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Attorney for ALYSSA FIGUEROA
Individually and on behalf of all other similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ALYSSA FIGUEROA, an individual, on behalf
of herself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

CASSETTA MANAGEMENT, LLC a Delaware
Corporation; and DOES 1 through 50,
Inclusive;

Defendants.

Case No. 37-2022-00050082-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME
WAGES IN VIOLATION OF CAL.
LAB. CODE §§ 510, *et seq.*

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/14/2022 at 08:58:34 AM
Clerk of the Superior Court
By Armando Villasenor, Deputy Clerk

3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§ 226 and 226.2; and
8. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203.
9. FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351; and
10. Civil Penalties Pursuant to Labor Code §2699, *et seq.*, for violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, and the California Code of Regulations

DEMAND FOR JURY TRIAL

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

THE PARTIES

1. Defendant CASSETTA MANAGEMENT, LLC. (“DEFENDANT”) is a Delaware Corporation that at all relevant times mentioned herein conducted and continues to conduct

1 substantial business in the state of California, Counties of San Diego, Riverside and San
2 Bernardino. Defendant provides hospitality services.

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

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

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

26 5. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
27 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
28 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any

1 employee a wage less than the minimum fixed by California state law, and as such, are subject
2 to civil penalties for each underpaid employee.

3 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on
4 an hourly basis and entitled to minimum wages, overtime pay, and legally compliant meal and
5 rest periods from May 2021 to present.

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

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

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

27 10. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of
28 themselves and all others similarly situated in California to recover, among other things, unpaid

1 wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant to Labor
2 Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226(a)(8), 226.7, 226.3, 227.3, 246 *et seq.*, 351,
3 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and 2698,
4 *et seq.*

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

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

13 **JURISDICTION AND VENUE**

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

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

23 **THE CONDUCT**

24 15. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
26 matter of company policy, practice and procedure, intentionally, knowingly and systematically
27 failed to provide legally compliant meal and rest periods, failed to accurately compensate
28 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest

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

12 **A. Meal Period Violations**

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

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

17 **B. Rest Period Violations**

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

1 time to time, required to remain on the premises, on duty and/or on call. As a result of their
2 rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other
3 CALIFORNIA CLASS members were from time-to-time denied their proper rest periods by
4 DEFENDANTS and DEFENDANTS' managers.

5 **C. Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period Premiums**

6 17. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue
7 to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS Members
8 for their overtime hours worked, meal and rest period premiums, and sick pay. As a result,
9 PLAINTIFF and the other CALIFORNIA CLASS Members forfeited wages due them for working
10 overtime without compensation at the correct overtime, meal and rest period premiums, and sick
11 pay rates. DEFENDANTS' uniform policy and practice to not pay the PLAINTIFF and the
12 CALIFORNIA CLASS the correct overtime rate for all overtime worked, meal and rest period
13 premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS'
14 business records.

15 18. State law provides that employees must be paid overtime at one-and-one half times
16 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
17 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
18 employee's performance.

19 19. The second component of PLAINTIFF's and other CALIFORNIA CLASS Member's
20 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF
21 and other CALIFORNIA CLASS Members incentive wages based on their performance for
22 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
23 basis with bonus, and/or commission compensation when the employees met the various
24 performance goals set by DEFENDANTS. Additionally, DEFENDANT gave PLAINTIFF and the
25 CALIFORNIA CLASS received bonuses when the employees met various performance goals set
26 by DEFENDANT.

27 20. However, from-time-to-time, when calculating the regular rate of pay, in those pay
28 periods where PLAINTIFF and the CALIFORNIA CLASS Members worked overtime and earned

1 this non-discretionary bonus, commission, or incentive DEFENDANTS failed to accurately
2 include the non-discretionary bonus compensation and/or incentive paid as part of the employees'
3 "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours
4 worked. Further, when calculating the regular rate of pay in order to pay sick pay to PLAINTIFF
5 and the CALIFORNIA CLASS, DEFENDANTS failed to include the incentive compensation as
6 part of the employees' "regular rate of pay" for purposes of calculating sick pay. Management and
7 supervisors described the incentive/bonus program to potential and new employees as part of the
8 compensation package. As a matter of law, the incentive compensation received by PLAINTIFF
9 and other CALIFORNIA CLASS Members must be included in the "regular rate of pay." The
10 failure to do so has resulted in a systematic underpayment of overtime and/or sick pay
11 compensation to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANTS.

12 21. As a matter of law, the incentive and commission compensation received by
13 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
14 calculated into the "regular rate of pay" for purposes of overtime compensation, meal and rest
15 period premiums, and sick pay. DEFENDANTS' failure to do so has resulted in DEFENDANTS'
16 systematic underpayment of overtime compensation, meal and rest period premiums, and sick pay
17 to PLAINTIFF and other CALIFORNIA CLASS members. Specifically, California Labor Code
18 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
19 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
20 sick time, whether or not the employee actually works overtime in that workweek.
21 DEFENDANT'S conduct, as articulated herein, by failing to include the incentive compensation
22 as part of the "regular rate of pay" for purposes of sick pay compensation was in violation of Cal.
23 Lab. Code § 246.

24 22. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
26 matter of company policy, practice, and procedure, intentionally, and knowingly failed to
27 compensate PLAINTIFF and the CALIFORNIA CLASS at the correct rate of pay for all overtime
28 and/or sick pay compensation. This uniform policy and practice of DEFENDANTS is intended to

1 purposefully avoid the payment of the correct overtime and/or sick pay compensation as required
2 by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage
3 over competitors who complied with the law. To the extent equitable tolling operates to toll claims
4 by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted
5 accordingly.

6 **A. Unreimbursed Business Expenses**

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

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

1 **B. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

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

9 10. During the CLASS PERIOD, from time-to-time DEFENDANTS required
10 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work, including
11 but not limited to, restocking bar materials before clocking in to start her shift. Further, as discussed
12 *supra*, PLAINTIFF and other members of the CALIFORNIA CLASS were from time to time
13 interrupted with work assignments during their off-duty meal periods without additional
14 compensation from DEFENDANTS.

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

17 12. DEFENDANTS controlled the work schedules, duties, protocols, applications,
18 assignments and employment conditions of PLAINTIFF and the other members of the
19 CALIFORNIA CLASS.

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

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

26 15. DEFENDANTS' policies and practices deprived PLAINTIFF and the other members
27 of the CALIFORNIA CLASS of all minimum, regular and overtime wages owed for the off-the-
28 clock work activities and their required meal periods. Because PLAINTIFF and the other members

1 of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight
2 (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

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

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

11 **C. Wage Statement Violations**

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

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

27 20. In addition to the violations described above, DEFENDANTS, from time-to-time,
28 failed to provide PLAINTIFF and the CALIFORNIA CLASS members with wage statements that

1 comply with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other
2 members of the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226.
3 Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an
4 unintentional payroll error due to clerical or inadvertent mistake.

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

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

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

23 **CLASS ACTION ALLEGATIONS**

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

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

7 26. The members of the class are so numerous that joinder of all class members is
8 impractical.

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

16 a. Whether DEFENDANTS maintained legally compliant meal
17 period policies and practices;

18 b. Whether DEFENDANTS maintained legally compliant rest
19 period policies and practices;

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

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

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

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

3 g. Whether DEFENDANTS issued legally compliant wage
4 statements;

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

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

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

19 28. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a
20 result of DEFENDANTS' conduct and actions alleged herein.

21 29. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the
22 same interests as the other members of the class.

23 30. PLAINTIFF will fairly and adequately represent and protect the interests of the
24 CALIFORNIA CLASS members.

25 31. PLAINTIFF retained able class counsel with extensive experience in class action
26 litigation.

27 32. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
28 interests of the other CALIFORNIA CLASS members.

1 33. There is a strong community of interest among PLAINTIFF and the members of the
2 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are
3 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
4 sustained;

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

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

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

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

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

26 **FIRST CAUSE OF ACTION**

27 **For Unlawful Business Practices**

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

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

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

5 38. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof.
6 Code § 17021.

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

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

20 Cal. Bus. & Prof. Code § 17203.

21 40. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
22 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair
23 competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§
24 17200, *et seq.* (the “UCL”), by engaging and continuing to engage in business practices which
25 violates California law, including but not limited to, the applicable Industrial Wage Order(s), the
26 California Code of Regulations and the California Labor Code including Sections 201, 202, 203,
27 204 *et seq.* 210, 226(a), 226(a)(8), 226.3, 226.7, 227.3, 246 *et seq.*, 351, 510, 512, 558, 1174,
28 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802 for which this Court should issue

1 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
2 necessary to prevent and remedy the conduct held to constitute unfair competition, including
3 restitution of wages wrongfully withheld.

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

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

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

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

28 45. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each

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

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

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

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

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

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

27 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
2 engaging in any unlawful and unfair business practices in the future.

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

10 **SECOND CAUSE OF ACTION**

11 **For Failure to Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

24 62. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
25 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
26 and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other
27 members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement
28 that would preclude the causes of action contained herein this Complaint. Rather, the PLAINTIFF

1 brings this Action on behalf of herself and the CALIFORNIA CLASS based on DEFENDANTS'
2 violations of non-negotiable, non-waivable rights provided by the State of California.

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

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

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

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

24 67. In performing the acts and practices herein alleged in violation of California labor
25 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
26 and provide them with the requisite overtime compensation, DEFENDANTS acted and continues
27 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
28 the CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the

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

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

15 **THIRD CAUSE OF ACTION**

16 **For Failure to Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 82. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
22 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment
23 of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor
24 Code and/or other applicable statutes. To the extent minimum wage compensation is determined
25 to be owed to the CALIFORNIA CLASS members who have terminated their employment,
26 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these
27 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
28 penalties are sought herein on behalf of these CALIFORNIA CLASS members. DEFENDANTS'

1 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and
2 other CALIFORNIA CLASS members are entitled to seek and recover statutory costs.

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

6 **FOURTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

28 86. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable

1 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS members
2 who were not provided a meal period, in accordance with the applicable Wage Order, one
3 additional hour of compensation at each employee's regular rate of compensation for each
4 workday that a meal period was not provided.

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

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 CLASS and Against All DEFENDANTS)**

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

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

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

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

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

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

13 93. Cal. Labor Code §2800 provides, in pertinent part, "[a]n employer shall in all cases
14 indemnify his employee for losses caused by the employer's want of ordinary care."

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

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

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

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

26 97. California Labor Code section 2804 mandates that this statutory right cannot be
27 waived.

28 98. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.

1 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
2 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
3 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
4 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
5 using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS.
6 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
7 DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of
8 DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse
9 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
10 their personal cellular phones for DEFENDANTS within the course and scope of their employment
11 for DEFENDANTS. These expenses were necessary to complete their principal job duties.
12 DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
13 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
14 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
15 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is
16 required to do under the laws and regulations of California.

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

21 **SEVENTH CAUSE OF ACTION**

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

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

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

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

28 101. Cal. Labor Code § 226 provides that an employer must furnish employees with an

1 “accurate itemized” statement in writing showing:

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

24 102. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF
25 and the other members of the CALIFORNIA CLASS with complete and accurate wage
26 statements which failed to accurately show, among other things, (1) total number of hours
27 worked, (2) net wages earned, (3) gross wages earned and (4) all applicable hourly rates in effect
28

1 during the pay period and the corresponding number of hours worked at each hourly rate by the
2 employee in violation of California Labor Code Section 226.

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

12 **EIGHTH CAUSE OF ACTION**

13 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

19 105. Cal. Lab. Code § 200 provides that:

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

24 (b) "Labor" includes labor, work, or service whether rendered
25 or performed under contract, subcontract, partnership, station
26 plan, or other agreement if the labor to be paid for is
27 performed personally by the person demanding payment.
28

1 106. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges an
2 employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately.”

4 107. Cal. Lab. Code § 202 provides, in relevant part, that:

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

17 108. There was no definite term in PLAINTIFF’s or any CALIFORNIA CLASS
18 Members’ employment contract.

19 109. Cal. Lab. Code § 203 provides:

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

1 110. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
2 terminated, and DEFENDANTS has not tendered payment of wages, to these employees who
3 missed meal and rest breaks, as required by law.

4 111. Cal. Lab. Code § 204 provides in part:

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

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

13 **NINTH CAUSE OF ACTION**

14 **FAILURE TO PAY STATUTORY GRATUITIES**

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

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

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

21 114. DEFENDANT's conduct, as set forth above, in failing to remit to non-managerial
22 employees the total proceeds of gratuities constitutes a violation of California Labor Code § 351.
23 The violation is enforceable pursuant to the California Unfair Competition Law, Cal. Bus. And
24 Prof. Code 17200 *et seq.* DEFENDANT's conduct constitutes unlawfully, unfair, And/or
25 fraudulent business acts or practices, int hat DEFENDANT has violated California Labor Code
26 Section 351 is not remitting to the non-managerial service employees the total gratuities.

27 115. As a proximate result of the aforementioned violations, PLAINTIFF and
28 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to

1 proof at trial, including the loss of gratuities to which they were entitled and seek all wages
2 earned and due, interest, penalties, expenses and costs of suit.

3 **TENTH CAUSE OF ACTION**

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

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

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

7 116. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs
8 as though fully set forth herein.

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

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

25 119. For all provisions of the Labor Code except those for which a civil penalty is
26 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
27 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
28

1 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent pay
2 period in which Defendants violated these provisions of the Labor Code.

3 120. Defendants' conduct violates numerous Wage Orders and Labor Code sections
4 including, but not limited to, the following:

- 5 a. Violation of Labor Code §§ 201, 202, 203, 204 *et seq.* 210, 226(a), 226(a)(8),
6 226.3, 226.7, 227.3, 246 *et seq.*, 351, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,
7 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698 for failure to timely pay all earned
8 wages (including minimum wage and overtime wages) owed to Plaintiff and other
9 aggrieved employees during employment and upon separation of employment as
10 herein alleged;
- 11 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
12 Plaintiff and other aggrieved employees failure to pay premium wages for missed
13 meal periods and herein alleged;
- 14 c. Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
15 other aggrieved employees and failure to pay premium wages for missed rest
16 periods as herein alleged;
- 17 d. Violation of Labor Code § 226 for failure to provide accurate itemized wage
18 statements to Plaintiff and other aggrieved employees as herein alleged;
- 19 e. Violation of Labor Code § 1174 and 1174.5 for failure to maintain accurate and
20 complete records showing, among other things, the hours worked daily by and
21 the wages paid to aggrieved employees; and
- 22 f. Violation of Labor Code § 2800 and 2802 for failure to reimburse Plaintiff and
23 other aggrieved employees as herein alleged.

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

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

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

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

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

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

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

7 H) Meal and rest period compensation pursuant to California Labor Code Sections
8 226.7, 512 and the applicable IWC Wage Order; and

9 I) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
10 1197.

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

13 2. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

14 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
15 General Act of 2004; and

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

17 3. On all claims:

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

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

20 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
21 including, but not limited to, pursuant to Labor Code §203, §204, §226, §1194, §2699 *et seq.*,
22 and/or §2802.

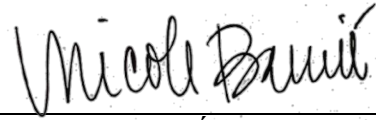
23 D) For prejudgment and post judgment interest on each of the foregoing at the legal
24 rate from the date the obligation became due through the date of judgment in this matter.

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

1 Dated: December 13, 2022

2 **BARVIÉ LAW, APC**

3
4 By



NICOLE BARVIÉ, Esq.

5
6 Attorneys for Plaintiff(s)

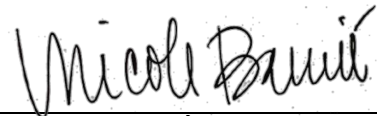
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8 **DEMAND FOR JURY TRIAL**

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

10
11
12
13 Dated: December 13, 2022

14 **BARVIÉ LAW, APC**

15
16 By



NICOLE BARVIÉ, Esq.

17
18 Attorneys for Plaintiff(s)