved a pattern and practice of violating ethical, moral, and safety rules. DEFENDANT is therefore entitled to punitive damages against DEFENDANT in an amount appropriate to punish and make an example of DEFENDANT.

132. PLAINTIFF is also entitled to costs and reasonable attorneys' fees pursuant to Code of Civil Procedure §1021.5, Labor Code §2699.3, and any other applicable provisions for attorneys' fees and costs.

TWELFTH CAUSE OF ACTION

Wrongful Termination In Violation of Public Policy

(By PLAINTIFF and Against DEFENDANT)

133. PLAINTIFF hereby re-alleges and incorporates by reference the previous paragraphs as though fully set forth herein.

134. Jurisdiction is invoked in this Court pursuant to the public policy and common law of the State of California. See *Tameny v. Atlantic Richfield Co.*, 27 Cal. 3d 167 (1980); *City of Moorpark v. Super. Ct.*, 18 Cal. 4th 1143, 1155, (1998); *Ferrick v. Santa Clara Univ.*, 231 Cal. App. 4th 1337, 1345 (2014) (reiterating that Labor Code §1102.5 “reflects the broad public policy interest in encouraging workplace whistle-blowers to report unlawful acts without fearing retaliation”). The general duty clauses to make employment safe and healthy “establish a general public policy requiring employers to provide a safe and secure workplace.” *Boone v. Carlsbad Cmty. Church*, 2008 U.S. Dist. LEXIS 44675 at *9-10 (S.D. Cal. June 6, 2008); *Franklin v. The Monadnock Co.*, 151 Cal. App. 4th 252 (2007); *Frazier v. UPS*, 2005 U.S. Dist.

1 LEXIS 13894, * (E.D. Cal. May 3, 2005) (“The right to refuse work under unsafe conditions is
2 arguably a right protected by California public policy.”); *Hentzel v. Singer Co.*, 138 Cal. App.
3 3d 290, 296 (1982) (overruled on other grounds) (“California has long maintained a policy of
4 protecting the right of employees to voice their dissatisfaction with working conditions.”); Cf.
5 Labor Code §6310(a)(1) (“No person shall discharge or in any manner discriminate against any
6 employee because the employee has...made any oral or written complaint [relating to employee
7 safety or health] to ... his or her employer”)

8 135. DEFENDANT terminated PLAINTIFF’S employment because she refused to
9 perform duties under conditions which violate statutes, including, without limitation, Labor
10 Code §§6400(a), 6402, 6403(a)-(c), 6404, and 6407. DEFENDANT also terminated
11 PLAINTIFF’s employment because she refused to work under conditions which violate 29
12 U.S.C. §654(a)(1) and the orders of Governor Newsom, the State Health Officer, and local
13 orders relating to COVID, in addition to the OSHA and CDC guidelines.

14 136. As a proximate result of Defendant’s wrongful conduct, PLAINTIFF has suffered,
15 and continues to suffer, substantial losses in earnings and job benefits in an amount to be
16 determined according to proof at the time of trial.

17 137. As a further proximate result of Defendant’s wrongful conduct, PLAINTIFF has
18 suffered, and continues to suffer humiliation, embarrassment, emotional distress, and mental
19 anguish, all in an amount to be determined according to proof at the time of trial.

20 138. In doing the acts herein alleged, DEFENDANT engaged in conduct with malice,
21 oppression, and/or fraud. DEFENDANT acted with intent to cause injury and/or its conduct was
22 done with a willful and knowing disregard of the rights and safety of others. DEFENDANT was
23 aware of the probable dangerous consequences of its conduct and deliberately failed to avoid those
24 consequences. DEFENDANT’s conduct was also despicable and subjected PLAINTIFF to cruel
25 and unjust hardship in knowing disregard of her rights. DEFENDANT’s conduct was
26 reprehensible in that it caused PLAINTIFF and her family physical and emotional harm,
27 DEFENDANT disregarded the health and safety of others, DEFENDANT’s conduct involved a
28 pattern and practice of violating ethical, moral, and safety rules. DEFENDANT is therefore

1 entitled to punitive damages against DEFENDANT in an amount appropriate to punish and make
2 an example of DEFENDANT.

3 139. PLAINTIFF is also entitled to costs and reasonable attorneys' fees pursuant to Code
4 of Civil Procedure §1021.5, Labor Code §2699.3, and any other applicable provisions for
5 attorneys' fees and costs.

6 **THIRTEENTH CAUSE OF ACTION**
7 **For Violation of the Private Attorneys General Act**
8 **[Cal. Lab . Code §§ 2698 ET SEQ. ("PAGA")]**
9 **(By PLAINTIFF and Against All DEFENDANTS)**

10 18. PLAINTIFF hereby re-alleges and incorporates by reference the previous
11 paragraphs as though fully set forth herein.

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

22 20. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
23 for a civil penalty to be assessed and collected by the Labor and Workforce Development
24 Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or
25 employees for violation of the Labor Code may, as an alternative, be recovered through civil
26 action brought by an aggrieved employee on behalf of himself or herself and other current or
27 former employees pursuant to the procedures specified in Labor Code § 2699.3.
28

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

6 116. Defendants' conduct violates numerous Wage Orders and Labor Code sections
7 including, but not limited to, the following:

- 8 a. Violation of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.2,
9 226.3, 226.7, 227.3, 246 *et seq.*, 510, 512, 558, 1182.12, 1194, 1194.2, 1197,
10 1197.1, 1198, 2802, 6310, 6311, 6500, 6401, 6402, 6403, 6404, 6407, 98.6,
11 1102.5(b), 2698 for failure to timely pay all earned wages (including minimum
12 wage and overtime wages) owed to Plaintiff and other aggrieved employees during
13 employment and upon separation of employment as herein alleged;
- 14 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
15 Plaintiff and other aggrieved employees failure to pay premium wages for missed
16 meal periods and herein alleged;
- 17 c. Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
18 other aggrieved employees and failure to pay premium wages for missed rest
19 periods as herein alleged;
- 20 d. Violation of Labor Code § 226 for failure to provide accurate itemized wage
21 statements to Plaintiff and other aggrieved employees as herein alleged;
- 22 e. Violation of Labor Code § 1174 and 1174.5 for failure to maintain accurate and
23 complete records showing, among other things, the hours worked daily by and
24 the wages paid to aggrieved employees;
- 25 f. Violation of Labor Code §6402 which provides that no employer shall require, or
26 permit any employee to go or be in any employment or place of employment
27 which is not safe and healthful.

- 1 g. Violation Labor Code §6403 which provides that no employer shall fail or
2 neglect to do any of the following: (a) To provide and use safety devices and
3 safeguards reasonably adequate to render the employment and place of
4 employment safe; (b) To adopt and use methods and processes reasonably
5 adequate to render the employment and place of employment safe; (c) To do
6 every other thing reasonably necessary to protect the life, safety, and health of
7 employees.
- 8 h. Violation of Labor Code §6404 which provides that no employer shall occupy or
9 maintain any place of employment that is not safe and healthful.
- 10 i. Violation of Labor Code §6407 which provides that every employer and every
11 employee shall comply with occupational safety and health standards, with
12 Section 25910 of the Health and Safety Code, and with all rules, regulations, and
13 orders pursuant to this division which are applicable to his own actions and
14 conduct; and
- 15 j. Violation of Labor Code § 2800 and 2802 for failure to reimburse Plaintiff and
16 other aggrieved employees as herein alleged.

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

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

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

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

28 **PRAYER FOR RELIEF**

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

3 1. On behalf of the CALIFORNIA CLASS:

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

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

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

11 D) Restitutionary disgorgement of DEFENDANT' ill-gotten gains into a fluid fund for
12 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the
13 other members of the CALIFORNIA CLASS; and,

14 E) Compensatory damages, according to proof at trial, including compensatory
15 damages for overtime compensation due PLAINTIFF and the other members of the CALIFORNIA
16 CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest thereon at the
17 statutory rate;

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

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

24 H) Meal and rest period compensation pursuant to California Labor Code Sections
25 226.7, 512 and the applicable IWC Wage Order; and

26 I) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
27 1197.
28

- 1 J) For Statutory penalties to the extent permitted by law, including those pursuant to
2 the Labor Code and IWC Wage Orders;
- 3 2. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 4 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
5 General Act of 2004; and
- 6 b. An Award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 7 3. On all claims:
- 8 A) An award of interest, including prejudgment interest at the legal rate;
- 9 B) Such other and further relief as the Court deems just and equitable; and,
- 10 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
11 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.
- 12 D) General damages in an amount to be proved at trial;
- 13 E) Special damages in an amount to be proved at trial;
- 14 F) For punitive damages, pursuant to *Civil Code* §§3294, 52(b)(1), and 52.4(a), in
15 amounts sufficient to punish all Defendants for the wrongful conduct alleged herein and to deter
16 such conduct in the future;
- 17 G) For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, the
18 Labor Code, and/or any other basis;
- 19 H) For prejudgment and post judgment interest on each of the foregoing at the legal
20 rate from the date the obligation became due through the date of judgment in this matter;
- 21 I) For any other relief that is just and proper.

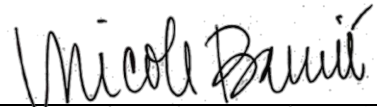
22

23 Dated: September 29, 2022

24 **BARVIÉ LAW, APC**

25

26 By



NICOLE BARVIÉ, Esq.

27 Attorneys for Plaintiff(s)

28

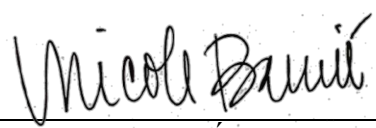
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

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

Dated: September 29, 2022

BARVIÉ LAW, ACP

By 

NICOLE BARVIÉ, Esq.

Attorneys for Plaintiff(s)