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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Angelika Cazares, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JULIO RODRIGUEZ-POLANCO and
GONZALO OMAR TORICES, individuals, on
behalf of themselves, and on behalf of all
persons similarly situated,

Plaintiffs,

v.

SUSHI VENTURES, INC., a California
Corporation, TABU SUSHI BAR & GRILL, a
California Corporation, FAR EAST SUSHI,
INC, a California Corporation, ASSIM
SHAMMAMI, an individual, and DOES 1-50,
Inclusive,

Defendants.

Case No: 37-2023-00039005-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200, *ET SEQ*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510, *ET SEQ*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO MAINTAIN REQUIRED RECORDS;
- 9) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; AND

10) CIVIL PENALTIES PURSUANT TO LABOR CODE §2699, *ET SEQ.*, FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204, 210, 218.6, 221, 226, 226.3, 226(A), 226(A)(8), 226.3, 226.7, 227.3, 233, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2802, AND THE CALIFORNIA CODE OF REGULATIONS

DEMAND FOR A JURY TRIAL

PLAINTIFFS JULIO RODRIGUEZ-POLANCO and GONZALO OMAR TORICES (collectively referred as “PLAINTIFFS”), individuals, on behalf of themselves and all other similarly situated current and former employees, allege on information and belief, except for their own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. Defendant SUSHI VENTURES, INC. a California Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in California.

2. Defendant FAR EAST SUSHI, INC. a California Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in California.

3. Defendant ASSIM SHAMMAMI is an individual over the age of eighteen. On information and belief, at all times relevant herein, Mr. Shammami was and is a resident of California with a principal place of residence in the County of San Diego, California, and is owner, director, officer, or managing agent of SUSHI VENTURES, INC., FAR EAST SUSHI, INC., and other corporate Defendants.

4. Defendant SUSHI VENTURES, INC., FAR EAST SUSHI, INC., and ASSIM SHAMMAMI will be collectively referred hereinafter as “DEFENDANTS”.

1 5. DEFENDANTS own, operate, and/or manage sushi restaurants with several
2 locations, including in the state of California, and the County of San Diego, where PLAINTIFFS
3 worked.

4 6. Plaintiffs allege, on information and belief, that DEFENDANTS operate additional
5 locations.

6 7. PLAINTIFFS allege, on information and belief, that DEFENDANT have
7 intentionally, wrongfully, and systematically tried to avoid the application of various California
8 labor laws by creating a convoluted corporate structure intended to conceal from PLAINTIFFS and
9 CLASS MEMBERS the true nature of their employment, and the true number of individuals
10 employed by DEFENDANTS.

11 8. PLAINTIFFS allege, on information and belief, that DEFENDANTS created
12 multiple corporate entitles to operate separate Sushi Ventures, Inc. locations, even though Sushi
13 Ventures Inc. locations operate as one entity for all intents and purposes. PLAINTIFFS allege, on
14 information and belief, that DEFENDANTS actually operate as a single entity which employs more
15 than 80 employees at a time.

16 9. PLAINTIFFS allege, on information and belief, that DEFENDANTS comingle
17 employees, employees pay, and company assets.

18 10. PLAINTIFFS further allege, on information and belief, SHAMMAMI is an owner,
19 director, officer, or managing agent of SUSHI VENTURES, FAR EAST SUSHI, SYCAMORE
20 SUSHI, and other DEFENDANTS, and is therefore personally liable for the wrongs alleged herein
21 pursuant to Labor Code section 558.1, among other things.

22 11. PLAINTIFFS allege on information and belief, that pursuant to subdivision (h) of
23 section 23626 of the Revenue and Taxation Code, all of DEFENDANTS' employees should be
24 treated as employed by a single qualified taxpayer.

25 12. PLAINTIFFS allege, on information and belief, that DEFENDANTS, including
26 DOES 1 through 50, inclusive, are now, and/or at all times mentioned in this Complaint were, the
27 affiliates of some or all other DEFENDANTS, and vice-versa, and in doing the thing alleged in this
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1 Complaint, DEFENDANTS were directly or indirectly controlling, controlled by, or under common
2 control with such other DEFENDANTS.

3 13. PLAINTIFFS allege, on information and belief, that DEFENDANTS, including
4 DOES 1 through 50, inclusive, at all times mentioned in this Complaint exercised control over
5 PLAINTIFFS and CLASS MEMBERS wages, hours, and working conditions, were therefore, joint
6 employers of PLAINTIFFS and CLASS MEMBERS.

7 14. Accordingly, PLAINTIFFS allege, on information and belief, that DEFENDANTS
8 are jointly and severally responsible for the harms alleged herein as joint employers, joint ventures,
9 successors and/or alter egos of one another.

10 15. PLAINTIFF JULIO RODRIGUEZ-POLANCO, was employed by DEFENDANTS
11 in California from February of 2018 to March of 2023 as a sushi cook. At all times relevant during
12 his employment with DEFENDANTS, PLAINTIFF JULIO RODRIGUEZ-POLANCO was
13 classified as a salaried employee exempt from overtime wages and other related benefits.

14 16. The position of sushi cook was represented by DEFENDANTS to PLAINTIFF
15 JULIO RODRIGUEZ-POLANCO as an exempt and salaried position.

16 17. PLAINTIFF GONZALO OMAR-TORICES was employed by DEFENDANTS in
17 California from March 2019 to March of 2023 as a sushi cook and as a non-exempt employee, paid
18 in part an hourly basis, and entitled to the legally required meal and rest periods and payment of
19 minimum and overtime wages due for all time worked.

20 18. PLAINTIFF GONZALO OMAR-TORICES was employed by DEFENDANTS in
21 California from March 2019 to March of 2023 as a sushi cook and as a non-exempt employee, paid
22 in part an hourly basis, and entitled to the legally required meal and rest periods and payment of
23 minimum and overtime wages due for all time worked.

24 19. The employees employed in the position with DEFENDANTS as a Sushi Cook all
25 performed the same primary job duty which was to provide day-to-day routine kitchen work in the
26 handling and processing of orders on the production side of DEFENDANT's business. The
27 PLAINTIFFS and other sushi cooks had the finite set of tasks of preparing ingredients to make
28 various sushi rolls as they were ordered by the restaurant guests. PLAINTIFFS were also

1 responsible for preparing all of the above food items for DEFENDANTS' customers before
2 delivering such sushi food items to various customers. In addition to that work, PLAINTIFFS also
3 prepared raw fish in an appropriate manner, sliced ingredients, prepared sushi rice, managed storage
4 of fruits, vegetables, and meats such as crab, eel, salmon and tuna. PLAINTIFFS also monitored
5 inventory of supplies.

6 20. According to DEFENDANTS' company policy, while performing the job function
7 of sushi cook, the sushi cooks were required from time to time to work in excess of eight (8) hours
8 each workday and more than forty (40) hours each workweek. The PLAINTIFFS and other kitchen
9 staff, including sushi cooks, primarily performed the overwhelming remedial day-to-day duties of
10 operating DEFENDANTS' kitchen/back of the house and as such, their work was not directly
11 related to a salaried position.

12 21. The work of the PLAINTIFFS and the other kitchen staff did not involve the use of
13 discretion and independent judgment with respect to matters of significance of the enterprise.
14 Instead, PLAINTIFFS and other kitchen staff, including sushi cooks, had the primary job duty of
15 performing day-to-day routine and mundane food production work. Courts and State Labor Boards
16 have held that Sushi Chefs and Kitchen staff are entitled to overtime compensation. Therefore, the
17 PLAINTIFF JULIO RODRIGUEZ-POLANCO, and all other staff wrongfully classified as exempt
18 should have been properly classified as non-exempt employees.

19 22. The work scheduled for the Sushi Chef's was set by DEFENDANT. From time to
20 time, PLAINTIFFS and other sushi chef's worked in excess of eight hours in a workday and more
21 than forty (40) hours in a workweek.

22 23. Specifically, PLAINTIFF JULIO RODRIGUEZ-POLANCO and other similarly
23 situated employees were not provided overtime compensation and other benefits by law as a result
24 of being classified as "exempt" by DEFENDANTS.

25 24. PLAINTIFFS and CLASS MEMBERS were not exempt from the California Labor
26 Code and other regulations regulating the wages, hours, and working condition of employees. They
27 engage in non-exempt duties delegated to non-exempt employees.

1 25. During PLAINTIFF' and CLASS MEMBERS employment with DEFENDANTS,
2 they spent few to none of their working hours performing work which was primarily intellectual,
3 managerial or creative, or which required the regular and customary exercise of discretion and
4 independent judgment with respect to matter of significance on more that an occasional basis.

5 26. PLAINTIFFS bring this Class Action on behalf of themselves and a California class,
6 defined as all persons who are or previously were employed by DEFENDANT in California and
7 classified as exempt and non-exempt employees (the "CALIFORNIA CLASS") at any time during
8 the period beginning four (4) years prior to the filing of this Complaint and ending on the date as
9 determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate
10 claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

11 27. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA
12 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
13 CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which failed to lawfully
14 compensate these employees. DEFENDANT's uniform policy and practice alleged herein was an
15 unlawful, unfair, and deceptive business practice whereby DEFENDANT retained and continues to
16 retain wages due to PLAINTIFFS and the other members of the CALIFORNIA CLASS.
17 PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an injunction enjoining
18 such conduct by DEFENDANT in the future, relief for the named PLAINTIFFS and the other
19 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's
20 past and current unlawful conduct, and all other appropriate legal and equitable relief.

21 28. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are presently
23 unknown to PLAINTIFFS who therefore sue these DEFENDANTS by such fictitious names
24 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to
25 allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
26 PLAINTIFFS are informed and believe, and based upon that information and belief alleges, that
27 the DEFENDANTS named in this Complaint, including DOES 1 through 50, inclusive, are
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1 responsible in some manner for one or more of the events and happenings that proximately caused
2 the injuries and damages hereinafter alleged.

3 29. The agents, servants and/or employees of the DEFENDANTS and each of them
4 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority
5 as the agent, servant and/or employee of the DEFENDANTS, and personally participated in the
6 conduct alleged herein on behalf of the DEFENDANTS with respect to the conduct alleged herein.
7 Consequently, the acts of each DEFENDANT are legally attributable to the other DEFENDANTS
8 and all Defendants are jointly and severally liable to PLAINTIFFS and the other members of the
9 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
10 Defendants' agents, servants and/or employees.

11 30. DEFENDANTS were PLAINTIFFS' employers or persons acting on behalf of the
12 PLAINTIFFS' employer, within the meaning of California Labor Code § 558, who violated or
13 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
14 regulating hours and days of work in any order of the Industrial Welfare Commission and, as such,
15 are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all
16 relevant times.

17 31. DEFENDANTS were PLAINTIFFS' employers or persons acting on behalf of
18 PLAINTIFFS' employer either individually or as an officer, agent, or employee of another person,
19 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
20 employee a wage less than the minimum fixed by California state law, and as such, are subject to
21 civil penalties for each underpaid employee.

22 32. DEFENDANT's uniform policies and practices alleged herein were unlawful,
23 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
24 wages due to PLAINTIFFS and other members of the CALIFORNIA CLASS.

25 33. PLAINTIFFS and other members of the CALIFORNIA CLASS seek an injunction
26 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFFS and other
27 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's
28 past and current unlawful conduct, and all other appropriate legal and equitable relief.

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

35. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employs the CALIFORNIA CLASS across California, including in this County, and committed the wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

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36. The finite set of tasks required of the PLAINTIFFS and other sushi cooks as defined by DEFENDANTS was executed by the PLAINTIFFS and other sushi cooks through the performance of non-exempt food handling labor within a defined skill set.

37. Although the PLAINTIFF and the other sushi cooks primarily performed non-exempt food handling labor, DEFENDANTS instituted a blanket classification policy, practice and procedure by which the PLAINTIFFS and other sushi cooks were classified as exempt from overtime compensation and other related benefits. By reason of this uniform exemption practice, policy and procedure applicable to the PLAINTIFFS and the other sushi cooks who performed this non-exempt labor, DEFENDANTS committed acts of unfair competition in violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”), by engaging in a company-wide policy, practice and procedure which failed to properly classify the PLAINTIFFS and the other sushi Cooks and thereby failed to pay them overtime wages for documented overtime worked. The proper classification of these employees is DEFENDANTS’ legal burden. As a result of DEFENDANTS’ intentional disregard of the obligation to meet this burden, DEFENDANTS failed to pay all required overtime compensation for work performed by the PLAINTIFFS and other Sushi Cooks violated the California Labor Code and regulations promulgated thereunder as herein alleged. In addition, DEFENDANTS failed to provide all the legally required off-duty meal and rest breaks to the PLAINTIFFS and the other CALIFORNIA

1 CLASS Members as required by the applicable Wage Order and Labor Code. DEFENDANTS did
2 not have a policy or practice which provided meal and rest breaks to the PLAINTIFFS and the other
3 CALIFORNIA CLASS Members. As a result, DEFENDANTS' failure to provide the PLAINTIFF
4 and the CALIFORNIA CLASS Members with legally required meal and rest breaks is evidenced
5 by DEFENDANTS business records which contain no record of these breaks.

6 38. DEFENDANTS, as a matter of law, have the burden of proving that
7 (a) employees were properly classified as exempt and that (b) DEFENDANTS otherwise
8 complied with applicable laws. Other than the initial classification of the PLAINTIFFS and
9 the CALIFORNIA CLASS members as exempt from being paid overtime based on job title
10 alone, DEFENDANTS had no business policy, practice, or procedure to ensure that the
11 PLAINTIFF Sand the CALIFORNIA CLASS members were properly classified as exempt,
12 and in fact, as a matter of corporate policy erroneously and unilaterally classified the
13 PLAINTIFFS and the CALIFORNIA CLASS members as exempt based on job title alone.
14 The PLAINTIFFS and the CALIFORNIA CLASS members, primarily performed
15 non-exempt job duties during their employment with DEFENDANTS, but were
16 nevertheless classified by DEFENDANTS as exempt from overtime pay and from time to
17 time worked more than eight (8) hours a day and in excess of forty (40) hours a week.

18 39. PLAINTIFFS and the CALIFORNIA CLASS members employed by
19 DEFENDANTS were not primarily engaged in work of a type that was or now is directly related
20 to the management or general business operation of the employer's customers, when giving these
21 words a fair but narrow construction. PLAINTIFFS and the CALIFORNIA CLASS members
22 employed by DEFENDANTS were also not primarily engaged in work of a type that was or now
23 is performed at the level of the policy or management of DEFENDANTS. PLAINTIFFS and the
24 CALIFORNIA CLASS members employed by DEFENDANTS were also not primarily engaged
25 in work requiring knowledge of an advanced type in a field or science or learning customarily
26 acquired by a prolonged course of specialized intellectual instruction and study, but rather their
27 work primarily involved the performance of routine mental, manual, and/or physical processes.
28 PLAINTIFFS and the CALIFORNIA CLASS members employed by DEFENDANTS were also

1 not primarily engaged in work that is predominantly intellectual and varied in character, but rather
2 was routine mental, manual, mechanical, and/or physical work that was of such character that the
3 output produced or the result accomplished could be standardized in relation to a given period of
4 time. The work of a Sushi Cook of DEFENDANTS was work wherein the PLAINTIFFS and the
5 CALIFORNIA CLASS members were engaged in the finite set of tasks of preparing raw fish in an
6 appropriate manner, slicing ingredients into perfect strips, preparing sushi rice with the accurate
7 form and consistency, managing storage of fruit, vegetables, and meat such as crab, eel, salmon and
8 tuna, and monitoring ingredients and supplies for inventory. PLAINTIFFS were also responsible
9 for preparing all of the above food items for DEFENDANTS' customers before delivering such
10 foods to various customers. Sushi Cooks performed all of their job functions according to
11 established company policies, protocols and procedures.

12 40. The fact that the work of PLAINTIFFS and the CALIFORNIA CLASS members
13 may have involved work using a specialized skill set or technical abilities in a defined technical
14 area does not mean that the PLAINTIFFS and the CALIFORNIA CLASS members employed by
15 DEFENDANT were exempt from overtime wages. Indeed, the exercise of discretion and
16 independent judgment must be more than the use of a highly technical skill set described in a manual
17 or other source. The work that the PLAINTIFFS and the CALIFORNIA CLASS members
18 employed by DEFENDANTS were primarily engaged in performing day-to-day mundane and
19 routine food handling which was work that was required to be performed as part of the day-to-day-
20 business of DEFENDANTS. As a result, the PLAINTIFFS and the other CALIFORNIA CLASS
21 members employed by DEFENDANTS were primarily engaged in work that was not directly
22 related to the management policies or general business operations of DEFENDANTS and therefore
23 should have been properly classified as non-exempt employees.

24 41. PLAINTIFFS and the other CALIFORNIA CLASS members were classified as
25 exempt from California overtime and related laws by DEFENDANTS, however, these employees
26 did not have managerial duties or authority. PLAINTIFFS and the CALIFORNIA CLASS members
27 performed ongoing day-to-day non-exempt activities. Furthermore, the PLAINTIFFS and other
28 CALIFORNIA CLASS members were tightly controlled by company policy and by their managers,

1 did not exercise discretion or independent judgment as to matters of significance, and their job
2 duties were not directly related to DEFENDANTS' management policies or general business
3 operation.

4 42. PLAINTIFF JULIO RODRIGUEZ-POLANCO and all other CALIFORNIA
5 CLASS members are and were uniformly classified and treated by DEFENDANTS as exempt at
6 the time of hire and thereafter, DEFENDANTS failed to take the proper steps to determine whether
7 the PLAINTIFF, and other CALIFORNIA CLASS members, were properly classified under the
8 applicable Industrial Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code
9 §§ 510, *et seq.*, as exempt from applicable California labor laws. Since DEFENDANTS
10 affirmatively and willfully misclassified the PLAINTIFF and other sushi cooks in compliance with
11 California labor laws, DEFENDANTS' practices violated and continue to violate California law.
12 In addition, DEFENDANTS acted deceptively by falsely and fraudulently telling the PLAINTIFF
13 and other sushi cooks that they were exempt from overtime pay when DEFENDANTS knew or
14 should have known that this statement was false and not based on known facts. DEFENDANT also
15 acted unfairly by violating the California labor laws, and as a result of this policy and practice,
16 DEFENDANTS also violated the UCL. In doing so, DEFENDANTS cheated the competition by
17 paying the CALIFORNIA CLASS less than the amount competitors paid who complied with the
18 law and cheated the CALIFORNIA CLASS by not paying them in accordance with California law.

19 43. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
20 employees with an accurate itemized wage statement in writing showing, among other things, gross
21 wages earned and all applicable hourly rates, including overtime rates, in effect during the pay
22 period and the corresponding amount of time worked at each hourly rate. From time to time,
23 DEFENDANTS violated Cal. Lab. Code § 226 by failing to provide wage statements that identified
24 the correct gross and net wages earned. Aside from the violations listed above, DEFENDANTS
25 failed to issue to PLAINTIFFS an itemized wage statement that lists all the requirements under
26 California Labor Code 226, *et seq.* As a result, from time to time DEFENDANTS provided
27 PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements which
28 violated Cal. Lab. Code § 226.

1 44. DEFENDANTS imposed mandatory tip pool which required PLAINTIFFS and
2 CLASS MEMBERS to give all of their tips to DEFENDANTS for distribution by the
3 DEFENDANTS in accordance with their tip pool; however, DEFENDANTS' managers and
4 supervisors unlawfully drew from the tip pool. Accordingly, PLAINTIFF and Class MEMBERS
5 were deprived of money that was their sole property.

6 45. By reason of this uniform conduct applicable to the PLAINTIFFS and all the
7 CALIFORNIA CLASS members, DEFENDANTS committed acts of unfair competition in
8 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
9 "UCL"), by engaging in a company-wide policy and procedure which failed to correctly classify
10 the PLAINTIFFS and the members of the CALIFORNIA CLASS as non-exempt. The proper
11 classification of these employees is DEFENDANTS' burden. As a result of DEFENDANTS'
12 intentional disregard of the obligation to meet this burden, DEFENDANTS failed to properly
13 calculate and/or pay all required overtime compensation for work performed by the members of the
14 CALIFORNIA CLASS and violated the applicable Wage Order, the California Labor Code and the
15 regulations promulgated thereunder as herein alleged.

16 46. By reason of this uniform conduct applicable to the PLAINTIFFS and all the
17 CALIFORNIA CLASS members, DEFENDANTS committed acts of unfair competition in
18 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
19 "UCL"), by engaging in a company-wide policy and procedure which failed to correctly classify
20 the PLAINTIFFS and the members of the CALIFORNIA CLASS as non-exempt. The proper
21 classification of these employees is DEFENDANTS' burden. As a result of DEFENDANTS'
22 intentional disregard of the obligation to meet this burden, DEFENDANTS failed to properly
23 calculate and/or pay all required overtime compensation for work performed by the members of the
24 CALIFORNIA CLASS and violated the applicable Wage Order, the California Labor Code and the
25 regulations promulgated thereunder as herein alleged.

26 47. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
27 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
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1 paid not more than seven calendar days following the close of the payroll period. Cal. Lab. Code
2 § 210 provides:

3 [I]n addition to, and entirely independent and apart from, any other penalty provided in this
4 article, every person who fails to pay the wages of each employee as provided in Sections.
5 ... 204 ... shall be subject to a civil penalty as follows: (1) For any initial violation, one
6 hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent
7 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
8 to pay each employee, plus 25 percent of the amount unlawfully withheld.

9 48. DEFENDANTS from time to time failed to pay PLAINTIFFS and member of the
10 CALIFORNIA LABOR Sub-CLASS Members within 7 days of the close of payroll period in
11 accordance with Cal. Lab. Code §204(d).

12 49. DEFENDANTS underpaid sick pay wages to PLAINTIFFS and other
13 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in violation
14 of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt employees earn
15 non-discretionary remuneration, including but not limited to, incentives, shift differential pay, and
16 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANTS underpaid sick pay
17 to PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates of pay.

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

22 51. DEFENDANTS violated Cal. Lab. Code Section 246 by failing to pay sick pay at
23 the regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely earned
24 nondiscretionary incentive wages which increased their regular rate of pay. However, when sick
25 pay was paid, it was paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA
26 CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code
27 Section 246.

28 52. As a pattern and practice, DEFENDANTS regularly failed to pay PLAINTIFFS and
other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time
penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS is informed and believes

1 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
2 PLAINTIFFS and/or members of the CALIFORNIA CLASS whose employment has separated are
3 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

4 53. In violation of the applicable sections of the California Labor Code and the
5 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a
6 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
7 failed to provide legally compliant meal and rest periods, failed to accurately compensate
8 PLAINTIFFS and the other members of the CALIFORNIA CLASS for missed meal and rest
9 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
10 time worked, failed compensate PLAINTIFFS and other members of the CALIFORNIA CLASS
11 for off-the-clock work, failed to pay PLAINTIFFS and the other members of the CALIFORNIA
12 CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFFS and other
13 members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse
14 PLAINTIFFS and other CALIFORNIA CLASS Members for business expenses, and failed to issue
15 to PLAINTIFFS and the members of the CALIFORNIA CLASS with accurate itemized wage
16 statements showing, among other things, all applicable hourly rates in effect during the pay periods
17 and the corresponding amount of time worked at each hourly rate. DEFENDANTS’ uniform
18 policies and practices are intended to purposefully avoid the accurate and full payment for all time
19 worked as required by California law which allows DEFENDANT to illegally profit and gain an
20 unfair advantage over competitors who comply with the law. To the extent equitable tolling
21 operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD
22 should be adjusted accordingly.

23 **A. Meal Period Violations**

24 54. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS was
25 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including all
27 the time the employee is suffered or permitted to work. From time to time during the CLASS
28 PERIOD, DEFENDANTS required PLAINTIFFS and CALIFORNIA CLASS Members to work

1 without paying them for all the time they were under DEFENDANTS control. Specifically,
2 DEFENDANT required PLAINTIFFS to work while clocked out during what was supposed to be
3 PLAINTIFFS' off-duty meal break. Indeed, there were many days where PLAINTIFFS did not
4 even receive a partial lunch. As a result, the PLAINTIFFS and other CALIFORNIA CLASS
5 Members forfeited minimum wage and overtime compensation by regularly working without their
6 time being accurately recorded and without compensation at the applicable minimum wage and
7 overtime rates. DEFENDANTS uniform policy and practice not to pay PLAINTIFFS and other
8 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS business
9 records.

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

26 **B. Rest Period Violations**

27 56. From time to time during the CLASS PERIOD, PLAINTIFFS and other
28 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without

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

13 **C. Unreimbursed Business Expenses**

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

25 58. In the course of their employment, DEFENDANTS required PLAINTIFFS and
26 other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in
27 furtherance of their job duties. Specifically, PLAINTIFFS and other CALIFORNIA CLASS
28 Members were required to use their personal cell phones in order to perform work related tasks.

1 However, DEFENDANTS unlawfully failed to reimburse PLAINTIFFS and other CALIFORNIA
2 CLASS Members for the use of their personal cell phones As a result, in the course of their
3 employment with DEFENDANTS, the PLAINTIFFS and other CALIFORNIA CLASS Members
4 incurred unreimbursed business expenses that included, but were not limited to, costs related to the
5 use of their personal cell phones, all on behalf of and for the benefit of DEFENDANT.

6 **D. Wage Statement Violations**

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

15 60. From time to time during the CLASS PERIOD, when PLAINTIFFS and other
16 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for missed
17 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to
18 provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate
19 wage statements which failed to show, among other things, all deductions, the total hours worked
20 and all applicable hourly rates in effect during the pay period, and the corresponding amount of
21 time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
22 periods.

23 61. Further, from time to time, DEFENDANTS included Holiday, Sick, Missed Rest
24 Period Premium, and Vacation hours into the computation of total hours worked for purposes of
25 Cal. Lab. Code §226(a)(2), notwithstanding the fact that Holiday, Sick, Missed Rest Period
26 Premium, and Vacation hours are not considered hours worked. DEFENDANTS' inclusion of
27 Holiday, Sick, Missed Rest Period Premium, and Vacation hours into the total hours worked in
28

1 itemized wage statements issued to PLAINTIFFS and other CALIFORNIA CLASS Members
2 violates Cal. Lab. Code §226(a)(2).

3 62. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
4 PLAINTIFFS and the CALIFORNIA CLASS Members with wage statements that comply with
5 Cal. Lab. Code § 226.

6 63. As a result, DEFENDANTS issued PLAINTIFFS and other members of the
7 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
8 DEFENDANTS' violations are knowing and intentional, were not isolated due to an unintentional
9 payroll error due to clerical or inadvertent mistake.

10 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

11 64. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
12 continues to fail to accurately pay PLAINTIFFS and other members of the CALIFORNIA CLASS
13 for all hours worked.

14 65. During the CLASS PERIOD, from time-to-time DEFENDANTS required
15 PLAINTIFFS and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
16 working. This resulted in PLAINTIFFS and other members of the CALIFORNIA CLASS to have
17 to work while off-the-clock.

18 66. DEFENDANTS directed and directly benefited from the undercompensated off-the-
19 clock work performed by PLAINTIFFS and the other CALIFORNIA CLASS Members.

20 67. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
21 assignments, and employment conditions of PLAINTIFFS and the other members of the
22 CALIFORNIA CLASS.

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24 68. DEFENDANTS were able to track the amount of time PLAINTIFFS and the other
25 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
26 document, track, or pay PLAINTIFFS and the other members of the CALIFORNIA CLASS all
27 wages earned and owed for all the work they performed.

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

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

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

10 72. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
11 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and benefit
12 for the time spent working while off-the-clock. DEFENDANT's uniform policy and practice to not
13 pay PLAINTIFFS and the members of the CALIFORNIA CLASS wages for all hours worked in
14 accordance with applicable law is evidenced by DEFENDANT's business records.

15 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
16 **Redeemed Sick Pay**

17 73. From time to time during the CLASS PERIOD, DEFENDANTS failed and
18 continues to fail to accurately calculate and pay PLAINTIFFS and the other CALIFORNIA CLASS
19 Members for their overtime and double time hours worked, meal and rest period premiums, and
20 redeemed sick pay. As a result, PLAINTIFFS and the other CALIFORNIA CLASS Members
21 forfeited wages due to them for working overtime without compensation at the correct overtime
22 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
23 DEFENDANTS' uniform policy and practice not to pay the CALIFORNIA CLASS Members at
24 the correct rate for all overtime and double time worked, meal and rest period premiums, and
25 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business
26 records.

27 74. State law provides that employees must be paid overtime at one-and-one-half times
28 their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS Members were

1 compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's
2 performance.

3 75. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
4 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
5 PLAINTIFFS and other CLASS MEMBERS incentive wages based on their performance for
6 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
7 basis with bonus compensation when the employees met the various performance goals set by
8 DEFENDANTS.

9 76. However, from-time-to-time, when calculating the regular rate of pay, in those pay
10 periods where PLAINTIFFS and other CALIFORNIA CLASS members worked overtime, double
11 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
12 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
13 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
14 rather than just all non-overtime hours worked. Management and supervisors described the
15 incentive/bonus program to potential and new employees as part of the compensation package. As
16 a matter of law, the incentive compensation received by PLAINTIFFS and other CALIFORNIA
17 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted in
18 a systematic underpayment of overtime and double time compensation, meal and rest period
19 premiums, and redeemed sick pay to PLAINTIFFS and other CALIFORNIA CLASS members by
20 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time for
21 non-employees shall be calculated in the same manner as the regular rate of pay for the workweek
22 in which the non-exempt employee uses paid sick time, whether or not the employee actually works
23 overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include
24 the incentive compensation as part of the "regular rate of pay" for purposes of sick pay
25 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
26 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

27 77. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a

1 matter of company policy, practice, and procedure, intentionally and knowingly failed to
2 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS at the correct rate
3 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay. This
4 uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment of the
5 correct overtime and double time compensation, meal and rest period premiums, and sick pay as
6 required by California law which allowed DEFENDANT to illegally profit and gain an unfair
7 advantage over competitors who complied with the law. To the extent equitable tolling operates to
8 toll claims by the CALIFORNIA CLASS members against DEFENDANT, the CLASS PERIOD
9 should be adjusted accordingly.

10 **G. Violations for Untimely Payment of Wages**

11 78. Pursuant to California Labor Code section 204, PLAINTIFFS and the
12 CALIFORNIA CLASS members were entitled to timely payment of wages during their
13 employment. PLAINTIFFS and the CALIFORNIA CLASS members, from time to time, did not
14 receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal
15 period premium wages, and rest period premium wages within permissible time period.

16 **H. Unlawful Deductions**

17 79. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFFS
18 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do so
19 or notice to PLAINTIFFS and the CALIFORNIA CLASS Members. As a result, DEFENDANTS
20 violated Labor Code § 221.

21 80. Specifically, as to PLAINTIFFS, PLAINTIFFS were from time to time unable to
22 take off duty meal and rest breaks and were not fully relieved of duty for their rest and meal periods.
23 PLAINTIFFS were required to perform work as ordered by DEFENDANTS for more than five (5)
24 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
25 provide PLAINTIFFS with a second off-duty meal period each workday in which they were
26 required by DEFENDANTS to work ten (10) hours of work. When DEFENDANT provided
27 PLAINTIFFS with a rest break, they required PLAINTIFFS to remain on-duty and on-call for the
28 rest break. DEFENDANTS policy caused PLAINTIFFS to remain on-call and on-duty during what

1 was supposed to be their off-duty meal periods. PLAINTIFFS therefore forfeited meal and rest
2 breaks without additional compensation and in accordance with DEFENDANT’S strict corporate
3 policy and practice. Moreover, DEFENDANT also provided PLAINTIFFS with paystubs that
4 failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to reimburse
5 PLAINTIFFS for required business expenses related to the personal expenses incurred for the use
6 of their personal cell phones, on behalf of and in furtherance of his employment with
7 DEFENDANTS. To date, DEFENDANTS has not fully paid PLAINTIFFS the minimum, overtime
8 and double time compensation still owed to them or any penalty wages owed to them under Cal.
9 Lab. Code § 203. The amount in controversy for PLAINTIFFS individually do not exceed the sum
10 or value of \$75,000.

11 **CLASS ACTION ALLEGATIONS**

12 81. PLAINTIFFS bring this Class Action on behalf of themselves, and a California class
13 defined as all persons who are or previously were employed by DEFENDANT in California and
14 classified as all exempt and non-exempt employees (the “CALIFORNIA CLASS”) at any time
15 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
16 date as determined by the Court (the “CLASS PERIOD”).

17 82. PLAINTIFFS and the other CALIFORNIA CLASS Members have uniformly been
18 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
19 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
20 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
21 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
22 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

23 83. The members of the class are so numerous that joinder of all class members is
24 impractical.

25 84. Common questions of law and fact regarding DEFENDANTS’ conduct, including
26 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
27 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
28 regular rate of compensation for missed meal and rest period premiums, failing to provide legally

1 compliant meal and rest periods, failed to reimburse for business expenses, failure to provide
2 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum
3 wage and overtime, exist as to all members of the class and predominate over any questions
4 affecting solely any individual members of the class. Among the questions of law and fact common
5 to the class are:

- 6 a. Whether DEFENDANTS maintained legally compliant meal period policies and
7 practices;
- 8 b. Whether DEFENDANT maintained legally compliant rest period policies and
9 practices;
- 10 c. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA CLASS
11 Members accurate premium payments for missed meal and rest periods;
- 12 d. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA CLASS
13 Members accurate overtime wages;
- 14 e. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA CLASS
15 Members at least minimum wage for all hours worked;
- 16 f. Whether DEFENDANT failed to compensate PLAINTIFFS and the CALIFORNIA
17 CLASS Members for required business expenses;
- 18 g. Whether DEFENDANT issued legally compliant wage statements;
- 19 h. Whether DEFENDANT committed an act of unfair competition by systematically
20 failing to record and pay PLAINTIFFS and the other members of the CALIFORNIA
21 CLASS for all time worked;
- 22 i. Whether DEFENDANT committed an act of unfair competition by systematically
23 failing to record all meal and rest breaks missed by PLAINTIFFS and other
24 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
25 of this work, required employees to perform this work and permits or suffers to
26 permit this work;

1 j. Whether DEFENDANT committed an act of unfair competition in violation of the
2 UCL, by failing to provide the PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS with the legally required meal and rest periods.

4 85. PLAINTIFFS are members of the CALIFORNIA CLASS and suffered damages as
5 a result of DEFENDANT's conduct and actions alleged herein.

6 86. PLAINTIFFS' claims are typical of the claims of the CALIFORNIA CLASS, and
7 PLAINTIFFS have the same interests as the other members of the class.

8 87. PLAINTIFFS will fairly and adequately represent and protect the interests of the
9 CALIFORNIA CLASS Members.

10 88. PLAINTIFFS retained able class counsel with extensive experience in class action
11 litigation.

12 89. Further, PLAINTIFFS' interests are coincident with, and not antagonistic to, the
13 interest of the other CALIFORNIA CLASS Members.

14 90. There is a strong community of interest among PLAINTIFFS and the members of
15 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
16 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
17 sustained.

18 91. The questions of law and fact common to the CALIFORNIA CLASS Members
19 predominate over any questions affecting only individual members, including legal and factual
20 issues relating to liability and damages.

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

1 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should
2 be adjusted accordingly.

3 96. DEFENDANT maintains records from which the Court can ascertain and identify
4 by job title each of DEFENDANT's employees who as CALIFORNIA LABOR SUB-CLASS
5 Members have been systematically, intentionally and uniformly misclassified as exempt as a matter
6 of DEFENDANT's corporate policies, practices and procedures. PLAINTIFF will seek leave to
7 amend the Complaint to include these additional job titles when they have been identified.

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

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

- 12 (a) Whether DEFENDANT unlawfully fails to pay overtime compensation
13 to members of the CALIFORNIA LABOR SUB-CLASS in violation of
14 the California Labor Code and California regulations and the applicable
15 California Wage Order;
- 16 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
17 non-exempt employees entitled to overtime compensation for overtime
18 worked under the overtime pay requirements of California law;
- 19 (c) Whether DEFENDANT's policy and practice of classifying the
20 CALIFORNIA LABOR SUB-CLASS Members as exempt from
21 overtime compensation and failing to pay the CALIFORNIA LABOR
22 SUB-CLASS Members overtime violate applicable provisions of
23 California law;
- 24 (d) Whether DEFENDANT unlawfully fails to keep and furnish
25 CALIFORNIA LABOR SUB-CLASS Members with accurate records
26 of overtime worked; and

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1 (e) The proper measure of damages and penalties owed to the members of
2 the CALIFORNIA LABOR SUB-CLASS.

3 99. DEFENDANT, as a matter of corporate policy, practice and procedure, erroneously
4 classifies all sushi cooks as exempt from overtime wages and other labor laws. All sushi cooks,
5 including PLAINTIFFS, perform the same finite set of tasks and are paid by DEFENDANT
6 according to uniform and systematic company procedures, which, as alleged herein above, fails to
7 correctly pay overtime compensation. This business practice has been uniformly applied to each
8 and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this
9 conduct can be adjudicated on a
10 class-wide basis.

11 100. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
12 under California law by:

13 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
14 failing to pay PLAINTIFF and the members of the CALIFORNIA
15 LABOR SUB-CLASS the correct overtime pay for a workday longer
16 than eight (8) hours and/or a workweek longer than forty (40) hours for
17 which DEFENDANTS is liable pursuant to Cal. Lab. Code § 1194;

18 (b) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and
19 the members of the CALIFORNIA LABOR SUB-CLASS who are
20 improperly classified as exempt with an accurate itemized statement in
21 writing showing the gross wages earned, the net wages earned, all
22 applicable hourly rates in effect during the pay period and the
23 corresponding amount of time worked at each hourly rate by the
24 employee when these employees worked overtime from time to time in
25 a pay period;

26 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
27 PLAINTIFF and the other members of the CALIFORNIA CLASS with
28 all legally required off-duty, uninterrupted thirty (30) minute meal

breaks and the legally required rest breaks;

- (d) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,
- (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

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

- (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, and declaratory relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUBCLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- (c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was improperly classified as exempt and denied overtime pay as a result of DEFENDANTS' systematic classification practices. PLAINTIFFS and all the other members of the CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT's violations of the laws of California; and

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

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

12 (a) Without class certification and determination of declaratory, statutory
13 and other legal questions within the class format, prosecution of
14 separate actions by individual members of the CALIFORNIA LABOR
15 SUBCLASS will create the risk of:

16 1) Inconsistent or varying adjudications with respect to individual
17 members of the CALIFORNIA LABOR SUB-CLASS which
18 would establish incompatible standards of conduct for the parties
19 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

25 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
26 acted or refused to act on grounds generally applicable to the
27 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
28 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a

1 whole in that DEFENDANT uniformly classified and treated the Sushi
2 Cooks as exempt and, thereafter, uniformly failed to take proper steps
3 to determine whether the Assistant General Managers were properly
4 classified as exempt, and thereby denied these employees overtime
5 wages as required by law;

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

13 1) The interests of the members of the CALIFORNIA LABOR
14 SUBCLASS in individually controlling the prosecution or defense
15 of separate actions in that the substantial expense of individual
16 actions will be avoided to recover the relatively small amount of
17 economic losses sustained by the individual CALIFORNIA
18 LABOR SUB-CLASS Members when compared to the substantial
19 expense and burden of individual prosecution of this litigation;

20 2) Class certification will obviate the need for unduly duplicative
21 litigation that would create the risk of:

22 A. Inconsistent or varying adjudications with respect to
23 individual members of the CALIFORNIA LABOR
24 SUBCLASS, which would establish incompatible standards
25 of conduct for DEFENDANT; and/or,

26 B. Adjudications with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS would as a practical
28 matter be dispositive of the interests of the other members not

parties to the adjudication or substantially impair or impede
their ability to protect their interests;

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

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

FIRST CAUSE OF ACTION

Unlawful Business Practices

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

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

1. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof. Code
§ 17021.

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

Any person who engages, has engaged, or proposes to engage in unfair
competition may be enjoined in any court of competent jurisdiction. The

1 court may make such orders or judgments, including the appointment of a
2 receiver, as may be necessary to prevent the use or employment by any
3 person of any practice which constitutes unfair competition, as defined in
4 this chapter, or as may be necessary to restore to any person in interest any
5 money or property, real or personal, which may have been acquired by
6 means of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

7 104. By the conduct alleged herein, DEFENDANTS have engaged and continues to
8 engage in a business practice which violates California law, including but not limited to, the
9 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
10 including Sections 201, 202, 203, 204, 210, 226, 226.7, 246 *et seq.*, 315, 510, 512, 558, 1194, 1197,
11 1197.1, 1198, and 2802, for which this Court should issue declaratory and other equitable relief
12 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
13 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

19 106. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
20 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
21 mandated meal and rest periods and the required amount of compensation for missed meal and rest
22 periods, failed to pay minimum and overtime wages owed, and failed to reimburse all necessary
23 business expenses incurred, due to a systematic business practice that cannot be justified, pursuant
24 to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of
25 Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
26 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
27 withheld.

28 107. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the

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1 other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANTS.

3 108. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
4 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
5 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members as
6 required by Cal. Lab. Code §§ 226.7 and 512.

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

12 110. PLAINTIFFS further demand on behalf of themselves and on behalf of each
13 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
14 not timely provided as required by law.

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

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

26 113. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled to,
27 and do, seek such relief as may be necessary to restore to them the money and property which
28 DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
2 business practices, including earned but unpaid wages for all time worked.

3 114. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
4 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair, and
5 deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in
6 any unlawful and unfair business practices in the future.

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

14 **SECOND CAUSE OF ACTION**

15 **Failure To Pay Minimum Wages**

16 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

17 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against ALL Defendants)**

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

21 117. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
22 for DEFENDANT's willful and intentional violations of the California Labor Code and the
23 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate
24 and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

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

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

6 121. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and the
7 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
8 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
9 intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the
10 CALIFORNIA CLASS.

11 122. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
12 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing
13 a uniform policy and practice that denies accurate compensation to PLAINTIFFS and the other
14 members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

24 125. During the CLASS PERIOD, PLAINTIFFS and the other members of the
25 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
26 failure to pay all earned wages.

27 126. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
28 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true

1 time they worked, PLAINTIFFS and the other members of the CALIFORNIA CLASS have
2 suffered and will continue to suffer an economic injury in amounts which are presently unknown
3 to them, and which will be ascertained according to proof at trial.

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

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

19 129. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
20 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
21 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
22 Labor Code and/or other applicable statutes. To the extent minimum wage compensation is
23 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
24 employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore
25 these 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 CLASS Members. DEFENDANTS'
27 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS and
28 other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

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1 the other members of the CALIFORNIA CLASS for overtime worked, including, the overtime
2 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
3 and/or forty (40) hours in any workweek.

4 137. In committing these violations of the California Labor Code, DEFENDANTS
5 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
6 PLAINTIFFS and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
7 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
8 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
9 regulations.

10 138. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
11 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive the correct
12 overtime compensation for their time worked for DEFENDANTS.

13 139. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
14 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFFS
15 and the other members of the CALIFORNIA CLASS. Further, PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement
17 that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFFS
18 bring this Action on behalf of themselves, and the CALIFORNIA CLASS, based on
19 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of
20 California.

21 140. During the CLASS PERIOD, PLAINTIFFS and the other members of the
22 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
23 a failure to pay all earned wages.

24 141. DEFENDANTS failed to accurately pay PLAINTIFFS and the other members of
25 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
26 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
27 though PLAINTIFFS and the other members of the CALIFORNIA CLASS were regularly required
28 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANTS

1 failed to accurately record and pay as evidenced by DEFENDANTS' business records and
2 witnessed by employees.

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

8 143. DEFENDANTS knew or should have known that PLAINTIFFS and the other
9 members of the CALIFORNIA CLASS were undercompensated for their time worked.
10 DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance,
11 to not pay them for their labor as a matter of uniform company policy, practice and procedure, and
12 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFFS and the other
13 members of the CALIFORNIA CLASS the correct overtime wages for their overtime worked.

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

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

1 penalties are sought herein. DEFENDANTS' conduct as alleged herein was willful, intentional, and
2 not in good faith. Further, PLAINTIFFS and other CALIFORNIA CLASS Members are entitled to
3 seek and recover statutory costs.

4 **FOURTH CAUSE OF ACTION**

5 **Failure To Provide Required Meal Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

7 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

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

25 148. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable
26 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS Members
27 who were not provided a meal period, in accordance with the applicable Wage Order, one additional
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1 hour of compensation at each employee's regular rate of pay for each workday that a meal period
2 was not provided.

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

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

9 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

13 151. From time to time, PLAINTIFFS and other CALIFORNIA CLASS Members were
14 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
15 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
16 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
17 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third
18 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
19 PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with one-hour
20 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFFS and other
21 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
22 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to compensate
23 PLAINTIFFS and other CALIFORNIA CLASS Members for their rest periods as required by the
24 applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to provide
25 PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid rest
26 periods is evidenced by DEFENDANT's business records.

27 152. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable
28 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS Members

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

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

7 **SIXTH CAUSE OF ACTION**

8 **Failure To Reimburse Employees for Required Expenses**

9 **(Cal. Lab. Code §§ 2802)**

10 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

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

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

18 156. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
19 Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA CLASS
20 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
21 benefit. DEFENDANTS failed to reimburse PLAINTIFFS and the CALIFORNIA CLASS
22 members for expenses which included, but were not limited to, personal expenses incurred for the
23 use of personal cell phones, purchase of tools, all on behalf of and for the benefit of
24 DEFENDANTS. Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were
25 required by DEFENDANT to use their personal cell phones and purchase of their own tools to
26 execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy,
27 practice and procedure was to not reimburse PLAINTIFFS and the CALIFORNIA CLASS
28 members for expenses resulting from the use of personal cell phones and purchase of such tools for

1 DEFENDANTS within the course and scope of their employment for DEFENDANT. These
2 expenses were necessary to complete their principal job duties. DEFENDANTS is estopped by
3 DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses were
4 necessary expenses incurred by PLAINTIFFS and the CALIFORNIA CLASS members,
5 DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA CLASS
6 members for these expenses as an employer is required to do under the laws and regulations of
7 California.

8 157. PLAINTIFFS therefore demand reimbursement for expenditures or losses incurred
9 by them and the CALIFORNIA CLASS members in the discharge of their job duties for
10 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
11 statutory rate and costs under Cal. Lab. Code § 2802.

12 **SEVENTH CAUSE OF ACTION**

13 **Failure To Provide Accurate Itemized Statements**

14 **(Cal. Lab. Code § 226)**

15 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

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

- 21 a. Gross wages earned,
- 22 b. (2) total hours worked by the employee, except for any employee whose
23 compensation is solely based on a salary and who is exempt from payment of
24 overtime under subdivision (a) of Section 515 or any applicable order of the
25 Industrial Welfare Commission,
- 26 c. the number of piece-rate units earned and any applicable piece rate if the
27 employee is paid on a piece-rate basis,

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- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. 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 of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

160. When DEFENDANTS did not accurately record PLAINTIFFS' and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

161. Further, from time to time, DEFENDANTS included Holiday, Sick, Missed Rest Period Premium, and Vacation hours into the computation of total hours worked for purposes of Cal. Lab. Code §226(a)(2), notwithstanding the fact that Holiday, Sick, Missed Rest Period Premium, and Vacation hours are not considered hours worked. DEFENDANTS' inclusion of Holiday, Sick, Missed Rest Period Premium, and Vacation hours into the total hours worked in itemized wage statements issued to PLAINTIFFS and other CALIFORNIA CLASS Members violates Cal. Lab. Code §226(a)(2).

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162. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFFS and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

163. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA 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. These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA CLASS herein).

EIGHTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

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

165. Cal. Lab. Code § 200 provides that:

As used in this article:

- (d) “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.
- (e) “Labor” includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the to be paid for is performed personally by the person demanding payment.

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

3 167. Cal. Lab. Code § 202 provides, in relevant part, that:

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

10 168. There was no definite term in PLAINTIFFS’ or any CALIFORNIA CLASS
11 Members’ employment contract.

12 169. Cal. Lab. Code § 203 provides:

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

17 170. The employment of PLAINTIFFS and many CALIFORNIA CLASS Members
18 terminated, and DEFENDANTS has not tendered payment of wages to these employees who
19 missed meal and rest breaks, as required by law.

20 171. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
21 members of the CALIFORNIA CLASS whose employment has, PLAINTIFFS demand up to
22 thirty (30) days of pay as penalty for not paying all wages due at time of termination for all
23 employees who terminated employment during the CLASS PERIOD and demand an accounting
24 and payment of all wages due, plus interest and statutory costs as allowed by law.

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1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO MAINTAIN REQUIRED RECORDS**

3 **[Cal. Labor Code §§ 226, 1174]**

4 **(Alleged by PLAINTIFFS against all DEFENDANTS)**

5 172. PLAINTIFFS incorporate by reference and re-allege as if fully stated herein the
6 material allegations set out above in the preceding paragraphs.

7 173. During the Class Period, as part of DEFENDANTS illegal payroll policies and
8 practices to deprive PLAINTIFFS and Class Members of all wages earned and due, DEFENDANTS
9 knowingly and intentionally failed to maintain records as required pursuant to Labor Code sections
10 226, and 1174, as well as California Code of Regulations, title 8, section 11040, subdivision
11 7(A)(3), and Industrial Welfare Commission Wage Order No. 5-2001 section 7(A)(3), including
12 without limitation, to the following records, onboarding records, employees w-2, applicable rates
13 of pay, meal periods, actual employer, and accurate itemized statements.

14 174. As a proximate result of DEFENDANTS' unlawful actions and omissions, Plaintiffs
15 and Class Members have been damages in an amount according to proof of trial, and are entitled to
16 all wages earned and due, plus interest thereon. Additionally, Plaintiffs and Class Members are
17 entitled to all available statutory penalties, including without limitation, to civil penalties pursuant
18 to Labor Code sections 226, 226.3, and 1174.5 and an award of attorneys' fees, and expenses and
19 costs of suit, including without limitation, to those provided in Labor Code section 226, as well as
20 other available remedies.

21 **TENTH CAUSE OF ACTION**

22 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**

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

24 **(Alleged by PLAINTIFFS against all DEFENDANTS)**

25 175. PLAINTIFFS reallege and incorporates by this reference, as though fully set
26 forth herein, the prior paragraphs of this Complaint.

27 176. PAGA is a mechanism by which the State of California itself can enforce state labor
28 laws through the employee suing under the PAGA who does so as the proxy or agent of the state's

1 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
2 a law enforcement action designed to protect the public and not to benefit private parties. The
3 purpose of the PAGA is not to recover damages or restitution, but to create a means of “deputizing”
4 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
5 Legislature specified that “it was ... in the public interest to allow aggrieved employees, acting as
6 private attorneys general to recover civil penalties for Labor Code violations ...” (Stats. 2003,
7 ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

8 177. For all provisions of the Labor Code except those for which a civil penalty is
9 specifically provided, Labor Code § 2699(f) imposes upon DEFENDANTS a penalty of one
10 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and
11 two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
12 period in which DEFENDANTS’ violated these provisions of the Labor Code.

13 178. PLAINTIFFS, and such persons that may be added from time to time who satisfy
14 the requirements and exhaust the administrative procedures under the Private Attorney General Act,
15 bring this Representative Action on behalf of the State of California with respect to herself and all
16 individuals who are or previously were employed by DEFENDANTS in California during the time
17 period of May 19, 2020 until the present (the “AGGRIEVED EMPLOYEES”).

18 179. On May 30, 2023, PLAINTIFFS gave written notice by online submission to the
19 Labor and Workforce Development Agency (the “Agency”) and by certified mail to the employer
20 of the specific provisions of this code alleged to have been violated as required by Labor Code
21 § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein. The statutory
22 waiting period for PLAINTIFFS to add these allegations and Parties to the Complaint has expired.
23 As a result, pursuant to Section 2699.3, PLAINTIFFS may now commence a representative civil
24 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to
25 all AGGRIEVED EMPLOYEES as herein defined.

26 180. The policies, acts and practices heretofore described were and are an unlawful
27 business act or practice because DEFENDANTS (a) failed to pay PLAINTIFFS and other
28 AGGRIEVED EMPLOYEES all earned wages, including by not limited to, minimum wages and

1 overtime wages, (b) failed to provide PLAINTIFFS and other AGGRIEVED EMPLOYEES legally
2 required meal and rest breaks and failed to pay premium wages for unlawful meal periods and rest
3 periods, (c) failed to provide accurate itemized wage statements, (d) failed to pay gratuities,
4 (e) failed to keep accurate records of hours worked; and (f) failed to timely pay wages, all in
5 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
6 limited to Labor Code §§ 201- 204, 201, 226, 226.3, 226(a), 226(a)(8), 226.7, 510, 512, 558, 1174,
7 1174.5, and 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and the applicable Industrial
8 Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
9 PLAINTIFFS hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
10 Attorney General Act of 2004 as the representative of the State of California for the illegal conduct
11 perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

12 181. Some or all of the conduct and violations alleged herein occurred during the PAGA
13 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
14 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
15 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018)
16 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.
17 App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least** one
18 Labor Code violation committed by an employer—to **pursue penalties for all the Labor Code**
19 **violations committed by that employer.**”], Emphasis added, reh’g denied (June 13, 2018).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFFS pray for a judgment against each Defendants, jointly and
22 severally, as follows:

23 1. On behalf of the CALIFORNIA CLASS:

- 24 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
25 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
26 b. An order temporarily, preliminarily and permanently enjoining and restraining
27 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
28 c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully

1 withheld from compensation due to PLAINTIFFS and the other members of the
2 CALIFORNIA CLASS; and

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

6 2. On behalf of the CALIFORNIA CLASS:

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

10 b. Compensatory damages, according to proof at trial, including compensatory
11 damages for overtime compensation due to PLAINTIFFS and the other members of
12 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
13 thereon at the statutory rate;

14 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
15 the applicable IWC Wage Order;

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

21 e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty
22 from the due date thereof at the same rate until paid or until an action therefore is
23 commenced, in accordance with Cal. Lab. Code § 203.

24 f. The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA
25 CLASS incurred in the course of their job duties, plus interest, and costs of suit.

26 3. On Behalf of the State of California and with respect to all AGGRIEVED
27 EMPLOYEES:

28 a. Recovery of civil penalties as prescribed by the Labor Code private Attorneys

General Act of 2004; and

b. An Award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, and §2699(g); and

c. For such other relief as the Court Deems just and proper.

4. On all claims:

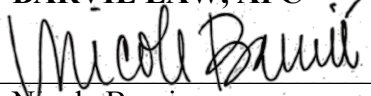
a. An award of interest, including prejudgment interest at the legal rate;

b. Such other and further relief as the Court deems just and equitable; and

c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: September 8, 2023

BARVIE LAW, APC

By: 

Nicole Barvie

Attorney for PLAINTIFFS

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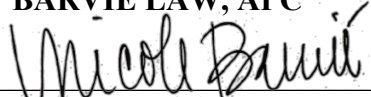
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DEMAND FOR A JURY TRIAL

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

DATED: September 8, 2023

BARVIE LAW, APC

By: 

Nicole Barvie

Attorney for PLAINTIFFS