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Attorneys for Plaintiff ALEXIS BARTRAM

SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF LOS ANGELES**

ALEXIS BARTRAM, an individual, on behalf
 of herself and on behalf of all persons similarly
 situated,

Plaintiff,

v.

LAKESHORE LEARNING MATERIALS,
 LLC, a California limited liability company;
 and DOES 1-50, Inclusive,

Defendant.

Case No: 23STCV21174

FIRST AMENDED 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

FILED
 Superior Court of California
 County of Los Angeles
 12/27/2023

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT LABOR
CODE §§ 2698 ET SEQ.

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant LAKESHORE LEARNING MATERIALS, LLC (“DEFENDANT” and/or “DEFENDANTS”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California

2. DEFENDANT is a developer and retailer of educational materials in the state of California.

3. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this First Amended 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 DEFENDANT named in this First Amended Complaint, including DOES 1 through 50, inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

4. The agents, servants, and/or employees of the DEFENDANT and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendant, and personally participated in the conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.

1 Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and
2 all DEFENDANT are jointly and severally liable to PLAINTIFF and the other members of the
3 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
4 Defendant's agents, servants and/or employees.

5 5. DEFENDANT was PLAINTIFF's employer or persons acting on behalf of
6 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or
7 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
8 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
9 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
10 at all relevant times.

11 6. DEFENDANT was PLAINTIFF's employer or persons acting on behalf of
12 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
13 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
14 employee a wage less than the minimum fixed by California state law, and as such, are subject to
15 civil penalties for each underpaid employee.

16 7. PLAINTIFF was employed by DEFENDANT in California from May of 2022 to
17 June of 2023 and at all times was classified by DEFENDANT as a non-exempt employee, paid
18 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
19 minimum and overtime wages due for all time worked, and assigned to work at a Defendant
20 Lakeshore Learning facility.

21 8. PLAINTIFF brings this Class Action on behalf of herself and a California class,
22 defined as all persons who are or previously were employed by Defendant in California (the
23 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing
24 of this Action and ending on the date as determined by the Court (the "CLASS PERIOD"). The
25 amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under
26 five million dollars (\$5,000,000.00).

27 9. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
28 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged

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

8 10. DEFENDANT's uniform policies and practices alleged herein were unlawful,
9 unfair, and deceptive business practices whereby DEFENDANT retained and continues to retain
10 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

16 **JURISDICTION AND VENUE**

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

21 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
23 the CALIFORNIA CLASS across California, including in this County, and committed the
24 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

25 **THE CONDUCT**

26 14. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
28 matter of company policy, practice and procedure, intentionally, knowingly and systematically

1 failed to provide legally compliant meal and rest periods, failed to accurately compensate
2 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
3 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
4 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
5 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
6 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
7 premiums at the regular rate, and failed to issue to PLAINTIFF and the members of the
8 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
9 applicable hourly rates in effect during the pay periods and the corresponding amount of time
10 worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to
11 purposefully avoid the accurate and full payment for all time worked as required by California
12 law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
13 who comply with the law. To the extent equitable tolling operates to toll claims by the
14 CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
15 accordingly.

16 **A. Meal Period Violations**

17 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
18 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
19 meaning the time during which an employee is subject to the control of an employer, including
20 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
21 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
22 without paying them for all the time they were under DEFENDANT's control. Specifically, as a
23 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
24 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-
25 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial
26 lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
27 minimum wage and overtime wages by regularly working without their time being accurately
28 recorded and without compensation at the applicable minimum wage and overtime rates.

1 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
2 CLASS Members for all time worked is evidenced by DEFENDANT's business records.

3 16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
4 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
5 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
6 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
7 other CALIFORNIA CLASS Members were required from time to time to perform work as
8 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
9 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
10 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
11 DEFENDANT required these employees to work ten (10) hours of work from time to time. The
12 nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does
13 not qualify for limited and narrowly construed "on-duty" meal period exception. When they were
14 provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from
15 time to time, required to remain on duty and on call. PLAINTIFF and other CALIFORNIA
16 CLASS Members therefore forfeited meal breaks without additional compensation and in
17 accordance with DEFENDANT's strict corporate policy and practice.

18 **B. Rest Period Violations**

19 17. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
20 CALIFORNIA CLASS members were also required from time to time to work in excess of four
21 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
22 requirements and DEFENDANT's inadequate staffing. Further, for the same reasons these
23 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
24 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
25 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
26 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
27 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
28 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or

1 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
2 hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's
3 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
4 time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

5 **C. Wage Statement Violations**

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

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

22 20. In addition, DEFENDANT, from time to time, failed to provide PLAINTIFF and
23 the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code §
24 226.

25 21. As a result, DEFENDANT issued PLAINTIFF and the other members of the
26 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
27 DEFENDANT's violations are knowing and intentional, were not isolated or due to an
28 unintentional payroll error due to clerical or inadvertent mistake.

1 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

2 22. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
3 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
4 CLASS for all hours worked.

5 23. During the CLASS PERIOD, from time-to-time DEFENDANT required
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift and post-shift
7 work all while off-the-clock. This resulted in PLAINTIFF and other members of the
8 CALIFORNIA CLASS to have to work while off-the-clock.

9 24. DEFENDANT directed and directly benefited from the uncompensated off-the-
10 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

11 25. DEFENDANT controlled the work schedules, duties, protocols, applications,
12 assignments, and employment conditions of PLAINTIFF and the other members of the
13 CALIFORNIA CLASS.

14 26. DEFENDANT was able to track the amount of time PLAINTIFF and the other
15 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
16 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
17 wages earned and owed for all the work they performed.

18 27. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
19 exempt employees, subject to the requirements of the California Labor Code.

20 28. DEFENDANT's policies and practices deprived PLAINTIFF and the other
21 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
22 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
23 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
24 hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

25 29. DEFENDANT knew or should have known that PLAINTIFF and the other
26 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

27 30. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
28 forfeited wages due them for all hours worked at DEFENDANT's direction, control and benefit

1 for the time spent working while off-the-clock. DEFENDANT's uniform policy and practice to
2 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked
3 in accordance with applicable law is evidenced by DEFENDANT's business records.

4 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
5 **Sick Pay**

6 31. From time-to-time during the CLASS PERIOD, DEFENDANT failed and
7 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
8 members for their overtime and double time hours worked, meal and rest period premiums, and
9 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
10 due them for working overtime without compensation at the correct overtime and double time
11 rates, meal and rest period premiums, and sick pay rates. DEFENDANT's uniform policy and
12 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
13 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
14 law is evidenced by DEFENDANT's business records.

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

19 33. The second component of PLAINTIFF's and other CALIFORNIA CLASS
20 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
21 PLAINTIFF and other CLASS Members incentive wages based on their performance for
22 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
23 basis with bonus compensation when the employees met the various performance goals set by
24 DEFENDANTS.

25 34. However, from time-to-time, when calculating the regular rate of pay, in those pay
26 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
27 time, paid meal and rest period premium payments, and/or sick pay, and earned this non-
28 discretionary bonus or incentive, DEFENDANTS failed to accurately include the non-

1 discretionary bonus compensation and/or incentive and/or shift differential paid as part of the
2 employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-
3 overtime hours worked. Management and supervisors described the incentive/bonus program to
4 potential and new employees as part of the compensation package. As a matter of law, the
5 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
6 must be included in the "regular rate of pay." The failure to do so has resulting in a systematic
7 underpayment of overtime and double time compensation, meal and rest period premiums, and
8 redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.
9 Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees
10 shall be calculated in the same manner as the regular rate of pay for the workweek in which the
11 non-exempt employee uses paid sick time, whether or not the employee actually works overtime
12 in that workweek. DEFENDANT's conduct, as articulated herein, by failing to include the
13 incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation
14 was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal.
15 Lab. Code Sections 201, 202, 203, and/or 204.

16 35. In violation of the applicable sections of the California Labor Code and the
17 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
18 matter of company policy, practice, and procedure, intentionally and knowingly failed to
19 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
20 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
21 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
22 of the correct overtime and double time compensation, meal and rest period premiums, and sick
23 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
24 unfair advantage over competitors who complied with the law. To the extent equitable tolling
25 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
26 CLASS PERIOD should be adjusted accordingly.

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1 **F. Violations for Untimely Payment of Wages**

2 36. Pursuant to California Labor Code section 204, PLAINTIFF and the
3 CALIFORNIA CLASS members were entitled to timely payment of wages during their
4 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
5 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
6 meal period premium wages, and rest period premium wages within permissible time period.

7 **G. Unlawful Rounding Violations**

8 37. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
9 an immutable timekeeping system to accurately record and pay PLAINTIFF and other
10 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
11 overtime hours. Specifically, DEFENDANT had in place an unlawful rounding policy and
12 practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
13 undercompensated for all of their time worked. As a result, DEFENDANT was able to and did in
14 fact unlawfully, and unilaterally round the time recorded in DEFENDANT'S timekeeping system
15 for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these
16 employees for all their time worked, including the applicable overtime compensation for overtime
17 worked. As a result, PLAINTIFF, and other CALIFORNIA CLASS Members, from time to time,
18 forfeited compensation for their time worked by working without their time being accurately
19 recorded and without compensation at the applicable overtime rates.

20 38. Further, the mutability of DEFENDANT'S timekeeping system and unlawful
21 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
22 being inaccurately recorded. As a result, from time to time, DEFENDANT'S unlawful rounding
23 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
24 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
25 duty meal break. Additionally, DEFENDANT'S unlawful rounding policy and practice caused
26 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
27 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

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1 **H. Timekeeping Manipulation**

2 39. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an
3 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
4 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
5 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
6 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally
7 alter the time recorded in DEFENDANT's timekeeping system for PLAINTIFF and other
8 members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours
9 worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed
10 rest break.

11 40. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
12 time-to-time, forfeited time worked by working without their time being accurately recorded and
13 without compensation at the applicable pay rates.

14 41. The mutability of the timekeeping system also allowed DEFENDANT to alter
15 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT's
16 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
17 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
18 were not at all times provided an off-duty meal break. This practice is a direct result of
19 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)
20 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

21 42. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
22 forfeited wages due them for all hours worked at DEFENDANT's direction, control and benefit
23 for the time the timekeeping system was inoperable. DEFENDANT's uniform policy and
24 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
25 hours worked in accordance with applicable law is evidenced by DEFENDANT's business
26 records.

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1 **I. Unlawful Deductions**

2 43. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
3 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
4 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT
5 violated Labor Code § 221.

6 44. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
7 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
8 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
9 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
10 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
11 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
12 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
13 DEFENDANT's policy caused PLAINTIFF to remain on-call and on-duty during what was
14 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
15 without additional compensation and in accordance with DEFENDANT'S strict corporate policy
16 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
17 comply with Cal. Lab. Code § 226. To date, DEFENDANT has not fully paid PLAINTIFF the
18 minimum, overtime and double time compensation still owed to her or any penalty wages owed
19 to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does
20 not exceed the sum or value of \$75,000.

21 **J. CLASS ACTION ALLEGATIONS**

22 45. PLAINTIFF brings the First through Seventh Causes of Action as a class action
23 pursuant to California Code of Civil Procedure § 382 on behalf of as all persons who are or
24 previously were employed by Defendant in California ("CALIFORNIA CLASS") during the
25 period beginning four years prior to the filing of the Action and ending on a date determined by
26 the Court ("CLASS PERIOD").

27 46. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
28 deprived of wages and penalties from unpaid wages earned and due, including but not limited to

1 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
2 illegal meal and rest period policies, failed compensate for off-the-clock work, failure to provide
3 accurate itemized wage statements, failure to maintain required records, and interest, statutory
4 and civil penalties, attorney's fees, costs, and expenses.

5 47. The members of the class are so numerous that joinder of all class members is
6 impractical.

7 48. Common questions of law and fact regarding DEFENDANT's conduct, including
8 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
9 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
10 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
11 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
12 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
13 minimum wage and overtime, exist as to all members of the class and predominate over any
14 questions affecting solely any individual members of the class. Among the questions of law and
15 fact common to the class are:

- 16 a. Whether DEFENDANT maintained legally compliant meal period policies and
17 practices;
- 18 b. Whether DEFENDANT maintained legally compliant rest period policies and
19 practices;
- 20 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
21 Members accurate premium payments for missed meal and rest periods;
- 22 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
23 Members accurate overtime wages;
- 24 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
25 Members at least minimum wage for all hours worked;
- 26 f. Whether DEFENDANT issued legally compliant wage statements;

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1 g. Whether DEFENDANT committed an act of unfair competition by systematically
2 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
3 CLASS for all time worked;

4 h. Whether DEFENDANT committed an act of unfair competition by systematically
5 failing to record all meal and rest breaks missed by PLAINTIFF and other
6 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
7 of this work, required employees to perform this work and permits or suffers to
8 permit this work;

9 i. Whether DEFENDANT committed an act of unfair competition in violation of the
10 UCL, by failing to provide the PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with the legally required meal and rest periods.

12 49. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
13 a result of DEFENDANT's conduct and actions alleged herein.

14 50. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
15 the same interests as the other members of the class.

16 51. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS Members.

18 52. PLAINTIFF retained able class counsel with extensive experience in class action
19 litigation.

20 53. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
21 interests of the other CALIFORNIA CLASS Members.

22 54. There is a strong community of interest among PLAINTIFF and the members of
23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
25 sustained.

26 55. The questions of law and fact common to the CALIFORNIA CLASS Members
27 predominate over any questions affecting only individual members, including legal and factual
28 issues relating to liability and damages.

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

- a. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- b. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

57. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

FIRST CAUSE OF ACTION

Unlawful Business Practices

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

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against DEFENDANT)

58. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First Amended Complaint.

59. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

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

5 Any person who engages, has engaged, or proposes to engage in unfair competition
6 may be enjoined in any court of competent jurisdiction. The court may make such
7 orders or judgments, including the appointment of a receiver, as may be necessary
8 to prevent the use or employment by any person of any practice which constitutes
9 unfair competition, as defined in this chapter, or as may be necessary to restore to
any person in interest any money or property, real or personal, which may have
been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
17203).

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

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

22 63. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
23 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
24 mandated meal and rest periods and the required amount of compensation for missed meal and
25 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
26 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
27 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
28 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

5 65. By the conduct alleged herein, DEFENDANT's practices were also unfair and
6 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
7 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
8 as required by Cal. Lab. Code §§ 226.7 and 512.

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

14 67. PLAINTIFF further demands on behalf of herself and on behalf of each
15 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
16 not timely provided as required by law.

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

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

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

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

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

17 **SECOND CAUSE OF ACTION**

18 **Failure To Pay Minimum Wages**

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

20 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against DEFENDANT)**

21 73. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
22 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First
23 Amended Complaint.

24 74. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
25 for DEFENDANT’S willful and intentional violations of the California Labor Code and the
26 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
27 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

3 76. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
5 the minimum so fixed is unlawful.

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

8 78. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
9 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
10 worked. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and
11 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
12 CALIFORNIA CLASS.

13 79. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
15 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
16 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

26 82. During the CLASS PERIOD, PLAINTIFF and the other members of the
27 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
28 failure to pay all earned wages.

1 83. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
2 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
3 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
4 suffered and will continue to suffer an economic injury in amounts which are presently unknown
5 to them, and which will be ascertained according to proof at trial.

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

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

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

Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

Failure To Pay Overtime Compensation

(Cal. Lab. Code §§ 510, 1194 and 1198)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

87. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First Amended Complaint.

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

89. 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.

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

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

92. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

1 93. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that failed to accurately record overtime worked by
4 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
5 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
6 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
7 (12) hours in a workday, and/or forty (40) hours in any workweek.

8 94. In committing these violations of the California Labor Code, DEFENDANT
9 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
10 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
11 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
12 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
13 regulations.

14 95. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
15 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
16 compensation for overtime worked.

17 96. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
18 from the overtime requirements of the law. None of these exemptions are applicable to the
19 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
20 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
21 agreement that would preclude the causes of action contained herein this First Amended
22 Complaint. Rather, PLAINTIFF brings this Action on behalf of herself, and the CALIFORNIA
23 CLASS based on DEFENDANT's violations of non- negotiable, non-waivable rights provided
24 by the State of California.

25 97. During the CLASS PERIOD, PLAINTIFF and the other members of the
26 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
27 constituting a failure to pay all earned wages.

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1 98. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
2 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
3 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
4 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
5 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
6 evidenced by DEFENDANT's business records and witnessed by employees.

7 99. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
8 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
9 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
10 CLASS have suffered and will continue to suffer an economic injury in amounts which are
11 presently unknown to them, and which will be ascertained according to proof at trial.

12 100. DEFENDANT knew or should have known that PLAINTIFF and the other
13 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
14 DEFENDANT systematically elected, either through intentional malfeasance or gross
15 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
16 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

26 102. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
27 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
28 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a

1 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
2 minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS
3 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
4 Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time
5 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
6 CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful,
7 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
8 Members are entitled to seek and recover statutory costs.

9 **FOURTH CAUSE OF ACTION**

10 **Failure To Provide Required Meal Periods**

11 **(Cal. Lab. Code §§ 226.7 & 512)**

12 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against DEFENDANT)**

13 103. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and
14 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First
15 Amended Complaint.

16 104. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
17 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
18 required by the applicable Wage Order and Labor Code. The nature of the work performed by
19 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
20 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
21 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
22 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
23 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
24 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
25 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
26 Members with a second off-duty meal period in some workdays in which these employees were
27 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
28

1 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
2 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

11 **FIFTH CAUSE OF ACTION**

12 **Failure To Provide Required Rest Periods**

13 **(Cal. Lab. Code §§ 226.7 & 512)**

14 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against DEFENDANT)**

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

18 108. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
19 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
20 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
21 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
22 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
23 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
24 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
25 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
26 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
27 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
28 PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required by the

1 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
3 periods is evidenced by DEFENDANT's business records.

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

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

12 **SIXTH CAUSE OF ACTION**

13 **Failure To Provide Accurate Itemized Statements**

14 **(Cal. Lab. Code §§ 226)**

15 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against DEFENDANT)**

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

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

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

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- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

113. From time to time during the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time, DEFENDANT failed to list the accurate name and address of the legal entity that was PLAINTIFF'S and other CALIFORNIA CLASS Members' employer. In addition, DEFENDANT, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty

dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

SEVENTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code §§ 203)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against DEFENDANT)

114. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this First Amended Complaint.

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

As used in this article:

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

116. 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."

117. 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.

118. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members' employment contract.

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

120. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated, and DEFENDANT has not tendered payment of wages to these employees who were underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as required by law.

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

EIGHTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

122. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this First Amended Complaint.

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

1 violations . . .” (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to
2 arbitration.

3 124. PLAINTIFF, and such persons that may be added from time to time who satisfy
4 the requirements and exhaust the administrative procedures under the Private Attorney General
5 Act, bring this individual and Representative Action on behalf of the State of California with
6 respect to herself and all non-exempt employees who worked for DEFENDANT in California
7 during the time period of June 28, 2022 until the present (the “AGGRIEVED EMPLOYEES”).

8 125. On June 28, 2023, PLAINTIFF gave written notice by certified mail to the Labor
9 and Workforce Development Agency (the “Agency”) and the employer of the specific provisions
10 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,
11 attached hereto and incorporated by this reference herein. The statutory waiting period for
12 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
13 Section 2699.3, PLAINTIFF may now commence an individual and representative civil action
14 under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
15 AGGRIEVED EMPLOYEES as herein defined.

16 126. The policies, acts, and practices heretofore described were and are an unlawful
17 business act or practice because DEFENDANT (a) failed to pay PLAINTIFF and AGGRIEVED
18 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and
19 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to pay PLAINTIFF
20 and AGGRIEVED EMPLOYEES at the correct regular rate of pay, (d) failed to pay PLAINTIFF
21 and AGGRIEVED EMPLOYEES for all time worked, and (e) failed to timely pay wages, all in
22 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
23 limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3,
24 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804,
25 and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a
26 result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
27 Labor Code Private Attorney General Act of 2004 as the representative of the State of California
28 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
- d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

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

violation of Cal. Lab. Code § 226

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

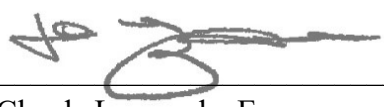
3. On behalf of PLAINTIFF as an individual and the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: December 27, 2023

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.

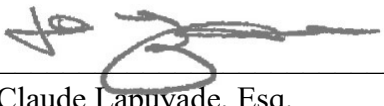
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: December 27, 2023

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.

Attorney for PLAINTIFF

EXHIBIT 1



Client # 55701

June 28, 2023

Via Online Filing to LWDA and Certified Mail to Defendants
Labor and Workforce Development Agency
Online Filing

LAKESHORE LEARNING MATERIALS, LLC

c/o Jennifer Centazzo
2695 East Dominguez Street
Carson, CA 90895

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 0625 6793 05

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff ALEXIS BARTRAM (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against LAKESHORE LEARNING MATERIALS, LLC (“Defendant”). Plaintiff was employed by Defendant in California from May of 2022 to June of 2023 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

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 California-compliant meal and rest breaks and 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, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all employees who worked for Defendant in California during the relevant claim period.

A true and correct 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, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees.

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.

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

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shani@zakaylaw.com

Attorneys for Plaintiff ALEXIS BARTRAM

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ALEXIS BARTRAM, an individual, on behalf
of herself and on behalf of all persons similarly
situated,

Plaintiff,

v.

LAKESHORE LEARNING MATERIALS,
LLC, a California limited liability company;
and DOES 1-50, Inclusive,

Defendant.

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 PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant LAKESHORE LEARNING MATERIALS, LLC (“Defendant”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California

2. Defendant is a developer and retailer of educational materials in the state of California.

3. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANT 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 DEFENDANT named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

4. The agents, servants, and/or employees of the DEFENDANT and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendant, and personally participated in the conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and

1 all DEFENDANT are jointly and severally liable to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
3 Defendant's agents, servants and/or employees.

4 5. DEFENDANT was PLAINTIFF's employer or persons acting on behalf of
5 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or
6 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
7 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
8 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
9 at all relevant times.

10 6. DEFENDANT was PLAINTIFF's employer or persons acting on behalf of
11 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
12 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
13 employee a wage less than the minimum fixed by California state law, and as such, are subject to
14 civil penalties for each underpaid employee.

15 7. PLAINTIFF was employed by DEFENDANT in California from May of 2022 to
16 June of 2023 and at all times was classified by DEFENDANT as a non-exempt employee, paid
17 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
18 minimum and overtime wages due for all time worked, and assigned to work at a Defendant
19 Lakeshore Learning facility.

20 8. PLAINTIFF brings this Class Action on behalf of herself and a California class,
21 defined as all persons who are or previously were employed by Defendant in California (the
22 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing
23 of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD").
24 The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is
25 under five million dollars (\$5,000,000.00).

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

1 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
2 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
3 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
4 other members of the CALIFORNIA CLASS who have been economically injured by
5 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
6 relief.

7 10. DEFENDANT's uniform policies and practices alleged herein were unlawful,
8 unfair, and deceptive business practices whereby DEFENDANT retained and continues to retain
9 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

15 **JURISDICTION AND VENUE**

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

20 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
21 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
22 the CALIFORNIA CLASS across California, including in this County, and committed the
23 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

24 **THE CONDUCT**

25 14. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
27 matter of company policy, practice and procedure, intentionally, knowingly and systematically
28 failed to provide legally compliant meal and rest periods, failed to accurately compensate

1 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
2 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
3 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
4 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
5 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
6 premiums at the regular rate, and failed to issue to PLAINTIFF and the members of the
7 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
8 applicable hourly rates in effect during the pay periods and the corresponding amount of time
9 worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to
10 purposefully avoid the accurate and full payment for all time worked as required by California
11 law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
12 who comply with the law. To the extent equitable tolling operates to toll claims by the
13 CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
14 accordingly.

15 **A. Meal Period Violations**

16 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
17 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
18 meaning the time during which an employee is subject to the control of an employer, including
19 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
20 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
21 without paying them for all the time they were under DEFENDANT's control. Specifically, as a
22 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
23 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-
24 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial
25 lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
26 minimum wage and overtime wages by regularly working without their time being accurately
27 recorded and without compensation at the applicable minimum wage and overtime rates.
28

1 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
2 CLASS Members for all time worked is evidenced by DEFENDANT's business records.

3 16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
4 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
5 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
6 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
7 other CALIFORNIA CLASS Members were required from time to time to perform work as
8 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
9 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
10 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
11 DEFENDANT required these employees to work ten (10) hours of work from time to time. The
12 nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does
13 not qualify for limited and narrowly construed "on-duty" meal period exception. When they were
14 provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from
15 time to time, required to remain on duty and on call. PLAINTIFF and other CALIFORNIA
16 CLASS Members therefore forfeited meal breaks without additional compensation and in
17 accordance with DEFENDANT's strict corporate policy and practice.

18 **B. Rest Period Violations**

19 17. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
20 CALIFORNIA CLASS members were also required from time to time to work in excess of four
21 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
22 requirements and DEFENDANT's inadequate staffing. Further, for the same reasons these
23 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
24 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
25 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
26 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
27 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
28 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or

1 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
2 hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's
3 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
4 time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

5 **C. Wage Statement Violations**

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

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

22 20. In addition, DEFENDANT, from time to time, failed to provide PLAINTIFF and
23 the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code §
24 226.

25 21. As a result, DEFENDANT issued PLAINTIFF and the other members of the
26 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
27 DEFENDANT's violations are knowing and intentional, were not isolated or due to an
28 unintentional payroll error due to clerical or inadvertent mistake.

D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

22. During the CLASS PERIOD, from time-to-time DEFENDANT failed and continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all hours worked.

23. During the CLASS PERIOD, from time-to-time DEFENDANT required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift and post-shift work all while off-the-clock. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

24. DEFENDANT directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

25. DEFENDANT controlled the work schedules, duties, protocols, applications, assignments, and employment conditions of PLAINTIFF and the other members of the CALIFORNIA CLASS.

26. DEFENDANT was able to track the amount of time PLAINTIFF and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for all the work they performed.

27. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt employees, subject to the requirements of the California Labor Code.

28. DEFENDANT's policies and practices deprived PLAINTIFF and the other members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

29. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

30. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for all hours worked at DEFENDANT's direction, control and benefit

1 for the time spent working while off-the-clock. DEFENDANT's uniform policy and practice to
2 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked
3 in accordance with applicable law is evidenced by DEFENDANT's business records.

4 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
5 **Sick Pay**

6 31. From time-to-time during the CLASS PERIOD, DEFENDANT failed and
7 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
8 members for their overtime and double time hours worked, meal and rest period premiums, and
9 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
10 due them for working overtime without compensation at the correct overtime and double time
11 rates, meal and rest period premiums, and sick pay rates. DEFENDANT's uniform policy and
12 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
13 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
14 law is evidenced by DEFENDANT's business records.

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

19 33. The second component of PLAINTIFF's and other CALIFORNIA CLASS
20 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
21 PLAINTIFF and other CLASS Members incentive wages based on their performance for
22 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
23 basis with bonus compensation when the employees met the various performance goals set by
24 DEFENDANTS.

25 34. However, from time-to-time, when calculating the regular rate of pay, in those pay
26 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
27 time, paid meal and rest period premium payments, and/or sick pay, and earned this non-
28 discretionary bonus or incentive, DEFENDANTS failed to accurately include the non-

1 discretionary bonus compensation and/or incentive and/or shift differential paid as part of the
2 employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-
3 overtime hours worked. Management and supervisors described the incentive/bonus program to
4 potential and new employees as part of the compensation package. As a matter of law, the
5 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
6 must be included in the "regular rate of pay." The failure to do so has resulting in a systematic
7 underpayment of overtime and double time compensation, meal and rest period premiums, and
8 redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.
9 Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees
10 shall be calculated in the same manner as the regular rate of pay for the workweek in which the
11 non-exempt employee uses paid sick time, whether or not the employee actually works overtime
12 in that workweek. DEFENDANT's conduct, as articulated herein, by failing to include the
13 incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation
14 was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal.
15 Lab. Code Sections 201, 202, 203, and/or 204.

16 35. In violation of the applicable sections of the California Labor Code and the
17 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
18 matter of company policy, practice, and procedure, intentionally and knowingly failed to
19 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
20 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
21 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
22 of the correct overtime and double time compensation, meal and rest period premiums, and sick
23 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
24 unfair advantage over competitors who complied with the law. To the extent equitable tolling
25 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
26 CLASS PERIOD should be adjusted accordingly.

27
28 ///

1 **F. Violations for Untimely Payment of Wages**

2 36. Pursuant to California Labor Code section 204, PLAINTIFF and the
3 CALIFORNIA CLASS members were entitled to timely payment of wages during their
4 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
5 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
6 meal period premium wages, and rest period premium wages within permissible time period.

7 **G. Unlawful Rounding Violations**

8 37. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
9 an immutable timekeeping system to accurately record and pay PLAINTIFF and other
10 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
11 overtime hours. Specifically, DEFENDANT had in place an unlawful rounding policy and
12 practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
13 undercompensated for all of their time worked. As a result, DEFENDANT was able to and did in
14 fact unlawfully, and unilaterally round the time recorded in DEFENDANT'S timekeeping system
15 for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these
16 employees for all their time worked, including the applicable overtime compensation for overtime
17 worked. As a result, PLAINTIFF, and other CALIFORNIA CLASS Members, from time to time,
18 forfeited compensation for their time worked by working without their time being accurately
19 recorded and without compensation at the applicable overtime rates.

20 38. Further, the mutability of DEFENDANT'S timekeeping system and unlawful
21 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
22 being inaccurately recorded. As a result, from time to time, DEFENDANT'S unlawful rounding
23 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
24 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
25 duty meal break. Additionally, DEFENDANT'S unlawful rounding policy and practice caused
26 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
27 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

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1 **H. Timekeeping Manipulation**

2 39. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an
3 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
4 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
5 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
6 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally
7 alter the time recorded in DEFENDANT's timekeeping system for PLAINTIFF and other
8 members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours
9 worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed
10 rest break.

11 40. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
12 time-to-time, forfeited time worked by working without their time being accurately recorded and
13 without compensation at the applicable pay rates.

14 41. The mutability of the timekeeping system also allowed DEFENDANT to alter
15 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT's
16 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
17 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
18 were not at all times provided an off-duty meal break. This practice is a direct result of
19 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)
20 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

21 42. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
22 forfeited wages due them for all hours worked at DEFENDANT's direction, control and benefit
23 for the time the timekeeping system was inoperable. DEFENDANT's uniform policy and
24 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
25 hours worked in accordance with applicable law is evidenced by DEFENDANT's business
26 records.

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1 **I. Unlawful Deductions**

2 43. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
3 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
4 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT
5 violated Labor Code § 221.

6 44. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
7 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
8 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
9 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
10 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
11 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
12 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
13 DEFENDANT's policy caused PLAINTIFF to remain on-call and on-duty during what was
14 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
15 without additional compensation and in accordance with DEFENDANT'S strict corporate policy
16 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
17 comply with Cal. Lab. Code § 226. To date, DEFENDANT has not fully paid PLAINTIFF the
18 minimum, overtime and double time compensation still owed to her or any penalty wages owed
19 to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does
20 not exceed the sum or value of \$75,000.

21 **J. CLASS ACTION ALLEGATIONS**

22 45. PLAINTIFF brings the First through Seventh Causes of Action as a class action
23 pursuant to California Code of Civil Procedure § 382 on behalf of as all persons who are or
24 previously were employed by Defendant in California ("CALIFORNIA CLASS") during the
25 period beginning four years prior to the filing of the Complaint and ending on a date determined
26 by the Court ("CLASS PERIOD").

27 46. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
28 deprived of wages and penalties from unpaid wages earned and due, including but not limited to

1 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
2 illegal meal and rest period policies, failed compensate for off-the-clock work, failure to provide
3 accurate itemized wage statements, failure to maintain required records, and interest, statutory
4 and civil penalties, attorney's fees, costs, and expenses.

5 47. The members of the class are so numerous that joinder of all class members is
6 impractical.

7 48. Common questions of law and fact regarding DEFENDANT's conduct, including
8 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
9 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
10 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
11 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
12 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
13 minimum wage and overtime, exist as to all members of the class and predominate over any
14 questions affecting solely any individual members of the class. Among the questions of law and
15 fact common to the class are:

- 16 a. Whether DEFENDANT maintained legally compliant meal period policies and
17 practices;
- 18 b. Whether DEFENDANT maintained legally compliant rest period policies and
19 practices;
- 20 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
21 Members accurate premium payments for missed meal and rest periods;
- 22 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
23 Members accurate overtime wages;
- 24 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
25 Members at least minimum wage for all hours worked;
- 26 f. Whether DEFENDANT issued legally compliant wage statements;

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- 1 g. Whether DEFENDANT committed an act of unfair competition by systematically
2 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
3 CLASS for all time worked;
- 4 h. Whether DEFENDANT committed an act of unfair competition by systematically
5 failing to record all meal and rest breaks missed by PLAINTIFF and other
6 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
7 of this work, required employees to perform this work and permits or suffers to
8 permit this work;
- 9 i. Whether DEFENDANT committed an act of unfair competition in violation of the
10 UCL, by failing to provide the PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with the legally required meal and rest periods.

12 49. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
13 a result of DEFENDANT's conduct and actions alleged herein.

14 50. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
15 the same interests as the other members of the class.

16 51. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS Members.

18 52. PLAINTIFF retained able class counsel with extensive experience in class action
19 litigation.

20 53. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
21 interests of the other CALIFORNIA CLASS Members.

22 54. There is a strong community of interest among PLAINTIFF and the members of
23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
25 sustained.

26 55. The questions of law and fact common to the CALIFORNIA CLASS Members
27 predominate over any questions affecting only individual members, including legal and factual
28 issues relating to liability and damages.

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

- a. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- b. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

57. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

FIRST CAUSE OF ACTION

Unlawful Business Practices

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

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against DEFENDANT)

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

59. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

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

5 Any person who engages, has engaged, or proposes to engage in unfair competition
6 may be enjoined in any court of competent jurisdiction. The court may make such
7 orders or judgments, including the appointment of a receiver, as may be necessary
8 to prevent the use or employment by any person of any practice which constitutes
9 unfair competition, as defined in this chapter, or as may be necessary to restore to
any person in interest any money or property, real or personal, which may have
been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
17203).

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

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

22 63. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
23 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
24 mandated meal and rest periods and the required amount of compensation for missed meal and
25 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
26 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
27 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
28 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

5 65. By the conduct alleged herein, DEFENDANT's practices were also unfair and
6 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
7 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
8 as required by Cal. Lab. Code §§ 226.7 and 512.

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

14 67. PLAINTIFF further demands on behalf of herself and on behalf of each
15 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
16 not timely provided as required by law.

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

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

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

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

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

17 **SECOND CAUSE OF ACTION**

18 **Failure To Pay Minimum Wages**

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

20 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against DEFENDANT)**

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

24 74. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
25 for DEFENDANT'S willful and intentional violations of the California Labor Code and the
26 Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately calculate
27 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

3 76. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
5 the minimum so fixed is unlawful.

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

8 78. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
9 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
10 worked. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and
11 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
12 CALIFORNIA CLASS.

13 79. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
15 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
16 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

26 82. During the CLASS PERIOD, PLAINTIFF and the other members of the
27 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
28 failure to pay all earned wages.

1 83. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
2 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
3 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
4 suffered and will continue to suffer an economic injury in amounts which are presently unknown
5 to them, and which will be ascertained according to proof at trial.

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

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

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

Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

Failure To Pay Overtime Compensation

(Cal. Lab. Code §§ 510, 1194 and 1198)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

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

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

89. 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.

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

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

92. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

1 93. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that failed to accurately record overtime worked by
4 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
5 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
6 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
7 (12) hours in a workday, and/or forty (40) hours in any workweek.

8 94. In committing these violations of the California Labor Code, DEFENDANT
9 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
10 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
11 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
12 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
13 regulations.

14 95. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
15 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
16 compensation for overtime worked.

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

25 97. During the CLASS PERIOD, PLAINTIFF and the other members of the
26 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
27 constituting a failure to pay all earned wages.

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1 98. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
2 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
3 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
4 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
5 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
6 evidenced by DEFENDANT's business records and witnessed by employees.

7 99. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
8 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
9 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
10 CLASS have suffered and will continue to suffer an economic injury in amounts which are
11 presently unknown to them, and which will be ascertained according to proof at trial.

12 100. DEFENDANT knew or should have known that PLAINTIFF and the other
13 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
14 DEFENDANT systematically elected, either through intentional malfeasance or gross
15 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
16 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

26 102. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
27 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
28 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a

1 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
2 minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS
3 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
4 Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time
5 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
6 CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful,
7 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
8 Members are entitled to seek and recover statutory costs.

9 **FOURTH CAUSE OF ACTION**

10 **Failure To Provide Required Meal Periods**

11 **(Cal. Lab. Code §§ 226.7 & 512)**

12 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against DEFENDANT)**

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

16 104. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
17 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
18 required by the applicable Wage Order and Labor Code. The nature of the work performed by
19 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
20 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
21 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
22 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
23 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
24 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
25 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
26 Members with a second off-duty meal period in some workdays in which these employees were
27 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
28

1 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
2 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

11 **FIFTH CAUSE OF ACTION**

12 **Failure To Provide Required Rest Periods**

13 **(Cal. Lab. Code §§ 226.7 & 512)**

14 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against DEFENDANT)**

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

18 108. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
19 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
20 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
21 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
22 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
23 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
24 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
25 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
26 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
27 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
28 PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required by the

1 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
3 periods is evidenced by DEFENDANT's business records.

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

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

12 **SIXTH CAUSE OF ACTION**

13 **Failure To Provide Accurate Itemized Statements**

14 **(Cal. Lab. Code §§ 226)**

15 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against DEFENDANT)**

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

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

- 20 a. Gross wages earned,
- 21 b. (2) total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment of
23 overtime under subdivision (a) of Section 515 or any applicable order of the
24 Industrial Welfare Commission,
- 25 c. the number of piece-rate units earned and any applicable piece rate if the employee
26 is paid on a piece-rate basis,
- 27 d. all deductions, provided that all deductions made on written orders of the employee
28 may be aggregated and shown as one item,

- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

113. From time to time during the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time, DEFENDANT failed to list the accurate name and address of the legal entity that was PLAINTIFF'S and other CALIFORNIA CLASS Members' employer. In addition, DEFENDANT, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an

1 amount according to proof at the time of trial (but in no event more than four thousand dollars
2 (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

3 **SEVENTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code §§ 203)**

6 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against DEFENDANT)**

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

10 115. Cal. Lab. Code § 200 provides that:

11 As used in this article:

- 12 (d) "Wages" includes all amounts for labor performed by employees of every
13 description, whether the amount is fixed or ascertained by the standard of time,
14 task, piece, Commission basis, or other method of calculation.
15 (e) "Labor" includes labor, work, or service whether rendered or performed under
16 contract, subcontract, partnership, station plan, or other agreement if the to be
17 paid for is performed personally by the person demanding payment.

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

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

22 If an employee not having a written contract for a definite period quits his or her
23 employment, his or her wages shall become due and payable not later than 72 hours
24 thereafter, unless the employee has given 72 hours previous notice of his or her intention
25 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
26 Notwithstanding any other provision of law, an employee who quits without providing a
27 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
28 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.

118. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
Members' employment contract.

119. 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 from the due date thereof at

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

3 120. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
4 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
5 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
6 required by law.

7 121. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
8 members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFF demand
9 up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all
10 employees who terminated employment during the CLASS PERIOD and demand an accounting
11 and payment of all wages due, plus interest and statutory costs as allowed by law.

12 **EIGHTH CAUSE OF ACTION**

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

14 **(Cal. Lab. Code §§2698 et seq.)**

15 **(Alleged by PLAINTIFF against DEFENDANT)**

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

18 123. 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
20 the 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
26 violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to
27 arbitration.

28 124. PLAINTIFF, and such persons that may be added from time to time who satisfy
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 himself
2 and all employees who worked for Defendant in California during the time period of November
3 9, 2021 until the present (the "AGGRIEVED EMPLOYEES").

4 125. On June 28, 2023, PLAINTIFF gave written notice by certified mail to the Labor
5 and Workforce Development Agency (the "Agency") and the employer of the specific
6 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
7 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
8 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
9 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
10 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
11 EMPLOYEES as herein defined.

12 126. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES
14 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
15 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct
16 regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e)
17 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor
18 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
19 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,
20 1197.14, 1198, 1199, 2802, 2804, and the applicable Industrial Wage Order(s), and thereby gives
21 rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
22 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
23 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
24 the other AGGRIEVED EMPLOYEES.

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PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
- d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

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

violation of Cal. Lab. Code § 226

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

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004;

4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: June 28, 2023

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay, Esq.

Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: June 28, 2023

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay, Esq.

Attorney for PLAINTIFF