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Case #22CV402597
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

CHRISTOPHER BRICK, CHRISTINA
SPARKS, and MARIA KARINA ZAMORA
CORONA on behalf of the State of
California, as private attorney generals,

Plaintiff,

vs.

HABIT EMPLOYMENT, L.P., a Limited
Partnership; THE HABIT RESTAURANTS,
LLC dba THE HABIT BURGER GRILL; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV402597

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1.Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226, 226(a), 226.3, 226.7, 227.3, 510,
512, 558, 558(a)(1)(2), 1174, 1174.5,
1175, 1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B), and
the applicable Wage Order(s).

Plaintiffs Christopher Brick, Christina Sparks, and Maria Karina Zamora Corona

1 (“PLAINTIFFS”), on behalf of the people of the State of California and as “aggrieved
2 employees” acting as private attorney generals under the Labor Code Private Attorney General
3 Act of 2004, § 2699, *et seq.* (“PAGA”) only, allege on information and belief, except for their
4 own acts and knowledge which are based on personal knowledge, the following:

5 6 **INTRODUCTION**

7 1. PLAINTIFFS bring this action against Habit Employment, L.P. and The Habit
8 Restaurants, LLC dba The Habit Burger Grill (collectively referred to as “DEFENDANT”)
9 seeking only to recover PAGA civil penalties for themselves, and on behalf of all current and
10 former aggrieved employees that worked for DEFENDANT. PLAINTIFFS do **not seek to**
11 **recover anything other than penalties as permitted by California Labor Code § 2699.** To
12 the extent that statutory violations are mentioned for wage violations, PLAINTIFFS do not seek
13 underlying general and/or special damages for those violations, but simply the civil penalties
14 permitted by California Labor Code § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 24 **THE PARTIES**

25 4. Defendant Habit Employment, LP is a limited partnership that at all relevant times
26 mentioned herein conducted and continues to conduct substantial business in the state of
27 California.

28 5. Defendant The Habit Restaurants, LLC dba The Habit Burger Grill is a limited

1 liability company that at all relevant times mentioned herein conducted and continues to conduct
2 substantial business in the state of California.

3 6. Habit Employment, LP and The Habit Restaurants, LLC dba The Habit Burger
4 Grill are the joint employers of PLAINTIFFS as evidenced by paycheck, standardized company
5 employment handbooks, by standardized policies and procedures, by the company
6 PLAINTIFFS perform work for respectively and are therefore jointly responsible as employers
7 for the conduct alleged herein, and are therefore collectively referred to herein as
8 (“DEFENDANT”).

9 7. DEFENDANT owns and operates restaurants in California.

10 8. Plaintiff Brick was employed by DEFENDANT in California from November 1,
11 2021 to December 15, 2021 and was at all times classified by DEFENDANT as a non-exempt
12 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
13 payment of minimum and overtime wages due for all time worked.

14 9. Plaintiff Sparks was employed by DEFENDANT in California from March of
15 2022 to September of 2022, and was at all times classified by DEFENDANT as a non-exempt
16 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
17 payment of minimum and overtime wages due for all time worked.

18 10. Plaintiff Corona was employed by DEFENDANT in California from August of
19 2021 to October of 2021, and was at all times classified by DEFENDANT as a non-exempt
20 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
21 payment of minimum and overtime wages due for all time worked.

22 11. PLAINTIFFS, and such persons that may be added from time to time who satisfy
23 the requirements and exhaust the administrative procedures under the Private Attorney General
24 Act, bring this Representative Action on behalf of the State of California with respect to
25 themselves and all individuals who are or previously were employed by Defendant Habit
26 Employment, L.P., and/or The Habit Restaurants, LLC dba The Habit Burger Grill in California,
27 including any employees staffed with DEFENDANT by a third party, and classified as non-
28 exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of June 22, 2021

1 until a date as determined by the Court (the "PAGA PERIOD").

2 12. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
3 presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this
4 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
5 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
6 226, 226(a), 226.3, 226.7, 227.3, 510, 512, 558, 558(a)(1)(2), 1174, 1174.5, 1175, 1194, 1197,
7 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-
8 (B), and the applicable Wage Order(s). Based upon the foregoing, PLAINTIFFS and all
9 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
10 2699, *et seq.*

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

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

THE CONDUCT

15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFFS and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. PLAINTIFFS and the AGGRIEVED EMPLOYEES worked off the clock with respect to time spent training for their job with DEFENDANT, and undergoing mandatory drug testing or any other testing and/or examination required as a condition of employment. Additionally, DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFFS and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFFS and the AGGRIEVED EMPLOYEES are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFFS and the AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a condition of employment, required these employees to submit to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business records.

16. State law provides that employees must be paid overtime and meal and rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFFS and the AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific elements of an employee's performance.

1 17. The second component of PLAINTIFFS' and the AGGRIEVED EMPLOYEES'
2 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFFS
3 and the AGGRIEVED EMPLOYEES incentive wages based on their performance for
4 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
5 hourly basis with incentive compensation when the employees met the various performance
6 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
7 overtime and meal and rest break premiums to PLAINTIFFS and the AGGRIEVED
8 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
9 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest
10 break premium pay. Management and supervisors described the incentive program to potential
11 and new employees as part of the compensation package. As a matter of law, the incentive
12 compensation received by PLAINTIFFS and the AGGRIEVED EMPLOYEES must be
13 included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
14 overtime compensation and meal and rest break premiums to PLAINTIFFS and the
15 AGGRIEVED EMPLOYEES by DEFENDANT.

16 18. As a result of their rigorous work schedules, PLAINTIFFS and the AGGRIEVED
17 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
18 are not fully relieved of duty for their meal periods. PLAINTIFFS and the AGGRIEVED
19 EMPLOYEES are required from time to time to perform work as ordered by DEFENDANT for
20 more than five (5) hours during some shifts without receiving a meal break. Further,
21 DEFENDANT from time to time fails to provide PLAINTIFFS and the AGGRIEVED
22 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
23 are required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engages in
24 the practice of rounding the meal period times to avoid paying penalties to PLAINTIFFS and
25 the AGGRIEVED EMPLOYEES. PLAINTIFFS and the AGGRIEVED EMPLOYEES
26 therefore forfeit meal breaks without additional compensation and in accordance with
27 DEFENDANT's corporate policy and practice.

28 19. During the PAGA PERIOD, PLAINTIFFS and the AGGRIEVED EMPLOYEES

1 are also required from time to time to work in excess of four (4) hours without being provided
2 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
3 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
4 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
5 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
6 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
7 PLAINTIFFS and the AGGRIEVED EMPLOYEES are also not provided with one hour wages
8 in lieu thereof. Additionally, the applicable California Wage Order requires employers to
9 provide employees with off-duty rest periods, which the California Supreme Court defined as
10 time during which an employee is relieved from all work related duties and free from employer
11 control. In so doing, the Court held that the requirement under California law that employers
12 authorize and permit all employees to take rest period means that employers must relieve
13 employees of all duties and relinquish control over how employees spend their time which
14 includes control over the locations where employees may take their rest period. Employers
15 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
16 five minutes back. Here, DEFENDANT's policy restricts PLAINTIFFS and the AGGRIEVED
17 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which
18 states PLAINTIFFS and the AGGRIEVED EMPLOYEES cannot leave the work premises
19 during their rest period.

20 20. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
21 PLAINTIFFS and the AGGRIEVED EMPLOYEES for the actual amount of time these
22 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
23 is required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked,
24 meaning the time during which an employee was subject to the control of an employer,
25 including all the time the employee was permitted or suffered to permit this work.
26 DEFENDANT requires these employees to work off the clock without paying them for all the
27 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
28 known that PLAINTIFFS and the AGGRIEVED EMPLOYEES are under compensated for all

1 time worked. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeit time
2 worked by working without their time being accurately recorded and without compensation at
3 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
4 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
5 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
6 1197.1.

7 21. From time to time, DEFENDANT also fails to provide PLAINTIFFS and the
8 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
9 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
10 provides that every employer shall furnish each of his or her employees with an accurate
11 itemized wage statement in writing showing, among other things, gross wages earned and all
12 applicable hourly rates in effect during the pay period and the corresponding amount of time
13 worked at each hourly rate. Aside, from the violations listed above in this paragraph,
14 DEFENDANT fails to issue to PLAINTIFFS itemized wage statements that list all the
15 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
16 time provides PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements which
17 violated Cal. Lab. Code § 226.

18 22. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
19 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
20 wages are paid not more than seven calendar days following the close of the payroll period.
21 Cal. Lab. Code § 210 provides:

22 [I]n addition to, and entirely independent and apart from, any other penalty provided in
23 this article, every person who fails to pay the wages of each employee as provided in
24 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
25 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
26 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
27 for each failure to pay each employee, plus 25 percent of the amount unlawfully
28 withheld.

23. DEFENDANT from time to time fails to pay PLAINTIFFS and the AGGRIEVED
EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal.
Lab. Code § 204(d).

1 24. DEFENDANT underpays sick pay wages to PLAINTIFFS and the AGGRIEVED
2 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
3 Code Section 246. Specifically, PLAINTIFFS and other non-exempt employees earn non-
4 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
5 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
6 to PLAINTIFFS and the AGGRIEVED EMPLOYEES at their base rates of pay.

7 25. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
8 employees be calculated by dividing the employee's total wages, not including overtime
9 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
10 of employment.

11 26. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
12 the regular rate of pay. PLAINTIFFS and the AGGRIEVED EMPLOYEES routinely earned
13 non-discretionary incentive wages which increased their regular rate of pay. However, when
14 sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and the AGGRIEVED
15 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
16 Code Section 246.

17 27. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS and
18 the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
19 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and
20 believe and based thereon allege that such failure to pay sick pay at regular rate was willful,
21 such that PLAINTIFFS and the AGGRIEVED EMPLOYEES whose employment has separated
22 are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

23 28. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
24 to collect or receive from an employee any part of wages theretofore paid by said employer to
25 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFFS and the
26 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to
27 PLAINTIFFS and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the
28 deductions from compensation payable to PLAINTIFFS and the AGGRIEVED EMPLOYEES,

1 and thereby fails to pay these employees all wages due at each applicable pay period and upon
2 termination.

3 29. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
4 PLAINTIFFS and the AGGRIEVED EMPLOYEES for required business expenses incurred
5 by the PLAINTIFFS and the AGGRIEVED EMPLOYEES in direct consequence of discharging
6 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
7 are required to indemnify employees for all expenses incurred in the course and scope of their
8 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
9 her employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
11 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
12 believed them to be unlawful."

13 30. In the course of their employment PLAINTIFFS and the AGGRIEVED
14 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
15 cellular phones as a result of and in furtherance of their job duties as employees for
16 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
17 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
18 PLAINTIFFS and the AGGRIEVED EMPLOYEES are required by DEFENDANT to use their
19 personal cellular phones. As a result, in the course of their employment with DEFENDANT,
20 PLAINTIFFS and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses
21 which included, but were not limited to, costs related to the use of their personal cellular phones
22 all on behalf of and for the benefit of DEFENDANT.

23 31. All of the conduct and violations alleged herein occurred during the PAGA
24 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
25 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
26 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
27 AJDAR 12157 (Certified for Publication 12/19/18).
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1 with respect to themselves and all individuals who are or previously were employed by
2 Defendant Habit Employment, L.P. and/or The Habit Restaurants, LLC dba The Habit
3 Burger Grill in California, including any employees staffed by a third party, and classified as
4 non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of June 22,
5 2021 until a date as determined by the Court (the "PAGA PERIOD").

6 37. On June 22, 2022, Plaintiff Brick gave written notice by electronic mail to the
7 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
8 employer of the specific provisions of this code alleged to have been violated as required by
9 Labor Code § 2699.3. A true and correct copy of this correspondence is attached hereto as
10 Exhibit 1. The statutory waiting period for Plaintiff Brick to add these allegations to the
11 Complaint has expired. On October 24, 2022, Plaintiff Sparks gave written notice by
12 electronic mail to the Agency and by certified mail to the employer of the specific provisions
13 of this code alleged to have been violated as required by Labor Code § 2699.3. A true and
14 correct copy of this correspondence is attached hereto as Exhibit 2. The statutory waiting
15 period for Plaintiff Sparks to add these allegations to the Complaint has expired. On
16 September 28, 2022, Plaintiff Corona gave written notice by electronic mail to the Agency
17 and by certified mail to the employer of the specific provisions of this code alleged to have
18 been violated as required by Labor Code § 2699.3. A true and correct copy of this
19 correspondence is attached hereto as Exhibit 3. The statutory waiting period for Plaintiff
20 Corona to add these allegations to the Complaint has expired. As a result, pursuant to
21 Section 2699.3, PLAINTIFFS may now commence a representative civil action under
22 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
23 AGGRIEVED EMPLOYEES as herein defined.

24 38. The policies, acts and practices heretofore described were and are an unlawful
25 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
26 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
27 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
28 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for

1 required expenses, and (f) failed to provide wages when due, all in violation of the
2 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
3 226, 226(a), 226.3, 226.7, 227.3, 510, 512, 558, 558(a)(1)(2), 1174, 1174.5, 1175, 1194,
4 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
5 Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil
6 penalties as a result of such conduct.¹ PLAINTIFFS hereby seek recovery of only civil
7 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
8 representative of the State of California for the illegal conduct perpetrated on PLAINTIFFS
9 and the AGGRIEVED EMPLOYEES.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the State of California and with respect to all AGGRIEVED
15 EMPLOYEES:

16 A) Recovery of civil penalties as prescribed by the Labor Code Private
17 Attorneys General Act of 2004; and,

18 B) An award of attorneys' fees and cost of suit, as allowable under the
19 law, including, but not limited to, pursuant to Labor Code §2699.

20 Dated: October 10, 2025 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
21

22
23 By: /s/ Nicholas De Blouw
24 Norman B. Blumenthal
25 Kyle R. Nordrehaug
26 Nicholas J. De Blouw

27 *Attorneys for Plaintiff*

28 ¹Plaintiffs specifically exclude and/or does not allege any claims under California Labor Code §558(a)(3).

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EXHIBIT - 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:

1004

June 21, 2022

CA2666

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Habit Employment, L.P.
Certified Mail #70220410000153343966
C T Corporation System
330 N. Brand Blvd, Suite 700
Glendale, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Habit Employment, L.P. in California, including any employees staffed with Habit Employment, L.P. by a third party, and classified as non-exempt employees during the time period of June 21, 2021 until a date as determined by the Court. Our offices represent Plaintiff Christopher Brick (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Habit Employment, L.P. (“Defendant”). Plaintiff was employed by Defendant in California as a non-exempt employee from November 1, 2021 to December 15, 2021 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks (and paid at the correct regular rate), and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v.*

Stoneledge Furniture, LLC, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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EXHIBIT – 2

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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LA JOLLA, CALIFORNIA 92037

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WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

October 24, 2022

CA2776

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

The Habit Restaurants, LLC
Certified Mail #70221670000126674933
C T CORPORATION SYSTEM
330 N BRAND BLVD STE 700
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by The Habit Restaurants, LLC in California, including any employees staffed with The Habit Restaurants, LLC by a third party, and classified as non-exempt employees during the time period of October 24, 2021 until a date as determined by the Court. Our offices represent Plaintiff Christina Sparks (“Plaintiff”) and other Aggrieved Employees in a lawsuit against The Habit Restaurants, LLC (“Defendant”). Plaintiff was employed by Defendant in California as a non-exempt employee from March of 2022 to September of 2022 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v.*

Stoneledge Furniture, LLC, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2 Norman B. Blumenthal (State Bar #068687)

3 Kyle R. Nordrehaug (State Bar #205975)

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6 2255 Calle Clara

7 La Jolla, CA 92037

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10 Website: www.bamlawca.com

11 Attorneys for Plaintiff

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF STANISLAUS**

14 CHRISTINA SPARKS, an individual, on behalf
15 of herself and on behalf of all persons similarly
16 situated,

17 Plaintiff,

18 vs.

19 THE HABIT RESTAURANTS, LLC, a
20 Limited Liability Company; and DOES 1
21 through 50, inclusive,

22 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246;
10. DISCRIMINATION AND RETALIATION IN VIOLATION OF FEHA;
11. FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN VIOLATION OF CAL. GOV. CODE § 12940(n);
12. FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN VIOLATION OF CAL. GOV. CODE § 12940(m); and,
13. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY.

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. The Habit Restaurants, LLC (“DEFENDANT”) is a limited liability company that
7 at all relevant times mentioned herein conducted and continues to conduct substantial business
8 in the state of California.

9 2. DEFENDANT owns and operates restaurants in California.

10 3. PLAINTIFF was employed by DEFENDANT in California from March of 2022
11 to September of 2022 and was at all times classified by DEFENDANT as a non-exempt
12 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
13 payment of minimum and overtime wages due for all time worked.

14 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
15 defined as all individuals who are or previously were employed by DEFENDANT in California
16 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
17 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
18 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
19 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
20 (\$5,000,000.00).

21 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
22 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred
23 during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice
24 which failed to lawfully compensate these employees. DEFENDANT’s policy and practice
25 alleged herein was an unlawful, unfair and deceptive business practice whereby
26 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other
27 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
28 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the

1 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA
2 CLASS who have been economically injured by DEFENDANT's past and current unlawful
3 conduct, and all other appropriate legal and equitable relief.

4 6. The true names and capacities, whether individual, corporate, subsidiary,
5 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
6 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
7 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
8 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
9 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
10 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
11 50, inclusive, are responsible in some manner for one or more of the events and happenings
12 that proximately caused the injuries and damages hereinafter alleged.

13 7. The agents, servants and/or employees of the Defendants and each of them
14 acting on behalf of the Defendants acted within the course and scope of his, her or its
15 authority as the agent, servant and/or employee of the Defendants, and personally
16 participated in the conduct alleged herein on behalf of the Defendants with respect to the
17 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
18 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and
19 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result
20 of the conduct of the Defendants' agents, servants and/or employees.

21 22 THE CONDUCT

23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
24 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
25 worked, meaning the time during which an employee is subject to the control of an
26 employer, including all the time the employee is suffered or permitted to work.
27 DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work without
28 paying them for all the time they are under DEFENDANT's control. Among other things,

1 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to
2 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
3 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal
4 break. DEFENDANT, as a matter of established company policy and procedure,
5 administers a uniform practice of rounding the actual time worked and recorded by
6 PLAINTIFF and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT,
7 so that during the course of their employment, PLAINTIFF and CALIFORNIA CLASS
8 Members are paid less than they would have been paid had they been paid for actual
9 recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the
10 practice of requiring PLAINTIFF and CALIFORNIA CLASS Members to perform work off
11 the clocking that DEFENDANT, as a condition of employment, required these employees to
12 submit to mandatory temperature checks and symptom questionnaires for COVID-19
13 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a
14 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage,
15 overtime wage compensation, and off-duty meal breaks by working without their time being
16 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy
17 and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
18 worked, is evidenced by DEFENDANT's business records.

19 9. State and federal law provides that employees must be paid overtime and meal
20 and rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF
21 and other CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive
22 pay that is tied to specific elements of an employee's performance.

23 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
24 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
25 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
26 performance for DEFENDANT. The non-discretionary incentive program provided all
27 employees paid on an hourly basis with incentive compensation when the employees met the
28 various performance goals set by DEFENDANT. However, when calculating the regular

1 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
2 other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
3 compensation as part of the employees' "regular rate of pay" for purposes of calculating
4 overtime pay and meal and rest break premium pay. Management and supervisors described
5 the incentive program to potential and new employees as part of the compensation package.
6 As a matter of law, the incentive compensation received by PLAINTIFF and other
7 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure
8 to do so has resulted in a underpayment of overtime compensation and meal and rest break
9 premiums to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

10 11. As a result of their rigorous work schedules, PLAINTIFF and other
11 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute
12 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
13 and other CALIFORNIA CLASS Members were required from time to time to perform
14 work as ordered by DEFENDANT for more than five (5) hours during some shifts without
15 receiving a meal break. Further, DEFENDANT from time to time failed to provide
16 PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for
17 some workdays in which these employees were required by DEFENDANT to work ten (10)
18 hours of work. DEFENDANT also engaged in the practice of rounding the meal period
19 times to avoid paying penalties to PLAINTIFF and other CALIFORNIA CLASS Members.
20 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks
21 without additional compensation and in accordance with DEFENDANT's corporate policy
22 and practice.

23 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
24 CALIFORNIA CLASS Members were also required from time to time to work in excess of
25 four (4) hours without being provided ten (10) minute rest periods. Further, these employees
26 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
27 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
28 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to

1 time, and a first, second and third rest period of at least ten (10) minutes for some shifts
2 worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA
3 CLASS Members were also not provided with one hour wages in lieu thereof. Additionally,
4 the applicable California Wage Order requires employers to provide employees with off-
5 duty rest periods, which the California Supreme Court defined as time during which an
6 employee is relieved from all work related duties and free from employer control. In so
7 doing, the Court held that the requirement under California law that employers authorize and
8 permit all employees to take rest period means that employers must relieve employees of all
9 duties and relinquish control over how employees spend their time which includes control
10 over the locations where employees may take their rest period. Employers cannot impose
11 controls that prohibit an employee from taking a brief walk - five minutes out, five minutes
12 back. Here, DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA
13 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
14 which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work
15 premises during their rest period.

16 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
17 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the
18 actual amount of time these employees worked. Pursuant to the Industrial Welfare
19 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other
20 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
21 employee was subject to the control of an employer, including all the time the employee was
22 permitted or suffered to permit this work. DEFENDANT required these employees to work
23 off the clock without paying them for all the time they were under DEFENDANT's control.
24 As such, DEFENDANT knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
26 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
27 working without their time being accurately recorded and without compensation at the
28 applicable minimum wage and overtime wage rates. To the extent that the time worked off

1 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
2 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
3 1197, and 1197.1.

4 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
5 other members of the CALIFORNIA CLASS with complete and accurate wage statements
6 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
7 Code § 226 provides that every employer shall furnish each of his or her employees with an
8 accurate itemized wage statement in writing showing, among other things, gross wages
9 earned and all applicable hourly rates in effect during the pay period and the corresponding
10 amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS
11 Members were paid on an hourly basis. As such, the wage statements should reflect all
12 applicable hourly rates during the pay period and the total hours worked, and the applicable
13 pay period in which the wages were earned pursuant to California Labor Code Section
14 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other
15 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
16 wage statements failed to identify the accurate total hours worked each pay period. When
17 the hours shown on the wage statements were added up, they did not equal the actual total
18 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from
19 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
20 an itemized wage statement that lists all the requirements under California Labor Code 226
21 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
22 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
23 § 226.

24 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
25 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
26 the wages are paid not more than seven (7) calendar days following the close of the payroll
27 period. Cal. Lab. Code § 210 provides:
28

1 in [I]n addition to, and entirely independent and apart from, any other penalty provided
2 this article, every person who fails to pay the wages of each employee as provided in
3 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
4 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.

5 16. DEFENDANT from time to time failed to pay PLAINTIFF and members of
6 the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
7 payroll period in accordance with Cal. Lab. Code § 204(d), including but not limited to for
8 the “Hourly” regular wage payments.

9 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
10 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
11 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
12 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
13 of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS
14 Members at their base rates of pay.

15 18. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
16 employees be calculated by dividing the employee’s total wages, not including overtime
17 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
18 days of employment.

19 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
20 at the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely
21 earned non-discretionary incentive wages which increased their regular rate of pay.
22 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
23 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay,
24 as required under Cal. Lab. Code Section 246.

25 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
26 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
27 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is
28 informed and believes and based thereon alleges that such failure to pay sick pay at regular

1 rate was willful, such that PLAINTIFF and members of the CALIFORNIA CLASS whose
2 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
3 Sections 201-203.

4 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
5 to collect or receive from an employee any part of wages theretofore paid by said employer
6 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and
7 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
8 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members,
9 failed to disclose all aspects of the deductions from compensation payable to PLAINTIFF
10 and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to pay these
11 employees all wages due at each applicable pay period and upon termination. PLAINTIFF
12 and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal
13 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

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

24 23. In the course of their employment PLAINTIFF and other CALIFORNIA
25 CLASS Members as a business expense, were required by DEFENDANT to use their own
26 personal cellular phones as a result of and in furtherance of their job duties as employees for
27 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
28 associated with the use of their personal cellular phones for DEFENDANT's benefit.

1 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
2 DEFENDANT to use their personal cellular phones. As a result, in the course of their
3 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
4 CLASS incurred unreimbursed business expenses which included, but were not limited to,
5 costs related to the use of their personal cellular phones all on behalf of and for the benefit
6 of DEFENDANT.

7 24. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
8 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage
9 Order and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due
10 to PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-
11 duty meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
12 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the
13 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties
14 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to
15 provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's
16 business records.

17 25. Furthermore, PLAINTIFF came back to work after birthing her child in March
18 of 2022. In April of 2022 continuing throughout the rest of her employment, PLAINTIFF
19 consulted and requested numerous times for an accommodation to allow her a space to pump
20 her breast milk for her new born child. In August of 2022, PLAINTIFF requested to
21 Christian Lopez, the General Manager, and Marcos Tejeda, DEFENDANT's District
22 Manager, that she be allowed a safe space to pump her breast milk. PLAINTIFF's
23 managers failed to accommodate her requests and brushed off PLAINTIFF's complaints that
24 she was not being allowed to pump her breast milk and that as a result PLAINTIFF was
25 having trouble feeding her newborn. PLAINTIFF suffered mental and physical issues as a
26 result of the stress caused by DEFENDANT's failure to accommodate her requests. During
27 this time, PLAINTIFF was plagued with ongoing work pressures, obligations, and
28 mistreatment by her supervisors, including but not limited to, falsifying performance reviews

1 and making false accusations about PLAINTIFF's performance. Furthermore, the
2 continuous stress from work caused PLAINTIFF to feel afraid of going into work.
3 Shortly after PLAINTIFF reporting DEFENDANT's failures to accommodate her ability to
4 pump and provide breast milk to her newborn , DEFENDANT terminated PLAINTIFF's
5 employment on September 7, 2022. DEFENDANT claimed PLAINTIFF's termination was
6 based on poor performance, but in reality DEFENDANT's decision and real motivation to
7 terminate PLAINTIFF was in retaliation for PLAINTIFF continuing to request
8 accommodation for her pregnancy and newborn related situation.

9 26. Moreover, DEFENDANT discriminated against and failed to reasonably
10 accommodate PLAINTIFF for her physical disabilities. PLAINTIFF herein alleges that the
11 actions taken by employees of DEFENDANT against PLAINTIFF occurred within the
12 normal scope and course of these individuals' employment with DEFENDANT.
13 PLAINTIFF further alleges that these employees were PLAINTIFF's supervisors while
14 PLAINTIFF was employed by DEFENDANT. However, PLAINTIFF's request for
15 accommodation fell on deaf ears, as DEFENDANT failed to respond to PLAINTIFF's
16 requests. Ultimately, DEFENDANT never took PLAINTIFF seriously and subsequently
17 terminated her employment on September 7, 2022.

18 27. Prior to filing this action, PLAINTIFF exhausted her administrative remedies
19 by filing a timely administrative complaint with the Department of Fair Employment and
20 Housing ("DFEH") and received a DFEH right-to-sue letter on October 24, 2022.

21 **JURISDICTION AND VENUE**

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

26 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
28

1 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
2 facilities in this County and/or conducts substantial business in this County, and (ii)
3 committed the wrongful conduct herein alleged in this County against members of the
4 CALIFORNIA CLASS.

5
6
7 **THE CALIFORNIA CLASS**

8 30. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
9 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
10 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
11 California class, defined as all individuals who are or previously were employed by
12 DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA
13 CLASS") at any time during the period beginning four (4) years prior to the filing of this
14 Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS
15 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
16 Members is under five million dollars (\$5,000,000.00).

17 31. To the extent equitable tolling operates to toll claims by the CALIFORNIA
18 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
19 accordingly.

20 32. DEFENDANT, as a matter of company policy, practice and procedure, and in
21 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage
22 Order requirements, and the applicable provisions of California law, intentionally,
23 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all
24 meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members,
25 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
26 this work and permits or suffers to permit this work.

27 33. DEFENDANT has the legal burden to establish that each and every
28 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as

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

8 34. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
9 CLASS Members is impracticable.

10 35. DEFENDANT violated the rights of the CALIFORNIA CLASS under
11 California law by:

- 12 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
13 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
14 and/or deceptively having in place company policies, practices and
15 procedures that failed to record and pay PLAINTIFF and the other
16 members of the CALIFORNIA CLASS for all time worked, including
17 minimum wages owed and overtime wages owed for work performed
18 by these employees; and,
- 19 (b) Committing an act of unfair competition in violation of the UCL, by
20 failing to provide the PLAINTIFF and the other members of the
21 CALIFORNIA CLASS with the legally required meal and rest periods.

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

- 24 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
25 that the joinder of all such persons is impracticable and the disposition
26 of their claims as a class will benefit the parties and the Court;
- 27 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
28 issues that are raised in this Complaint are common to the

CALIFORNIA CLASS will apply to every member of the CALIFORNIA CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,

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

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

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

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
 - 2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;
- 1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
- (c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary

1 duplicative litigation that is likely to result in the absence of
2 certification of this action pursuant to Cal. Code of Civ. Proc. §
3 382.

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

- 6 (a) The questions of law and fact common to the CALIFORNIA CLASS
7 predominate over any question affecting only individual CALIFORNIA
8 CLASS Members because the DEFENDANT's employment practices
9 are applied with respect to the CALIFORNIA CLASS;
- 10 (b) A Class Action is superior to any other available method for the fair
11 and efficient adjudication of the claims of the members of the
12 CALIFORNIA CLASS because in the context of employment litigation
13 a substantial number of individual CALIFORNIA CLASS Members
14 will avoid asserting their rights individually out of fear of retaliation or
15 adverse impact on their employment;
- 16 (c) The members of the CALIFORNIA CLASS are so numerous that it is
17 impractical to bring all members of the CALIFORNIA CLASS before
18 the Court;
- 19 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not
20 be able to obtain effective and economic legal redress unless the action
21 is maintained as a Class Action;
- 22 (e) There is a community of interest in obtaining appropriate legal and
23 equitable relief for the acts of unfair competition, statutory violations
24 and other improprieties, and in obtaining adequate compensation for
25 the damages and injuries which DEFENDANT's actions have inflicted
26 upon the CALIFORNIA CLASS;
- 27
28

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

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

19
20 **THE CALIFORNIA LABOR SUB-CLASS**

21 40. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
22 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members
23 of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in
24 California and classified as non-exempt employees (the "CALIFORNIA LABOR SUB-
25 CLASS") at any time during the period three (3) years prior to the filing of the complaint
26 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-
27 CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy
28

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

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

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

20 40. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
21 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 24 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
25 compensation due to members of the CALIFORNIA LABOR SUB-
26 CLASS for missed meal and rest breaks in violation of the California
27 Labor Code and California regulations and the applicable California
28 Wage Order;

- 1 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS with accurate
3 itemized wage statements;
- 4 (c) Whether DEFENDANT has engaged in unfair competition by the
5 above-listed conduct;
- 6 (d) The proper measure of damages and penalties owed to the members of
7 the CALIFORNIA LABOR SUB-CLASS; and,
- 8 (e) Whether DEFENDANT's conduct was willful.

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

- 11 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
12 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
13 CLASS all wages due for overtime worked, for which DEFENDANT is
14 liable pursuant to Cal. Lab. Code § 1194;
- 15 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
16 accurately pay PLAINTIFF and the members of the CALIFORNIA
17 LABOR SUB-CLASS the correct minimum wage pay for which
18 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 19 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
20 the members of the CALIFORNIA LABOR SUB-CLASS with an
21 accurate itemized statement in writing showing the corresponding
22 correct amount of wages earned by the employee;
- 23 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
24 PLAINTIFF and the other members of the CALIFORNIA LABOR
25 SUB-CLASS with all legally required off-duty, uninterrupted thirty
26 (30) minute meal breaks and the legally required off-duty rest breaks;
- 27 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
28 when an employee is discharged or quits from employment, the

1 employer must pay the employee all wages due without abatement, by
2 failing to tender full payment and/or restitution of wages owed or in the
3 manner required by California law to the members of the
4 CALIFORNIA LABOR SUB-CLASS who have terminated their
5 employment; and,

- 6 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
7 and the CALIFORNIA LABOR SUB-CLASS members with necessary
8 expenses incurred in the discharge of their job duties.

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

- 11 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
12 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
13 CLASS Members is impracticable and the disposition of their claims as
14 a class will benefit the parties and the Court;
- 15 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
16 issues that are raised in this Complaint are common to the
17 CALIFORNIA LABOR SUB-CLASS and will apply to every member
18 of the CALIFORNIA LABOR SUB-CLASS;
- 19 (c) The claims of the representative PLAINTIFF are typical of the claims
20 of each member of the CALIFORNIA LABOR SUB-CLASS.
21 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
22 SUB-CLASS, was a non-exempt employee paid on an hourly basis who
23 was subjected to the DEFENDANT's practice and policy which failed
24 to pay the correct amount of wages due to the CALIFORNIA LABOR
25 SUB-CLASS. PLAINTIFF sustained economic injury as a result of
26 DEFENDANT's employment practices. PLAINTIFF and the members
27 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
28

1 identically harmed by the same unlawful, deceptive, and unfair
2 misconduct engaged in by DEFENDANT; and,

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

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

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

- 18 1) Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA LABOR SUB-CLASS which
20 would establish incompatible standards of conduct for the
21 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
22 2) Adjudication with respect to individual members of the
23 CALIFORNIA LABOR SUB-CLASS which would as a
24 practical matter be dispositive of interests of the other members
25 not party to the adjudication or substantially impair or impede
26 their ability to protect their interests.

- 27 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
28 acted or refused to act on grounds generally applicable to the

1 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
2 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
3 whole in that DEFENDANT fails to pay all wages due. Including the
4 correct wages for all time worked by the members of the
5 CALIFORNIA LABOR SUB-CLASS as required by law;

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

- 13 1) The interests of the members of the CALIFORNIA LABOR
14 SUB-CLASS in individually controlling the prosecution or
15 defense of separate actions in that the substantial expense of
16 individual actions will be avoided to recover the relatively small
17 amount of economic losses sustained by the individual
18 CALIFORNIA LABOR SUB-CLASS Members when compared
19 to the substantial expense and burden of individual prosecution
20 of this litigation;
- 21 2) Class certification will obviate the need for unduly duplicative
22 litigation that would create the risk of:
 - 23 A. Inconsistent or varying adjudications with respect to
24 individual members of the CALIFORNIA LABOR SUB-
25 CLASS, which would establish incompatible standards of
26 conduct for the DEFENDANT; and/or,
 - 27 B. Adjudications with respect to individual members of the
28 CALIFORNIA LABOR SUB-CLASS would as a

practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

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

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

- 1 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
2 numerous that it is impractical to bring all members of the
3 CALIFORNIA LABOR SUB-CLASS before the Court;
- 4 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
5 Members, will not be able to obtain effective and economic legal
6 redress unless the action is maintained as a Class Action;
- 7 (e) There is a community of interest in obtaining appropriate legal and
8 equitable relief for the acts of unfair competition, statutory violations
9 and other improprieties, and in obtaining adequate compensation for
10 the damages and injuries which DEFENDANT's actions have inflicted
11 upon the CALIFORNIA LABOR SUB-CLASS;
- 12 (f) There is a community of interest in ensuring that the combined assets of
13 DEFENDANT are sufficient to adequately compensate the members of
14 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 15 (g) DEFENDANT has acted or refused to act on grounds generally
16 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
17 making final class-wide relief appropriate with respect to the
18 CALIFORNIA LABOR SUB-CLASS as a whole;
- 19 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
20 ascertainable from the business records of DEFENDANT. The
21 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
22 CLASS Members who worked for DEFENDANT in California at any
23 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 24 (i) Class treatment provides manageable judicial treatment calculated to
25 bring a efficient and rapid conclusion to all litigation of all wage and
26 hour related claims arising out of the conduct of DEFENDANT as to
27 the members of the CALIFORNIA LABOR SUB-CLASS.
28

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

8 47. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
9 Code § 17021.

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

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

22 Cal. Bus. & Prof. Code § 17203.

23 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
24 engage in a business practice which violates California law, including but not limited to, the
25 applicable Industrial Wage Order(s), the California Code of Regulations and the California
26 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1,
27 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
28 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

7 51. By the conduct alleged herein, DEFENDANT's practices were deceptive and
8 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
9 meal and rest periods, the required amount of compensation for missed meal and rest
10 periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
11 reimburse all necessary business expenses incurred, and failed to provide Fair Labor
12 Standards Act overtime wages due for overtime worked as a result of failing to include non-
13 discretionary incentive compensation into their regular rates of pay for purposes of
14 computing the proper overtime pay due to a business practice that cannot be justified,
15 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements
16 in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
17 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
18 restitution of wages wrongfully withheld.

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

23 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
24 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to
25 provide all legally required meal breaks to PLAINTIFF and the other members of the
26 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

27 54. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
28 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty

1 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of
2 pay for each workday in which a second off-duty meal period was not timely provided for
3 each ten (10) hours of work.

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

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

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

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

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

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

SECOND CAUSE OF ACTION

For Failure To Pay Minimum Wages

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

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

and Against All Defendants)

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

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

63. 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.

64. 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.

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

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

9 67. DEFENDANT's unlawful wage and hour practices manifested, without
10 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
11 implementing a policy and practice that denies accurate compensation to PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
13 wage pay.

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

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

24 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
25 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
26 Members to work without paying them for all the time they were under DEFENDANT's
27 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
28

1 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
2 that they were entitled to, constituting a failure to pay all earned wages.

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

9 72. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
11 time worked. DEFENDANT elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
13 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
14 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
15 wages for their time worked.

16 73. In performing the acts and practices herein alleged in violation of California
17 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
18 CLASS for all time worked and provide them with the requisite compensation,
19 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
20 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 with a conscious and utter disregard for their legal rights, or the consequences to them, and
22 with the despicable intent of depriving them of their property and legal rights, and otherwise
23 causing them injury in order to increase company profits at the expense of these employees.
24

25 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
27 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
28 in a sum as provided by the California Labor Code and/or other applicable statutes. To the

1 extent minimum wage compensation is determined to be owed to the CALIFORNIA
2 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
3 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
4 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
5 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
6 conduct as alleged herein was willful, intentional and not in good faith. Further,
7 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek
8 and recover statutory costs.

9
10 **THIRD CAUSE OF ACTION**

11 **For Failure To Pay Overtime Compensation**

12 **[Cal. Lab. Code § 510]**

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

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

18 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
19 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
20 California Labor Code and the Industrial Welfare Commission requirements for
21 DEFENDANT's failure to pay these employees for all overtime worked, including, work
22 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
23 and/or forty (40) hours in any workweek.

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

26 78. Cal. Lab. Code § 510 further provides that employees in California shall not
27 be employed more than eight (8) hours per workday and more than forty (40) hours per
28

1 workweek unless they receive additional compensation beyond their regular wages in
2 amounts specified by law.

3 79. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
4 wages, including minimum wage and overtime compensation and interest thereon, together
5 with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an
6 employee for longer hours than those fixed by the Industrial Welfare Commission is
7 unlawful.

8 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
9 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
10 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
11 including overtime work.

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

20 82. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
22 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
23 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
24 violation of the California Labor Code, the Industrial Welfare Commission requirements
25 and other applicable laws and regulations.

26 As a direct result of DEFENDANT's unlawful wage practices as alleged
27 herein, the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
28 did not receive full compensation for overtime worked.

1 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
2 from the overtime requirements of the law. None of these exemptions are applicable to the
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
5 subject to a valid collective bargaining agreement that would preclude the causes of action
6 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of
7 herself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
8 of non-negotiable, non-waiveable rights provided by the State of California.

9 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
10 the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
11 overtime worked that they are entitled to, constituting a failure to pay all earned wages..

12 85. DEFENDANT failed to accurately pay the PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they
14 worked which was in excess of the maximum hours permissible by law as required by Cal.
15 Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work, overtime
17 as to which DEFENDANT failed to accurately record and pay as evidenced by
18 DEFENDANT's business records and witnessed by employees.

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

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

1 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
2 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

26 92. DEFENDANT further violates California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
28 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with

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

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

7
8 **FIFTH CAUSE OF ACTION**

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

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

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

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

16 95. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
17 from time to time required to work in excess of four (4) hours without being provided ten
18 (10) minute rest periods. Further, these employees from time to time were denied their first
19 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
20 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
21 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
22 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

23 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
24 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
25 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
26 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

27 96. DEFENDANT further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA

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

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

8 **SIXTH CAUSE OF ACTION**

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

10 **[Cal. Lab. Code § 226]**

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

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

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

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

1 100. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
3 wage statements which failed to show, among other things, the correct gross and net wages
4 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
5 employees with an accurate itemized wage statement in writing showing, among other
6 things, gross wages earned and all applicable hourly rates in effect during the pay period and
7 the corresponding amount of time worked at each hourly rate. PLAINTIFF and
8 CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the
9 wage statements should reflect all applicable hourly rates during the pay period and the total
10 hours worked, and the applicable pay period in which the wages were earned pursuant to
11 California Labor Code Section 226(a). The wage statements DEFENDANT provided to
12 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members failed to identify
13 such information. More specifically, the wage statements failed to identify the accurate total
14 hours worked each pay period. When the hours shown on the wage statements were added
15 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
16 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph,
17 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
18 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
19 to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
20 CLASS with wage statements which violated Cal. Lab. Code § 226.

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

1 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
2 226, in an amount according to proof at the time of trial (but in no event more than four
3 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
4 CALIFORNIA LABOR SUB-CLASS herein).

5
6 **SEVENTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code § 2802]**

9 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

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

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

15 An employer shall indemnify his or her employee for all necessary
16 expenditures or losses incurred by the employee in direct consequence of the
17 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.

18 104. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
19 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
20 CLASS members for required expenses incurred in the discharge of their job duties for
21 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
22 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
23 limited to, costs related to using their personal cellular phones on behalf of and for the
24 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR
25 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
26 phones and home offices in order to perform work related job tasks. DEFENDANT's policy
27 and practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
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1 CLASS members for expenses resulting from using their personal cellular phones and home
2 offices for DEFENDANT within the course and scope of their employment for
3 DEFENDANT. These expenses were necessary to complete their principal job duties.
4 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
5 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF
6 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
7 and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
8 these expenses as an employer is required to do under the laws and regulations of California.

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

13 **EIGHTH CAUSE OF ACTION**

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

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

16 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

17 **and Against All Defendants)**

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

21 107. Cal. Lab. Code § 200 provides, in relevant part, that:
As used in this article:

- 22 (a) "Wages" includes all amounts for labor performed by employees of
23 every description, whether the amount is fixed or ascertained by the
standard of time, task, piece, Commission basis, or other method of calculation.
24 (b) "Labor" includes labor, work, or service whether rendered or
performed under contract, subcontract, partnership, station plan, or other
25 agreement if the labor to be paid for is performed personally by the person
demanding payment.

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

1 109. Cal. Lab. Code § 202 provides, in relevant part, that:

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

12 110. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
13 SUB-CLASS Members' employment contract.

14 111. Cal. Lab. Code § 203 provides, in relevant part, that:

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

21 112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
22 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
23 owed as required by law.

24 113. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
25 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated
26 and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days
27 of pay as penalty for not paying all wages due at time of termination for all employees who
28 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
demands an accounting and payment of all wages due, plus interest and statutory costs as
allowed by law.

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1 **NINTH CAUSE OF ACTION**

2 **For Failure to Pay Sick Pay Wages**

3 **[Cal. Lab. Code §§ 201-204, 210, 233, 246]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

5 **and Against All Defendants)**

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

9 115. Cal Lab. Code § 233 provides that an employer must permit an employee to
10 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
11 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
12 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
13 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
14 right to sick pay wages, which an employer must calculate and compensate based on one of
15 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
16 same manner as the regular rate of pay for the workweek in which the employee uses paid
17 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
18 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
19 total wages, not including overtime premium pay, by the employee's total hours worked in
20 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
21 233, employees may sue to recover underpaid sick pay wages as damages.

22 116. As a matter of policy and practice, DEFENDANT pays sick pay wages to
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the
24 incorrect rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-
25 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
26 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
27 wages to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS
28 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-

1 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
2 employee's total wages, not including overtime premium pay, by the employee's total hours
3 worked in the full pay periods of the prior 90 days of employment. As a result,
4 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
5 CALIFORNIA LABOR-SUB-CLASS.

6 117. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
7 during each calendar month and are to be paid no later than the payday for the next regular
8 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically
9 requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid
10 no later than the payday for the next regular payroll period after accrued sick leave is used as
11 paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an
12 employee, wages earned and unpaid at the time of discharge are due and payable
13 immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all
14 unpaid wages no later than 72 hours after an employee quits his or her employment, unless
15 the employee has given 72-hour notice of his or her intention to quit, in which case the
16 employee is entitled to his or her wages at the time of quitting. The Labor Code penalizes
17 untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
18 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the
19 wages of the employee shall continue as a penalty from the due date, and at the same rate
20 until paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal.
21 Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and untimely
22 payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may
23 sue to recover applicable penalties.

24 118. As alleged herein and as a matter of policy and practice, DEFENDANT
25 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
26 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
27 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,
28 among other Labor Code provisions. PLAINTIFF is informed and believes that

1 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
2 mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the
3 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
4 include those benefits to which an employee is entitled as a part of his or her compensation,
5 including money, room, board, clothing, vacation pay, *and sick pay.*" *Murphy v. Kenneth*
6 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
7 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
8 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
9 penalties.

10 119. Such a pattern, practice, and uniform administration of corporate policy is
11 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-
12 SUB-CLASS to underpaid sick pay wages, including in

13
14 **TENTH CAUSE OF ACTION**

15 **[Disability Discrimination and Retaliation For the Exercise of Rights Guaranteed**
16 **Under the FEHA, Participating in Protected Activities, and/or Opposing**
17 **DEFENDANT's Failure to Provide Such Rights]**
18 **Violation of FEHA Government Section 12900, *et. seq.***
19 **(By PLAINTIFF Against All Defendants)**

20 120. PLAINTIFF realleges and incorporates by reference, as though fully set forth
21 herein, the prior paragraphs of this Complaint.

22 121. Furthermore, PLAINTIFF came back to work after birthing her child in March
23 of 2022. In April of 2022, continuing throughout the rest of her employment, PLAINTIFF
24 consulted and requested numerous times for an accommodation to allow her a space to
25 pump her breast milk for her new born child. In August of 2022, PLAINTIFF requested to
26 Christian Lopez, the General Manager, and Marcos Tejeda, DEFENDANT's District
27 Manager, that she be allowed a safe space to pump her breast milk. PLAINTIFF's
28 managers failed to accommodate her requests and brushed off PLAINTIFF's complaints that

1 she was not being allowed to pump her breast milk and that as a result PLAINTIFF was
2 having trouble feeding her newborn. PLAINTIFF suffered mental and physical issues as a
3 result of the stress caused by DEFENDANT's failure to accommodate her requests. During
4 this time, PLAINTIFF was plagued with ongoing work pressures, obligations, and
5 mistreatment by her supervisors, including but not limited to, falsifying performance
6 reviews and making false accusations about PLAINTIFF's performance. Furthermore, the
7 continuous stress from work caused PLAINTIFF to feel afraid of going into work.

8 122. Shortly after PLAINTIFF reporting DEFENDANT's failures to accommodate
9 her ability to pump and provide breast milk to her newborn , DEFENDANT terminated
10 PLAINTIFF's employment on September 7, 2022. DEFENDANT claimed PLAINTIFF's
11 termination was based on poor performance, but in reality DEFENDANT's decision and
12 real motivation to terminate PLAINTIFF was in retaliation for PLAINTIFF continuing to
13 request accommodation for her pregnancy and newborn related situation.

14 123. Moreover, DEFENDANT discriminated against and failed to reasonably
15 accommodate PLAINTIFF for her physical disabilities. PLAINTIFF herein alleges that the
16 actions taken by employees of DEFENDANT against PLAINTIFF occurred within the
17 normal scope and course of these individuals' employment with DEFENDANT.
18 PLAINTIFF further alleges that these employees were PLAINTIFF's supervisors while
19 PLAINTIFF was employed by DEFENDANT. However, PLAINTIFF's request for
20 accommodation fell on deaf ears, as DEFENDANT failed to respond to PLAINTIFF's
21 requests. Ultimately, DEFENDANT never took PLAINTIFF seriously and subsequently
22 terminated her employment on September 7, 2022.

23 124. DEFENDANT's conduct, as alleged, violated FEHA, Government Code
24 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
25 including the following bases for liability:

26 125. Taking adverse employment actions against PLAINTIFF, including
27 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or
28

1 otherwise discriminating against PLAINTIFF, in whole or in part on the basis of
2 PLAINTIFF's disability in violation of Government Code Section 12940(a);

3 126. Harassing PLAINTIFF and/or creating a hostile work environment, in whole
4 or in part on the basis of PLAINTIFF's disability, and/or having taken FMLA leave in
5 violation of Government Code Section 12940(j);

6 127. Failing to take all reasonable steps to prevent discrimination and harassment
7 based on disability in violation of Government Code section 12940(k);

8 128. Retaliating against PLAINTIFF for seeking to exercise rights guaranteed
9 under FEHA, participating in protected activities, and/or opposing DEFENDANT's failure
10 to provide such rights, in violation of Government Code Section 12940(h).

11 129. As a proximate result of DEFENDANT's willful, knowing, and intentional
12 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain
13 substantial losses of earnings and other employment benefits.

14 130. As a proximate result of DEFENDANT's willful, knowing, and intentional
15 discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer
16 humiliation, emotional distress, and physical and mental pain and anguish, all to his damage
17 in a sum according to proof.

18 131. PLAINTIFF has incurred and continues to incur legal expenses and attorneys'
19 fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover
20 reasonable attorneys' fees and costs (including expert costs) in an amount according to
21 proof.

22 132. DEFENDANT's misconduct was committed intentionally, in a malicious,
23 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
24 against DEFENDANT.

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ELEVENTH CAUSE OF ACTION

For Failure to Engage in the Interactive Process

[Cal. Gov. Code § 12940(n)]

(By PLAINTIFF and Against All Defendants)

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

134. DEFENDANT was an employer who met all of the requisite requirements set forth under the California Fair Employment and Housing Act.

135. PLAINTIFF suffered from a mental disability as defined under Cal. Gov. Code § 12926(j).

136. PLAINTIFF suffered from a physical disability as defined under Cal. Gov. Code § 12926(m).

137. DEFENDANT was aware that PLAINTIFF suffered from a physical disability, as set forth herein.

138. PLAINTIFF requested from DEFENDANT for accommodation based on her need to pump breast milk for her new born child. PLAINTIFF requested to be allowed a safe place to pump her breast milk where she would be free from the stressful environment created by her supervisors at her current location. However, PLAINTIFF's request for accommodation fell on deaf ears, as DEFENDANT failed to respond to PLAINTIFF's request. Ultimately, DEFENDANT terminated her employment on September 7, 2022.

139. Moreover, PLAINTIFF was more than willing to participate in an interactive process to determine whether reasonable accommodations could be made without DEFENDANT suffering any business or financial hardships.

140. DEFENDANT failed to participate in a timely and/or good faith interactive process after PLAINTIFF requested reasonable accommodations. In fact, DEFENDANT failed to respond to any of PLAINTIFF's communications regarding her request for accommodations.

141. As a result of DEFENDANT refusing to participate in a good faith interactive process, PLAINTIFF was harmed in the form of emotional and physical pain and suffering.

1 142. DEFENDANT's failure to engage in a good faith interactive process was a
2 substantial factor in causing PLAINTIFF's harm.

3 143. The actions alleged herein were taken by managing agents and/or officers of
4 DEFENDANT and/or ratified by managing agents and/or officers of DEFENDANT. In so
5 doing, said managing agents and/or officers of DEFENDANT acted with malice and oppression
6 as those terms are used in California Code of Civil Procedure § 3294. As such, PLAINTIFF is
7 entitled to an award of punitive damages.

8 144. PLAINTIFF is also entitled to recover reasonable attorney's fees and costs
9 pursuant to Cal. Gov. Code § 12965(b).

10
11 **TWELFTH CAUSE OF ACTION**

12 **For Failure to Provide Reasonable Accommodation**

13 **[Cal. Gov. Code § 12940(m)]**

14 **(By PLAINTIFF and Against All Defendants)**

15 145. PLAINTIFF realleges and incorporates by reference, as though fully set forth
16 herein, the prior paragraphs of this Complaint.

17 146. DEFENDANT was an employer who met all of the requirements set forth under
18 the California Fair Employment and Housing Act.

19 147. PLAINTIFF suffered from a mental disability as defined under Cal. Gov. Code
20 § 12926(j).

21 148. PLAINTIFF suffered from a physical disability as defined under Cal. Gov. Code
22 § 12926(m).

23 149. DEFENDANT was aware that PLAINTIFF suffered from a physical disability
24 as set forth herein.

25 150. PLAINTIFF requested from DEFENDANT for accommodation based on her need
26 to pump breast milk for her new born child. PLAINTIFF requested to be allowed a safe place
27 to pump her breast milk where she would be free from the stressful environment created by her
28 supervisors at her current location. However, PLAINTIFF's request for accommodation fell

1 on deaf ears, as DEFENDANT failed to respond to PLAINTIFF's request. Ultimately,
2 DEFENDANT terminated her employment on September 7, 2022.

3 151. DEFENDANT failed to provide PLAINTIFF with reasonable accommodation for
4 her mental and physical disabilities.

5 152. As a direct and proximate result of DEFENDANT refusing to provide
6 PLAINTIFF with reasonable accommodation, PLAINTIFF was met with a series of adverse
7 employment actions as set forth herein. As a further direct result of DEFENDANT's failure to
8 provide PLAINTIFF with a reasonable accommodation, PLAINTIFF was harmed in the form
9 of emotional and physical pain and suffering.

10 153. DEFENDANT's failure to provide reasonable accommodation was a substantial
11 factor in causing PLAINTIFF's harm.

12 154. The actions alleged herein were taken by managing agents and/or officers of
13 DEFENDANT and/or ratified by managing agents and/or officers of DEFENDANT. In so
14 doing, said managing agents and/or officers of DEFENDANT acted with malice and oppression
15 as those terms are used in California Code of Civil Procedure § 3294. As such, PLAINTIFF is
16 entitled to an award of punitive damages.

17 155. PLAINTIFF is also entitled to recover reasonable attorney's fees and costs
18 pursuant to Cal. Gov. Code § 12965(b).

19
20 **THIRTEENTH CAUSE OF ACTION**

21 **Wrongful Termination In Violation of Public Policy**
22 **(By PLAINTIFF Against All Defendants)**

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

25 157. PLAINTIFF came back to work after birthing her child in March of 2022. In
26 April of 2022 continuing throughout the rest of her employment, PLAINTIFF consulted and
27 requested numerous times for an accommodation to allow her a space to pump her breast
28 milk for her new born child. In August of 2022, PLAINTIFF requested to Christian Lopez,

1 the General Manager, and Marcos Tejeda, DEFENDANT's District Manager, that she be
2 allowed a safe space to pump her breast milk. PLAINTIFF's managers failed to
3 accommodate her requests and brushed off PLAINTIFF's complaints that she was not being
4 allowed to pump her breast milk and that as a result PLAINTIFF was having trouble feeding
5 her newborn. PLAINTIFF suffered mental and physical issues as a result of the stress
6 caused by DEFENDANT's failure to accommodate her requests. During this time,
7 PLAINTIFF was plagued with ongoing work pressures, obligations, and mistreatment by her
8 supervisors, including but not limited to, falsifying performance reviews and making false
9 accusations about PLAINTIFF's performance. Furthermore, the continuous stress from
10 work caused PLAINTIFF to feel afraid of going into work. Shortly after PLAINTIFF
11 reporting DEFENDANT's failures to accommodate her ability to pump and provide breast
12 milk to her newborn, DEFENDANT terminated PLAINTIFF's employment on September
13 7, 2022. DEFENDANT claimed PLAINTIFF's termination was based on poor
14 performance, but in reality DEFENDANT's decision and real motivation to terminate
15 PLAINTIFF was in retaliation for PLAINTIFF continuing to request accommodation for her
16 pregnancy and newborn related situation.

17 158. Moreover, DEFENDANT discriminated against and failed to reasonably
18 accommodate PLAINTIFF for her physical disabilities. PLAINTIFF herein alleges that the
19 actions taken by employees of DEFENDANT against PLAINTIFF occurred within the
20 normal scope and course of these individuals' employment with DEFENDANT.
21 PLAINTIFF further alleges that these employees were PLAINTIFF's supervisors while
22 PLAINTIFF was employed by DEFENDANT. However, PLAINTIFF's request for
23 accommodation fell on deaf ears, as DEFENDANT failed to respond to PLAINTIFF's
24 requests. Ultimately, DEFENDANT never took PLAINTIFF seriously and subsequently
25 terminated her employment on September 7, 2022. As a result, there is a causal link
26 between the protected activity and DEFENDANT's decision to terminate PLAINTIFF's
27 employment, which is against public policy. As a direct consequence of PLAINTIFF's
28

1 complaints to DEFENDANT, DEFENDANT retaliated against PLAINTIFF by terminating
2 PLAINTIFF's employment.

3 159. PLAINTIFF raised complaints of illegality while PLAINTIFF worked for
4 DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT
5 retaliated against PLAINTIFF by taking adverse employment actions, including employment
6 termination, against PLAINTIFF.

7
8 160. As a proximate result of DEFENDANT'S willful, knowing, and intentional,
9 PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental
10 and physical pain and anguish, all to PLAINTIFF's damage in a sum according to proof.

11 161. As a result of DEFENDANT'S adverse employment actions against
12 PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to
13 proof.

14 162. DEFENDANT's misconduct was committed intentionally, in a malicious,
15 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
16 against DEFENDANT.

17
18 **PRAYER FOR RELIEF**

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

21 1. On behalf of the CALIFORNIA CLASS:

- 22
23 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
24 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
25 B) An order temporarily, preliminarily and permanently enjoining and restraining
26 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
27
28

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

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

7
8 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

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

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

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

22 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
23 the applicable IWC Wage Order;

24 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
25 1197;
26
27
28

- 1 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
2 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
3 costs of suit.; and,
- 4 G) The wages of all terminated employees in the CALIFORNIA LABOR
5 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
6 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 7
- 8 3. On behalf of PLAINTIFF for the Tenth, Eleventh, Twelfth and Thirteenth causes of
9 action:
- 10 A) Compensatory damages, according to proof at trial, but in excess of \$25,000.
- 11 B) Special and General damages according to proof;
- 12 C) Statutory damages, penalties and attorney's fees;
- 13
- 14 D) For punitive damages in an amount necessary to make an example of and to
15 punish DEFENDANT and deter DEFENDANT from engaging in future similar
16 conduct;
- 17 E) For loss of earnings (both past and future); and,
- 18 F) For interest at the legal rate in an amount according to proof.
- 19
- 20 4. On all claims:
- 21 A) An award of interest, including prejudgment interest at the legal rate;
- 22 B) Such other and further relief as the Court deems just and equitable; and,
- 23 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
24 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
25 and/or §2802.
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Dated: October 24, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Nicholas J. De Blouw
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: October 24, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____

Nicholas J. De Blouw

Attorneys for Plaintiff

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EXHIBIT - 3

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618

TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

September 28, 2022

Via LWDA Website

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

THE HABIT RESTAURANTS, LLC

Dbas THE HABIT BURGER GRILL;

HABIT EMPLOYMENT, LP

c/o Agent for Service of Process:

C T CORPORATION SYSTEM

330 N. Brand Blvd., Ste 700

Glendale, CA 91203

Receipt No.: 7021 1970 0000 9061 2670

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

To Whom It May Concern:

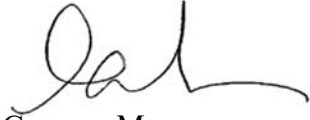
PLEASE TAKE NOTICE that plaintiff MARIA KARINA ZAMORA CORONA, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, and Defendants, THE HABIT RESTAURANTS, LLC doing business as THE HABIT BURGER GRILL and HABIT EMPLOYMENT, LP through its Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the Los Angeles County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims.

Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Gregory Mauro', with a stylized, cursive script.

Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint