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9 Individually and on behalf of all other similarly situated

FILED
Superior Court of California,
County of Amador
11/3/2022
By: C. TEMPLETON, Deputy Clerk

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY AMADOR**

13 TAMERA PERKINS, an individual, on behalf
14 of herself, and on behalf of all persons similarly
15 situated,

16 Plaintiff,

17 v.

18 SUN COMMUNITIES, INC., a Maryland
19 Corporation; and DOES 1 through 50,
20 Inclusive;

21 Defendants.

Case No. 22CV12888 AMENDED
CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR JURY TRIAL

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

5 **THE PARTIES**

6 1. Defendant SUN COMMUNITIES, INC. (“DEFENDANT”) is a Maryland
7 Corporation that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California, including the County of Amador. Defendant
9 provides manufactured home communities.

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

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

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

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

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

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

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

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

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

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

6 10. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of
7 themselves and all others similarly situated in California to recover, among other things, unpaid
8 wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant to Labor
9 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5,
10 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, and 2698, *et seq.*

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

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

19 **JURISDICTION AND VENUE**

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

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

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1 out for what should have been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF
2 and other CALIFORNIA CLASS members forfeited minimum wage and overtime wages by
3 regularly working without their time being accurately recorded and without compensation at the
4 applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not
5 to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked is evidenced
6 by DEFENDANTS' business records.

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

23 **B. Rest Period Violations**

24 18. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
25 CALIFORNIA CLASS members were also required from time-to-time to work in excess of four
26 (4) hours without being provided ten (10) minute rest periods as a result of, among other reasons,
27 their rigorous work schedules, and DEFENDANTS' inadequate staffing. Further, for the same
28 reasons these employees were denied their first rest periods of at least ten (10) minutes for some

1 shifts worked of at least two (2) to four (4) hours from time-to-time, a first and second rest period
2 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from
3 time-to-time, and a first, second, and third rest period of at least ten (10) minutes for some shifts
4 worked of ten (10) hours or more from time-to-time. PLAINTIFF and other CALIFORNIA
5 CLASS members were also not provided with one-hour wages in lieu thereof. When they were
6 provided with rest periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from
7 time to time, required to remain on the premises, on duty and/or on call. As a result of their
8 rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other
9 CALIFORNIA CLASS members were from time-to-time denied their proper rest periods by
10 DEFENDANTS and DEFENDANTS' managers.

11 **C. Unreimbursed Business Expenses**

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

22 20. From time-to-time during the CLASS PERIOD, PLAINTIFF and members of the
23 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular
24 phones, as a result of and in furtherance of their job duties as employees for DEFENDANTS.
25 Specifically, Plaintiff and members of the CALIFORNIA CLASS, used their personal cellular
26 phones to execute their job duties. But for the use of their personal cell phones, PLAINTIFF and
27 the members of the CALIFORNIA CLASS could not complete their essential job duties.
28 Notwithstanding, DEFENDANTS did not reimburse or indemnify PLAINTIFF or the members

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

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

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

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

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

22 12. DEFENDANTS controlled the work schedules, duties, protocols, applications,
23 assignments and employment conditions of PLAINTIFF and the other members of the
24 CALIFORNIA CLASS.

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

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

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

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

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

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

17 During the CLASS PERIOD, DEFENDANT also systematically failed to record and pay
18 PLAINTIFF and CALIFORNIA CLASS Members the correct amount of wages due for split-shift
19 premiums. The applicable Industrial Welfare Commission Wage Orders define a "split-shift" as a
20 "work schedule, which is interrupted by non-paid, non-working, periods established by the
21 employer, other than bona fide rest or meal periods." The Industrial Welfare Commission Wage
22 Orders further provide, "When an employee works a split shift, one (1) hour's pay at the minimum
23 wage shall be paid in addition to the minimum wage for that workday, except when the employee
24 resides at the place of employment." DEFENDANT, from time-to-time, required PLAINTIFF and
25 CLASS Members to work split-shifts throughout the CLASS PERIOD, but intentionally and
26 unlawfully failed to pay PLAINTIFF and the CLASS Members split-shift premium wages and
27 failed to pay PLAINTIFF and CLASS Members the correct overtime compensation for hours
28

1 worked in excess of eight (8) in a workday and forty (40) in a workweek. As a result, PLAINTIFF
2 and the CLASS Members were underpaid during their employment with DEFENDANT

3 **F. Wage Statement Violations**

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

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

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

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

1 **CLASS ACTION ALLEGATIONS**

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

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

13 24. The members of the class are so numerous that joinder of all class members is
14 impractical.

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

22 a. Whether DEFENDANTS maintained legally compliant meal
23 period policies and practices;

24 b. Whether DEFENDANTS maintained legally compliant rest
25 period policies and practices;

26 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
27 CALIFORNIA CLASS members accurate premium payments for
28 missed meal and rest periods;

1 d. Whether DEFENDANTS failed to pay PLAINTIFF and the
2 CALIFORNIA CLASS members accurate overtime wages and sick
3 pay;

4 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
5 CALIFORNIA CLASS members at least minimum wage for all hours
6 worked;

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

9 g. Whether DEFENDANTS issued legally compliant wage
10 statements;

11 h. Whether DEFENDANTS committed an act of unfair
12 competition by systematically failing to record and pay PLAINTIFF
13 and the other members of the CALIFORNIA CLASS for all time
14 worked;

15 i. Whether DEFENDANTS committed an act of unfair
16 competition by systematically failing to record all meal and rest
17 breaks missed by PLAINTIFF and other CALIFORNIA CLASS
18 members, even though DEFENDANTS enjoyed the benefit of this
19 work, required employees to perform this work and permits or suffers
20 to permit this work;

21 j. Whether DEFENDANTS committed an act of unfair
22 competition in violation of the UCL, by failing to provide the
23 PLAINTIFF and the other members of the CALIFORNIA CLASS
24 with the legally required meal and rest periods.

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

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

1 28. PLAINTIFF will fairly and adequately represent and protect the interests of the
2 CALIFORNIA CLASS members.

3 29. PLAINTIFF retained able class counsel with extensive experience in class action
4 litigation.

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

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

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

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

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

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

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

4 **FIRST CAUSE OF ACTION**

5 **For Unlawful Business Practices**

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

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

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

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

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

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

26 Cal. Bus. & Prof. Code § 17203.

27 38. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
28 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair

1 competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§
2 17200, *et seq.* (the “UCL”), by engaging and continuing to engage in business practices which
3 violates California law, including but not limited to, the applicable Industrial Wage Order(s), the
4 California Code of Regulations and the California Labor Code including Sections 201, 202, 203,
5 204 *et seq.*, 210, 221, 226(a), 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1182.12, 1194,
6 1194.2, 1197, 1197.1, 1198, & 2802, for which this Court should issue declaratory and other
7 equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and
8 remedy the conduct held to constitute unfair competition, including restitution of wages
9 wrongfully withheld.

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

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

24 41. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful,
25 unfair and deceptive in that DEFENDANTS’ employment practices caused PLAINTIFF and the
26 other members of the CALIFORNIA CLASS to be underpaid during their employment with
27 DEFENDANTS.

28 42. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful,

1 unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to,
2 *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of
3 compensation for missed meal and rest periods, overtime and minimum wages owed, provide
4 accurate itemized wage statements, to PLAINTIFF and the other members of the CALIFORNIA
5 CLASS as required by Cal. Labor Code.

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

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

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

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

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

28 48. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,

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

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

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

16 **SECOND CAUSE OF ACTION**

17 **For Failure to Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

27 59. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
28 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full

1 compensation for all overtime worked.

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

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

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

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

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

1 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

21 **THIRD CAUSE OF ACTION**

22 **For Failure to Pay Minimum Wages**

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

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

25 67. 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 68. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for

1 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
2 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and
3 pay minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members
4 during the CLASS PERIOD.

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

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

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

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

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

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

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

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

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

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

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

27 80. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
28 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment

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

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

12 **FOURTH CAUSE OF ACTION**

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

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

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

16 82. 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 83. During the CLASS PERIOD, from time-to-time, DEFENDANTS failed to provide
20 all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS
21 members as required by the applicable Wage Order and Labor Code. The nature of the work
22 performed by PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees
23 from being relieved of all of their duties for the legally required off-duty meal periods. As a result
24 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were
25 from time-to-time not fully relieved of duty by DEFENDANTS for their meal periods.
26 Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS
27 members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
28 DEFENDANTS' business records from time-to-time. Further, DEFENDANTS failed to provide

1 PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period in some
2 workdays in which these employees were required by DEFENDANTS to work ten (10) hours of
3 work. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore
4 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS'
5 strict corporate policy and practice.

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

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

14 **FIFTH CAUSE OF ACTION**

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

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

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

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

21 87. During the CLASS PERIOD, PLAINTIFF and other members of the CALIFORNIA
22 CLASS were from time-to-time required to work in excess of four (4) hours without being
23 provided ten (10) minute rest periods. Further, these employees were denied their first rest periods
24 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
25 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight
26 (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts
27 worked of ten (10) hours or more from time-to-time. PLAINTIFF and other members of the
28 CALIFORNIA CLASS were also not provided with one-hour wages in lieu thereof. As a result

1 of their rigorous work schedules, PLAINTIFF and other members of the CALIFORNIA CLASS
2 were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS'
3 managers.

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

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

12 **SIXTH CAUSE OF ACTION**

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

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

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

16 90. 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 91. Cal. Labor Code §2800 provides, in pertinent part, "[a]n employer shall in all cases
20 indemnify his employee for losses caused by the employer's want of ordinary care."

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

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

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

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

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

96. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using their personal cellular phones for DEFENDANTS within the course and scope of their employment for DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and regulations of California.

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

SEVENTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

1 [Cal. Lab. Code §§ 226 and 226.2]

2 (By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

6 99. Cal. Labor Code § 226 provides that an employer must furnish employees with an
7 “accurate itemized” statement in writing showing:

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

1 employee.

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

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

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES WHEN DUE**

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

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

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

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

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

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

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

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

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

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

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

24 If an employer willfully fails to pay, without abatement or
25 reduction, in accordance with Sections 201, 201.5, 202, and
26 205.5, any wages of an employee who is discharged or who
27 quits, the wages of the employee shall continue as a penalty
28 from the due date thereof at the same rate until paid or until an

1 action therefor is commenced; but the wages shall not
2 continue for more than 30 days.

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

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

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

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

15 **PRAYER FOR RELIEF**

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

18 1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

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

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

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

11 H) Meal and rest period compensation pursuant to California Labor Code Sections
12 226.7, 512 and the applicable IWC Wage Order; and

13 I) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
14 1197.

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

17 2. 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 §226, §1194, §2699 *et seq.*, and/or §2802.

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

24 E) For any other relief that is just and proper.

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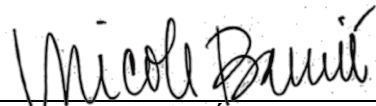
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Dated: November 1, 2022

BARVIÉ LAW, ACP

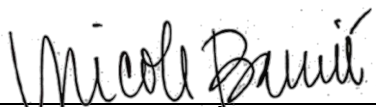
By 
NICOLE BARVIÉ, Esq.
Attorneys for Plaintiff(s)

DEMAND FOR JURY TRIAL

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

Dated: November 1, 2022

BARVIÉ LAW, ACP

By 
NICOLE BARVIÉ, Esq.
Attorneys for Plaintiff(s)