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Attorneys for PLAINTIFF ROSA GRASIELA MORENO GUTIERREZ, as an individual, and on behalf of all others similarly situated,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ROSA GRASIELA MORENO GUTIERREZ,
an individual, and on behalf of all others
similarly situated,

Plaintiff,

vs.

GHP MANAGEMENT CORPORATION, a
California Corporation; and DOES 1 through
50 inclusive,

Defendants.

Case No. 23STCV26618

CLASS ACTION COMPLAINT

1. Failure to Pay Minimum Wages
2. Failure to Pay Overtime Wages
3. Failure to Provide Required Meal Periods
4. Failure to Provide Required Rest Periods
5. Failure to Properly Pay Accrued Sick Days
6. Failure to Properly Pay Unused Vacation Pay
7. Wilful Misclassification of Employees as Independent Contractors
8. Failure to Pay Timely Wages During Employment
9. Failure to Pay All Wages Due to Discharged and Quitting Employees
10. Failure to Maintain Required Records
11. Failure to Furnish Accurate,

Itemized Wage Statements

12. Failure to Reimburse Necessary Expenditures

13. Unfair and Unlawful Business Practices

14. Civil Penalties Pursuant to The Private Attorneys General Act

DEMAND FOR JURY TRIAL

PLAINTIFF ROSA MORENO (“PLAINTIFF”), as an individual, and on behalf of all others similarly situated, hereby submits this Complaint against GHP MANAGEMENT CORPORATION; and DOES 1 through 50, inclusive (collectively “DEFENDANTS”):

INTRODUCTION

1. This is a class action lawsuit being brought on behalf of PLAINTIFF and the class PLAINTIFF seeks to represent. The PLAINTIFF CLASS consists of all current and former non-exempt employees employed by DEFENDANTS in California at any time within the four (4) years prior to the filing of the initial complaint in this action and through the date notice is mailed to a certified class.

2. The term “CLASS PERIOD” is defined as four (4) years prior to the filing of this complaint through the date final judgment is entered.

3. DEFENDANTS’ actions give rise to violations of state wage and hour laws, including laws mandating the payment of wages. Through this lawsuit, PLAINTIFF, and others similarly situated, seek to recover all wages which they and other employees of DEFENDANTS rightfully earned but have been denied, as well as any penalties associated with DEFENDANTS’ rampant and willful violations of the law, interest on the unpaid wage amounts, and attorney fees. PLAINTIFF also seeks equitable remedies in the form of declaratory and injunctive relief, and relief under Business and Professions Code section 17200 *et seq.* for unfair business practices.

1 4. At all times relevant herein, DEFENDANTS have consistently maintained and
2 enforced against PLAINTIFF and the PLAINTIFF CLASS at least the following unlawful practices
3 and policies:

- 4 a) willfully refusing to pay PLAINTIFF and the PLAINTIFF CLASS for all hours
5 worked, including both regular and overtime;
- 6 b) willfully refusing to permit PLAINTIFF and the PLAINTIFF CLASS from
7 taking meal periods or providing proper compensation in lieu thereof;
- 8 c) willfully refusing to permit PLAINTIFF and the PLAINTIFF CLASS from
9 taking rest periods or providing proper compensation in lieu thereof;
- 10 d) willfully refusing to furnish accurate itemized wage statements to PLAINTIFF
11 and the PLAINTIFF CLASS;
- 12 e) willfully refusing to pay PLAINTIFF and the PLAINTIFF CLASS timely
13 wages during employment pursuant to Labor Code § 204;
- 14 f) willfully refusing to pay PLAINTIFF and the PLAINTIFF CLASS all wages
15 earned and due at time of termination and/or resignation pursuant to Labor
16 Code §§ 201, 202 and 203;
- 17 g) willfully refusing to pay PLAINTIFF and the PLAINTIFF CLASS proper pay
18 for accrued sick days pursuant to Labor Code §§ 233, 246;
- 19 h) willfully refusing to pay PLAINTIFF and the PLAINTIFF CLASS all accrued
20 and due vacation pay at the final rate of pay, at the time of termination and/or
21 resignation pursuant to Labor Code § 227.3; and
- 22 i) willfully refusing to reimburse PLAINTIFF and the PLAINTIFF CLASS for
23 necessary business expenditures.

24 5. PLAINTIFF is informed and believes that DEFENDANTS, and each of them, were
25 on actual and constructive notice of the improprieties alleged herein and intentionally refused to
26 rectify their unlawful policies. DEFENDANTS' violations, as alleged above, during all relevant
27 times herein were willful and deliberate.

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1 **JURISDICTION AND VENUE**

2 6. This Court is the proper Court, and this action is properly filed in Los Angeles
3 County because DEFENDANTS' obligations and liability arise therein, because DEFENDANTS
4 maintain offices and transact business within Los Angeles County, and because the work that is the
5 subject of this action was performed by PLAINTIFF in Los Angeles County.

6 **THE PARTIES**

7 7. Plaintiff Rosa Grasiela Moreno Gutierrez is, and at all times relevant hereto was, a
8 resident of the State of California, County of Los Angeles.

9 8. Defendant GHP Management Corporation ("GHP") is, and at all times relevant
10 hereto was, a corporation, existing, doing business, and employing individuals in the County of Los
11 Angeles, State of California.

12 9. Defendant GHP Management Corporation was PLAINTIFF's employer within the
13 meaning of Government Code §§ 12925(d), 12940 (a), (h), (l), (h)(3)(A) and (i), and 12950, and the
14 *Labor Code*, and regularly employs five (5) or more persons.

15 10. The true names and capacities, whether individual, corporate, associate, or otherwise
16 of the DEFENDANTS named herein as DOES 1-50, inclusive, are unknown to PLAINTIFF at this
17 time and therefore said DEFENDANTS are sued by such fictitious names. PLAINTIFF will seek
18 leave to amend this Complaint to insert the true names and capacities of said DEFENDANTS when
19 the same become known to Plaintiff. PLAINTIFF is informed and believes and thereupon alleges
20 that each of the fictitiously named DEFENDANTS is responsible for the wrongful acts alleged
21 herein and is therefore liable to PLAINTIFF as alleged hereinafter.

22 11. PLAINTIFF is informed and believes, and based thereupon allege, that at all times
23 relevant hereto, DEFENDANTS, and each of them, were the agents, employees, managing agents,
24 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of the
25 other DEFENDANTS, and each of them, and in doing the things alleged herein, were acting at least
26 in part within the course and scope of said agency, employment, conspiracy, joint employment, alter
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ego status, and/or joint venture and with the permission and consent of each of the other DEFENDANTS.

12. PLAINTIFF is informed and believes, and based thereupon allege, that DEFENDANTS, and each of them, including those DEFENDANTS named as DOES 1-50, acted in concert with one another to commit the wrongful acts alleged herein, and aided, abetted, incited, compelled, and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so. PLAINTIFF are further informed and believes, and based thereupon allege, that the DEFENDANTS, and each of them, including those DEFENDANTS named as DOES 1-50, formed and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to and actually causing PLAINTIFF' harm.

13. Whenever and wherever reference is made in this Complaint to any act or failure to act by a Defendant or co-DEFENDANTS, such allegations and references shall also be deemed to mean the acts and/or failures to act by each Defendant acting individually, jointly, and severally.

ALTER EGO, AGENCY, AND JOINT EMPLOYER

14. PLAINTIFF is informed and believes, and based thereon alleges, that there exists such a unity of interest and ownership between DEFENDANTS and DOES 1-50 that the individuality and separateness of DEFENDANTS have ceased to exist.

15. PLAINTIFF is informed and believes, and based thereon alleges, that despite the formation of purported corporate existence, DOES 1-50 are, in reality, one and the same as DEFENDANTS, including, but not limited to, for the following reasons:

a) DEFENDANTS are completely dominated and controlled by DOES 1-50, who personally violated the laws set forth in this complaint, and who have hidden and currently hide behind DEFENDANTS to circumvent statutes or accomplish some other wrongful or inequitable purpose.

1 b) DOES 1-50 derive actual and significant monetary benefits by and through
2 DEFENDANTS' unlawful conduct, and by using DEFENDANTS as the funding source for their
3 own personal expenditures.

4 c) PLAINTIFF is informed and believes, and thereupon alleges, that DEFENDANTS
5 and DOES 1-50, while really one and the same, were segregated to appear as though separate and
6 distinct for purposes of circumventing a statute or accomplishing some other wrongful or inequitable
7 purpose.

8 d) PLAINTIFF is informed and believes that DEFENDANTS do not comply with all
9 requisite corporate formalities to maintain a legal and separate corporate existence.

10 e) PLAINTIFF is informed and believes, and based thereon alleges, that the business
11 affairs of DEFENDANTS and DOES 1-50 are, and at all times relevant hereto were, so mixed and
12 intermingled that the same cannot reasonably be segregated, and the same are in inextricable
13 confusion. DEFENDANTS are, and at all times relevant hereto were, used by DOES 1-50 as a mere
14 shell and conduit for the conduct of certain of DEFENDANTS' affairs, and are, and were, the alter
15 ego of DOES 1-50. The recognition of the separate existence of DEFENDANTS would not promote
16 justice, in that it would permit DEFENDANTS to insulate themselves from liability to PLAINTIFF
17 for violations of the Government Code, Labor Code, and other statutory violations. The corporate
18 existence of DEFENDANTS and DOES 1-50 should be disregarded in equity and for the ends of
19 justice because such disregard is necessary to avoid fraud and injustice to PLAINTIFF herein.

20 16. Accordingly, DEFENDANTS constitute the alter ego of DOES 1-50, and the fiction
21 of their separate corporate existence must be disregarded.

22 17. As a result of the aforementioned facts, PLAINTIFF is informed and believes, and
23 based thereon alleges that DEFENDANTS and DOES 1-50 are PLAINTIFF's joint employers by
24 virtue of a joint enterprise, and that PLAINTIFF was an employee of DEFENDANTS and DOES
25 1-50. PLAINTIFF performed services for each and every one of DEFENDANTS, and to the mutual
26 benefit of all DEFENDANTS, and all DEFENDANTS shared control of PLAINTIFF as an
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1 employee, either directly or indirectly, in the manner in which Defendant’ business was and is
2 conducted.

3 18. PLAINTIFF is informed and believes and thereupon alleges that GHP Management
4 Corporation and DOES 1-50 were the actual employers and/or “person[s] acting on behalf of the
5 employer” within the meaning of *Labor Code* section 558.1.

6 **PRIVATE ATTORNEYS GENERAL ACT ADMINISTRATIVE PREREQUISITE**

7 19. Pursuant to Labor Code section 2699.3, on June 02, 2023, prior to filing this
8 complaint, PLAINTIFF gave written notice to the Labor Workforce Development Agency
9 (“LWDA”) and to DEFENDANTS, specifying the provisions alleged to have been violated by
10 DEFENDANTS, and including the facts and theories supporting the alleged violations.

11 20. As of the date of this Complaint, sixty-five (65) days have passed since PLAINTIFF
12 provided notice of the violations alleged herein to the Labor Workforce Development Agency
13 (“LWDA”), and the LWDA has not provided notice of its intent to investigate PLAINTIFF’s claims.

14 **GENERAL ALLEGATIONS**

15 21. PLAINTIFF ROSA GRASIELA MORENO GUTIERREZ was employed as a
16 Hybrid Associate by DEFENDANTS from approximately August 17, 2022, to approximately
17 April 28, 2023, in Los Angeles, California.

18 22. PLAINTIFF and members of the PLAINTIFF CLASS are current or former non-
19 exempt employees of DEFENDANTS. PLAINTIFF and members of the PLAINTIFF CLASS have
20 been subjected to a variety of wage and hour violations during their employment with
21 DEFENDANTS.

22 **Failure to Pay Wages for All Hours Worked**

23 23. Throughout the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and
24 members of the PLAINTIFF CLASS for all hours worked in violation of Labor Code sections 1194,
25 1197, and the IWC Wage Orders. DEFENDANTS required and/or permitted off-the-clock work,
26 including but not limited to pre- and post-shift duties and work done while clocked out for meal
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1 periods, precluding the PLAINTIFF and the PLAINTIFF CLASS from being paid for all time
2 worked.

3 **Failure to Pay Proper Overtime Compensation**

4 24. Throughout the CLASS PERIOD, PLAINTIFF and members of the PLAINTIFF
5 CLASS were non-exempt employees covered by Labor Code § 510 and one or more IWC Wage
6 Orders. On multiple occasions throughout the CLASS PERIOD, PLAINTIFF and members of the
7 PLAINTIFF CLASS worked overtime by working in excess of eight (8) hours in one workday,
8 and/or in excess of forty (40) hours in any one workweek, and/or working on the seventh day of
9 work in any one workweek. Despite working overtime hours, PLAINTIFF and members of the
10 PLAINTIFF CLASS were not compensated at the rate of at least one and one-half times the regular
11 rate of pay for all overtime hours worked.

12 25. Off-the-Clock Hours Worked: DEFENDANTS' failure to properly pay overtime to
13 PLAINTIFF and members of the PLAINTIFF CLASS is and was due in part to DEFENDANTS'
14 failure to capture the off-the-clock work, as described above.

15 26. Failure to Include Non-Discretionary Pay in Regular Rate of Pay: Pursuant to Labor
16 Code § 510, overtime and double-time pay shall be compensated as multiples of an employee's
17 "regular rate of pay." An employee's regular rate of pay includes the employee's hourly rate and all
18 nondiscretionary incentive payments, such as bonuses and commissions, provided to the employee
19 for work performed. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.)
20 DEFENDANTS did not properly make adjustments to the overtime and double-time rates paid to
21 PLAINTIFF and members of the PLAINTIFF CLASS to reflect all nondiscretionary pay. As a
22 result, PLAINTIFF and members of the PLAINTIFF CLASS have been denied "the unpaid balance
23 of the full amount of this...overtime compensation" as required by Labor Code § 1194.

24 **Failure to Provide Rest Periods**

25 27. During the relevant time period, DEFENDANTS failed to maintain a compliant rest
26 period policy and practice. DEFENDANTS did not authorize or permit PLAINTIFF and members
27 of the PLAINTIFF CLASS to take at least a ten-minute rest period in which they were relieved of
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1 all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Labor Code §§
2 226.7, § 512 and applicable IWC Wage Orders.

3 28. DEFENDANTS further failed to pay PLAINTIFF and members of the PLAINTIFF
4 CLASS all premium compensation (one hour of pay at the employee's regular rate of pay for missed
5 or untimely rest periods) mandated by Labor code § 226.7(b) for these missed rest periods.

6 29. Failure to Include Non-Discretionary Pay in Regular Rate of Pay: Further, even when
7 DEFENDANTS attempted to issue premium compensation for missed rest periods, such premium
8 compensation did not properly take into account all non-discretionary pay, resulting in an under
9 payment of premium compensation to PLAINTIFF and members of the PLAINTIFF CLASS.

10 **Failure to Provide Timely, Uninterrupted Meal Periods**

11 30. During the relevant time period, DEFENDANTS failed to maintain a compliant meal
12 period policy and practice. DEFENDANTS failed to provide PLAINTIFF and members of the
13 PLAINTIFF CLASS with the right to take an off-duty 30-minute meal period. Labor Code § 512
14 provides, "[a]n employer may not employ an employee for a work period for more than five hours
15 per day without providing the employee with a meal period of not less than 30 minutes..." Labor
16 Code § 226.7(a) provides, "[n]o employer shall require an employee to work during any
17 meal...period mandated by an applicable order of the Industrial Welfare commission." Paragraph
18 11(A) of the Wage Orders provides, in pertinent part, "[u]nless the employee is relieved of all duty
19 during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and
20 counted as time worked."

21 31. PLAINTIFF and members of the PLAINTIFF CLASS were often given so much
22 work and understaffed that they were unable to take time away from their duties for breaks. When
23 PLAINTIFF was able to take meal periods, PLAINTIFF was frequently interrupted with job duties.

24 32. Failure to Provide Second Meal Periods: Similarly, PLAINTIFF and members of the
25 PLAINTIFF CLASS were not authorized and permitted to take second meal periods during shifts
26 of ten hours or longer.

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1 33. DEFENDANTS further failed to pay PLAINTIFF and members of the PLAINTIFF
2 CLASS all premium compensation (one hour of pay at the employee's regular rate of pay for missed
3 or untimely meal periods) mandated by Labor code § 226.7(b) for these missed meal periods.

4 34. Failure to Include Non-Discretionary Pay in Regular Rate of Pay: Further, even when
5 DEFENDANTS attempted to issue premium compensation for missed meal periods, such premium
6 compensation did not properly take into account all non-discretionary pay, resulting in an under
7 payment of premium compensation to PLAINTIFF and members of the PLAINTIFF CLASS.

8 **Failure to Reimburse for Required Business Expenses**

9 35. Labor Code § 2802 requires employers to indemnify employees for necessary
10 expenditures or losses incurred by employees in direct consequence of discharge of duties. Here,
11 DEFENDANTS required PLAINTIFF and members of the PLAINTIFF CLASS to use their
12 personal cellular phones for work related duties, but failed to reimburse PLAINTIFF and members
13 of the PLAINTIFF CLASS as required by the Labor Code and applicable Wage Order(s).

14 **Failure to Timely Pay All Wages Owed**

15 36. Failure to pay all wages owed to employees at termination/resignation: As set forth
16 above, due to DEFENDANTS' unlawful employment practices, DEFENDANTS knowingly and
17 willfully failed to timely pay all wages owed to PLAINTIFF and members of the PLAINTIFF
18 CLASS at the time that employment terminated. DEFENDANTS willfully failed to pay aggrieved
19 employees who are no longer employed all compensation due upon termination of employment as
20 required by Cal. Labor Code §§ 201 and 202. Pursuant to sections 203 and 256, PLAINTIFF and
21 members of the PLAINTIFF CLASS are now also entitled to recover up to thirty (30) days of wages
22 for DEFENDANTS' willful failure to comply with the statutory requirements of sections 201 and
23 202 of the Labor Code.

24 37. Failure to pay all wages owed twice per month: Labor Code § 204 requires employers
25 to pay all wages earned by non-exempt employees at least twice during each calendar month, within
26 seven calendar days following the close of the payroll period. DEFENDANTS failed to pay all
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1 wages owed to PLAINTIFF and members of the PLAINTIFF CLASS as a result of the unlawful
2 employment policies and practices discussed herein.

3 **Failure to Provide Accurate Itemized Wage Statements and Maintain Required Records**

4 38. California labor Code § 226(a) provides that “[e]very employer shall, semimonthly
5 or at the time of each payment of wages, furnish each of his or her employees...an accurate itemized
6 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except
7 as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece
8 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions
9 made on written orders of the employee may be aggregated and shown as one item, (5) net wages
10 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
11 employee and only the last four digits of his or her social security number or an employee
12 identification number other than a social security number, (8) the name and address of the legal
13 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate by the employee.”

15 39. DEFENDANTS knowingly and intentionally failed to provide timely, accurate,
16 itemized wage statements to PLAINTIFF and members of the PLAINTIFF CLASS, as well as
17 maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The wage statements
18 provided to PLAINTIFF and members of the PLAINTIFF CLASS have not accurately reflected
19 actual gross wages earned and total hours worked. Such failures cause actual injury to PLAINTIFF
20 and others, by, among other things, impeding them from knowing the total hours worked and the
21 amount of wages to which they are and were entitled. DEFENDANTS knowingly and intentionally
22 failed to itemize the correct wages earned, net wages earned, and total hours worked.

23 40. As a result of these violations of California Labor Code § 226(a), PLAINTIFF and
24 members of the PLAINTIFF CLASS suffered injury because, among other things,

- 25 a) the violations led them to believe that they were not entitled to be paid minimum
26 wages, overtime wages, meal period premium wages, and rest period premium wages
27 to which they were in fact entitled;

- 1 b) the violations led them to believe that they had been paid the minimum, overtime,
2 meal period premium, and rest period premium wages, even though they had not
3 been;
- 4 c) the violations hindered them from determining the amounts of minimum wages,
5 overtime, meal period premium, and rest period premium owed to them;
- 6 d) in connection with their employment, before and during this action, and in
7 connection with prosecuting this action, the violations caused them to have to
8 perform mathematical computations to determine the amounts of wages owed to
9 them, computations they would not have to make if the wage statements contained
10 the required accurate information;
- 11 e) the violations, by understating the wages truly due to PLAINTIFF and members of
12 the PLAINTIFF CLASS, caused them to lose entitlement and/or accrual of the full
13 amount of Social Security, disability, unemployment, and other governmental
14 benefits;
- 15 f) the wage statements inaccurately understated the wages, hours, and wages rates to
16 which PLAINTIFF and members of the PLAINTIFF CLASS were entitled, and as a
17 result PLAINTIFF and members of the PLAINTIFF CLASS were in fact paid less
18 wages and/or a lower wage rate than the wages to which they were entitled.

19 **Failure to Pay Proper Sick Leave Wages**

20 41. During their employment with DEFENDANTS, PLAINTIFF and members of the
21 PLAINTIFF CLASS were entitled to “paid sick days” pursuant to California Labor Code section
22 245, *et seq.*

23 42. Labor Code § 246(l) requires that employers pay sick time pay to non-exempt
24 employees at the employee’s “regular rate of pay.” Employers may either calculate “paid sick days”
25 for non-exempt employees in California at the regular rate of pay for the workweek in which the
26 employee uses paid sick time or by dividing the employee’s total wages, into including overtime
27 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of
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1 employment. Labor Code 246(1)(2). The “regular rate of pay” includes all remuneration for
2 employment paid to the employee and includes, but is not limited to, shift differentials and non-
3 discretionary incentive bonuses.

4 43. During the relevant time period, PLAINTIFF and members of the PLAINTIFF
5 CLASS accrued and took paid sick leave. However, DEFENDANTS failed to include non-
6 discretionary remuneration when determining the “regular rate of pay.” Instead, DEFENDANTS
7 only paid PLAINTIFF and members of the PLAINTIFF CLASS paid sick leave at their base hourly
8 rate, rather than at their “regular rate of pay.”

9 **Failure to Properly Pay Vacation Pay**

10 44. At the termination of PLAINTIFF and members of the PLAINTIFF CLASS’
11 employment with DEFENDANTS, PLAINTIFF and members of the PLAINTIFF CLASS had
12 earned but unused vacation pay.

13 45. California Labor Code section 227.3 requires employers to pay terminated
14 employees for their unused paid vacation time at their final rate of pay. However, DEFENDANTS
15 did not pay PLAINTIFF and members of the PLAINTIFF CLASS for their unused paid vacation
16 time at the final rate of pay because the rate of pay used by DEFENDANTS did not take into account
17 all non-discretionary pay earned by PLAINTIFF and members of the PLAINTIFF CLASS.

18 **CLASS ALLEGATIONS**

19 46. PLAINTIFF brings this class action pursuant to Code of Civil Procedure section 382.
20 PLAINTIFF brings this class action on behalf of PLAINTIFF and all other similarly situated non-
21 exempt employees, with PLAINTIFF proceeding as the representative member of the proposed class
22 as follows:

- 23 a) **PLAINTIFF CLASS:** All current and former non-exempt employees employed by
24 DEFENDANTS in California at any time within the four (4) years prior to the filing
25 of the initial complaint in this action and through the date notice is mailed to a
26 certified class.

1 47. PLAINTIFF reserves the right, under Rule 3.765 of the California Rules of Court, to
2 amend or modify the Class Members description with greater specificity or further division into
3 subclasses or limitation to particular issues.

4 48. There exists a well-defined community of interests among the PLAINTIFF CLASS
5 with respect to the claims asserted herein, and the PLAINTIFF CLASS is readily ascertainable for
6 the following reasons:

7 a) Numerosity and Ascertainability: The members of the class are so numerous that
8 joinder of all members would be unfeasible and not practicable. While PLAINTIFF
9 does not know the exact number and identity of all Class members, PLAINTIFF
10 alleges, on information and belief, that the members of the PLAINTIFF CLASS
11 exceed one hundred (100) persons. PLAINTIFF alleges, on information and belief,
12 that the identity of such membership is readily ascertainable via inspection of the
13 personnel records and other documents maintained by DEFENDANTS;

14 b) Typicality: The claims of PLAINTIFF, pleaded as class action claims, are typical of
15 the claims of all members of the class as they arise out of the same course of conduct
16 and are predicated on the same violation(s) of the law. PLAINTIFF and all members
17 of the PLAINTIFF CLASS sustained injuries and damages arising out of
18 DEFENDANTS' common course of conduct in violation of laws as complained of
19 herein.

20 c) Commonality: Common issues of fact and law predominate in this action over any
21 allegedly individual issues. The claims of PLAINTIFF and the PLAINTIFF CLASS
22 members arise from the same events or patterns or practices and are based on the
23 same legal theories. Specifically, the following issues of fact and law, without
24 limitation, predominate and make this action superior to individual actions:

25 i. Whether DEFENDANTS denied PLAINTIFF and members of the
26 PLAINTIFF CLASS all of the wages to which they are entitled pursuant to
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- the California Labor Code, California IWC Wage Orders, and all other applicable employment laws and regulations;
- ii. Whether DEFENDANTS violated California Labor Code section 204 by failing to pay all wages earned in a timely manner;
 - iii. Whether DEFENDANTS failed to pay the required rest break or meal premiums to PLAINTIFF and members of the PLAINTIFF CLASS for all missed rest or meal breaks.
 - iv. Whether DEFENDANTS owe PLAINTIFF and members of the PLAINTIFF CLASS waiting time penalties pursuant to California Labor Code section 203;
 - v. Whether DEFENDANTS have failed to properly provide accurate itemized wage statements as well as keep accurate records as required by California Labor Code section 226 and the applicable Industrial Welfare Commission’s (“IWC”) Wage Order;
 - vi. Whether DEFENDANTS failed to pay PLAINTIFF and members of the PLAINTIFF CLASS the proper rate of pay for accrued and used sick pay;
 - vii. Whether DEFENDANTS failed to pay PLAINTIFF and members of the PLAINTIFF CLASS the proper rate of final pay for unused vacation pay at the time of termination;
 - viii. Whether DEFENDANTS engaged in unfair business practices under section 17200, *et. seq* of the California Business and Professions Code;
 - ix. The effect upon and the extent of damages suffered by PLAINTIFF and members of the PLAINTIFF CLASS and the appropriate amount of compensation.
- d) Adequacy: PLAINTIFF and the PLAINTIFF CLASS all worked for DEFENDANTS, share the same interests, and were subjected to DEFENDANTS’ unlawful policy and practice of failing to adequately compensate employees and/or

1 provide them with their statutory entitlements, including but not limited to: all owed
2 wages, meal and rest breaks, wage statements, as required by law. PLAINTIFF and
3 members of the PLAINTIFF CLASS do not have any conflicts of interest with other
4 members. Given the significance of the deprivation of their rights, PLAINTIFF will
5 prosecute this action vicariously on behalf of the PLAINTIFF CLASS. They have
6 retained competent and experienced legal counsel who specialize in employment,
7 wage and hour, and class action litigation to represent themselves and the proposed
8 PLAINTIFF CLASS.

9 e) Superiority of Class Action: The disposition of PLAINTIFF and the proposed
10 PLAINTIFF CLASS members' claims in a class action will provide substantial
11 benefits to both the parties and the Court. The nature of this action and the nature of
12 the laws available to the PLAINTIFF CLASS make use of the class action format a
13 particularly efficient and appropriate procedure to afford relief to the PLAINTIFF
14 CLASS. Further, this case involves a corporate employer and a large number of
15 individual employees possessing claims with common issues of law and fact. If each
16 employee were required to file an individual lawsuit, the corporate defendant would
17 necessarily gain an unconscionable advantage since each defendant would be able to
18 exploit and overwhelm the limited resources of each individual plaintiff with its
19 vastly superior financial and legal resources. Requiring each class member to pursue
20 an individual remedy would also discourage the assertion of lawful claims by
21 employees who would be disinclined to pursue an action against their present and/or
22 former employer for an appreciable and justifiable fear of retaliation and permanent
23 damage to their careers at present and/or subsequent employment. Proof of a
24 common business practice or factual pattern, of which the named PLAINTIFF
25 experienced, is representative of the class mentioned herein and will establish the
26 right of each of the members of the class to recover on the claims alleged herein.
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49. The prosecution of separate actions by the individual class members, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the individual class members against the defendants herein; and/or (b) legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the other class members' claims who are not parties to the adjudications and/or would substantially impair or impede the ability of class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

50. PLAINTIFF is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

Failure to Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197; IWC Wage Orders]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

51. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

52. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

53. At all relevant times, DEFENDANTS failed to pay PLAINTIFF and members of the PLAINTIFF CLASS minimum wages for all hours worked by, among other things: requiring, permitting or suffering PLAINTIFF to work off the clock; requiring, permitting or suffering PLAINTIFF to work through meal and rest breaks; illegally and inaccurately recording time in which PLAINTIFF worked; failing to properly maintain PLAINTIFF's records; failing to provide accurate itemized wage statements to PLAINTIFF for each pay period; and other methods to be discovered.

54. DEFENDANTS' conduct described herein violates California Labor Code §§ 1194, 1197, and IWC Wage Orders.

55. As a proximate result of the aforementioned violations, PLAINTIFF and members of the PLAINTIFF CLASS have been damaged and seek all wages earned and due, plus interest thereon.

56. Pursuant to Labor Code § 1194, PLAINTIFF and members of the PLAINTIFF CLASS request that the court award reasonable attorney fees and costs incurred by PLAINTIFF and members of the PLAINTIFF CLASS in this action.

57. In addition, pursuant to Labor Code § 1194.2, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully withheld, and interest thereon.

SECOND CAUSE OF ACTION

Failure to Pay Overtime Wages

[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Orders]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

58. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

59. Pursuant to California Labor Code §§ 510, 1194, 1198 and IWC Wage Orders, DEFENDANTS are required to compensate PLAINTIFF and members of the PLAINTIFF CLASS for all overtime, which is calculated at one and one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

60. At all relevant times, PLAINTIFF and members of the PLAINTIFF CLASS were not exempt and were entitled to the protections of California Labor Code §§ 510, 1194, 1198, and IWC

1 Wage Orders. DEFENDANTS failed to compensate PLAINTIFF and members of the PLAINTIFF
2 CLASS for all overtime hours worked as required under the foregoing provisions of the California
3 Labor Code and IWC Wage Orders.

4 61. In violation of California law, DEFENDANTS knowingly and willfully refused to
5 perform their obligations to compensate PLAINTIFF and members of the PLAINTIFF CLASS for
6 all wages earned and all hours worked. As a proximate result, PLAINTIFF and members of the
7 PLAINTIFF CLASS have suffered, and continue to suffer, substantial losses related to the use and
8 enjoyment of such wages, lost interest on such wages, and expenses and attorney fees in seeking to
9 compel DEFENDANTS to fully perform their obligations under state law.

10 62. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
11 1194, 1198 and IWC Wage Orders. Therefore, pursuant to California Labor Code 28 §§ 200, 203,
12 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and IWC
13 Wage Orders, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the
14 unpaid balance of wages owed, plus interest, penalties, attorney fees, expenses, and costs.

15 **THIRD CAUSE OF ACTION**

16 **Failure to Provide Required Meal Periods**

17 [Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Orders]

18 (PLAINTIFF, individually, and on behalf of all similarly situated employees against all
19 DEFENDANTS)

20 63. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of
21 this Complaint as though fully set forth herein.

22 64. DEFENDANTS failed to provide PLAINTIFF and members of the PLAINTIFF
23 CLASS with a 30-minute meal period free of all duties on days which they worked more than five
24 (5) hours. Furthermore, DEFENDANTS also failed to provide PLAINTIFF and members of the
25 PLAINTIFF CLASS with a second and third 30-minute meal period free of all duties on days on
26 which PLAINTIFF worked more than 10 or 15 hours, pursuant to California Labor Code Section
27 226.7, 512 and IWC Orders.

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65. DEFENDANTS further violated California Labor Code Section 226.7 and IWC Wage Orders by failing to compensate PLAINTIFF and members of the PLAINTIFF CLASS one additional hour of compensation at their regular rate of pay, including all non-discretionary pay, for each meal period that was not provided.

66. DEFENDANTS further violated California Labor Code Sections 226.7, 510, 1194, 1197, and IWC Wage Orders by failing to compensate PLAINTIFF and members of the PLAINTIFF CLASS for all hours worked during their meal periods.

67. As a proximate result of the aforementioned violations, PLAINTIFF and members of the PLAINTIFF CLASS have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed; penalties, including penalties available pursuant to California Labor Code Sections 226, 226.7, and 558, plus interest; and costs of suit. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to attorney fees and costs pursuant to Labor Code Section 218.5 for DEFENDANTS' failure to pay all earned wages to PLAINTIFF and PLAINTIFF CLASS.

FOURTH CAUSE OF ACTION

Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7, 512; IWC Wage Orders]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

68. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

69. At all times relevant herein, DEFENDANTS failed to provide rest periods to PLAINTIFF and members of the PLAINTIFF CLASS as required under California Labor Code Sections 226.7 and 512, and IWC Wage Orders. DEFENDANTS also did not provide PLAINTIFF and members of the PLAINTIFF CLASS a second, third, or fourth rest period for each additional four (4) hours worked, or major fraction thereof.

70. DEFENDANTS further violated California Labor Code Section 226.7 and IWC Wage Orders by failing to compensate PLAINTIFF and members of the PLAINTIFF CLASS one additional hour of compensation at their regular rate of pay, including all non-discretionary pay, for each rest period that was not provided.

71. DEFENDANTS further violated California Labor Code Sections 226.7, 510, 1194, 1197, and IWC Wage Orders by failing to compensate PLAINTIFF and members of the PLAINTIFF CLASS for all hours worked during their rest periods.

72. As a proximate result of the aforementioned violations, PLAINTIFF and members of the PLAINTIFF CLASS have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed; penalties, including penalties available pursuant to California Labor Code Sections 226, 226.7, and 558, plus interest, and costs of suit. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to attorney fees and costs pursuant to Labor Code Section 218.5 for DEFENDANTS' failure to pay all earned wages to PLAINTIFF and PLAINTIFF CLASS.

FIFTH CAUSE OF ACTION

Failure to Properly Pay Accrued Sick Days

[Cal. Lab. Code §§ 233, 246]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

73. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

74. PLAINTIFF and members of the PLAINTIFF CLASS worked for DEFENDANTS in California for thirty days or more within a year of the commencement of their employment and thus were entitled to paid sick days in accordance with Labor Code §§ 233 and 246.

75. PLAINTIFF and members of the PLAINTIFF CLASS used some or all of their accrued paid sick days during the relevant time period.

76. DEFENDANTS failed to pay PLAINTIFF and members of the PLAINTIFF CLASS the proper rate for their paid sick days, in accordance with Labor Code § 246(l), because DEFENDANTS did not include all wages earned by PLAINTIFF and members of the PLAINTIFF CLASS in their regular rate of pay calculations.

77. As a proximate result of the aforementioned violations, PLAINTIFF and members of the PLAINTIFF CLASS have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed; penalties, including penalties available pursuant to California Labor Code Sections 226, 226.7, and 558, plus interest; and costs of suit. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to attorney fees and costs pursuant to Labor Code Section 218.5 for DEFENDANTS' failure to pay all earned wages to PLAINTIFF and PLAINTIFF CLASS.

SIXTH CAUSE OF ACTION

Failure to Properly Pay Unused Vacation Pay

[Cal. Lab. Code § 227.3]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

78. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

79. California Labor Code section 227.3 requires employers to pay terminated employees for their unused paid vacation time at their final rate of pay.

80. During the CLASS PERIOD, PLAINTIFF and members of the PLAINTIFF CLASS had accrued, but unused, vacation pay at the time that their employment with DEFENDANTS ended.

81. As a matter of uniform practice and policy, DEFENDANTS violated Labor Code § 227.3 by failing to pay PLAINTIFF and members of the PLAINTIFF CLASS all earned and vested vacation pay by not awarding such earned vacation pay resulting in a forfeit of all such pay and not

1 paying vacation pay at the final rate of pay for PLAINTIFF and similarly situated employees, by
2 failing to include all non-discretionary pay in final rate.

3 82. As a proximate result of the aforementioned violations, PLAINTIFF and members
4 of the PLAINTIFF CLASS have been damaged in an amount according to proof at time of trial, but
5 in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the
6 PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed; penalties, including
7 penalties available pursuant to California Labor Code Sections 226, 226.7, and 558, plus interest;
8 and costs of suit. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to attorney
9 fees and costs pursuant to Labor Code Section 218.5 for DEFENDANTS' failure to pay all earned
10 wages to PLAINTIFF and PLAINTIFF CLASS.

11 **SEVENTH CAUSE OF ACTION**

12 **Failure to Pay Timely Wages During Employment**

13 [Cal. Lab. Code § 204]

14 (PLAINTIFF, individually, and on behalf of all similarly situated employees against all
15 DEFENDANTS)

16 83. PLAINTIFF incorporate by reference all allegations in the foregoing paragraphs of
17 this Complaint as though fully set forth herein.

18 84. Pursuant to California Labor Code Section 204, for all labor performed between the
19 1st and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt
20 employees between the 16th and 26th day of the month during which the labor was performed.
21 California Labor Code Section 204 also provides that for all labor performed between the 16th and
22 26th days of any calendar month, DEFENDANTS are required to pay their nonexempt employees
23 between the 1st and 15th day of the following calendar month. In addition, California Labor Code
24 Section 204 provides that all wages earned for labor in excess of the normal work period shall be
25 paid no later than the payday of the next regular payroll period.

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85. DEFENDANTS knowingly and willfully failed to pay PLAINTIFF and members of the PLAINTIFF CLASS all the wages earned when due as required by California Labor Code Section 204.

86. Pursuant to California Labor Code Section 210, failure to pay the wages of each employee as provided in California Labor Code Section 204 will subject DEFENDANTS to a statutory penalty of: (1) one hundred dollars (\$100) for each failure to pay each employee for each initial violation; and (2) two hundred dollars (\$200) for each failure to pay each employee, plus twenty-five percent (25%) of the amount unlawfully withheld, for each subsequent violation.

87. DEFENDANTS' conduct described herein violates California Labor Code Section 204. As a proximate result of the aforementioned violations, PLAINTIFF and members of the PLAINTIFF CLASS have been damaged in an amount according to proof at trial. Pursuant to California Labor Code Sections 200, 210, 226, 558, 1194, 1197.1, 2699, and other applicable provisions under the Labor Code and IWC Wage Orders, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed by DEFENDANTS, plus interest, penalties, attorney fees, expenses, and costs of suit.

EIGHTH CAUSE OF ACTION

Failure to Pay All Wages Due to Discharged and Quitting Employees

[Cal. Lab. Code §§ 201, 202, 203]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

88. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

89. Pursuant to California Labor Code Sections 201, 202, and 203, DEFENDANTS are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code Section 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

90. Furthermore, pursuant to California Labor Code Section 202, DEFENDANTS are required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 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.

91. California Labor Code Section 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code Sections 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

92. DEFENDANTS have willfully failed to pay accrued wages, premium pay for missed meal and rest periods and other compensation to PLAINTIFF and members of the PLAINTIFF CLASS in accordance with California Labor Code Sections 201 and 202.

93. As a result, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code Section 203, together with interest thereon, attorney fees and costs as well as other available remedies.

NINTH CAUSE OF ACTION

Failure to Maintain Required Records

[Cal. Lab. Code §§ 226, 1174; IWC Wage Orders]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

94. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

95. At all relevant times, DEFENDANTS knowingly and intentionally failed to maintain records as required under California Labor Code Sections 226, 1174, and IWC Wage Orders, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal period pay; rest period pay; time records showing when each employee begins and ends each work period; and accurate itemized statements.

1 96. As a result of DEFENDANTS' violations, PLAINTIFF and members of the
2 PLAINTIFF CLASS suffered injury because, among other things,

- 3 a) the violations led them to believe that they were not entitled to be paid minimum
4 wages, overtime wages, meal period premium wages, and rest period premium wages
5 to which they were in fact entitled;
- 6 b) the violations led them to believe that they had been paid the minimum, overtime,
7 meal period premium, and rest period premium wages, even though they had not
8 been;
- 9 c) the violations hindered them from determining the amounts of minimum wages,
10 overtime, meal period premium, and rest period premium owed to them;
- 11 d) in connection with their employment, before and during this action, and in
12 connection with prosecuting this action, the violations caused them to have to
13 perform mathematical computations to determine the amounts of wages owed to
14 them, computations they would not have to make if the wage statements contained
15 the required accurate information;
- 16 e) the violations, by understating the wages truly due to PLAINTIFF and members of
17 the PLAINTIFF CLASS, caused them to lose entitlement and/or accrual of the full
18 amount of Social Security, disability, unemployment and other governmental
19 benefits;
- 20 f) the wage statements inaccurately understated the wages, hours, and wages rates to
21 which PLAINTIFF and members of the PLAINTIFF CLASS were entitled, and as a
22 result PLAINTIFF and members of the PLAINTIFF CLASS were in fact paid less
23 wages and/or a lower wage rate than the wages to which they were entitled.

24 97. As a proximate result of DEFENDANTS' unlawful actions and omissions,
25 PLAINTIFF and members of the PLAINTIFF CLASS have been damaged and are entitled to all
26 available statutory penalties, including but not limited to penalties pursuant to California Labor
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Code Sections 226 (e), and an award of costs, expenses, and reasonable attorney fees, including but not limited to those provided in Section 226 (e), as well as other available remedies.

TENTH CAUSE OF ACTION

Failure to Furnish Accurate, Itemized Wage Statements

[Cal. Lab. Code §§ 226; IWC Wage Orders]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

98. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

99. DEFENDANTS routinely failed to provide PLAINTIFF and members of the PLAINTIFF CLASS with timely, accurate, and itemized wage statements in writing showing each employee's gross wages earned—including missed meal and rest period pay, total hours worked, all deductions made, net wages earned, the name and address of the legal entity or entities employing Plaintiff, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of California Labor Code Section 226 and IWC Wage Orders.

100. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and members of the PLAINTIFF CLASS with timely, accurate, and itemized wage statements in accordance with California Labor Code Section 226 (a).

101. As a result of DEFENDANTS' violations, PLAINTIFF and members of the PLAINTIFF CLASS suffered injury because, among other things,

- a) the violations led them to believe that they were not entitled to be paid minimum wages, overtime wages, meal period premium wages, and rest period premium wages to which they were in fact entitled;
- b) the violations led them to believe that they had been paid the minimum, overtime, meal period premium, and rest period premium wages, even though they had not been;

- 1 c) the violations hindered them from determining the amounts of minimum wages,
2 overtime, meal period premium, and rest period premium owed to them;
3 d) in connection with their employment, before and during this action, and in
4 connection with prosecuting this action, the violations caused them to have to
5 perform mathematical computations to determine the amounts of wages owed to
6 them, computations they not have to make if the wage statements contained the
7 required accurate information;
8 e) the violations, by understating the wages truly due to PLAINTIFF and members of
9 the PLAINTIFF CLASS, caused them to lose entitlement and/or accrual of the full
10 amount of Social Security, disability, unemployment, and other governmental
11 benefits;
12 f) the wage statements inaccurately understated the wages, hours, and wages rates to
13 which PLAINTIFF and members of the PLAINTIFF CLASS were entitled, and as a
14 result PLAINTIFF and members of the PLAINTIFF CLASS were in fact paid less
15 wages and/or a lower wage rate than the wages to which they were entitled.

16 102. As a proximate result of DEFENDANTS' unlawful actions and omissions,
17 PLAINTIFF and members of the PLAINTIFF CLASS have been damaged and are entitled to all
18 available statutory penalties, including but not limited to penalties pursuant to California Labor
19 Code Sections 226 (e), and an award of costs, expenses, and reasonable attorney fees, including but
20 not limited to those provided in Section 226 (e), as well as other available remedies.

21 **ELEVENTH CAUSE OF ACTION**

22 **Failure to Reimburse Necessary Expenditures**

23 [Cal. Lab. Code § 2802]

24 (PLAINTIFF, individually, and on behalf of all similarly situated employees against all
25 DEFENDANTS)

26 103. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of
27 this Complaint as though fully set forth herein.
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104. Labor Code Section 2802 requires employers to indemnify employees 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.

105. DEFENDANTS did not reimburse PLAINTIFF and members of the PLAINTIFF CLASS for all necessary expenditures or losses incurred by them during their employment.

106. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and members of the PLAINTIFF CLASS have been deprived of compensation and are entitled to recovery of such amounts, plus interest thereon, and attorney fees and costs.

TWELFTH CAUSE OF ACTION

Unfair and Unlawful Business Practices

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

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

107. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

108. Each and every one of DEFENDANTS' acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Orders as alleged herein constitutes an unfair and unlawful business practice under California Business and Professions Code § 17200 *et seq.*

109. DEFENDANTS' violations of California wage and hour laws constitute a business practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and members of the PLAINTIFF CLASS.

110. DEFENDANTS have avoided payment of wages, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Orders. Further, DEFENDANTS have failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations.

111. As a result of DEFENDANTS' unfair and unlawful business practices, DEFENDANTS have reaped unfair and illegal profits at the expense of PLAINTIFF and members of the PLAINTIFF CLASS. DEFENDANTS should be made to disgorge its ill-gotten gains and to restore them to PLAINTIFF and members of the PLAINTIFF CLASS.

112. DEFENDANTS' unfair business practices entitle PLAINTIFF and the PLAINTIFF CLASS to seek preliminary and permanent injunctive relief, including but not limited to, orders that DEFENDANTS account for and restore to PLAINTIFF and the PLAINTIFF CLASS the compensation unlawfully withheld from them. Thus, they are entitled to restitution, in addition to interest, costs, and attorney fees for the underlying statutory violations incorporated herein, including but not limited to Labor Code Sections 1194, 1194.2, 218.5, et seq., amongst other violations.

THIRTEENTH CAUSE OF ACTION

Civil Penalties Pursuant to The Private Attorneys General Act

[Labor Code § 2698 *et seq.*]

(PLAINTIFF, individually, and on behalf of all similarly situated employees against all
DEFENDANTS)

113. PLAINTIFF incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

114. PLAINTIFF alleges—on information and belief—that DEFENDANTS violated Labor Code sections 201, 202, 203, 256 (waiting time), 204, 210 (timely wages during employment), 226, 226(a), 226.3, 226.6 (wage statements), 226, 1174, 1174.5 (maintenance of records), 226.2, 226.7, 510, 512, 1194, 1197 (meal and rest periods) 227.3 (vacation pay), 233, 246 (sick pay), 1182.12, 1194, 1197, 1197.1 (minimum wage), 510, 1194, 1198 (overtime), as well as all applicable Wage Orders, as alleged herein.

115. These violations subject employers and individuals to civil penalties as set forth in (1) the foregoing statutes to the extent that they are specified and contained therein, which PLAINTIFF will be seeking individually and on the behalf of all aggrieved employees; or to (2) to

1 the extent that that the statutes do not provide for PAGA civil penalties or PAGA available relief,
2 then PLAINTIFF will seek the default PAGA penalties for each of the preceding statutory violations
3 in accordance with Labor Code section 2699(f), individually and for all aggrieved employees, as
4 well as the LWDA.

5 116. Pursuant to Labor Code section 2699(g), PLAINTIFF is entitled to an award of
6 reasonable attorney fees and costs in connection with the claim for civil penalties.

7 117. PLAINTIFF has exhausted the administrative remedies by providing notice to the
8 LWDA and to DEFENDANTS as required by the PAGA statute, complying with all requirements
9 to exhaust the administrative remedies on or about June 02, 2023. Neither PLAINTIFF nor
10 PLAINTIFF's counsel received a response from DEFENDANTS or the LWDA.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF and the PLAINTIFF CLASS pray for judgment against
13 DEFENDANTS, and each of the, as follows:

- 14 1. That this action be certified as a class action;
- 15 2. That PLAINTIFF be appointed as representative of the PLAINTIFF CLASS;
- 16 3. That counsel for PLAINTIFF be appointed as class counsel;
- 17 4. For unpaid wages and reimbursement of business expenses;
- 18 5. For actual damages pursuant to California Labor Code 226(e);
- 19 6. For meal and rest period compensation pursuant to California Labor Code § 226.7
20 and IWC Wage Orders;
- 21 7. For minimum wage liquidated damages pursuant to California Labor Code 1194.2;
- 22 8. For statutory and civil penalties, including under PAGA as provided by law;
- 23 9. For waiting time penalties pursuant to California Labor Code section 203;
- 24 10. For injunctive relief to stop DEFENDANTS' illegal practices described above,
25 including, but not limited to, the failure to pay all earned wages, including overtime wages, the
26 failure to provide accurate itemized statements, and other practices as mentioned herein;
- 27 11. For DEFENDANTS to be ordered and enjoined to make restitution to PLAINTIFF

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1 and members of the PLAINTIFF CLASS and disgorgement of profits from their unlawful business
2 practices and accounting, pursuant to California Business and Professions Code § 17203 and 17204;

3 12. For costs of suit, attorney fees, and expert witness fees pursuant the Labor Code,
4 Code of Civil Procedure § 1021.5, and/or any other basis;

5 13. For pre- and post-judgment interest; and,

6 14. For all such other and further relief that the court may deem just and proper.

7
8 DATED: October 30, 2023

Respectfully Submitted,

9 ELKIN | GAMBOA LLP

10
11 By: 

12 Michael Elkin

13 Attorneys for Plaintiff Rosa Moreno
14

15 **DEMAND FOR TRIAL BY JURY**

16 PLAINTIFF hereby demands a jury trial of all causes of action and claims with respect to
17 which PLAINTIFF has a right to jury trial.
18

19 Respectfully Submitted,

20 DATED: October 30, 2023

ELKIN | GAMBOA LLP

21
22 By: 

23 Michael Elkin

24 Attorneys for Plaintiff Rosa Moreno
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26
27
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