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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ANDREA ALARCON and GEORGINA
NUNEZ, an individual, on behalf of herself and
on behalf of all persons similarly situated,

Plaintiffs,

vs.

ZVLA, LLC, a California Limited Liability
Company; and DOES 1 through 50, inclusive,

Defendants.

Case No. 23STCV03865

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246; and,
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiffs Andrea Alarcon and Georgina Nunez (“PLAINTIFFS”), an individuals, on
2 behalf of themselves and all other similarly situated current and former employees allege on
3 information and belief, except for their own acts and knowledge which are based on personal
4 knowledge, the following.

5
6 **THE PARTIES**

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

10 2. DEFENDANT owns and operates retail stores selling clothing in California.

11 3. Plaintiff Alarcon was employed by DEFENDANT in California from August of
12 2021 to November 8, 2022. Plaintiff Alarcon was at all times classified by DEFENDANT as
13 a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and
14 rest periods and payment of minimum and overtime wages due for all time worked.

15 4. Plaintiff Nunez was employed by DEFENDANT in California from March of
16 2019 to November 14, 2022. Plaintiff Nunez was at all times classified by DEFENDANT as
17 a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and
18 rest periods and payment of minimum and overtime wages due for all time worked.

19 4. PLAINTIFFS bring this Class Action on behalf of themselves and a California
20 class, defined as all individuals who are or previously were employed by Defendant ZVLA,
21 LLC (“Defendant”) who were classified as non-exempt in the State of California (the
22 “CALIFORNIA CLASS”) at any time during the period beginning February 22, 2019 to
23 October 8, 2024 (“CALIFORNIA CLASS PERIOD”). The amount in controversy for the
24 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
25 (\$5,000,000.00).

26 5. PLAINTIFFS bring this Class Action on behalf of themselves and a
27 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their
28 losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s

1 policy and practice which failed to lawfully compensate these employees. DEFENDANT's
2 policy and practice alleged herein was an unlawful, unfair and deceptive business practice
3 whereby DEFENDANT retained and continues to retain wages due PLAINTIFFS and the
4 other members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the
5 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
6 future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA
7 CLASS who have been economically injured by DEFENDANT's past and current unlawful
8 conduct, and all other appropriate legal and equitable relief.

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

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

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28 **THE CONDUCT**

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

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

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

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

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

22 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
23 accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the
24 actual amount of time these employees worked. Pursuant to the Industrial Welfare
25 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and other
26 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
27 employee was subject to the control of an employer, including all the time the employee was
28 permitted or suffered to permit this work. DEFENDANT required these employees to work

1 off the clock without paying them for all the time they were under DEFENDANT's control.
2 As such, DEFENDANT knew or should have known that PLAINTIFFS and the other
3 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
4 result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited time worked by
5 working without their time being accurately recorded and without compensation at the
6 applicable minimum wage and overtime wage rates. To the extent that the time worked off
7 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
8 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
9 1197, and 1197.1.

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

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

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

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

15 17. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other
16 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
17 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt
18 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
19 of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other CALIFORNIA
20 CLASS Members at their base rates of pay.

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

25 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
26 at the regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely
27 earned non-discretionary incentive wages which increased their regular rate of pay.
28 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and

1 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay,
2 as required under Cal. Lab. Code Section 246.

3 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS
4 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
5 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS is
6 informed and believes and based thereon alleges that such failure to pay sick pay at regular
7 rate was willful, such that PLAINTIFFS and members of the CALIFORNIA CLASS whose
8 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
9 Sections 201-203.

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

21 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
22 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
23 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct
24 consequence of discharging their duties on behalf of DEFENDANT. Under California
25 Labor Code Section 2802, employers are required to indemnify employees for all expenses
26 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
27 states that "an employer shall indemnify his or her employee for all necessary expenditures
28 or losses incurred by the employee in direct consequence of the discharge of his or her

1 duties, or of his or her obedience to the directions of the employer, even though unlawful,
2 unless the employee, at the time of obeying the directions, believed them to be unlawful."

3 23. In the course of their employment PLAINTIFFS and other CALIFORNIA
4 CLASS Members as a business expense, were required by DEFENDANT to use their own
5 personal cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
7 associated with the use of their personal cellular phones for DEFENDANT's benefit.
8 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
9 DEFENDANT to use their personal cellular phones. As a result, in the course of their
10 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
11 CLASS incurred unreimbursed business expenses which included, but were not limited to,
12 costs related to the use of their personal cellular phones all on behalf of and for the benefit
13 of DEFENDANT.

14 24. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the
15 legally required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable
16 Wage Order and Labor Code and failed to pay PLAINTIFFS all minimum and overtime
17 wages due to PLAINTIFFS. DEFENDANT did not have a policy or practice which
18 provided timely off-duty meal and rest breaks to PLAINTIFFS and also failed to compensate
19 PLAINTIFFS for PLAINTIFFS' missed meal and rest breaks. The nature of the work
20 performed by the PLAINTIFFS did not prevent PLAINTIFFS from being relieved of all of
21 PLAINTIFFS' duties for the legally required off-duty meal periods. As a result,
22 DEFENDANT's failure to provide PLAINTIFFS with the legally required meal periods is
23 evidenced by DEFENDANT's business records. The amount in controversy for
24 PLAINTIFFS individually does not exceed the sum or value of \$75,000.

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1 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all
2 meal and rest breaks missed by PLAINTIFFS and other CALIFORNIA CLASS Members,
3 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
4 this work and permits or suffers to permit this work.

5 30. DEFENDANT has the legal burden to establish that each and every
6 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
7 required by California laws. The DEFENDANT, however, as a matter of policy and
8 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails
9 to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
10 Member is paid as required by law. This common business practice is applicable to each
11 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
12 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
13 (the "UCL") as causation, damages, and reliance are not elements of this claim.

14 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
15 CLASS Members is impracticable.

16 32. DEFENDANT violated the rights of the CALIFORNIA CLASS under
17 California law by:

- 18 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
19 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
20 and/or deceptively having in place company policies, practices and
21 procedures that failed to record and pay PLAINTIFFS and the other
22 members of the CALIFORNIA CLASS for all time worked, including
23 minimum wages owed and overtime wages owed for work performed
24 by these employees; and,
- 25 (b) Committing an act of unfair competition in violation of the UCL, by
26 failing to provide the PLAINTIFFS and the other members of the
27 CALIFORNIA CLASS with the legally required meal and rest periods.
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1 33. This Class Action meets the statutory prerequisites for the maintenance of a
2 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 3 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
4 that the joinder of all such persons is impracticable and the disposition
5 of their claims as a class will benefit the parties and the Court;
- 6 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
7 issues that are raised in this Complaint are common to the
8 CALIFORNIA CLASS will apply to every member of the
9 CALIFORNIA CLASS;
- 10 (c) The claims of the representative PLAINTIFFS are typical of the claims
11 of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all
12 the other members of the CALIFORNIA CLASS, was classified as a
13 non-exempt employee paid on an hourly basis who was subjected to the
14 DEFENDANT's deceptive practice and policy which failed to provide
15 the legally required meal and rest periods to the CALIFORNIA CLASS
16 and thereby underpaid compensation to PLAINTIFFS and
17 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a
18 result of DEFENDANT's employment practices. PLAINTIFFS and the
19 members of the CALIFORNIA CLASS were and are similarly or
20 identically harmed by the same unlawful, deceptive and unfair
21 misconduct engaged in by DEFENDANT; and,
- 22 (d) The representative PLAINTIFFS will fairly and adequately represent
23 and protect the interest of the CALIFORNIA CLASS, and has retained
24 counsel who are competent and experienced in Class Action litigation.
25 There are no material conflicts between the claims of the representative
26 PLAINTIFFS and the members of the CALIFORNIA CLASS that
27 would make class certification inappropriate. Counsel for the
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CALIFORNIA CLASS will vigorously assert the claims of all
CALIFORNIA CLASS Members.

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

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

1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFFS seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and

1 incidental equitable relief as may be necessary to prevent and
2 remedy the conduct declared to constitute unfair competition;

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

- 9 1) The interests of the members of the CALIFORNIA CLASS in
10 individually controlling the prosecution or defense of separate
11 actions in that the substantial expense of individual actions will
12 be avoided to recover the relatively small amount of economic
13 losses sustained by the individual CALIFORNIA CLASS
14 Members when compared to the substantial expense and burden
15 of individual prosecution of this litigation;
- 16 2) Class certification will obviate the need for unduly duplicative
17 litigation that would create the risk of:
- 18 A. Inconsistent or varying adjudications with respect to
19 individual members of the CALIFORNIA CLASS, which
20 would establish incompatible standards of conduct for the
21 DEFENDANT; and/or,
- 22 B. Adjudications with respect to individual members of the
23 CALIFORNIA CLASS would as a practical matter be
24 dispositive of the interests of the other members not
25 parties to the adjudication or substantially impair or
26 impede their ability to protect their interests;
- 27 3) In the context of wage litigation because a substantial number of
28 individual CALIFORNIA CLASS Members will avoid asserting

1 their legal rights out of fear of retaliation by DEFENDANT,
2 which may adversely affect an individual's job with
3 DEFENDANT or with a subsequent employer, the Class Action
4 is the only means to assert their claims through a representative;
5 and,

- 6 4) A class action is superior to other available methods for the fair
7 and efficient adjudication of this litigation because class
8 treatment will obviate the need for unduly and unnecessary
9 duplicative litigation that is likely to result in the absence of
10 certification of this action pursuant to Cal. Code of Civ. Proc. §
11 382.

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

- 14 (a) The questions of law and fact common to the CALIFORNIA CLASS
15 predominate over any question affecting only individual CALIFORNIA
16 CLASS Members because the DEFENDANT's employment practices
17 are applied with respect to the CALIFORNIA CLASS;
18 (b) A Class Action is superior to any other available method for the fair
19 and efficient adjudication of the claims of the members of the
20 CALIFORNIA CLASS because in the context of employment litigation
21 a substantial number of individual CALIFORNIA CLASS Members
22 will avoid asserting their rights individually out of fear of retaliation or
23 adverse impact on their employment;
24 (c) The members of the CALIFORNIA CLASS are so numerous that it is
25 impractical to bring all members of the CALIFORNIA CLASS before
26 the Court;
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- 1 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not
2 be able to obtain effective and economic legal redress unless the action
3 is maintained as a Class Action;
- 4 (e) There is a community of interest in obtaining appropriate legal and
5 equitable relief for the acts of unfair competition, statutory violations
6 and other improprieties, and in obtaining adequate compensation for
7 the damages and injuries which DEFENDANT's actions have inflicted
8 upon the CALIFORNIA CLASS;
- 9 (f) There is a community of interest in ensuring that the combined assets of
10 DEFENDANT are sufficient to adequately compensate the members of
11 the CALIFORNIA CLASS for the injuries sustained;
- 12 (g) DEFENDANT has acted or refused to act on grounds generally
13 applicable to the CALIFORNIA CLASS, thereby making final class-
14 wide relief appropriate with respect to the CALIFORNIA CLASS as a
15 whole;
- 16 (h) The members of the CALIFORNIA CLASS are readily ascertainable
17 from the business records of DEFENDANT; and,
- 18 (i) Class treatment provides manageable judicial treatment calculated to
19 bring a efficient and rapid conclusion to all litigation of all wage and
20 hour related claims arising out of the conduct of DEFENDANT as to
21 the members of the CALIFORNIA CLASS.

22 36. DEFENDANT maintains records from which the Court can ascertain and
23 identify by job title each of DEFENDANT's employees who have been intentionally
24 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
25 PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles of
26 similarly situated employees when they have been identified.

27 ///

28 ///

THE CALIFORNIA LABOR SUB-CLASS

37. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth causes Action on behalf of a California sub-class, defined as all individuals who are or previously were employed by Defendant ZVLA, LLC ("Defendant") who were classified as non-exempt in the State of California (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning February 22, 2019 to October 8, 2024 ("CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

- 3 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
4 compensation due to members of the CALIFORNIA LABOR SUB-
5 CLASS for missed meal and rest breaks in violation of the California
6 Labor Code and California regulations and the applicable California
7 Wage Order;
- 8 (b) Whether DEFENDANT failed to provide the PLAINTIFFS and the
9 other members of the CALIFORNIA LABOR SUB-CLASS with
10 accurate itemized wage statements;
- 11 (c) Whether DEFENDANT has engaged in unfair competition by the
12 above-listed conduct;
- 13 (d) The proper measure of damages and penalties owed to the members of
14 the CALIFORNIA LABOR SUB-CLASS; and,
- 15 (e) Whether DEFENDANT's conduct was willful.

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

- 18 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
19 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
20 CLASS all wages due for overtime worked, for which DEFENDANT is
21 liable pursuant to Cal. Lab. Code § 1194;
- 22 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
23 accurately pay PLAINTIFFS and the members of the CALIFORNIA
24 LABOR SUB-CLASS the correct minimum wage pay for which
25 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 26 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
27 the members of the CALIFORNIA LABOR SUB-CLASS with an
28

1 accurate itemized statement in writing showing the corresponding
2 correct amount of wages earned by the employee;

3 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
4 PLAINTIFFS and the other members of the CALIFORNIA LABOR
5 SUB-CLASS with all legally required off-duty, uninterrupted thirty
6 (30) minute meal breaks and the legally required off-duty rest breaks;

7 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
8 when an employee is discharged or quits from employment, the
9 employer must pay the employee all wages due without abatement, by
10 failing to tender full payment and/or restitution of wages owed or in the
11 manner required by California law to the members of the
12 CALIFORNIA LABOR SUB-CLASS who have terminated their
13 employment; and,

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

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

19 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
20 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
21 CLASS Members is impracticable and the disposition of their claims as
22 a class will benefit the parties and the Court;

23 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
24 issues that are raised in this Complaint are common to the
25 CALIFORNIA LABOR SUB-CLASS and will apply to every member
26 of the CALIFORNIA LABOR SUB-CLASS;

27 (c) The claims of the representative PLAINTIFFS are typical of the claims
28 of each member of the CALIFORNIA LABOR SUB-CLASS.

1 PLAINTIFFS, like all the other members of the CALIFORNIA
2 LABOR SUB-CLASS, was a non-exempt employee paid on an hourly
3 basis who was subjected to the DEFENDANT's practice and policy
4 which failed to pay the correct amount of wages due to the
5 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained
6 economic injury as a result of DEFENDANT's employment practices.
7 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-
8 CLASS were and are similarly or identically harmed by the same
9 unlawful, deceptive, and unfair misconduct engaged in by
10 DEFENDANT; and,

- 11 (d) The representative PLAINTIFFS will fairly and adequately represent
12 and protect the interest of the CALIFORNIA LABOR SUB-CLASS,
13 and has retained counsel who are competent and experienced in Class
14 Action litigation. There are no material conflicts between the claims of
15 the representative PLAINTIFFS and the members of the
16 CALIFORNIA LABOR SUB-CLASS that would make class
17 certification inappropriate. Counsel for the CALIFORNIA LABOR
18 SUB-CLASS will vigorously assert the claims of all CALIFORNIA
19 LABOR SUB-CLASS Members.

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

- 22 (a) Without class certification and determination of declaratory, injunctive,
23 statutory and other legal questions within the class format, prosecution
24 of separate actions by individual members of the CALIFORNIA
25 LABOR SUB-CLASS will create the risk of:
26 1) Inconsistent or varying adjudications with respect to individual
27 members of the CALIFORNIA LABOR SUB-CLASS which
28

would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,

- 2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

- (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails to pay all wages due. Including the correct wages for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

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

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared

1 to the substantial expense and burden of individual prosecution
2 of this litigation;

- 3 2) Class certification will obviate the need for unduly duplicative
4 litigation that would create the risk of:
- 5 A. Inconsistent or varying adjudications with respect to
6 individual members of the CALIFORNIA LABOR SUB-
7 CLASS, which would establish incompatible standards of
8 conduct for the DEFENDANT; and/or,
- 9 B. Adjudications with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS would as a
11 practical matter be dispositive of the interests of the other
12 members not parties to the adjudication or substantially
13 impair or impede their ability to protect their interests;
- 14 3) In the context of wage litigation because a substantial number of
15 individual CALIFORNIA LABOR SUB-CLASS Members will
16 avoid asserting their legal rights out of fear of retaliation by
17 DEFENDANT, which may adversely affect an individual's job
18 with DEFENDANT or with a subsequent employer, the Class
19 Action is the only means to assert their claims through a
20 representative; and,
- 21 4) A class action is superior to other available methods for the fair
22 and efficient adjudication of this litigation because class
23 treatment will obviate the need for unduly and unnecessary
24 duplicative litigation that is likely to result in the absence of
25 certification of this action pursuant to Cal. Code of Civ. Proc. §
26 382.

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

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

- 1 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
2 ascertainable from the business records of DEFENDANT. The
3 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
4 CLASS Members who worked for DEFENDANT in California at any
5 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
6 (i) Class treatment provides manageable judicial treatment calculated to
7 bring a efficient and rapid conclusion to all litigation of all wage and
8 hour related claims arising out of the conduct of DEFENDANT as to
9 the members of the CALIFORNIA LABOR SUB-CLASS.

10
11 **FIRST CAUSE OF ACTION**

12 **For Unlawful Business Practices**

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

14 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

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

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

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

1 Cal. Bus. & Prof. Code § 17203.

2 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
3 engage in a business practice which violates California law, including but not limited to, the
4 applicable Industrial Wage Order(s), the California Code of Regulations and the California
5 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1,
6 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
7 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
8 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
9 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

1 52. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
2 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS
3 and the other members of the CALIFORNIA CLASS to be underpaid during their
4 employment with DEFENDANT.

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

9 54. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of
10 each CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an
11 off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1)
12 hour of pay for each workday in which a second off-duty meal period was not timely
13 provided for each ten (10) hours of work.

14 55. PLAINTIFFS further demand on behalf of themselves and each member of the
15 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
16 duty paid rest period was not timely provided as required by law.

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

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

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

7 59. PLAINTIFFS and the other members of the CALIFORNIA CLASS are
8 further entitled to, and do, seek a declaration that the described business practices are
9 unlawful, unfair and deceptive, and that injunctive relief should be issued restraining
10 DEFENDANT from engaging in any unlawful and unfair business practices in the future.

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

18
19 **SECOND CAUSE OF ACTION**

20 **For Failure To Pay Minimum Wages**

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

22 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

23 **and Against All Defendants)**

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

27 62. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
28 CLASS bring a claim for DEFENDANT's willful and intentional violations of the

1 California Labor Code and the Industrial Welfare Commission requirements for
2 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFFS
3 and CALIFORNIA CLASS Members.

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

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

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

12 66. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the
13 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
14 amount of time they work. As set forth herein, DEFENDANT's policy and practice was to
15 unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the
16 other members of the CALIFORNIA LABOR SUB-CLASS.

17 67. DEFENDANT's unlawful wage and hour practices manifested, without
18 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
19 implementing a policy and practice that denies accurate compensation to PLAINTIFFS and
20 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
21 wage pay.

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

1 69. As a direct result of DEFENDANT's unlawful wage practices as alleged
2 herein, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
3 did not receive the correct minimum wage compensation for their time worked for
4 DEFENDANT.

5 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
6 required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
7 Members to work without paying them for all the time they were under DEFENDANT's
8 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the
9 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
10 that they were entitled to, constituting a failure to pay all earned wages.

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

17 72. DEFENDANT knew or should have known that PLAINTIFFS and the other
18 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
19 time worked. DEFENDANT elected, either through intentional malfeasance or gross
20 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
21 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS
22 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
23 wages for their time worked.

24 73. In performing the acts and practices herein alleged in violation of California
25 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
26 CLASS for all time worked and provide them with the requisite compensation,
27 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
28 toward PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS

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

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

16 17 **THIRD CAUSE OF ACTION**

18 **For Failure To Pay Overtime Compensation**

19 **[Cal. Lab. Code § 510]**

20 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
21 **Defendants)**

22 75. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
23 CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior
24 paragraphs of this Complaint.

25 76. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
26 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
27 California Labor Code and the Industrial Welfare Commission requirements for
28 DEFENDANT's failure to pay these employees for all overtime worked, including, work

1 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
2 and/or forty (40) hours in any workweek.

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

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

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

14 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
15 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
16 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
17 including overtime work.

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

26 82. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
28 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT

1 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
2 violation of the California Labor Code, the Industrial Welfare Commission requirements
3 and other applicable laws and regulations.

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

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

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

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

25 86. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
26 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
27 CLASS for the true amount of time they worked, PLAINTIFFS and the other members of
28 the CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an

1 economic injury in amounts which are presently unknown to them and which will be
2 ascertained according to proof at trial.

3 87. DEFENDANT knew or should have known that PLAINTIFFS and the other
4 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
5 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
6 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
7 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS
8 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

1 good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS
2 Members are entitled to seek and recover statutory costs.

3
4 **FOURTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226.7 & 512]**

7 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
8 **Defendants)**

9 90. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
10 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
11 paragraphs of this Complaint.

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

1 92. DEFENDANT further violates California Labor Code §§ 226.7 and the
2 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA
3 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with
4 the applicable Wage Order, one additional hour of compensation at each employee's regular
5 rate of pay for each workday that a meal period was not provided.

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

10
11 **FIFTH CAUSE OF ACTION**

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

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

14 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
15 **Defendants)**

16 94. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
17 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
18 paragraphs of this Complaint.

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

1 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were periodically
2 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

3 96. DEFENDANT further violated California Labor Code §§ 226.7 and the
4 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA
5 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with
6 the applicable Wage Order, one additional hour of compensation at each employee's regular
7 rate of pay for each workday that rest period was not provided.

8 97. As a proximate result of the aforementioned violations, PLAINTIFFS and
9 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
10 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
11 suit.

12 **SIXTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 226]**

15 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
16 **Defendants)**

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

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

- 22 (1) gross wages earned,
23 (2) total hours worked by the employee, except for any employee whose
24 compensation is solely based on a salary and who is exempt from payment of
25 overtime under subdivision (a) of Section 515 or any applicable order of the
26 Industrial Welfare Commission,
27 (3) the number of piecerate units earned and any applicable piece rate if the employee
28 is paid on a piece-rate basis,
(4) all deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item,
(5) net wages earned,
(6) the inclusive dates of the period for which the employee is paid,
(7) the name of the employee and his or her social security number, except that by
January 1, 2008, only the last four digits of his or her social security number or an

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

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

26 101. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
27 Code § 226, causing injury and damages to PLAINTIFFS and the other members of the
28 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
expended calculating the correct wages for all missed meal and rest breaks and the amount
of employment taxes which were not properly paid to state and federal tax authorities.

1 These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of
2 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
3 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
4 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
5 226, in an amount according to proof at the time of trial (but in no event more than four
6 thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
7 CALIFORNIA LABOR SUB-CLASS herein).

8
9 **SEVENTH CAUSE OF ACTION**

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

11 **[Cal. Lab. Code § 2802]**

12 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
13 **Defendants)**

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

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

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

21 104. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
22 by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
23 CLASS members for required expenses incurred in the discharge of their job duties for
24 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the
25 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
26 limited to, costs related to using their personal cellular phones on behalf of and for the
27 benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA LABOR
28

1 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
2 phones and home offices in order to perform work related job tasks. DEFENDANT's policy
3 and practice was to not reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-
4 CLASS members for expenses resulting from using their personal cellular phones and home
5 offices for DEFENDANT within the course and scope of their employment for
6 DEFENDANT. These expenses were necessary to complete their principal job duties.
7 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
8 expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS
9 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
10 and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for
11 these expenses as an employer is required to do under the laws and regulations of California.

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

16 **EIGHTH CAUSE OF ACTION**

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

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

19 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

20 **and Against All Defendants)**

21 106. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
22 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
23 paragraphs of this Complaint.

24 107. Cal. Lab. Code § 200 provides, in relevant part, that:

25 As used in this article:

26 (a) "Wages" includes all amounts for labor performed by employees of
every description, whether the amount is fixed or ascertained by the
standard of time, task, piece, Commission basis, or other method of calculation.

27 (b) "Labor" includes labor, work, or service whether rendered or
28 performed under contract, subcontract, partnership, station plan, or other

1 agreement if the labor to be paid for is performed personally by the person
2 demanding payment.

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

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

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

17 110. There was no definite term in PLAINTIFFS’s or any CALIFORNIA LABOR
18 SUB-CLASS Members’ employment contract.

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

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

26 112. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-
27 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
28 owed as required by law.

1 Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and
2 the
3 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated
4 and who have not been fully paid their wages due to them, PLAINTIFFS demand thirty days
5 of pay as penalty for not paying all wages due at time of termination for all employees who
6 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and

1 demands an accounting and payment of all wages due, plus interest and statutory costs as
2 allowed by law.

3 **NINTH CAUSE OF ACTION**

4 **For Failure to Pay Sick Pay Wages**

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

6 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

7 **and Against All Defendants)**

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

11 115. Cal Lab. Code § 233 provides that an employer must permit an employee to
12 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
13 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
14 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
15 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
16 right to sick pay wages, which an employer must calculate and compensate based on one of
17 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
18 same manner as the regular rate of pay for the workweek in which the employee uses paid
19 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
20 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
21 total wages, not including overtime premium pay, by the employee's total hours worked in
22 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
23 233, employees may sue to recover underpaid sick pay wages as damages.

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

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

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

26 118. As alleged herein and as a matter of policy and practice, DEFENDANT
27 routinely underpays sick pay wages and thus did not timely pay PLAINTIFFS and the other
28 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay

1 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,
2 among other Labor Code provisions. PLAINTIFFS is informed and believes that
3 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
4 mandates of the Labor Code as it relates to PLAINTIFFS's allegations, especially since the
5 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
6 include those benefits to which an employee is entitled as a part of his or her compensation,
7 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth*
8 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
9 willfully fails to timely pay PLAINTIFFS and the other members of the CALIFORNIA
10 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
11 penalties.

12 119. Such a pattern, practice, and uniform administration of corporate policy is
13 unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA LABOR-
14 SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties,
15 attorney's fees, and costs of suit.

16 TENTH CAUSE OF ACTION

17 For Violation of the Private Attorneys General Act

18 [Cal. Lab. Code §§ 2698, *et seq.*]

19 (By PLAINTIFF and Against All Defendants)

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

22 121. PAGA is a mechanism by which the State of California itself can enforce state
23 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
24 the state's labor law enforcement agencies. An action to recover civil penalties under PAGA
25 is fundamentally a law enforcement action designed to protect the public and not to benefit
26 private parties. The purpose of the PAGA is not to recover damages or restitution, but to
27 create a means of "deputizing" citizens as private attorneys general to enforce the Labor
28 Code. In enacting PAGA, the California Legislature specified that "it was ... in the public

1 interest to allow aggrieved employees, acting as private attorneys general to recover civil
2 penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims
3 cannot be subject to arbitration.

4 122. PLAINTIFF, and such persons that may be added from time to time who
5 satisfy the requirements and exhaust the administrative procedures under the Private
6 Attorney General Act, bring this Representative Action on behalf of the State of California
7 with respect to themselves and all non-exempt employees who worked for Defendant in the State
8 of California ("AGGRIEVED EMPLOYEES") during the time period of January 6, 2022 to
9 the October 8, 2024 (the "PAGA PERIOD").

10 123. On January 6, 2023, PLAINTIFF gave written notice by electronic mail to
11 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
12 employer of the specific provisions of this code alleged to have been violated as required by
13 Labor Code § 2699.3. *See Exhibit #1*, attached hereto and incorporated by this reference
14 herein (*PAGA Notice only without draft complaint*). The statutory waiting period for
15 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
16 Section 2699.3, PLAINTIFF may pursue a representative civil action under PAGA pursuant
17 to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
18 EMPLOYEES as herein defined.

19 124. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
21 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
22 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
23 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
24 required expenses, (f) failed to provide wages when due, (g) failed to provide suitable
25 seating, and (h) failed to provide gratuities, all in violation of the applicable Labor Code
26 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
27 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
28 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations,

1 Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s),
2 and thereby gives rise to civil penalties as a result of such conduct. PLAINTIFF hereby seek
3 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of
4 2004 as the representatives of the State of California for the illegal conduct perpetrated on
5 PLAINTIFF and the AGGRIEVED EMPLOYEES.

6 125. All of the conduct and violations alleged herein occurred during the PAGA
7 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
8 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
9 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
10 2018 AJDAR 12157 (Certified for Publication 12/19/18).

11
12 **PRAYER FOR RELIEF**

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

15 1. On behalf of the CALIFORNIA CLASS:

- 16 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
17 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
18 B) An order temporarily, preliminarily and permanently enjoining and restraining
19 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
20 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
21 withheld from compensation due to PLAINTIFFS and the other members of the
22 CALIFORNIA CLASS; and,
23 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
24 for restitution of the sums incidental to DEFENDANT's violations due to
25 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

26 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
27
28

- 1 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
2 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
3 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) Compensatory damages, according to proof at trial, including compensatory
5 damages for minimum and overtime compensation due PLAINTIFFS and the
6 other members of the CALIFORNIA LABOR SUB-CLASS, during the
7 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
8 at the statutory rate;
- 9 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
10 in which a violation occurs and one hundred dollars (\$100) per each member of
11 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
13 an award of costs for violation of Cal. Lab. Code § 226;
- 14 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
15 the applicable IWC Wage Order;
- 16 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
17 1197;
- 18 F) The amount of the expenses PLAINTIFFS and each member of the
19 CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties,
20 plus interest, and costs of suit.; and,
- 21 G) The wages of all terminated employees in the CALIFORNIA LABOR
22 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
23 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

24 3. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:

26 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
27 General Act of 2004.

28 4. On all claims:

- 1 A) An award of interest, including prejudgment interest at the legal rate;
2 B) Such other and further relief as the Court deems just and equitable; and,
3 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
4 law, including, but not limited to, pursuant to Labor Code §221, §226, §1194,
5 and/or §2802.

6
7 Dated: January 27, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

8
9
10 By: /s/ Nicholas J. De Blouw
11 Nicholas J. De Blouw
12 Attorneys for PLAINTIFFS
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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: January 27, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Nicholas J. De Blouw
Attorneys for PLAINTIFFS

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:
1004

January 6, 2023
CA2841

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency	ZVLA, LLC
Online Filing	Certified Mail #70222410000060826181
	CSC - LAWYERS INCORPORATING SERVICE
	2710 GATEWAY OAKS DR STE 150N
	SACRAMENTO, CA 95833

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

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by ZVLA, LLC in California, including any employees staffed with ZVLA, LLC by a third party, and classified as non-exempt employees during the time period of January 6, 2022 until a date as determined by the Court. Our offices represent Plaintiff Andrea Alarcon (“Plaintiff”) and other Aggrieved Employees in a lawsuit against ZVLA, LLC (“Defendant”). Plaintiff was employed by Defendant in California as a non-exempt employee from August of 2021 to November of 2022 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal.

App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiff and the Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiff and the Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.