

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

EMPLOYBRIDGE HOLDING COMPANY., a Delaware Corporation;
and DOES 1 through 50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

GRISelda DURAN, an individual, on behalf of herself and on behalf of
all persons similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED

7/9/2020

Kern County Superior Court
By Candice Rocha, Deputy

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

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

Kern Superior Court
1415 Truxtun Avenue
Bakersfield, CA 93301

CASE NUMBER:
(Número del Caso): **BCV-20-101583**

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq. (SBN 277924); T: 619-255-9047; F: 858-404-9203

Zakay Law Group, APLC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE:

(Fecha) **7/9/2020**

TAMARAH HARBER-PICKENS

Clerk, by

(Secretario)

Candice Rocha

, Deputy
(Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

[SEAL]



ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
3990 Old Town Avenue, Ste. C204
San Diego, CA 92110
Telephone: (619) 255-9047
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JEAN-CLAUDE LAPUYADE (SBN 248676)
JCL LAW FIRM, APC
3990 OLD TOWN AVENUE, SUITE C204
SAN DIEGO, CALIFORNIA 92110
TELEPHONE: (619) 599-8292
FAX: (619) 599-8291

ATTORNEYS FOR PLAINTIFF

SUPERIOR COURT OF CALIFORNIA

COUNTY OF KERN

GRISELDA DURAN, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

EMPLOYBRIDGE HOLDING COMPANY., a
Delaware Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. BCV-20-101583

REPRESENTATIVE ACTION
COMPLAINT FOR:

1) VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT
PURSUANT TO LABOR CODE
SECTIONS 2698, et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff GRISELDA DURAN (“PLAINTIFF”), on behalf of the people of the State of
2 California and as “aggrieved employees” acting as a private attorney general under the Labor Code
3 Private Attorney General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information and
4 belief, except for her own acts and knowledge which are based on personal knowledge, the following:

5 **INTRODUCTION**

6 1. PLAINTIFF brings this action against EMPLOYBRIDGE HOLDING COMPANY
7 (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA civil penalties for herself, and
8 on behalf of all current and former aggrieved employees that worked for DEFENDANTS. PLAINTIFF
9 does **not seek to recover anything other than penalties as permitted by California Labor Code §**
10 **2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does not
11 seek underlying general and/or special damages for those violations in this action, but simply the civil
12 penalties permitted by California Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning
13 her right to pursue her individual claims for, *inter alia*, Defendant’s alleged wage violations, and/or
14 general or special damages arising from those violations, and she fully intends to, at a future date,
15 pursue claims for those individual claims and damages.

16 2. California has enacted the PAGA to permit an individual to bring an action on behalf of
17 herself and on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this
18 action.

19 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANTS’
20 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any
21 other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be
22 construed as attempting to obtain any relief that would not be available in a PAGA-only action.

23 **THE PARTIES**

24 4. Defendant EMPLOYBRIDGE HOLDING COMPANY (“DEFENDANT”) is a Delaware
25 corporation and at all relevant times mentioned herein conducted and continues to conduct substantial
26 and regular business throughout the State of California.

27 5. DEFENDANT owns and operates various staffing agencies throughout the United States.
28 Defendant staffs many companies in California. Generally, DEFENDANT assigns employees it hires

1 to work for its clients.

2 6. PLAINTIFF was employed by DEFENDANT in California from April 2018 to August
3 2019 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
4 basis, and entitled bonuses, and to the legally required meal and rest periods and payment of minimum
5 and overtime wages due for all time worked. From August 2018 to August 2019 Plaintiff worked
6 directly for DEFENDNANT and was not assigned to any of DEFENDANT's clients.

7 7. PLAINTIFF, and such persons that may be added from time to time who satisfy the
8 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
9 this Representative Action on behalf of the State of California with respect to herself and all individuals
10 who are or previously were employed by DEFENDANT as sales persons in California (the
11 "AGGRIEVED EMPLOYEES") during the time period of April 6, 2016 until the present (the "PAGA
12 PERIOD").

13 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently or
14 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action
15 pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of California
16 Labor Code §§ 201 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, & 2802
17 and the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED
18 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

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

28 10. The agents, servants and/or employees of the Defendants and each of them acting on

1 behalf of the Defendants acted within the course and scope of his, her or its authority as the agent,
2 servant and/or employee of the Defendants, and personally participated in the conduct alleged herein
3 on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each
4 Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally
5 liable to PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate
6 result of the conduct of the Defendants' agents, servants and/or employees.

7 **THE CONDUCT**

8 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
9 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
10 time during which an employee is subject to the control of an employer, including all the time the
11 employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and AGGRIEVED
12 EMPLOYEES to work without paying them for all the time they were under DEFENDANT's control.
13 Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was
14 supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
15 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
16 Indeed there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the
17 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
18 compensation by regularly working without their time being accurately recorded and without
19 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy
20 and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is
21 evidenced by DEFENDANT's business records.

22 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
23 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were
24 not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES
25 were required to perform work as ordered by DEFENDANT for more than five (5) hours during some
26 shifts without receiving a meal break. Further, DEFENDANT from time to time failed to provide
27 PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays
28 in which these employees were required by DEFENDANT to work ten (10) hours of work.

1 PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional
2 compensation and in accordance with DEFENDANT's strict corporate policy and practice.
3 DEFENDANT failed to maintain adequate staffing levels while increasing the production levels for
4 each employee at the busy work sites they provided services for.

5 13. During the PAGA PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members
6 were also required from time to time to work in excess of four (4) hours without being provided ten
7 (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
8 (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and
9 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
10 hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some
11 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA
12 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their
13 rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time
14 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

15 14. During the PAGA PERIOD, DEFENDANTS failed and continue to fail to accurately
16 calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their overtime worked.
17 DEFENDANT unlawfully and unilaterally failed to accurately calculate wages for overtime worked by
18 PLAINTIFF and other AGGRIEVED EMPLOYEES in order to avoid paying these employees the
19 correct overtime compensation. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES
20 forfeited wages due them for working overtime without compensation at the correct overtime rates.
21 DEFENDANT's uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct
22 overtime rate for all overtime worked in accordance with applicable law is evidenced by
23 DEFENDANT's business records.

24 15. State law provides that employees must be paid overtime at one-and-one-half times their
25 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an
26 hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

27 16. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
28 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and

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

12 17. In violation of the applicable sections of the California Labor Code and the requirements
13 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
14 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
15 other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime worked. This uniform
16 policy and practice of DEFENDANT is intended to purposefully avoid the payment of the correct
17 overtime compensation as required by California law which allowed DEFENDANT to illegally profit
18 and gain an unfair advantage over competitors who complied with the law. To the extent equitable
19 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA
20 PERIOD should be adjusted accordingly.

21 18. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
22 PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these employees
23 worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to
24 pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, meaning the time during
25 which an employee was subject to the control of an employer, including all the time the employee was
26 permitted or suffered to permit this work. DEFENDANT required these employees to work off the
27 clock without paying them for all the time they were under DEFENDANT's control. As such,
28 DEFENDANT knew or should have known that PLAINTIFF and the other AGGRIEVED

1 EMPLOYEES were under compensated for all time worked. As a result, PLAINTIFF and other
2 AGGRIEVED EMPLOYEES forfeited time worked by working without their time being accurately
3 recorded and without compensation at the applicable minimum wage and overtime wage rates. To the
4 extent that the time worked off the clock did not qualify for overtime premium payment, DEFENDANT
5 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
6 1197, and 1197.1.

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

17 20. In the course of their employment PLAINTIFF and other AGGRIEVED EMPLOYEES
18 as a business expense, were required by DEFENDANT to use their own personal cellular phones as a
19 result of and in furtherance of their job duties as employees for DEFENDANT but were not reimbursed
20 or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones
21 for DEFENDANT's benefit. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were
22 required by DEFENDANT to use their personal cell phones for work related issues. As a result, in the
23 course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES
24 incurred unreimbursed business expenses which included, but were not limited to, costs related to the
25 use of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

26 21. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
27 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
28 among other things, the correct wages paid. Cal. Lab. Code § 226 provides that every employer shall

1 furnish each of his or her employees with an accurate itemized wage statement in writing showing,
2 among other things, gross wages earned and all applicable hourly rates in effect during the pay period
3 and the corresponding amount of time worked at each hourly rate. Aside, from the violations listed
4 above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
5 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
6 to time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements which
7 violated Cal. Lab. Code § 226.

8 22. In violation of the applicable sections of the California Labor Code and the requirements
9 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
10 policy, practice and procedure, intentionally, knowingly and systematically failed to compensate
11 PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest periods. This
12 uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment for all
13 time worked as required by California law which allows DEFENDANT to illegally profit and gain an
14 unfair advantage over competitors who complied with the law. To the extent equitable tolling operates
15 to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should
16 be adjusted accordingly.

17 23. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required
18 off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor Code and
19 failed to pay her all minimum and overtime wages due to her. DEFENDANT did not have a policy or
20 practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also failed to
21 compensate PLAINTIFF for her missed meal and rest breaks. The nature of the work performed by the
22 PLAINTIFF did not prevent her from being relieved of all of her duties for the legally required off-
23 duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally
24 required meal periods is evidenced by DEFENDANT's business records. As a result of DEFENDANT
25 not accurately recording all missed meal and rest periods and/or minimum and overtime wages due, the
26 wage statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,
27 Labor Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of her wages due
28 to her and DEFENDANT has failed to pay any penalty wages owed to her under California Labor Code

1 Section 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value
2 of \$75,000.

3 **JURISDICTION AND VENUE**

4 24. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10.

6 25. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
7 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained
8 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
9 committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.
10

11 **FIRST CAUSE OF ACTION**

12 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

13 **[Cal. Lab. Code §§ 2698 et seq.]**

14 **(Alleged by PLAINTIFF against all Defendants)**

15 26. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein,
16 the prior paragraphs of this Second Amended Complaint.

17 27. PAGA is a mechanism by which the State of California itself can enforce state labor laws
18 through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law
19 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
20 enforcement action designed to protect the public and not to benefit private parties. The purpose of
21 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
22 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
23 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
24 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,
25 PAGA claims cannot be subject to arbitration.

26 28. PLAINTIFF, and such persons that may be added from time to time who satisfy the
27 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
28 this Representative Action on behalf of the State of California with respect to herself and all individuals

1 who are or previously were employed by DEFENDANT as sales persons in California during the time
2 period of April 6, 2019 until the present (the "AGGRIEVED EMPLOYEES").

3 29. On May 1, 2020, PLAINTIFF gave written notice by certified mail to the Labor and
4 Workforce Development Agency (the "Agency") and the employer of the specific provisions of
5 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
6 hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add
7 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF
8 may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
9 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

10 30. The policies, acts and practices heretofore described were and are an unlawful business
11 act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
12 minimum wages and overtime wages, (b) failed to provide PLAINTIFFS and other AGGRIEVED
13 EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate itemized wage
14 statements, and (d) failed to timely pay wages, all in violation of the applicable Labor Code sections
15 listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201 202, 203, 204, 210, 226,
16 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, & 2802, and the applicable Industrial Wage Order(s),
17 and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks
18 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
19 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other
20 AGGRIEVED EMPLOYEES.

21 31. Some or all of the conduct and violations alleged herein occurred during the PAGA
22 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF
23 during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other
24 AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See
25 also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an
26 “aggrieved employee”—a person affected by **at least one** Labor Code violation committed by an
27 employer—to pursue penalties for all the Labor Code violations committed by that employer.”],
28 Emphasis added, reh'g denied (June 13, 2018).)

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally,
3 as follows:

4 1. On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:

- 6 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
7 General Act of 2004; and
8 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the
9 law.

10
11 Dated: July 8, 2020

Respectfully Submitted,
ZAKAY LAW GROUP, A.P.C.

12
13 By: 
14 Shani O. Zakay
15 Attorneys for Plaintiff

16
17
18 **DEMAND FOR JURY TRIAL**

19 PLAINTIFF demands jury trial on all issues triable to a jury.
20

21 Dated: July 8, 2020

Respectfully Submitted,
ZAKAY LAW GROUP, A.P.C.

22
23 By: 
24 Shani O. Zakay
25 Attorneys for Plaintiff
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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

April 30, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

EMPLOYBRIDGE HOLDING COMPANY
c/o CORPORATE CREATIONS NETWORK INC.
4640 Admiralty Way, 5th Floor
Marina del Rey, CA 90292

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802 and Applicable Industrial Welfare Commission Wage Orders, California Code or regulations, Title 8 Section 1 1070(14) (Failure to Provide Seating) and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents GRISELDA DURAN (“Plaintiff”) and other aggrieved employees in an action against EMPLOYBRIDGE HOLDING COMPANY, (“Defendant”). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from April 2018 to August 2019. From August 2018 to August 2019 Plaintiff worked directly for Defendant and was not assigned to any of Defendant’s clients. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay.

As a consequence, Plaintiff contends that Defendant failed to fully compensate her, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802 and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and 2698 *et seq.*

A copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii)

details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

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

Respectfully,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney at Law

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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN**

GRISELDA DURAN, an individual, on behalf
of herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

EMPLOYBRIDGE HOLDING COMPANY.,
a Delaware Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No:

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 PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO REIMURSE EXMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
- 9) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, *et seq*.

DEMAND FOR A JURY TRIAL

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

4 5 **THE PARTIES**

6 1. Defendant EMPLOYBRIDGE HOLDING COMPANY (“DEFENDANT”) is a
7 corporation that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California.

9 2. DEFENDANT owns and operates various staffing agencies throughout the United
10 States. Defendant staffs many companies in California. Generally, DEFENDANT assigns
11 employees it hires to work for its clients.

12 3. PLAINTIFF was employed by DEFENDANT in California from April 2018 to
13 August 2019 and was at all times classified by DEFENDANT as a non-exempt employee, paid
14 on an hourly basis, and entitled bonuses, and to the legally required meal and rest periods and
15 payment of minimum and overtime wages due for all time worked. From August 2018 to August
16 2019 Plaintiff worked directly for DEFENDANT and was not assigned to any of
17 DEFENDANT’s clients.

18 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
19 defined as all individuals who are or previously were employed by DEFENDANT in California
20 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time between
21 April 6, 2016 and on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”).
22 The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under
23 five million dollars (\$5,000,000.00).

24 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
26 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
27 which failed to lawfully compensate these employees. DEFENDANT’s uniform policy and
28 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of

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

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

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

THE CONDUCT

8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were

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

11 9. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
12 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks
13 and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA
14 CLASS Members were required to perform work as ordered by DEFENDANT for more than five
15 (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time
16 to time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-
17 duty meal period for some workdays in which these employees were required by DEFENDANT
18 to work ten (10) hours of work. PLAINTIFF and other members of the CALIFORNIA CLASS
19 therefore forfeited meal breaks without additional compensation and in accordance with
20 DEFENDANT's strict corporate policy and practice. DEFENDANT failed to maintain adequate
21 staffing levels while increasing the production levels for each employee at the busy work sites
22 they provided services for.

23 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
24 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
25 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
26 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
27 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for
28 some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second

1 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more
2 from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not
3 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
4 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
5 proper rest periods by DEFENDANT and DEFENDANT's managers.

6 11. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed and continue
7 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
8 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to accurately
9 calculate wages for overtime worked by PLAINTIFF and other members of the CALIFORNIA
10 CLASS in order to avoid paying these employees the correct overtime compensation. As a result,
11 PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for
12 working overtime without compensation at the correct overtime rates. DEFENDANT's uniform
13 policy and practice to not pay the members of the CALIFORNIA CLASS the correct overtime
14 rate for all overtime worked in accordance with applicable law is evidenced by DEFENDANT's
15 business records.

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

20 13. The second component of PLAINTIFF's and other CALIFORNIA CLASS
21 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
22 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
23 performance for DEFENDANT. The non-discretionary incentive program provided all employees
24 paid on an hourly basis with incentive compensation when the employees met the various
25 performance goals set by DEFENDANT. However, when calculating the regular rate of pay in
26 order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
27 DEFENDANTS failed to include the incentive compensation as part of the employees' "regular
28 rate of pay" for purposes of calculating overtime pay. Management and supervisors described the

1 incentive program to potential and new employees as part of the compensation package. As a
2 matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
3 CLASS Members must be included in the “regular rate of pay.” The failure to do so has resulted
4 in a systematic underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA
5 CLASS Members by DEFENDANT.

6 14. In violation of the applicable sections of the California Labor Code and the
7 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
8 matter of company policy, practice and procedure, intentionally and knowingly failed to
9 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
10 of pay for all overtime worked. This uniform policy and practice of DEFENDANT is intended to
11 purposefully avoid the payment of the correct overtime compensation as required by California
12 law which allowed DEFENDANT to illegally profit and gain an unfair advantage over
13 competitors who complied with the law. To the extent equitable tolling operates to toll claims by
14 the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should
15 be adjusted accordingly.

16 15. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
17 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of
18 time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
19 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
20 time worked, meaning the time during which an employee was subject to the control of an
21 employer, including all the time the employee was permitted or suffered to permit this work.
22 DEFENDANT required these employees to work off the clock without paying them for all the
23 time they were under DEFENDANT’s control. As such, DEFENDANT knew or should have
24 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
25 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
26 Members forfeited time worked by working without their time being accurately recorded and
27 without compensation at the applicable minimum wage and overtime wage rates. To the extent
28 that the time worked off the clock did not qualify for overtime premium payment, DEFENDANT

1 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§
2 1194, 1197, and 1197.1.

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

14 17. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
15 Members as a business expense, were required by DEFENDANT to use their own personal
16 cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANT
17 but were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
18 their personal cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other
19 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell
20 phones for work related issues. As a result, in the course of their employment with
21 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
22 unreimbursed business expenses which included, but were not limited to, costs related to the use
23 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

24 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
25 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
26 to show, among other things, the correct wages paid. Cal. Lab. Code § 226 provides that every
27 employer shall furnish each of his or her employees with an accurate itemized wage statement in
28 writing showing, among other things, gross wages earned and all applicable hourly rates in effect

1 during the pay period and the corresponding amount of time worked at each hourly rate. Aside,
2 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
3 an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
4 As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of the
5 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

6 19. In violation of the applicable sections of the California Labor Code and the
7 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
8 matter of company policy, practice and procedure, intentionally, knowingly and systematically
9 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
10 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to
11 purposefully avoid the payment for all time worked as required by California law which allows
12 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
13 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
14 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

15 20. By reason of this uniform conduct applicable to PLAINTIFF and all
16 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
17 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
18 "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
19 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
20 CLASS Members. The proper recording of these employees' missed meal and rest breaks is the
21 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation
22 to meet this burden, DEFENDANT failed to properly calculate and/or pay all required
23 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
24 California Labor Code and regulations promulgated thereunder as herein alleged.

25 21. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
26 required off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor
27 Code and failed to pay her all minimum and overtime wages due to her. DEFENDANT did not
28 have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and

1 also failed to compensate PLAINTIFF for her missed meal and rest breaks. The nature of the work
2 performed by the PLAINTIFF did not prevent her from being relieved of all of her duties for the
3 legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
4 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
5 records. As a result of DEFENDANT not accurately recording all missed meal and rest periods
6 and/or minimum and overtime wages due, the wage statements issued to PLAINTIFF by
7 DEFENDANT violated California law, and in particular, Labor Code Section 226(a). To date,
8 DEFENDANT has yet to pay PLAINTIFF all of her wages due to her and DEFENDANT has
9 failed to pay any penalty wages owed to her under California Labor Code Section 203. The
10 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

11 **JURISDICTION AND VENUE**

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

16 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,
17 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
18 maintained offices and facilities in this County and/or conduct substantial business in this County,
19 and (ii) committed the wrongful conduct herein alleged in this County against members of the
20 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

21 **THE CALIFORNIA CLASS**

22 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
23 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
24 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
25 individuals who are or previously were employed by DEFENDANT in California and classified
26 as non-exempt employees (the "CALIFORNIA CLASS") at any time between April 6, 2016 and
27 on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
28

1 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
2 dollars (\$5,000,000.00).

3 25. On April 6, 2020, due to the impact of the COVID-19 pandemic on California's
4 judicial branch, the Judicial Council of California issued Emergency Rule Number 9 which states
5 that, "Notwithstanding any other law, the statutes of limitation for civil causes of action are tolled
6 from April 6, 2020, until 90 days after the Governor declare that the state of emergency related
7 COVID-19 pandemic is lifted."

8 26. To the extent equitable tolling operates to toll claims by the CALIFORNIA
9 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
10 accordingly.

11 27. DEFENDANT, as a matter of company policy, practice and procedure, and in
12 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
13 requirements, and the applicable provisions of California law, intentionally, knowingly, and
14 willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
15 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
16 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
17 permits or suffers to permit this work.

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

27 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
28 CLASS Members is impracticable.

1 30. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
2 California law by:

- 3 a. Committing an act of unfair competition in violation of Cal. Bus. & Prof. Code §§
4 17200, et seq. (the "UCL"), by unlawfully, unfairly and/or deceptively having in
5 place company policies, practices and procedures that uniformly and
6 systematically failed to record and pay PLAINTIFF and the other members of the
7 CALIFORNIA CLASS for all time worked, including minimum wages owed and
8 overtime wages owed for work performed by these employees;
- 9 b. Committing an act of unfair competition in violation of the UCL, by failing to
10 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
11 with the legally required meal and rest periods;
- 12 c. Committing an act of unfair competition in violation of the UCL by failing to pay
13 the PLAINTIFF and the other members of the CALIFORNIA CLASS the correct
14 rate of overtime;
- 15 d. Committing an act of unfair competition in violation of the California Unfair
16 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 et seq., by violating Cal. Lab.
17 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
18 members with necessary expenses incurred in the discharge of their job duties.

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

- 21 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
22 joinder of all such persons is impracticable and the disposition of their claims as a
23 class will benefit the parties and the Court;
- 24 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
25 raised in this Complaint are common to the CALIFORNIA CLASS will apply
26 uniformly to every member of the CALIFORNIA CLASS;
- 27 c. The claims of the representative PLAINTIFF are typical of the claims of each
28 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members

1 of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on
2 an hourly basis who was subjected to the DEFENDANT's deceptive practice and
3 policy which failed to provide the legally required meal and rest periods to the
4 CALIFORNIA CLASS and thereby systematically underpaid compensation to
5 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
6 as a result of DEFENDANT's employment practices. PLAINTIFF and the
7 members of the CALIFORNIA CLASS were and are similarly or identically
8 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
9 misconduct engaged in by DEFENDANT; and,

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

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

- 19 a. Without class certification and determination of declaratory, injunctive, statutory
20 and other legal questions within the class format, prosecution of separate actions
21 by individual members of the CALIFORNIA CLASS will create the risk of:
- 22 i. Inconsistent or varying adjudications with respect to individual members
23 of the CALIFORNIA CLASS which would establish incompatible
24 standards of conduct for the parties opposing the CALIFORNIA CLASS;
25 and/or;
 - 26 ii. Adjudication with respect to individual members of the CALIFORNIA
27 CLASS which would as a practical matter be dispositive of interests of the
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1 other members not party to the adjudication or substantially impair or
2 impede their ability to protect their interests.

3 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
4 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
5 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
6 DEFENDANT uniformly classified and treated the CALIFORNIA CLASS
7 Members as independent contractors and, thereafter, uniformly failed to take
8 proper steps to determine whether the CALIFORNIA CLASS Members were
9 properly classified as independent contractors, and thereby denied these
10 employees wages and payments for business expenses and the employer's share of
11 payroll taxes and mandatory insurance as required by law.

12 i. With respect to the First Cause of Action, the final relief on behalf of the
13 CALIFORNIA CLASS sought does not relate exclusively to restitution
14 because through this claim PLAINTIFF seeks declaratory relief holding
15 that the DEFENDANTS' policies and practices constitute unfair
16 competition, along with declaratory relief, injunctive relief, and incidental
17 relief as may be necessary to prevent and remedy the conduct declared to
18 constitute unfair competition;

19 c. Common questions of law and fact exist as to the members of the CALIFORNIA
20 CLASS, with respect to the practices and violations of California law as listed
21 above, and predominate over any question affecting only individual
22 CALIFORNIA CLASS Members, and a Class Action is superior to other available
23 methods for the fair and efficient adjudication of the controversy, including
24 consideration of:

25 i. The interests of the members of the CALIFORNIA CLASS in individually
26 controlling the prosecution or defense of separate actions in that the
27 substantial expense of individual actions will be avoided to recover the
28 relatively small amount of economic losses sustained by the individual

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- CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical 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;
- iii. In the context of wage litigation because a substantial number of individual CALIFORNIA 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,
- iv. 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.

33. The Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members

1 because the DEFENDANT's employment practices are uniform and
2 systematically applied with respect to the CALIFORNIA CLASS;

3 b. A Class Action is superior to any other available method for the fair and efficient
4 adjudication of the claims of the members of the CALIFORNIA CLASS because
5 in the context of employment litigation a substantial number of individual
6 CALIFORNIA CLASS Members will avoid asserting their rights individually out
7 of fear of retaliation or adverse impact on their employment;

8 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical
9 to bring all members of the CALIFORNIA CLASS before the Court;

10 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
11 obtain effective and economic legal redress unless the action is maintained as a
12 Class Action;

13 e. There is a community of interest in obtaining appropriate legal and equitable relief
14 for the acts of unfair competition, statutory violations and other improprieties, and
15 in obtaining adequate compensation for the damages and injuries which
16 DEFENDANT'S' actions have inflicted upon the CALIFORNIA CLASS;

17 f. There is a community of interest in ensuring that the combined assets of
18 DEFENDANT are sufficient to adequately compensate the members of the
19 CALIFORNIA CLASS for the injuries sustained;

20 g. DEFENDANT have acted or refused to act on grounds generally applicable to the
21 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
22 respect to the CALIFORNIA CLASS as a whole;

23 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
24 business records of DEFENDANT; and,

25 i. Class treatment provides manageable judicial treatment calculated to bring an
26 efficient and rapid conclusion to all litigation of all wage and hour related claims
27 arising out of the conduct of DEFENDANT as to the members of the
28 CALIFORNIA CLASS.

1 34. DEFENDANT maintains records from which the Court can ascertain and identify
2 by name job title each of DEFENDANT’S employees who have been systematically, intentionally
3 and uniformly subjected to DEFENDANT’S corporate policies, practices and procedures as
4 herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job
5 titles of similarly situated employees when they have been identified.

6 **THE CALIFORNIA LABOR SUB-CLASS**

7 35. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
8 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
9 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
10 (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior
11 to the filing of the complaint and ending on the date as determined by the Court (the
12 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.
13 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
14 Members is under five million dollars (\$5,000,000.00).

15 36. DEFENDANT, as a matter of company policy, practice and procedure, and in
16 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
17 requirements, and the applicable provisions of California law, intentionally, knowingly, and
18 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate compensation
19 for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
20 CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoyed
21 the benefit of this work, required employees to perform this work and permitted or suffered to
22 permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
23 CLASS Members wages to which these employees are entitled in order to unfairly cheat the
24 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
25 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-
26 CLASS PERIOD should be adjusted accordingly.

27 37. DEFENDANT maintains records from which the Court can ascertain and identify
28 by name and job title, each of DEFENDANT’s employees who have been systematically,

1 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
2 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any
3 additional job titles of similarly situated employees when they have been identified.

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

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

- 8 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
9 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
10 missed meal and rest breaks in violation of the California Labor Code and
11 California regulations and the applicable California Wage Order;
- 12 b. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime
13 wages due to members of the CALIFORNIA LABOR SUB-CLASS in violation
14 of the California Labor Code and California regulations and the applicable
15 California Wage Order;
- 16 c. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
17 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
18 statements;
- 19 d. Whether DEFENDANT has engaged in unfair competition by the above listed
20 conduct;
- 21 e. The proper measure of damages and penalties owed to the members of the
22 CALIFORNIA LABOR SUB-CLASS; and,
- 23 f. Whether DEFENDANT's conduct was willful.

24 40. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
25 under California law by:

- 26 a. Violating Cal. Lab. Code §§ 510, et seq., by failing to correctly pay the
27 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all
28

wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 et seq., by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;

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

e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and,

f. 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

41. 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 CALIFORNIA LABOR SUB-CLASS Members

1 is impracticable and the disposition of their claims as a class will benefit the parties
2 and the Court;

3 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
4 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
5 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
6 CLASS;

7 c. The claims of the representative PLAINTIFF are typical of the claims of each
8 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
9 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
10 employee paid on an hourly basis who was subjected to the DEFENDANT's
11 practice and policy which failed to pay the correct amount of wages due to the
12 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
13 a result of DEFENDANT's employment practices. PLAINTIFF and the members
14 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
15 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
16 misconduct engaged in by DEFENDANT; and,

17 d. The representative PLAINTIFF will fairly and adequately represent and protect
18 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel
19 who are competent and experienced in Class Action litigation. There are no
20 material conflicts between the claims of the representative PLAINTIFF and the
21 members of the CALIFORNIA LABOR SUB-CLASS that would make class
22 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
23 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
24 Members.

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

27 a. Without class certification and determination of declaratory, injunctive, statutory
28 and other legal questions within the class format, prosecution of separate actions

1 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
2 the risk of:

- 3 i. Inconsistent or varying adjudications with respect to individual members
4 of the CALIFORNIA LABOR SUB-CLASS which would establish
5 incompatible standards of conduct for the parties opposing the
6 CALIFORNIA LABOR SUB-CLASS; or
- 7 ii. Adjudication with respect to individual members of the CALIFORNIA
8 LABOR SUB-CLASS which would as a practical matter be dispositive of
9 interests of the other members not party to the adjudication or substantially
10 impair or impede their ability to protect their interests.
- 11 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
12 refused to act on grounds generally applicable to the CALIFORNIA LABOR
13 SUB-CLASS, making appropriate class-wide relief with respect to the
14 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
15 fails to pay all wages due. Including the correct wages for all time worked by the
16 members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- 17 c. Common questions of law and fact predominate as to the members of the
18 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
19 of California Law as listed above, and predominate over any question affecting
20 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
21 Action is superior to other available methods for the fair and efficient adjudication
22 of the controversy, including consideration of:
 - 23 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
24 in individually controlling the prosecution or defense of separate actions in
25 that the substantial expense of individual actions will be avoided to recover
26 the relatively small amount of economic losses sustained by the individual
27 CALIFORNIA LABOR SUB-CLASS Members when compared to the
28 substantial expense and burden of individual prosecution of this litigation;

1 ii. Class certification will obviate the need for unduly duplicative litigation
2 that would create the risk of:

3 1. Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA LABOR SUB-CLASS, which
5 would establish incompatible standards of conduct for the
6 DEFENDANT; and/or,

7 2. Adjudications with respect to individual members of the
8 CALIFORNIA LABOR SUB-CLASS would as a practical matter
9 be dispositive of the interests of the other members not parties to
10 the adjudication or substantially impair or impede their ability to
11 protect their interests;

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

18 iv. A class action is superior to other available methods for the fair and
19 efficient adjudication of this litigation because class treatment will obviate
20 the need for unduly and unnecessary duplicative litigation that is likely to
21 result in the absence of certification of this action pursuant to Cal. Code of
22 Civ. Proc. § 382.

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

25 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
26 CLASS predominate over any question affecting only individual CALIFORNIA
27 LABOR SUB-CLASS Members;

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

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

6 49. By the conduct alleged herein, DEFENDANT's practices were deceptive and
7 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
8 mandated meal and rest periods, the required amount of compensation for missed meal and rest
9 periods and overtime and minimum wages owed, and failed to reimburse all necessary business
10 expenses incurred, due to a systematic business practice that cannot be justified, pursuant to the
11 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
12 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
13 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

14 50. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
15 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
16 other members of the CALIFORNIA CLASS to be underpaid during their employment with
17 DEFENDANT.

18 51. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
19 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to
20 provide all legally required meal breaks to PLAINTIFF and the other members of the
21 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

22 52. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
23 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal
24 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
25 each workday in which a second off-duty meal period was not timely provided for each ten (10)
26 hours of work.

1 53. PLAINTIFF further demands on behalf of herself and each member of the
2 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty
3 paid rest period was not timely provided as required by law.

4 54. By and through the unlawful and unfair business practices described herein,
5 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
6 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
7 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
8 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
9 to unfairly compete against competitors who comply with the law.

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

15 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
16 and do, seek such relief as may be necessary to restore to them the money and property which
17 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
18 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
19 business practices, including earned but unpaid wages for all time worked.

20 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
21 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
22 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
23 engaging in any unlawful and unfair business practices in the future.

24 58. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
25 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
26 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
27 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
28 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal

1 and economic harm unless DEFENDANT is restrained from continuing to engage in these
2 unlawful and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**
5 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

6 (Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
7 Defendants)

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

11 60. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
12 bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code
13 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
14 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

17 62. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
18 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
19 the minimum so fixed is unlawful.

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

22 64. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
23 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
24 of time they work. As set forth herein, DEFENDANT's uniform policy and practice was to
25 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS.

27 65. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
28 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF

1 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
2 pay.

3 66. In committing these violations of the California Labor Code, DEFENDANT
4 inaccurately calculated the correct time worked and consequently underpaid the actual time
5 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
6 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
7 benefits in violation of the California Labor Code, the Industrial Welfare Commission
8 requirements and other applicable laws and regulations.

9 67. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
11 the correct minimum wage compensation for their time worked for DEFENDANT.

12 68. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
14 they were entitled to, constituting a failure to pay all earned wages.

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

20 70. DEFENDANT knew or should have known that PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS are under-compensated for their time
22 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
23 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice
24 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
26 minimum wages for their time worked.

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PAY OVERTIME COMPENSATION** 18 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

19 (Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all Defendants)

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

23 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code
25 and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these
26 employees for all overtime worked, including, work performed in excess of eight (8) hours in a
27 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

9 78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
10 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
11 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

20 80. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately recorded overtime worked and inaccurately calculated the overtime rate, and
22 consequently underpaid the overtime worked by PLAINTIFF and other CALIFORNIA LABOR-
23 SUB CLASS Members. DEFENDANT acted in an illegal attempt to avoid the payment of all
24 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
25 Commission requirements and other applicable laws and regulations.

26 81. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
28 full compensation for overtime worked.

 82. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF

1 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and
2 the other members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid
3 collective bargaining agreement that would preclude the causes of action contained herein this
4 Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA
5 LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-waiveable
6 rights provided by the State of California.

7 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
8 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
9 worked that they are entitled to, constituting a failure to pay all earned wages.

10 84. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
11 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
12 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
13 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
14 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
15 to accurately record and pay as evidenced by DEFENDANT's business records and witnessed by
16 employees.

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

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS (Cal. Lab. Code §§ 226.7 & 512)

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

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

90. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other

1 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
2 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
3 SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their
4 duties for the legally required off-duty meal periods. As a result of their rigorous work schedules,
5 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time
6 not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
7 failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with
8 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
9 DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and
10 CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which
11 these employees were required by DEFENDANT to work ten (10) hours of work. As a result,
12 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited
13 meal breaks without additional compensation and in accordance with DEFENDANT's strict
14 corporate policy and practice.

15 91. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable
16 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
17 CLASS Members who were not provided a meal period, in accordance with the applicable Wage
18 Order, one additional hour of compensation at each employee's regular rate of pay for each
19 workday that a meal period was not provided.

20 92. As a proximate result of the aforementioned violations, PLAINTIFF and
21 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
22 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

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FIFTH CAUSE OF ACTION

**FAILURE TO PROVIDE REQUIRED REST PERIODS
(Cal. Lab. Code §§ 226.7 & 512)**

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

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

94. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT'S managers.

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

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

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2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

4 **(Cal. Lab. Code § 226)**

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

6 97. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 98. Cal. Labor Code § 226 provides that an employer must furnish employees with an
10 “accurate itemized” statement in writing showing:

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

1 99. From time to time, when DEFENDANT did not accurately record PLAINTIFF's
2 and other CALIFORNIA CLASS Members' minimum and overtime wages earned and/or missed
3 meal and rest breaks, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed
4 to provide an accurate wage statement in writing that properly and accurately itemizes all missed
5 meal and rest periods and reporting time wages owed to PLAINTIFF and the other members of
6 the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the correct wages
7 earned by the employees.

8 100. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
9 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
10 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating
11 the correct wages for all missed meal and rest breaks and the amount of employment taxes which
12 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
13 Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may
14 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
15 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
16 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
17 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
18 member of the CALIFORNIA LABOR SUB-CLASS herein).

19 20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO REIMURSE EMPLOYEES FOR REQUIRED EXPENSES** 22 **(Cal. Lab. Code § 2802)**

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

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

27 102. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

1 103. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
2 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
3 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
4 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
5 CLASS members for expenses which included, but were not limited to, costs related to using their
6 personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically,
7 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
8 their personal cell phones to respond to work related issues. DEFENDANT's uniform policy,
9 practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
10 CLASS members for expenses resulting from using their personal cellular phones for
11 DEFENDANT within the course and scope of their employment for DEFENDANT. These
12 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
13 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
14 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
15 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
16 LABOR SUB-CLASS members for these expenses as an employer is required to do under the
17 laws and regulations of California.

18 104. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
19 by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties
20 for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
21 statutory rate and costs under Cal. Lab. Code § 2802.

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EIGHTH CAUSE OF ACTION
FAILURE TO PAY WAGES WHEN DUE
(Cal. Lab. Code §§201, 202, 203)

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

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

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

As used in this article: (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

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

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

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other 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.

109. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

110. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty

1 from the due date thereof at the same rate until paid or until an action therefor is
2 commenced; but the wages shall not continue for more than 30 days.

3 111. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
4 Members terminated and DEFENDANT have not tendered payment of all wages owed as required
5 by law.

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

12 **NINTH CAUSE OF ACTION**

13 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

14 **[Cal. Lab. Code §§ 2698 et seq.]**

15 **(Alleged by PLAINTIFF against all Defendants)**

16 113. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
17 herein, the prior paragraphs of this Complaint.

18 114. PAGA is a mechanism by which the State of California itself can enforce state
19 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
20 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
21 fundamentally a law enforcement action designed to protect the public and not to benefit private
22 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
23 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
24 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
25 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
26 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

27 115. PLAINTIFF, and such persons that may be added from time to time who satisfy
28 the requirements and exhaust the administrative procedures under the Private Attorney General

1 Act, bring this Representative Action on behalf of the State of California with respect to herself
2 and all individuals who are or previously were employed by DEFENDANT as sales persons in
3 California during the time period of _____ until the present (the "AGGRIEVED
4 EMPLOYEES").

5 116. On _____, PLAINTIFF gave written notice by certified mail to the Labor
6 and Workforce Development Agency (the "Agency") and the employer of the specific
7 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
8 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
9 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
10 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
11 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
12 AGGRIEVED EMPLOYEES as herein defined.

13 117. The policies, acts and practices heretofore described were and are an unlawful
14 business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED
15 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other
16 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate
17 itemized wage statements, and (d) failed to timely pay wages, all in violation of the applicable
18 Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
19 201 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, & 2802 and the
20 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of
21 such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
22 Code Private Attorney General Act of 2004 as the representative of the State of California for the
23 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

24 118. Some or all of the conduct and violations alleged herein occurred during the PAGA
25 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
26 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
27 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
28 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by **at least one** Labor

1 Code violation committed by an employer—to pursue penalties for all the Labor Code
2 violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for a judgment against each Defendant, jointly and
6 severally, as follows:

7 1. On behalf of the CALIFORNIA CLASS:

- 8 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
9 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
10 b. An order temporarily, preliminarily and permanently enjoining and restraining
11 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
12 c. Restitutionary disgorgement of DEFENDANT’S ill-gotten gains into a fluid fund
13 for restitution of the sums incidental to DEFENDANT’S violations due to
14 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

15 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
17 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
18 action pursuant to Cal. Code of Civ. Proc. § 382;
19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages due PLAINTIFF and the other members of the CALIFORNIA LABOR
21 SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS
22 PERIOD plus interest thereon at the statutory rate;
23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
25 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per member of the
27 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
28 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and

- 1 an award of costs for violation of Cal. Lab. Code § 226; and
- 2 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
- 3 CLASS as a penalty from the due date thereof at the same rate until paid or until an
- 4 action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 5 f. The amount of expenses PLAINTIFF and each member of the CALIFORNIA
- 6 LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and
- 7 costs of suit.
- 8 3. On behalf of the State of California and with respect to all AGGRIEVED
- 9 EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private
- 10 Attorneys General Act of 2004; and
- 11 4. On all claims:
- 12 a. An award of interest, including prejudgment interest at the legal rate;
- 13 b. Such other and further relief as the Court deems just and equitable; and
- 14 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
- 15 including, but not limited to, pursuant to Labor Code § 226, § 1198 and/or § 2802.

16 DATED: April __, 2020

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By: _____

Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: April __, 2020

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for PLAINTIFF

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EXHIBIT 1