

# SUMMONS

## (CITACION JUDICIAL)

### NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

FERNANDO ACOSTA & E GROUP, INC., a California corporation;  
and DOES 1 through 50, inclusive,

### YOU ARE BEING SUED BY PLAINTIFF:

### (LO ESTÁ DEMANDANDO EL DEMANDANTE):

NORMA I. CARDOZA REINA, individually, and on behalf of all others  
similarly situated.

FOR COURT USE ONLY  
(PARA USO DE LA CORTE)  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

MAY 04 2023

BY Ragine M-Mamudu  
DEPUTY  
Ragine M-Mamudu

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO  
247 WEST 3RD STREET  
SAN BERNARDINO, CALIFORNIA 92415

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
SCOTT ERNEST WHEELER (SBN 187998)  
250 WEST FIRST STREET, SUITE 216  
CLAREMONT, CALIFORNIA 91711

LAW OFFICE OF SCOTT ERNEST WHEELER  
TELEPHONE: (909) 621-4988  
FACSIMILE: (909) 621-4622

DATE:

(Fecha)

MAY 04 2023

Clerk, by

(Secretario)

Ragine M-Mamudu

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

### NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under:

☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

CM-010

FOR COURT USE ONLY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

SCOTT ERNEST WHEELER (SBN 187998)  
LAW OFFICE OF SCOTT ERNEST WHEELER  
250 WEST FIRST STREET, SUITE 216  
CLAREMONT, CALIFORNIA 91711

TELEPHONE NO.: (909) 621-4988

FAX NO. (Optional): (909) 621-4622

E-MAIL ADDRESS: SEW@SCOTTWHEELERLAWOFFICE.COM

ATTORNEY FOR (Name) PLAINTIFF, NORMA I. CARDOZA REINA

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

APR 26 2023

BY: Rafael M. Mamudu  
Rafael M. Mamudu, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

STREET ADDRESS: 247 WEST 3RD STREET

MAILING ADDRESS:

CITY AND ZIP CODE: SAN BERNARDINO, CALIFORNIA 92415

BRANCH NAME: SAN BERNARDINO - CIVIL DIVISION

CASE NAME: NORMA I. CARDOZA REINA V. FERNANDO ACOSTA R E GROUP, INC.

**CIVIL CASE COVER SHEET**

- ☒ **Unlimited**  
(Amount demanded exceeds \$25,000)
- ☐ **Limited**  
(Amount demanded is \$25,000 or less)

**Complex Case Designation**

- ☐ Counter ☐ Joinder

Filed with first appearance by defendant  
(Cal. Rules of Court, rule 3.402)

CASE NUMBER: **CIV SB 2309611**

JUDGE:

DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

**Auto Tort**

- ☐ Auto (22)  
☐ Uninsured motorist (46)

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

- ☐ Asbestos (04)  
☐ Product liability (24)  
☐ Medical malpractice (45)  
☐ Other PI/PD/WD (23)

**Non-PI/PD/WD (Other) Tort**

- ☐ Business tort/unfair business practice (07)  
☐ Civil rights (08)  
☐ Defamation (13)  
☐ Fraud (16)  
☐ Intellectual property (19)  
☐ Professional negligence (25)  
☐ Other non-PI/PD/WD tort (35)

**Employment**

- ☐ Wrongful termination (36)  
☒ Other employment (15)

**Contract**

- ☐ Breach of contract/warranty (06)  
☐ Rule 3.740 collections (09)  
☐ Other collections (09)  
☐ Insurance coverage (18)  
☐ Other contract (37)

**Real Property**

- ☐ Eminent domain/Inverse condemnation (14)  
☐ Wrongful eviction (33)  
☐ Other real property (26)

**Unlawful Detainer**

- ☐ Commercial (31)  
☐ Residential (32)  
☐ Drugs (38)

**Judicial Review**

- ☐ Asset forfeiture (05)  
☐ Petition re: arbitration award (11)  
☐ Writ of mandate (02)  
☐ Other judicial review (39)

**Provisionally Complex Civil Litigation**  
(Cal. Rules of Court, rules 3.400-3.403)

- ☐ Antitrust/Trade regulation (03)  
☐ Construction defect (10)  
☐ Mass tort (40)  
☐ Securities litigation (28)  
☐ Environmental/Toxic tort (30)  
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

**Enforcement of Judgment**

- ☐ Enforcement of judgment (20)

**Miscellaneous Civil Complaint**

- ☐ RICO (27)  
☐ Other complaint (not specified above) (42)

**Miscellaneous Civil Petition**

- ☐ Partnership and corporate governance (21)  
☐ Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☒ Large number of separately represented parties  
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve  
c. ☒ Substantial amount of documentary evidence  
d. ☒ Large number of witnesses  
e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): **ELEVEN CAUSES OF ACTION**

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 4/25/23

Scott Ernest Wheeler

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief from Late Claim  
Other Civil Petition

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

NORMA I. CARDOZA REINA, individually, and on  
behalf of all others similarly situated,

vs.

FERNANDO ACOSTA R E GROUP, INC., a California corporation; and  
DOES 1 through 50, inclusive,

CASE NO.:

CIV SB 2309611

## CERTIFICATE OF ASSIGNMENT

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the  
residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the SAN BERNARDINO - CIVIL DIVISION  
District of the Superior Court under Rule 131 and General Order of this court for the checked reason:

☒ General☐ Collection

## Nature of Action

## Ground

- |                                                                                                     |                                                                                     |
|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1. Adoption                                                                | Petitioner resides within the district.                                             |
| <input type="checkbox"/> 2. Conservator                                                             | Petitioner or conservatee resides within the district.                              |
| <input type="checkbox"/> 3. Contract                                                                | Performance in the district is expressly provided for.                              |
| <input type="checkbox"/> 4. Equity                                                                  | The cause of action arose within the district.                                      |
| <input type="checkbox"/> 5. Eminent Domain                                                          | The property is located within the district.                                        |
| <input type="checkbox"/> 6. Family Law                                                              | Plaintiff, defendant, petitioner or respondent resides within the district.         |
| <input type="checkbox"/> 7. Guardianship                                                            | Petitioner or ward resides within the district or has property within the district. |
| <input type="checkbox"/> 8. Harassment                                                              | Plaintiff, defendant, petitioner or respondent resides within the district.         |
| <input type="checkbox"/> 9. Mandate                                                                 | The defendant functions wholly within the district.                                 |
| <input type="checkbox"/> 10. Name Change                                                            | The petitioner resides within the district.                                         |
| <input type="checkbox"/> 11. Personal Injury                                                        | The injury occurred within the district.                                            |
| <input type="checkbox"/> 12. Personal Property                                                      | The property is located within the district.                                        |
| <input type="checkbox"/> 13. Probate                                                                | Decedent resided or resides within or had property within the district.             |
| <input type="checkbox"/> 14. Prohibition                                                            | The defendant functions wholly within the district.                                 |
| <input type="checkbox"/> 15. Review                                                                 | The defendant functions wholly within the district.                                 |
| <input type="checkbox"/> 16. Title to Real Property                                                 | The property is located within the district.                                        |
| <input type="checkbox"/> 17. Transferred Action                                                     | The lower court is located within the district.                                     |
| <input type="checkbox"/> 18. Unlawful Detainer                                                      | The property is located within the district.                                        |
| <input type="checkbox"/> 19. Domestic Violence                                                      | The petitioner, defendant, plaintiff or respondent resides within the district.     |
| <input checked="" type="checkbox"/> 20. Other Employment                                            | The cause of action arose within the district.                                      |
| <input type="checkbox"/> 21. THIS FILING WOULD NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT. |                                                                                     |

The address of the accident, performance, party, detention, place of business, or other factor which qualifies  
this case for filing in the above-designated district is:

Fernando Acosta R E Group, Inc., DBA Popeyes Louisiana Kitchen  
NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR

1320 West Baseline Road

Rialto

California

ADDRESS

CITY

STATE

92376

ZIP CODE

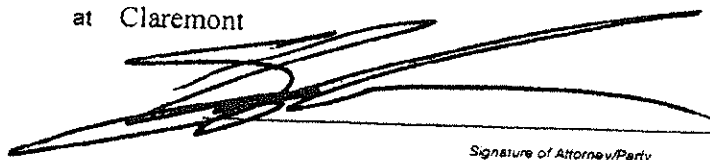
I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed

on

4/25/23

at Claremont

, California.

  
Signature of Attorney/Party
 

CERTIFICATE OF ASSIGNMENT

Rev. June 2019

**LAW OFFICE OF SCOTT ERNEST WHEELER**

Scott Ernest Wheeler (SBN 187998)

Justin A. Wheeler (SBN 342226)

250 West First Street, Suite 216

Claremont, California 91711

Telephone: (909) 621-4988

Facsimile: (909) 621-4622

Email: sew@scottwheelerlawoffice.com

jaw@scottwheelerlawoffice.com

*Attorneys for Plaintiff and all others similarly situated***FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

APR 26 2023

  
BY: Regina M. Marmada, Deputy**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**NORMA I. CARDOZA REINA, individually,  
and on behalf of all others similarly situated,

Plaintiff,

v.

FERNANDO ACOSTA R E GROUP, INC., a  
California corporation; and DOES 1 through  
50, inclusive,

Defendants.

CASE NUMBER

**CIV SB 2309611****CLASS AND REPRESENTATIVE  
ACTION COMPLAINT**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate Itemized Statements
9. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
10. Unfair and Unlawful Business Practices

**REPRESENTATIVE ACTION**

11. Penalties Under the Labor Code Private Attorneys General Act

**DEMAND FOR JURY TRIAL**

## INTRODUCTION

1  
2       1.       This is a class and representative action brought by Norma I. Cardoza Reina  
3 (“Plaintiff”), on behalf of herself and all other similarly situated individuals, against Fernando Acosta  
4 R E Group, Inc. (“R E Group” or “Defendant”), in order to hold Defendant accountable for wage  
5 theft and other violations of California wage and hour laws. Plaintiff makes the following allegations  
6 on information and belief, except as to allegations pertaining to Plaintiff individually, which are  
7 based on her respective personal knowledge.

8       2.       Defendant operates a private, for-profit one or more fast food restaurant doing  
9 business as Popeyes Louisiana Kitchen located at 1320 West Baseline Road, Rialto, California  
10 92376.

11       3.       At all relevant times herein, Defendant has implemented common policies and  
12 practices designed to maximize profits at the expense of its non-exempt employees. These policies  
13 and practices have resulted in systematic violations of California’s wage and hour laws.

14       4.       Defendant maximizes profits by cutting labor costs through understaffing, denying  
15 meal and rest breaks, cheating its non-exempt employees out of wages and premiums, failing to  
16 provide accurate and itemized wage statements, and related violations of California wage and hour  
17 laws. For instance, in order to minimize labor costs, Defendant has implemented unlawful policies  
18 with respect to meal and rest breaks. Defendant requires its non-exempt employees to work through  
19 meal and rest breaks, take their meal periods and breaks at times after the start of the fifth hour from  
20 the beginning of their shifts, and/or their meal and rest periods are cut short due to staffing shortages  
21 and the needs of Defendant in assisting customers. As a result, Plaintiff and other non-exempt  
22 employees have been denied the ability to take the legally-compliant meal and rest breaks that they  
23 were and are entitled to take.

24       5.       Defendant also willfully turns a blind eye to off-the-clock work that Plaintiff and other  
25 non-exempt employees perform as a direct consequence of Defendant’s inadequate staffing and  
26 imposition of an unreasonable workload. Moreover, Defendant uniformly failed to pay Plaintiff and  
27 other aggrieved employees proper overtime wages due the fact that it has willfully turned a blind eye  
28 to off-the-clock work that Plaintiff and other non-exempt employees perform as a direct consequence

1 of Defendant's understaffing and imposition of an unreasonable workload. Defendant failed to pay  
2 Plaintiff and other aggrieved employees timely wages. Defendant has also failed to pay final wages to  
3 Plaintiff and other aggrieved employees who were employed by Defendant. Defendant has failed to  
4 maintain required records, including: total daily hours worked by each non-exempt employee;  
5 applicable rates of pay; all deductions; meal periods; time records showing when each non-exempt  
6 employee begins and ends each workday; and other missing records yet to be discovered. Defendant  
7 also failed to provide Plaintiff and other aggrieved employees with accurate itemized wage  
8 statements. Finally, Defendant has failed to indemnify Plaintiff and other aggrieved employees for  
9 necessary expenditures incurred in discharge of duties.

10 6. Plaintiff seeks declaratory, compensatory and other statutorily available relief for  
11 herself and a Class of all current and former non-exempt employees of Defendant during the  
12 applicable limitations period to compensate these workers for the wages Defendant has stolen from  
13 the Class members and to protect current and future workers from being subjected to similar unlawful  
14 working conditions perpetrated by Defendant.

### 15 **JURISDICTION AND VENUE**

16 7. The Superior Court of the State of California has jurisdiction in this matter because  
17 Plaintiff is a resident of the State of California, and Defendant is licensed to do business under the laws  
18 of the State of California. No federal question is at issue because Plaintiff's claims are based solely on  
19 California law.

20 8. Venue is proper in this judicial district and the County of San Bernardino because  
21 Plaintiff, and all other persons similarly situated, performed work for Defendant in San Bernardino  
22 County, Defendant maintains a restaurant located within San Bernardino County, and Defendant's  
23 illegal payroll policies and practices, which are the subject of this action were applied, at least in part,  
24 to Plaintiff, and other persons similarly situated, in the County of San Bernardino.

### 25 **THE PARTIES**

26 9. During the statute of limitations period, Plaintiff was employed by Defendant as a cook,  
27 a non-exempt position, at the restaurant owned and operated by Defendant in Rialto, California.

28 10. Plaintiff is informed and believes, and thereon alleges, that Defendant, Fernando Acosta

1 R E Group, Inc., is and at all times relevant hereto was, a company organized and existing under the  
2 laws of the State of California.

3 11. As a direct and proximate result of the unlawful actions of Defendant, and each of  
4 them, Plaintiff and Class members have suffered, and continue to suffer, from loss of earnings in  
5 amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

6 12. The true names and capacities of DOES 1 through 50, inclusive, are unknown to  
7 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is  
8 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner  
9 highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees'  
10 injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE  
11 defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and  
12 capacities of such DOE defendants when ascertained.

13 13. Plaintiff is informed and believe, and based thereon alleges, that each defendant sued in  
14 this action, including each defendant sued by the fictitious names DOES 1 through 50, inclusive, is  
15 directly or indirectly responsible in some manner for the occurrences, controversies and damages  
16 alleged herein, in various capacities, including but not limited to serving as joint employer, joint  
17 tortfeasor, single enterprise, alter ego, or agents of the other defendants. Each defendant approved,  
18 participated in, controlled, or ratified the acts of all other defendants.

19 **CLASS ACTION ALLEGATIONS**

20 14. Pursuant to Cal. Code of Civ. P. § 382, Plaintiff brings this action on behalf of herself  
21 and the following Class:

22 All current and former non-exempt employees of Defendant who performed  
23 work for Defendant in the State of California at any time during the relevant  
statute of limitations period.

24 15. Plaintiff reserves the right to name additional Class representatives as may be  
25 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of the  
26 proposed Class and/or add subclasses before the Court determines whether certification is  
27 appropriate.  
28

1           16.     This action is appropriately suited for a class action because:

2           A.     The proposed Class is a significant number. Plaintiff is informed and believes  
3 that the proposed Class consists of at least forty (40) current and former non-exempt employees,  
4 rendering joinder impractical.

5           B.     This action involves common questions of law and fact to the proposed Class  
6 because the action focuses on Defendant's systematic course of illegal payroll practices and policies,  
7 which was applied to all non-exempt employees in uniform violation of the California Labor Code,  
8 IWC Wage Orders, and the California Business and Professions Code, which prohibits unfair  
9 business practices arising from such violations. Here are a few common questions of law and fact  
10 that will drive resolution of this action:

- 11                   1.     Whether Defendant failed to provide non-exempt employees with  
12                         legally compliant meal periods and rest breaks, and whether Defendant  
13                         properly paid premium pay as a result of missed and non-compliant  
14                         meal periods and rest breaks;
- 15                   2.     Whether Defendant failed to pay overtime and minimum wages  
16                         non-exempt employees in compliance with California law;
- 17                   3.     Whether Defendant failed to maintain required records and accurate  
18                         wage statements for non-exempt employees;
- 19                   4.     Whether Defendant paid all wages due at the time of separation to  
20                         the non-exempt employees; and
- 21                   5.     Whether Defendant's engaged in unfair and/or unlawful business  
22                         practices.

23           C.     Plaintiff's claims are typical of the proposed Class because Defendant  
24 subjected all of its non-exempt employees to the similar and overlapping violations of the California  
25 Labor Code, the applicable IWC wage order, and the California Business and Professions Code.

26           D.     Plaintiff is able to fairly and adequately protect the interests of all members of  
27 the proposed Class because it is in her best interests to prosecute the claims alleged herein to obtain  
28

1 full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff has  
2 also retained counsel that is experienced in wage and hour class action litigation.

3 **FIRST CAUSE OF ACTION**

4 **Failure to Provide Required Meal Periods**

5 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 5-2001, § 11**

6 **And All Other Applicable Wage Orders and Applicable Sections]**

7 ***(On Behalf of Plaintiff and the Class against all Defendants)***

8 17. Plaintiff incorporates herein by specific reference, as though fully set forth, the  
9 allegations in paragraphs 1 through 16 (A-D).

10 18. During the statute of limitations period, as part of Defendant's unlawful policies and  
11 practices to deprive its non-exempt employees of all wages earned and due, Defendant required,  
12 permitted or otherwise suffered Plaintiff and Class members to perform work during their meal  
13 periods, to completely skip their meal periods, to take late and short meal periods, and Defendant has  
14 otherwise failed to provide the required meal periods to Plaintiff and Class members as required  
15 under California Labor Code §§ 226.7, 512, and §§10-11 of all applicable IWC Orders.

16 19. Defendant has implemented several common policies and practices that have caused  
17 Plaintiff and Class members to systematically miss and otherwise take non-compliant meal periods.  
18 For example, Defendant has failed to adequately inform Plaintiff and Class members of their rights to  
19 take meal periods under California law. Defendant also understaffed its restaurant such that Plaintiff  
20 and Class members are given so much work to complete that they regularly miss or take non-  
21 compliant meal periods. Plaintiff and Class members are so busy with their assigned duties and  
22 responsibilities cooking, preparing food, waiting on customers, etc., which must be completed within  
23 their scheduled shifts they are forced to skip their meal periods altogether, to take them after working  
24 longer than five (5) hours, to perform work during their meal periods, or return to work after taking  
25 less than a thirty (30) minute meal period.

26 20. Further, Defendant systemically deprived Plaintiff and Class members of the  
27 opportunity to take second meal periods even though they regularly work shifts in excess of ten (10)  
28 hours.

1           21.     Despite work conditions that systematically result in missed and non-compliant meal  
2 periods, and in order to keep labor costs down, Defendant has implemented a policy and practice of  
3 discouraging payment of meal period premium payments. Moreover, Defendant, to the extent any  
4 meal period premiums are paid, fail to pay such premiums at the regular rate of pay of the Class  
5 members. In short, Defendant has violated California Labor Code §§ 226.7, §§ 10 and 11 of all  
6 applicable IWC Wage Orders, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§  
7 17200 *et. seq.*, by failing to compensate Plaintiff and Class members who were not authorized and  
8 permitted to take a complete, timely, uninterrupted meal period, one additional hour of compensation  
9 at the proper regular rate of pay for each workday that such a meal period was not authorized or  
10 permitted. Defendant further violated California Labor Code sections 226.7, 510, 1194, 1197, and §§  
11 10 and 11 of all applicable IWC Wage Orders by failing to compensate Plaintiff and Class members  
12 for all hours worked during their meal periods.

13           22.     As a proximate result of the aforementioned violations, Plaintiff and Class members  
14 have been damaged in an amount according to proof at trial, and seek all wages earned and due,  
15 interest, penalties, expenses, and costs of suit.

16                               **SECOND CAUSE OF ACTION**

17                               **Failure to Provide Required Rest Breaks**

18                               **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 12 And**  
19                               **All Other Applicable Wage Orders and Applicable Sections]**  
20                               ***(On Behalf of Plaintiff and the Class against all Defendants)***

21           23.     Plaintiff incorporates herein by specific reference, as though fully set forth, the  
22 allegations in paragraphs 1 through 22.

23           24.     At all times relevant herein, as part of Defendant's illegal policies and practices to  
24 deprive its non-exempt employees of all wages earned and due, Defendant failed to permit Plaintiff  
25 and Class members to take rest breaks as required under California Labor Code §§ 226.7 and 512,  
26 and §§ 11-12 of all applicable IWC Wage Orders.

27           25.     As with meal periods, Defendant's policies and practices caused Plaintiff and Class  
28 members to miss or otherwise take non-compliant rest periods by, among other things, giving them  
unreasonable amounts of work that had to be completed within their shift such that rest periods simply

1 could not be taken. This was the result of systematic understaffing at each of the restaurants.  
2 Further, as set forth above, Defendant implemented skeletal staffing policies, which resulted in the  
3 inability of Plaintiff and Class members to take compliant rest periods. In addition, Defendant did  
4 not adequately notify Plaintiff and Class members of their rights to take rest periods, and  
5 systematically denied them the opportunity to take rest periods.

6 26. Defendant further violated California Labor Code § 226.7, IWC Wage Order No. 5-  
7 2001, § 12, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by  
8 failing to pay Plaintiff and Class members who were not provided with a rest break, in accordance  
9 with the applicable wage order, one additional hour of compensation at the proper regular rate of pay  
10 for each workday that a rest break was not provided.

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

14 **THIRD CAUSE OF ACTION**  
15 **Failure to Pay Overtime Wages**  
16 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3**  
17 **And All Other Applicable Wages Orders And Sections]**  
18 ***(On Behalf of Plaintiff and the Class against all Defendants)***

19 28. Plaintiff incorporates herein by specific reference, as though fully set forth, the  
20 allegations in paragraphs 1 through 27.

21 29. Pursuant to California Labor Code §§ 510, 1194, and § 3 of all applicable wage  
22 orders, Defendant is required to compensate Plaintiff and Class members for all overtime, which is  
23 calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of  
24 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the  
25 seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in  
26 any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of  
27 work in any workweek.

28 30. During the statute of limitations period, Defendant failed to compensate Plaintiff and  
Class members for all overtime hours worked as required under the foregoing provisions of the

1 California Labor Code and IWC Wage Orders by, among other methods, failing to pay overtime at  
2 one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§  
3 510, 1194 and IWC Wage Order No. 5-2001, § 3 and all other applicable wage orders, requiring,  
4 permitting or suffering Plaintiff and Class members to work off-the-clock, and to work through meal  
5 and rest breaks, but not compensating them for this time, illegally and inaccurately recording time in  
6 which Plaintiff and Class members worked, failing to pay the regular overtime rate of pay based upon  
7 Plaintiff and Class members earned non-discretionary bonuses, and other methods to be discovered.

8 31. In violation of California law, Defendant has knowingly and willfully refused to  
9 perform their obligations to compensate Plaintiff and Class members for all wages earned and all  
10 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class members  
11 have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such  
12 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendant  
13 to fully perform their obligations under state law, all to their respective damages in amounts  
14 according to proof at time of trial, and within the jurisdiction of this Court.

15 32. Defendant's conduct described herein violates California Labor Code §§ 510, 1194,  
16 1198 and § 3 of all applicable IWC Wage Orders. Therefore, pursuant to California Labor Code §§  
17 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code  
18 and IWC Wage Orders, Plaintiff and Class members are entitled to recover the unpaid balance of  
19 wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of  
20 suit.

21 **FOURTH CAUSE OF ACTION**

22 **Failure to Pay Minimum Wages**

23 **[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 5-2001,**  
24 **And § 4 And All Other Applicable Wages Orders And Sections]**  
25 ***(On Behalf of Plaintiff and the Class against all Defendants)***

26 33. Plaintiffs incorporate herein by specific reference, as though fully set forth, the  
27 allegations in paragraphs 1 through 32.

28 34. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 5-2001  
and all applicable wage orders and sections, payment to an employee of less than the applicable

1 minimum wage for all hours worked in a payroll period is unlawful.

2 35. During the statute of limitations period, the hourly rates for Plaintiffs and Class  
3 members were at or slightly above minimum wage. Based on this common practice, Defendant failed  
4 to actually pay Plaintiffs and Class members minimum wages for all hours worked by requiring,  
5 permitting or suffering Plaintiffs and Class members to work off-the-clock, such as requiring them to  
6 work through meal and rest breaks, but not compensating them for this time as Plaintiff and the Class  
7 members were required to write down the time of their work shifts on their time cards which did not  
8 accurately reflect their actual hours worked, and failing to include this time in all hours worked,  
9 unlawfully rounding their time, failing to pay the accurate rate of pay based upon earned non-  
10 discretionary bonus payments and other methods to be discovered.

11 36. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4  
12 of IWC Wage Order No. 5, and any other applicable IWC Wage Order. As a proximate result of the  
13 aforementioned violations, Plaintiff and Class members have been damaged in an amount according  
14 to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1,  
15 and any other applicable wage orders and law, Plaintiffs and Class members are entitled to recover  
16 the unpaid balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees,  
17 expenses, and costs of suit.

18 **FIFTH CAUSE OF ACTION**

19 **Failure to Pay Timely Wages**

20 **[Cal. Lab. Code §§ 204, 210]**

21 ***(On Behalf of Plaintiff and the Class against all Defendants)***

22 37. Plaintiff incorporates herein by specific reference, as though fully set forth, the  
23 allegations in paragraphs 1 through 36.

24 38. California Labor Code § 204 provides that all wages earned by any person in any  
25 employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages  
26 due upon termination of an employee, are due and payable between the 16th and 26th day of the  
27 month during which the labor was performed. California Labor Code § 204 further provides that all  
28 wages earned by any person in any employment between the 16th and the last day, inclusive, of any  
calendar month, other than those wages due upon termination of an employee, are due and payable

1 between the 1st and the 10th day of the following month. California Labor Code § 204 further  
2 provides that all wages earned for labor in excess of the normal work period shall be paid no later than  
3 the payday for the next regular payroll period.

4 39. During the statute of limitations period, Defendant, among other things, willfully  
5 failed to pay Plaintiff and Class members all wages earned and due to them, including but not limited  
6 to, meal and rest break premiums, overtime and minimum wages, and payment for work performed  
7 off-the-clock, within any time period permissible under Labor Code § 204.

8 40. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and  
9 Class members are entitled to all available statutory penalties, including but not limited to, civil  
10 penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other  
11 applicable provisions under the California Labor Code and IWC Wage Orders, and an award of costs,  
12 expenses, and reasonable attorneys' fees.

13 **SIXTH CAUSE OF ACTION**

14 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

15 **[Cal. Lab. Code §§ 201-203]**

16 ***(On Behalf of Plaintiff and the Class against all Defendants)***

17 41. Plaintiff incorporates herein by specific reference, as though fully set forth, the  
18 allegations in paragraphs 1 through 40.

19 42. Pursuant to California Labor Code §§ 201, 202, and 203, Defendant is required to pay  
20 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201  
21 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at  
22 the time of discharge are due and payable immediately.

23 43. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay  
24 all accrued wages due to an employee no later than seventy-two (72) hours after the employee quits  
25 his or her employment, unless the employee provided seventy-two (72) hours previous notice of his  
26 or her intention to quit, in which case the employee is entitled to his or her wages at the time of  
27 quitting.  
28

44. As a result, Plaintiff and Class members are entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code § 203, together with interest thereon, as well as other available remedies.

### SEVENTH CAUSE OF ACTION

### Failure to Maintain Required Records

**[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 5-2001, § 6 And**

### **All Applicable Wage Orders And Sections]**

***(On Behalf of Plaintiff and the Class against all Defendants)***

45. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 44.

46. During the statute of limitations period, as part of Defendant's illegal payroll policies and practices to deprive Plaintiff and Class members of all wages earned and due, Defendant knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226, 1174, and §§ 6 and 7 of the applicable IWC Wage Orders, including but not limited to, the following records: total daily hours worked by each non-exempt employee; applicable rates of pay; all deductions; meal periods; time records showing when each non-exempt employee begins and ends each workday; accurate itemized wage statements, and other missing records yet to be discovered.

47. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all available penalties, including but not limited to, penalties pursuant to California Labor Code §§ 226(a) and (e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

### EIGHTH CAUSE OF ACTION

### **Failure to Furnish Accurate Itemized Wage Statements**

**[Cal. Lab. Code §§ 226; IWC Wage Order No. 5-2001, § 6 And**

### All Applicable Wage Orders And Sections

**(On Behalf of Plaintiff and the Class against all Defendants)**

48. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 47.

1        49. During the statute of limitations period, Defendant routinely failed to provide Plaintiff  
2 and Class members with timely, accurate, and itemized wage statements in writing showing each  
3 employee's gross wages earned, total hours worked, overtime hours worked and paid, all deductions  
4 made, net wages earned, and all applicable and accurate hourly rates in effect during each pay period  
5 and the corresponding number of hours worked at each hourly rate, the full legal name and address of  
6 the employer on the wage statements; all in violation of California Labor Code § 226 and §§ 6 and 7  
7 of the applicable IWC Wage Orders.

8        50. Defendant's pay stubs violate Labor Code § 226 because Defendant routinely and  
9 intentionally fail to provide Plaintiff and Class members with proper meal and rest breaks but fail to  
10 include in their wage statements one (1) additional hour of compensation at their regular rates of pay  
11 for each non-compliant meal or rest break, fail to include all regular and overtime hours worked off  
12 the clock by Plaintiff and the other Class members, in addition to failing to provide regular and  
13 overtime wages, rendering the wage statements inaccurate; and other violations yet to be discovered.

14        51. Defendant knowingly and intentionally failed to provide Plaintiff and Class members  
15 with timely, accurate, and itemized wage statements in accordance with California Labor Code §  
16 226(a) so as to prevent Plaintiff and Class members from being able to determine whether they were  
17 being paid for, among other things, all of the hours they worked and at the proper rates of pay.

18        52. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and  
19 Class members have been damaged in an amount according to proof at trial, and seek all wages  
20 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all  
21 available penalties, including but not limited to penalties pursuant to California Labor Code §§  
22 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including  
23 but not limited to those provided in California Labor Code § 226(e), as well as other available  
24 remedies.

25                                    **NINTH CAUSE OF ACTION**

26                                    **Failure to Indemnify Employees for Necessary Expenditures**

27                                    **[Cal. Lab. Code § 2802]**

28                                    ***(On Behalf of Plaintiff and the Class Against all Defendants)***

53. Plaintiff incorporates herein by specific reference, as though fully set forth, the

1 allegations in paragraphs 1 through 52.

2 54. Cal. Lab. Code § 2802(a) requires an employer to indemnify an employee for all  
3 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of  
4 his or her duties, or of his or her obedience to the directions of the employer.

5 55. During the Class period, and in violation of Cal. Lab. Code § 2802, Defendant  
6 failed to indemnify Plaintiff and Class members for all business expenses and/or losses incurred in  
7 direct consequence of the discharge of their duties, including but not limited to, expenses for their  
8 uniforms and uniform maintenance, but Defendant did not reimburse them for these expenses.

9 56. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and  
10 Class members have been damaged in an amount according to proof at trial, and seek reimbursement  
11 of all necessary expenditures, plus interest thereon pursuant to Cal. Lab. Code §2802(b).  
12 Additionally, Plaintiff and Class members are entitled to all available statutory penalties and an  
13 award of costs, expenses, and reasonable attorneys' fees, including those provided in Cal. Lab. Code  
14 § 2802(c), as well as other available remedies.

15 **TENTH CAUSE OF ACTION**

16 **Unfair and Unlawful Business Practices**

17 **[Cal. Bus. & Prof. Code § 17200 *et seq.*]**

18 ***(On Behalf of Plaintiff and the Class against all Defendants)***

19 57. Plaintiff incorporates herein by specific reference, as though fully set forth, the  
20 allegations in paragraphs 1 through 56.

21 58. Each and every one of Defendant's acts and omissions in violation of the California  
22 Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited to,  
23 Defendant's failure to provide required meal and rest breaks, unlawful rounding and requiring off-  
24 the-clock work, failure to pay all wages due to discharged or quitting employees or to pay timely  
25 wages, failure pay the accurate rate of pay, and failure to furnish accurate itemized wage statements  
26 or to maintain required records, and failure to provide notice of wage theft pursuant to Labor Code  
27 §2810.5, all constitutes an unfair and unlawful business practice under California Business and  
28 Professions Code § 17200 *et seq.*

1           59. Defendant's violations of California wage and hour laws constitute a business practice  
2 because the aforementioned acts and omissions were done repeatedly over a significant period of  
3 time, and in a systematic manner, to the detriment of Plaintiff and Class members.

4           60. Defendant has avoided payment of wages, the provision of meal and rest breaks, and  
5 other benefits as required by the California Labor Code, the California Code of Regulations, and the  
6 applicable IWC Wage Orders. Further, Defendant has failed to record, report, and pay the correct  
7 sums of assessment to the state authorities under the California Labor Code and other applicable  
8 regulations.

9           61. As a result of these unfair and unlawful business practices, Defendant has reaped  
10 unfair and illegal profits during the Class period at the expense of Plaintiff and Class members, and  
11 members of the public. Defendant should be made to disgorge their ill-gotten gains and to restore  
12 them to Plaintiff and Class members.

13           62. Defendant's unfair and unlawful business practices entitle Plaintiff and Class members  
14 to seek preliminary and permanent injunctive relief, including but not limited to orders that  
15 Defendant accounts for, disgorge, and restore to Plaintiff and Class members the wages and other  
16 compensation unlawfully withheld from them. Plaintiff and Class members are entitled to restitution  
17 of all monies to be disgorged from Defendant in an amount according to proof at the time of trial.

18                           **ELEVENTH CAUSE OF ACTION**  
19                           **Representative Action for Civil Penalties**  
20                           **[Cal. Lab. Code §§ 2698- 2699.5]**

21                           ***(On Behalf of Plaintiff and Other Aggrieved Employees against all Defendants)***

22           63. Plaintiff incorporates herein by specific reference as though fully set forth the  
23 allegations in paragraphs 1 through 62, with exception of the allegations in Paragraphs 14 through 16  
(A-D).

24           62. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code §  
25 2699(c), and is a proper representative to bring a civil action on behalf of herself, and other non-  
26 exempt employees of Defendant who are California citizens, pursuant to the procedures specified in  
27 California Labor Code § 2699.3, because Plaintiff was employed by Defendant and the alleged  
28 violations of the California Labor Code were committed against Plaintiff.

1           63.     A plaintiff has standing to represent all aggrieved employees for all of her asserted  
2 violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA, Inc.*  
3 (2018) 23 Cal.App.5<sup>th</sup> 745, 757.

4           64.     Plaintiff seeks to recover civil penalties through a representative action permitted by  
5 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class  
6 certification is not required.

7           65.     Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor  
8 Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties  
9 under California Labor Code §§ 2699, 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1775, 1199, and all  
10 applicable IWC wage order penalties, from Defendant in a representative action for the violations set  
11 forth above, including but not limited to violations of California Labor Code §§ 201, 202, 203, 226,  
12 226.7, 246, 248, 248.1, 248.2, 351, 510, 512, 558, 1174, 1194, 1197, 1198, 1774 and 2810.5. Plaintiff  
13 is also entitled to an award of reasonable attorneys’ fees and costs pursuant to California Labor Code  
14 § 2699(g)(1).

15           66.     Pursuant to California Labor Code §§ 2699.3, on February 17, 2023, Plaintiff gave  
16 written notice by certified mail to the California Labor and Workforce Development Agency  
17 (“LWDA”) and Defendant of the specific provisions of the California Labor Code and IWC Wage  
18 Orders alleged to have been violated, including the facts and theories to support the alleged  
19 violations. Within sixty-five (65) calendar of the postmark date of Plaintiff’s notice letter, the  
20 LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations.  
21 Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code §  
22 2699.3 to commence a representative action under PAGA.

23           67.     California Labor Code § 2699(f) provides that for all California Labor Code violations  
24 for which a civil penalty is not specifically provided, the following civil penalties are established: one  
25 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two  
26 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

27           68.     Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f)  
28 for Defendant violations of California Labor Code provisions for which a civil penalty is not

specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204, 226.7, 1197, 1024.5, 2810.5 and for the violations of the applicable IWC Wage Order alleged above.

69. All civil penalties sought and recovered under this action will be allocated as follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and aggrieved employees.

70. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly situated, respectfully prays for relief against Defendant and DOES 1 through 50, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from the unfair and unlawful business practices of Defendant;
3. For meal and rest break compensation pursuant to California Labor Code § 226.7 and IWC Wage Order No. 5-2001 and all applicable IWC Wage Orders and pertinent sections;
4. For liquidated damages pursuant to California Labor Code § 1194.2;
5. For preliminary and permanent injunctive relief enjoining Defendant from violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from engaging in the unlawful business practices complained of herein;
6. For civil penalties under California Labor Code § 2699(f);
7. For waiting time penalties pursuant to California Labor Code § 203;
8. For statutory penalties according to proof, including but not limited to, all penalties authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 354, 1174.5, 1775, 1197.1 and 2699;
9. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;

1           10.     For interest on the unpaid wages at 10 percent per annum pursuant to California Labor  
2 Code §§ 218.6, 1194, 2802 and California Civil Code §§ 3287, 3288, and/or any other applicable  
3 provision providing for pre-judgment interest;

4           11.     For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5,  
5 226, 1194, 2802, 2699 and California Code of Civil Procedure § 1021.5, California Civil Code §  
6 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other applicable provisions providing  
7 for attorneys' fees and costs;

8           12.     For declaratory relief;

9           13.     For an order requiring and certifying the First through Tenth Causes of Action as a  
10 class action;

11           14.     For an order appointing Plaintiff as Class representative and Plaintiff's counsel as  
12 Class counsel; and

13           15.     For such further relief that the Court may deem just and proper.

14                               **DEMAND FOR JURY TRIAL**

15           Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial  
16 with respect to all issues triable of right by jury.

17           DATED: April 25, 2023

THE LAW OFFICE OF SCOTT E. WHEELER

18  
19                               By: 

SCOTT ERNEST WHEELER  
JUSTIN A. WHEELER

21                               *Attorney for Plaintiff and all others similarly situated*  
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