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Electronically FILED by  
 Superior Court of California,  
 County of Los Angeles  
 3/18/2025 5:01 PM  
 David W. Slayton,  
 Executive Officer/Clerk of Court,  
 By P. Perez, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MARLIN MEJIA, BASILIA KONDE, and  
 GULALAY OMARZAY, individuals, on  
 behalf of themselves and on behalf of all  
 persons similarly situated,

Plaintiffs,

v.

CHICO'S FAS, INC., a Corporation; and  
 DOES 1 through 50, inclusive,

Defendants.

Case No. 23TRCV03862

**FIRST AMENDED CLASS AND  
 REPRESENTATIVE 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;
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 Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802;
8. Failure to Pay Sick Pay Wages in Violation of Cal. Lab Code §§201-203, 233, 246,
9. Failure to Maintain Accurate Records In Violation of Cal. Lab Code §§ 226, 1174,

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1174.5 and IWC Wage Order; and  
10. Civil Penalties Pursuant to Labor Code  
§ 2699, *et seq.* for violations of Labor  
Code §§ 201, 202, 203, 204 *et seq.*, 210,  
218, 221, 226, 226(a), 226.7, 227.3, 246,  
510, 512, 558(a)(1)(2), 1174, 1174.5,  
1194, 1197, 1197.1, 1198, 2802,  
California Code of Regulations, Title 8,  
Section 11040, Subdivision 5(A)-(B),  
California Code of Regulations, Title 8,  
Section 1 1070(14) (Failure to Provide  
Seating), and the applicable Wage  
Order(s).

**DEMAND FOR A JURY TRIAL**

1 Marlin Mejia, Basilia Konde, and Gulalay Omarzay (“PLAINTIFFS”), individuals, on  
2 behalf of themselves and all other similarly situated current and former employees allege on  
3 information and belief, except for their own acts and knowledge which are based on personal  
4 knowledge, the following.

5 **THE PARTIES**

6 1. Chico’s FAS, Inc. (“DEFENDANT”) is a Corporation that at all relevant times  
7 mentioned herein conducted and continues to conduct substantial business in California.

8 2. DEFENDANT owns and operates clothing stores in California.

9 3. Plaintiff Mejia was employed by DEFENDANT in California from March 2023 to  
10 February 2024. Plaintiff Basilia Konde was employed from July 2023 to February 2024 by  
11 DEFENDANT in California. Plaintiff Gulalay Omarzay has been employed by DEFENDANT in  
12 California since July 2023. PLAINTIFFS have been at all times classified by DEFENDANT as  
13 non-exempt employees, paid on an hourly basis, and entitled to the legally required meal and rest  
14 periods and payment of minimum and overtime wages due for all time worked.

15 4. PLAINTIFFS bring this Class Action on behalf of themselves and a California class,  
16 defined as all individuals who are or previously were employed by DEFENDANT as non-exempt  
17 employees in California, and any of its subsidiaries (the “CALIFORNIA CLASS”) during the  
18 period of January 1, 2022 to December 31, 2024 (the “CALIFORNIA CLASS PERIOD”). The  
19 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five  
20 million dollars (\$5,000,000.00).

21 5. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA  
22 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
23 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which failed  
24 to lawfully compensate these employees. DEFENDANT’s policy and practice alleged herein was  
25 an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues  
26 to retain wages due PLAINTIFFS and the other members of the CALIFORNIA CLASS.  
27 PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an injunction enjoining  
28 such conduct by DEFENDANT in the future, relief for the named PLAINTIFFS and the other

1 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's  
2 past and current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

### 20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
22 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,  
23 meaning the time during which an employee is subject to the control of an employer, including all  
24 the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFFS and  
25 CALIFORNIA CLASS Members to work without paying them for all the time they are under  
26 DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFFS to work  
27 while clocked out during what is supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS  
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1 were from time to time interrupted by work assignments while clocked out for what should have  
2 been PLAINTIFFS' off-duty meal break. DEFENDANT, as a matter of established company  
3 policy and procedure, administers a uniform practice of rounding the actual time worked and  
4 recorded by PLAINTIFFS and CALIFORNIA CLASS Members, always to the benefit of  
5 DEFENDANT, so that during the course of their employment, PLAINTIFFS and CALIFORNIA  
6 CLASS Members are paid less than they would have been paid had they been paid for actual  
7 recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the practice of  
8 requiring PLAINTIFFS and CALIFORNIA CLASS Members to perform work off the clock in that  
9 DEFENDANT, as a condition of employment, required these employees to submit to mandatory  
10 temperature checks and symptom questionnaires for COVID-19 screening prior to clocking into  
11 DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFFS and other  
12 CALIFORNIA CLASS Members forfeit minimum wage, overtime wage compensation, and off-  
13 duty meal breaks by working without their time being correctly recorded and without compensation  
14 at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and other  
15 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's business  
16 records.

17 9. State and federal law provides that employees must be paid overtime and meal and  
18 rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other  
19 CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay that is tied  
20 to specific elements of an employee's performance.

21 10. The second component of PLAINTIFFS' and other CALIFORNIA CLASS  
22 Members' compensation is DEFENDANT's non-discretionary incentive program that paid  
23 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their  
24 performance for DEFENDANT. The non-discretionary incentive program provided all employees  
25 paid on an hourly basis with incentive compensation when the employees met the various  
26 performance goals set by DEFENDANT. However, when calculating the regular rate of pay in  
27 order to pay overtime and meal and rest break premiums to PLAINTIFFS and other CALIFORNIA  
28 CLASS Members, DEFENDANT failed to include the incentive compensation as part of the

1 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest break  
2 premium pay. Management and supervisors described the incentive program to potential and new  
3 employees as part of the compensation package. As a matter of law, the incentive compensation  
4 received by PLAINTIFFS and other CALIFORNIA CLASS Members must be included in the  
5 "regular rate of pay." The failure to do so has resulted in a underpayment of overtime compensation  
6 and meal and rest break premiums to PLAINTIFFS and other CALIFORNIA CLASS Members by  
7 DEFENDANT.

8 11. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA  
9 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks  
10 and were not fully relieved of duty for their meal periods. PLAINTIFFS and other CALIFORNIA  
11 CLASS Members were required from time to time to perform work as ordered by DEFENDANT  
12 for more than five (5) hours during some shifts without receiving a meal break. Further,  
13 DEFENDANT from time to time failed to provide PLAINTIFFS and CALIFORNIA CLASS  
14 Members with a second off-duty meal period for some workdays in which these employees were  
15 required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged in the  
16 practice of rounding the meal period times to avoid paying penalties to PLAINTIFFS and other  
17 CALIFORNIA CLASS Members. PLAINTIFFS and other members of the CALIFORNIA CLASS  
18 therefore forfeit meal breaks without additional compensation and in accordance with  
19 DEFENDANT's corporate policy and practice.

20 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other  
21 CALIFORNIA CLASS Members were also required from time to time to work in excess of four  
22 (4) hours without being provided ten (10) minute rest periods. Further, these employees were  
23 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two  
24 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for  
25 some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and  
26 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from  
27 time to time. PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided  
28 with one hour wages in lieu thereof. Additionally, the applicable California Wage Order requires

1 employers to provide employees with off-duty rest periods, which the California Supreme Court  
2 defined as time during which an employee is relieved from all work related duties and free from  
3 employer control. In so doing, the Court held that the requirement under California law that  
4 employers authorize and permit all employees to take rest period means that employers must relieve  
5 employees of all duties and relinquish control over how employees spend their time which includes  
6 control over the locations where employees may take their rest period. Employers cannot impose  
7 controls that prohibit an employee from taking a brief walk - five minutes out, five minutes back.  
8 Here, DEFENDANT's policy restricted PLAINTIFFS and other CALIFORNIA CLASS Members  
9 from unconstrained walks and is unlawful based on DEFENDANT's rule which states  
10 PLAINTIFFS and other CALIFORNIA CLASS Members cannot leave the work premises during  
11 their rest period.

12 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to maintain  
13 accurate and complete records, including but not limited to, by failing to keep time records showing  
14 when PLAINTIFFS and other CALIFORNIA CLASS Members began and ended each shift and  
15 meal period, in violation of Cal. Lab. Code §§ 226, 1174, 1174.5, and Industrial Welfare  
16 Commission Wage Orders.

17 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately  
18 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount of  
19 time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,  
20 DEFENDANT was required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for  
21 all time worked, meaning the time during which an employee was subject to the control of an  
22 employer, including all the time the employee was permitted or suffered to permit this work.  
23 DEFENDANT required these employees to work off the clock without paying them for all the time  
24 they were under DEFENDANT's control. As such, DEFENDANT knew or should have known  
25 that PLAINTIFFS and the other members of the CALIFORNIA CLASS were under compensated  
26 for all time worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeited  
27 time worked by working without their time being accurately recorded and without compensation at  
28 the applicable minimum wage and overtime wage rates. To the extent that the time worked off the

1 clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum wages  
2 for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

3 15. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other  
4 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed  
5 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides  
6 that every employer shall furnish each of his or her employees with an accurate itemized wage  
7 statement in writing showing, among other things, gross wages earned and all applicable hourly  
8 rates in effect during the pay period and the corresponding amount of time worked at each hourly  
9 rate. PLAINTIFFS and CALIFORNIA CLASS Members were paid on an hourly basis. As such,  
10 the wage statements should reflect all applicable hourly rates during the pay period and the total  
11 hours worked, and the applicable pay period in which the wages were earned pursuant to California  
12 Labor Code Section 226(a). The wage statements DEFENDANT provided to PLAINTIFFS and  
13 other CALIFORNIA CLASS Members failed to identify such information. More specifically, the  
14 wage statements failed to identify the accurate total hours worked each pay period. When the hours  
15 shown on the wage statements were added up, they did not equal the actual total hours worked  
16 during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed  
17 above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement  
18 that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT  
19 from time to time provided PLAINTIFFS and the other members of the CALIFORNIA CLASS  
20 with wage statements which violated Cal. Lab. Code § 226.

21 16. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed  
22 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are  
23 paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab.  
24 Code § 210 provides:

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

1           17.     DEFENDANT from time to time failed to pay PLAINTIFFS and members of the  
2 CALIFORNIA CLASS Members within seven (7) days of the close of the payroll period in  
3 accordance with Cal. Lab. Code § 204(d), including but not limited to for the “Hourly” regular  
4 wage payments.

5           18.     DEFENDANT underpaid reporting time pay to PLAINTIFFS and other  
6 CALIFORNIA CLASS Members by failing to pay for reporting time in violation of Cal. Code  
7 Regs., tit. 8 § 11040, subd. 5(A) and 5(B). Specifically, when DEFENDANT required  
8 PLAINTIFFS and other CALIFORNIA CLASS Members to report for work, but “furnished less  
9 than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit.  
10 8 § 11040, subd. 5(A) by failing to pay PLAINTIFFS and other CALIFORNIA CLASS Members  
11 for at least two (2) hours’ worth of work and failed to pay reporting time pay at their regular rate  
12 of pay. In addition, when DEFENDANT required PLAINTIFFS and other CALIFORNIA CLASS  
13 Members to respond to and engage in additional work, this resulted in a second reporting for work  
14 in a single workday, and DEFENDANT failed to pay these employees reporting time pay at their  
15 regular rate of pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B).

16           19.     DEFENDANT underpaid sick pay wages to PLAINTIFFS and other CALIFORNIA  
17 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.  
18 Code Section 246. Specifically, PLAINTIFFS and other non-exempt employees earn non-  
19 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT  
20 underpaid sick pay to PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates  
21 of pay.

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

26           21.     DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the  
27 regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely earned non-  
28 discretionary incentive wages which increased their regular rate of pay. However, when sick pay

1 was paid, it was paid at the base rate of pay for PLAINTIFFS and members of the CALIFORNIA  
2 CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code  
3 Section 246.

4 22. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS and  
5 other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time  
6 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and believe  
7 and based thereon allege that such failure to pay sick pay at regular rate was willful, such that  
8 PLAINTIFFS and members of the CALIFORNIA CLASS whose employment has separated are  
9 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

10 23. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to  
11 collect or receive from an employee any part of wages theretofore paid by said employer to said  
12 employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and other  
13 CALIFORNIA CLASS Members, made unlawful deductions from compensation payable to  
14 PLAINTIFFS and CALIFORNIA CLASS Members, failed to disclose all aspects of the deductions  
15 from compensation payable to PLAINTIFFS and CALIFORNIA CLASS Members, and thereby  
16 failed to pay these employees all wages due at each applicable pay period and upon termination.  
17 PLAINTIFFS and members of the CALIFORNIA CLASS seek recovery of all illegal deductions  
18 from wages according to proof, related penalties, interest, attorney fees and costs.

19 24. DEFENDANT intentionally and knowingly failed to reimburse and indemnify  
20 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses  
21 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of  
22 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802,  
23 employers are required to indemnify employees for all expenses incurred in the course and scope  
24 of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify  
25 his or her employee for all necessary expenditures or losses incurred by the employee in direct  
26 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the  
27 employer, even though unlawful, unless the employee, at the time of obeying the directions,  
28 believed them to be unlawful."

1           25.     In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS  
2 Members as a business expense, were required by DEFENDANT to use their own personal cellular  
3 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are  
4 not reimbursed or indemnified by DEFENDANT for the cost associated with the use of their  
5 personal cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFFS and other  
6 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cellular  
7 phones. As a result, in the course of their employment with DEFENDANT, PLAINTIFFS and  
8 other members of the CALIFORNIA CLASS incurred unreimbursed business expenses which  
9 included, but were not limited to, costs related to the use of their personal cellular phones all on  
10 behalf of and for the benefit of DEFENDANT.

11           26.     In violation of the applicable sections of the California Labor Code and the  
12 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,  
13 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly  
14 and systematically failed to provide PLAINTIFFS and the other Aggrieved Employees suitable  
15 seating when the nature of these employees' work reasonably permitted sitting.

16           27.     DEFENDANT knew or should have known that PLAINTIFFS and other Aggrieved  
17 Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with  
18 the performance of their duties, and that DEFENDANT did not provide suitable seating and/or did  
19 not allow them to sit when it did not interfere with the performance of their duties.

20           28.     By reason of this conduct applicable to PLAINTIFFS and all Aggrieved Employees,  
21 DEFENDANT violated California Labor Code Section 1198 and California Code of Regulations,  
22 Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order 4-2001, Section 14 by failing  
23 to provide suitable seats. PLAINTIFFS seek penalties on behalf of PLAINTIFFS and other  
24 Aggrieved Employees as provided herein. Providing suitable seating is the DEFENDANT's  
25 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden,  
26 DEFENDANT violated the California Labor Code and regulations promulgated thereunder as  
27 herein alleged.

28           29.     Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally

1 required off-duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage Order  
2 and Labor Code and failed to pay PLAINTIFFS all minimum and overtime wages due to  
3 PLAINTIFFS. DEFENDANT did not have a policy or practice which provided timely off-duty  
4 meal and rest breaks to PLAINTIFFS and also failed to compensate PLAINTIFFS for  
5 PLAINTIFFS' missed meal and rest breaks. The nature of the work performed by the PLAINTIFFS  
6 did not prevent PLAINTIFFS from being relieved of all of PLAINTIFFS' duties for the legally  
7 required off-duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFFS with  
8 the legally required meal periods is evidenced by DEFENDANT's business records. The amount  
9 in controversy for PLAINTIFFS individually does not exceed the sum or value of \$75,000.

#### 10 **JURISDICTION AND VENUE**

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

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

#### 20 **THE CALIFORNIA CLASS**

21 32. PLAINTIFFS brings the First Cause of Action for Unfair, Unlawful and Deceptive  
22 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
23 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
24 individuals who are or previously were employed by DEFENDANT in California, including any  
25 employees staffed with DEFENDANT by a third party, and classified as non-exempt employees  
26 (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the  
27 filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA  
28 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS

1 Members is under five million dollars (\$5,000,000.00).

2 33. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS  
3 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

4 34. DEFENDANT, as a matter of company policy, practice and procedure, and in  
5 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
6 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
7 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks  
8 missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though DEFENDANT  
9 enjoyed the benefit of this work, required employees to perform this work and permits or suffers to  
10 permit this work.

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

20 36. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA  
21 CLASS Members is impracticable.

22 37. DEFENDANT violated the rights of the CALIFORNIA CLASS under California  
23 law by:

- 24 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.  
25 Code §§ 17200, *et seq.* (the “UCL”), by unlawfully, unfairly and/or  
26 deceptively having in place company policies, practices and procedures that  
27 failed to record and pay PLAINTIFFS and the other members of the  
28 CALIFORNIA CLASS for all time worked, including minimum wages

1 owed and overtime wages owed for work performed by these employees;  
2 and,

- 3 (b) Committing an act of unfair competition in violation of the UCL, by failing  
4 to provide the PLAINTIFFS and the other members of the CALIFORNIA  
5 CLASS with the legally required meal and rest periods.

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

- 8 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that  
9 the joinder of all such persons is impracticable and the disposition of their  
10 claims as a class will benefit the parties and the Court;
- 11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues  
12 that are raised in this Complaint are common to the CALIFORNIA CLASS  
13 will apply to every member of the CALIFORNIA CLASS;
- 14 (c) The claims of the representative PLAINTIFFS are typical of the claims of  
15 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other  
16 members of the CALIFORNIA CLASS, was classified as a non-exempt  
17 employee paid on an hourly basis who was subjected to the DEFENDANT's  
18 deceptive practice and policy which failed to provide the legally required  
19 meal and rest periods to the CALIFORNIA CLASS and thereby underpaid  
20 compensation to PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFFS  
21 sustained economic injury as a result of DEFENDANT's employment  
22 practices. PLAINTIFFS and the members of the CALIFORNIA CLASS  
23 were and are similarly or identically harmed by the same unlawful, deceptive  
24 and unfair misconduct engaged in by DEFENDANT; and,
- 25 (d) The representative PLAINTIFFS will fairly and adequately represent and  
26 protect the interest of the CALIFORNIA CLASS, and has retained counsel  
27 who are competent and experienced in Class Action litigation. There are no  
28 material conflicts between the claims of the representative PLAINTIFFS and

1 the members of the CALIFORNIA CLASS that would make class  
2 certification inappropriate. Counsel for the CALIFORNIA CLASS will  
3 vigorously assert the claims of all CALIFORNIA CLASS Members.

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

6 (a) Without class certification and determination of declaratory, injunctive,  
7 statutory and other legal questions within the class format, prosecution of  
8 separate actions by individual members of the CALIFORNIA CLASS will  
9 create the risk of:

10 i) Inconsistent or varying adjudications with respect to individual  
11 members of the CALIFORNIA CLASS which would establish  
12 incompatible standards of conduct for the parties opposing the  
13 CALIFORNIA CLASS; and/or,

14 ii) Adjudication with respect to individual members of the  
15 CALIFORNIA CLASS which would as a practical matter be  
16 dispositive of interests of the other members not party to the  
17 adjudication or substantially impair or impede their ability to protect  
18 their interests.

19 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act  
20 on grounds generally applicable to the CALIFORNIA CLASS, making  
21 appropriate class-wide relief with respect to the CALIFORNIA CLASS as a  
22 whole in that DEFENDANT failed to pay all wages due to members of the  
23 CALIFORNIA CLASS as required by law;

24 i) With respect to the First Cause of Action, the final relief on behalf of  
25 the CALIFORNIA CLASS sought does not relate exclusively to  
26 restitution because through this claim PLAINTIFFS seeks  
27 declaratory relief holding that the DEFENDANT's policy and  
28 practices constitute unfair competition, along with declaratory relief,

1 injunctive relief, and incidental equitable relief as may be necessary  
2 to prevent and remedy the conduct declared to constitute unfair  
3 competition;

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

10 i) The interests of the members of the CALIFORNIA CLASS in  
11 individually controlling the prosecution or defense of separate  
12 actions in that the substantial expense of individual actions will be  
13 avoided to recover the relatively small amount of economic losses  
14 sustained by the individual CALIFORNIA CLASS Members when  
15 compared to the substantial expense and burden of individual  
16 prosecution of this litigation;

17 ii) Class certification will obviate the need for unduly duplicative  
18 litigation that would create the risk of:

19 A. Inconsistent or varying adjudications with respect to  
20 individual members of the CALIFORNIA CLASS, which  
21 would establish incompatible standards of conduct for the  
22 DEFENDANT; and/or,

23 B. Adjudications with respect to individual members of the  
24 CALIFORNIA CLASS would as a practical matter be  
25 dispositive of the interests of the other members not parties  
26 to the adjudication or substantially impair or impede their  
27 ability to protect their interests;

28 iii) In the context of wage litigation because a substantial number of

1 individual CALIFORNIA CLASS Members will avoid asserting  
2 their legal rights out of fear of retaliation by DEFENDANT, which  
3 may adversely affect an individual's job with DEFENDANT or with  
4 a subsequent employer, the Class Action is the only means to assert  
5 their claims through a representative; and,

6 iv) A class action is superior to other available methods for the fair and  
7 efficient adjudication of this litigation because class treatment will  
8 obviate the need for unduly and unnecessary duplicative litigation  
9 that is likely to result in the absence of certification of this action  
10 pursuant to Cal. Code of Civ. Proc. § 382.

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

13 (a) The questions of law and fact common to the CALIFORNIA CLASS  
14 predominate over any question affecting only individual CALIFORNIA  
15 CLASS Members because the DEFENDANT's employment practices are  
16 applied with respect to the CALIFORNIA CLASS;

17 (b) A Class Action is superior to any other available method for the fair and  
18 efficient adjudication of the claims of the members of the CALIFORNIA  
19 CLASS because in the context of employment litigation a substantial  
20 number of individual CALIFORNIA CLASS Members will avoid asserting  
21 their rights individually out of fear of retaliation or adverse impact on their  
22 employment;

23 (c) The members of the CALIFORNIA CLASS are so numerous that it is  
24 impractical to bring all members of the CALIFORNIA CLASS before the  
25 Court;

26 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be  
27 able to obtain effective and economic legal redress unless the action is  
28 maintained as a Class Action;

- 1 (e) There is a community of interest in obtaining appropriate legal and equitable  
2 relief for the acts of unfair competition, statutory violations and other  
3 improprieties, and in obtaining adequate compensation for the damages and  
4 injuries which DEFENDANT's actions have inflicted upon the  
5 CALIFORNIA CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of  
7 DEFENDANT are sufficient to adequately compensate the members of the  
8 CALIFORNIA CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable  
10 to the CALIFORNIA CLASS, thereby making final class-wide relief  
11 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 12 (h) The members of the CALIFORNIA CLASS are readily ascertainable from  
13 the business records of DEFENDANT; and,
- 14 (i) Class treatment provides manageable judicial treatment calculated to bring  
15 a efficient and rapid conclusion to all litigation of all wage and hour related  
16 claims arising out of the conduct of DEFENDANT as to the members of the  
17 CALIFORNIA CLASS.

18 41. DEFENDANT maintains records from which the Court can ascertain and identify  
19 by job title each of DEFENDANT's employees who have been intentionally subjected to  
20 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFFS will  
21 seek leave to amend the Complaint to include any additional job titles of similarly situated  
22 employees when they have been identified.

23 **THE CALIFORNIA CLASS**

24 42. PLAINTIFFS further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and  
25 Eighth causes Action on behalf of a California class, defined as all members of the CALIFORNIA  
26 CLASS who are or previously were employed by DEFENDANT in California, and any of its  
27 subsidiaries (the "CALIFORNIA CLASS") during the period of January 1, 2022 to December 31,  
28 2024 (the "CALIFORNIA CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The

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

3 43. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare  
4 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law,  
5 intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to  
6 correctly calculate compensation for the time worked by PLAINTIFFS and the other members of  
7 the CALIFORNIA CLASS and reporting time wages owed to these employees, even though  
8 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and  
9 permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA CLASS  
10 Members wages to which these employees are entitled in order to unfairly cheat the competition  
11 and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
12 CLASS against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

13 44. DEFENDANT maintains records from which the Court can ascertain and identify  
14 by name and job title, each of DEFENDANT’s employees who have been intentionally subjected  
15 to DEFENDANT’s company policy, practices and procedures as herein alleged. PLAINTIFFS will  
16 seek leave to amend the complaint to include any additional job titles of similarly situated  
17 employees when they have been identified.

18 45. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA  
19 CLASS Members is impracticable.

20 46. Common questions of law and fact exist as to members of the CALIFORNIA  
21 CLASS, including, but not limited, to the following:

- 22 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay  
23 compensation due to members of the CALIFORNIA CLASS for missed  
24 meal and rest breaks in violation of the California Labor Code and California  
25 regulations and the applicable California Wage Order;
- 26 (b) Whether DEFENDANT failed to maintain accurate records and failed to  
27 provide the PLAINTIFFS and the other members of the CALIFORNIA  
28 CLASS with accurate itemized wage statements;

- 1 (c) Whether DEFENDANT has engaged in unfair competition by the  
2 above-listed conduct;
- 3 (d) The proper measure of damages and penalties owed to the members of the  
4 CALIFORNIA CLASS; and,
- 5 (e) Whether DEFENDANT's conduct was willful.

6 47. DEFENDANT violated the rights of the CALIFORNIA CLASS under California  
7 law by:

- 8 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFFS  
9 and the members of the CALIFORNIA CLASS all wages due for overtime  
10 worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code  
11 § 1194;
- 12 (b) Violating Cal. Lab. Code §§ 226, 1174, 1174.5 and Industrial Welfare  
13 Commission Wage Orders, by failing to maintain accurate and complete  
14 records, including but not limited to, by failing to keep time records showing  
15 when PLAINTIFFS and other CALIFORNIA CLASS Members began and  
16 ended each shift and meal period;
- 17 (c) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to  
18 accurately pay PLAINTIFFS and the members of the CALIFORNIA  
19 CLASS the correct minimum wage pay for which DEFENDANT is liable  
20 pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 21 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the  
22 members of the CALIFORNIA CLASS with an accurate itemized statement  
23 in writing showing the corresponding correct amount of wages earned by the  
24 employee;
- 25 (e) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide  
26 PLAINTIFFS and the other members of the CALIFORNIA CLASS with all  
27 legally required off-duty, uninterrupted thirty (30) minute meal breaks and  
28 the legally required off-duty rest breaks;

- 1 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when  
2 an employee is discharged or quits from employment, the employer must  
3 pay the employee all wages due without abatement, by failing to tender full  
4 payment and/or restitution of wages owed or in the manner required by  
5 California law to the members of the CALIFORNIA CLASS who have  
6 terminated their employment;
- 7 (g) Violating Cal. Code Regs., tit. 8 § 11040, subd. 5(A)-(B) by requiring  
8 PLAINTIFFS and the other members of the CALIFORNIA CLASS to report  
9 to work but failing to pay for at least two (2) hours' worth of work at their  
10 regular rate of pay, and by requiring PLAINTIFFS and the other members  
11 of the CALIFORNIA CLASS to respond to and engage in additional work,  
12 resulting in a second reporting for work in a single workday but failing to  
13 pay them reporting time pay at their regular rate of pay; and,
- 14 (h) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and  
15 the CALIFORNIA CLASS members with necessary expenses incurred in  
16 the discharge of their job duties.

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

- 19 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that  
20 the joinder of all CALIFORNIA CLASS Members is impracticable and the  
21 disposition of their claims as a class will benefit the parties and the Court;
- 22 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues  
23 that are raised in this Complaint are common to the CALIFORNIA CLASS  
24 and will apply to every member of the CALIFORNIA CLASS;
- 25 (c) The claims of the representative PLAINTIFFS are typical of the claims of  
26 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other  
27 members of the CALIFORNIA CLASS, was a non-exempt employee paid  
28 on an hourly basis who was subjected to the DEFENDANT's practice and

1 policy which failed to pay the correct amount of wages due to the  
2 CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a result  
3 of DEFENDANT's employment practices. PLAINTIFFS and the members  
4 of the CALIFORNIA CLASS were and are similarly or identically harmed  
5 by the same unlawful, deceptive, and unfair misconduct engaged in by  
6 DEFENDANT; and,

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

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

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

1 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act  
2 on grounds generally applicable to the CALIFORNIA CLASS, making  
3 appropriate class-wide relief with respect to the CALIFORNIA CLASS as a  
4 whole in that DEFENDANT fails to pay all wages due. Including the correct  
5 wages for all time worked by the members of the CALIFORNIA CLASS as  
6 required by law;

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

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

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

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

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

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

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

9 iv) A class action is superior to other available methods for the fair and  
10 efficient adjudication of this litigation because class treatment will  
11 obviate the need for unduly and unnecessary duplicative litigation  
12 that is likely to result in the absence of certification of this action  
13 pursuant to Cal. Code of Civ. Proc. § 382.

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

16 (a) The questions of law and fact common to the CALIFORNIA CLASS  
17 predominate over any question affecting only individual CALIFORNIA  
18 CLASS Members;

19 (b) A Class Action is superior to any other available method for the fair and  
20 efficient adjudication of the claims of the members of the CALIFORNIA  
21 CLASS because in the context of employment litigation a substantial  
22 number of individual CALIFORNIA CLASS Members will avoid asserting  
23 their rights individually out of fear of retaliation or adverse impact on their  
24 employment;

25 (c) The members of the CALIFORNIA CLASS are so numerous that it is  
26 impractical to bring all members of the CALIFORNIA CLASS before the  
27 Court;

28 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be

able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

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

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

(g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;

(h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA CLASS PERIOD; and,

(i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

## FIRST CAUSE OF ACTION

## For Unlawful Business Practices

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

**(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

1           52.     DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code  
2     § 17021.

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

7           Any person who engages, has engaged, or proposes to engage in unfair competition may be  
8           enjoined in any court of competent jurisdiction. The court may make such orders or  
9           judgments, including the appointment of a receiver, as may be necessary to prevent the use  
10          or employment by any person of any practice which constitutes unfair competition, as  
11          defined in this chapter, or as may be necessary to restore to any person in interest any money  
12          or property, real or personal, which may have been acquired by means of such unfair  
13          competition.

14     Cal. Bus. & Prof. Code § 17203.

15           54.     By the conduct alleged herein, DEFENDANT has engaged and continues to engage  
16     in a business practice which violates California law, including but not limited to, the applicable  
17     Industrial Wage Order(s), the California Code of Regulations and the California Labor Code  
18     including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the  
19     Fair Labor Standards Act and federal regulations promulgated thereunder, for which this Court  
20     should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as  
21     may be necessary to prevent and remedy the conduct held to constitute unfair competition,  
22     including restitution of wages wrongfully withheld.

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

28           56.     By the conduct alleged herein, DEFENDANT’s practices were deceptive and  
fraudulent in that DEFENDANT’s policy and practice failed to provide the legally mandated meal  
and rest periods, the required amount of compensation for missed meal and rest periods and

1 overtime and minimum wages owed, failed to timely pay wages, failed to pay sick wages, failed to  
2 pay reporting time pay, failed to maintain accurate records, failed to reimburse all necessary  
3 business expenses incurred, and failed to provide Fair Labor Standards Act overtime wages due for  
4 overtime worked as a result of failing to include non-discretionary incentive compensation into  
5 their regular rates of pay for purposes of computing the proper overtime pay due to a business  
6 practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare  
7 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court  
8 should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including  
9 restitution of wages wrongfully withheld.

10         57. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair  
11 and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the other  
12 members of the CALIFORNIA CLASS to be underpaid during their employment with  
13 DEFENDANT.

14         58. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair  
15 and deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally  
16 required meal breaks to PLAINTIFFS and the other members of the CALIFORNIA CLASS as  
17 required by Cal. Lab. Code §§ 226.7 and 512.

18         59. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each  
19 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal  
20 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each  
21 workday in which a second off-duty meal period was not timely provided for each ten (10) hours  
22 of work.

23         60. PLAINTIFFS further demands on behalf of themselves and each member of the  
24 CALIFORNIA CLASS, one (1) hour of pay for each workday in which an off duty paid rest period  
25 was not timely provided as required by law.

26         61. By and through the unlawful and unfair business practices described herein,  
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the  
28 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and has

1 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment  
2 of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly  
3 compete against competitors who comply with the law.

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

9 63. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled to,  
10 and do, seek such relief as may be necessary to restore to them the money and property which  
11 DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the  
12 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
13 business practices, including earned but unpaid wages for all time worked.

14 64. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further  
15 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and  
16 deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in  
17 any unlawful and unfair business practices in the future.

18 65. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,  
19 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
20 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a  
21 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other  
22 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal  
23 and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful  
24 and unfair business practices.

25 **SECOND CAUSE OF ACTION**

26 **For Failure To Pay Minimum Wages**

27 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

28 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

4           67.     PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim  
5 for DEFENDANT's willful and intentional violations of the California Labor Code and the  
6 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate  
7 and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

10          69.     Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
11 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
12 the minimum so fixed is unlawful.

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

15          71.     DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other  
16 members of the CALIFORNIA CLASS without regard to the correct amount of time they work.  
17 As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny  
18 timely payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA  
19 CLASS.

20          72.     DEFENDANT's unlawful wage and hour practices manifested, without limitation,  
21 applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a policy and  
22 practice that denies accurate compensation to PLAINTIFFS and the other members of the  
23 CALIFORNIA CLASS in regards to minimum wage pay.

24          73.     In committing these violations of the California Labor Code, DEFENDANT  
25 inaccurately calculated the correct time worked and consequently underpaid the actual time worked  
26 by PLAINTIFFS and other members of the CALIFORNIA CLASS. DEFENDANT acted in an  
27 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the  
28 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws

1 and regulations.

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

5 75. During the CALIFORNIA CLASS PERIOD, DEFENDANT required, permitted or  
6 suffered PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all  
7 the time they were under DEFENDANT's control. During the CALIFORNIA CLASS PERIOD,  
8 PLAINTIFFS and the other members of the CALIFORNIA CLASS were paid less for time worked  
9 that they were entitled to, constituting a failure to pay all earned wages.

10 76. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
11 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true  
12 time they worked, PLAINTIFFS and the other members of the CALIFORNIA CLASS have  
13 suffered and will continue to suffer an economic injury in amounts which are presently unknown  
14 to them and which will be ascertained according to proof at trial.

15 77. DEFENDANT knew or should have known that PLAINTIFFS and the other  
16 members of the CALIFORNIA CLASS were under compensated for their time worked.  
17 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay  
18 employees for their labor as a matter of company policy, practice and procedure, and  
19 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members of  
20 the CALIFORNIA CLASS the correct minimum wages for their time worked.

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

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

### THIRD CAUSE OF ACTION

### For Failure To Pay Overtime Compensation

**[Cal. Lab. Code § 510]**

**(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

81. PLAINTIFFS 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.

82. 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.

83. 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.

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

5           85.     During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and CALIFORNIA  
6 CLASS Members were required, permitted or suffered by DEFENDANT to work for  
7 DEFENDANT and were not paid for all the time they worked, including overtime work.

8           86.     DEFENDANT's unlawful wage and hour practices manifested, without limitation,  
9 applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a policy and  
10 practice that failed to accurately record overtime worked by PLAINTIFFS and other CALIFORNIA  
11 CLASS Members and denied accurate compensation to PLAINTIFFS and the other members of  
12 the CALIFORNIA CLASS for overtime worked, including, the overtime work performed in excess  
13 of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in  
14 any workweek.

15           87.     In committing these violations of the California Labor Code, DEFENDANT  
16 inaccurately recorded overtime worked and consequently underpaid the overtime worked by  
17 PLAINTIFFS and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal  
18 attempt to avoid the payment of all earned wages, and other benefits in violation of the California  
19 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and  
20 regulations. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the  
21 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full  
22 compensation for overtime worked.

23           88.     Cal. Lab. Code § 515 sets out various categories of employees who are exempt from  
24 the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFFS  
25 and the other members of the CALIFORNIA CLASS. Further, PLAINTIFFS and the other  
26 members of the CALIFORNIA CLASS were not subject to a valid collective bargaining agreement  
27 that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFFS  
28 bring this Action on behalf of themselves and the CALIFORNIA CLASS based on

1 DEFENDANT's violations of non-negotiable, non-waiveable rights provided by the State of  
2 California.

3 89. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and the other members  
4 of the CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,  
5 constituting a failure to pay all earned wages.

6 90. DEFENDANT failed to accurately pay the PLAINTIFFS and the other members of  
7 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the  
8 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even  
9 though PLAINTIFFS and the other members of the CALIFORNIA CLASS were required to work,  
10 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as  
11 evidenced by DEFENDANT's business records and witnessed by employees.

12 91. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
13 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true  
14 amount of time they worked, PLAINTIFFS and the other members of the CALIFORNIA CLASS  
15 have suffered and will continue to suffer an economic injury in amounts which are presently  
16 unknown to them and which will be ascertained according to proof at trial.

17 92. DEFENDANT knew or should have known that PLAINTIFFS and the other  
18 members of the CALIFORNIA CLASS were under compensated for all overtime worked.  
19 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay  
20 employees for their labor as a matter of company policy, practice and procedure, and  
21 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members of  
22 the CALIFORNIA CLASS for overtime worked.

23 93. In performing the acts and practices herein alleged in violation of California labor  
24 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime  
25 worked and provide them with the requisite overtime compensation, DEFENDANT acted and  
26 continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other  
27 members of the CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights,  
28 or the consequences to them, and with the despicable intent of depriving them of their property and

1 legal rights, and otherwise causing them injury in order to increase company profits at the expense  
2 of these employees.

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

13 **FOURTH CAUSE OF ACTION**

14 **For Failure to Provide Required Meal Periods**

15 **[Cal. Lab. Code §§ 226.7 & 512]**

16 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

20 96. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time  
21 failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other  
22 CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The  
23 nature of the work performed by PLAINTIFFS and CALIFORNIA CLASS MEMBERS did not  
24 prevent these employees from being relieved of all of their duties for the legally required off-duty  
25 meal periods. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA  
26 CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal  
27 periods. Additionally, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA  
28

1 CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is  
2 evidenced by DEFENDANT's business records from time to time. Further, DEFENDANT failed  
3 to provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period  
4 in some workdays in which these employees were required by DEFENDANT to work ten  
5 (10) hours of work from time to time. As a result, PLAINTIFFS and other members of the  
6 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in  
7 accordance with DEFENDANT's strict corporate policy and practice.

8 97. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable  
9 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS Members  
10 who were not provided a meal period, in accordance with the applicable Wage Order, one additional  
11 hour of compensation at each employee's regular rate of pay for each workday that a meal period  
12 was not provided.

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

16 **FIFTH CAUSE OF ACTION**

17 **For Failure to Provide Required Rest Periods**

18 **[Cal. Lab. Code §§ 226.7 & 512]**

19 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

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

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

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

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

14 **SIXTH CAUSE OF ACTION**

15 **For Failure to Provide Accurate Itemized Statements**

16 **[Cal. Lab. Code § 226]**

17 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

21 104. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
22 "accurate itemized" statement in writing showing:

- 23 (1) gross wages earned,  
24 (2) total hours worked by the employee, except for any employee whose compensation is  
25 solely based on a salary and who is exempt from payment of overtime under subdivision (a)  
26 of Section 515 or any applicable order of the Industrial Welfare Commission,  
27 (3) the number of piece-rate units earned and any applicable piece rate if the employee is  
28 paid on a piece-rate basis,  
(4) all deductions, provided that all deductions made on written orders of the employee may  
be aggregated and shown as one item,  
(5) net wages earned,  
(6) the inclusive dates of the period for which the employee is paid,

1 (7) the name of the employee and his or her social security number, except that by January 1,  
2 2008, only the last four digits of his or her social security number or an employee  
3 identification number other than a social security number may be shown on the itemized  
4 statement,  
5 (8) the name and address of the legal entity that is the employer, and  
6 (9) all applicable hourly rates in effect during the pay period and the corresponding number  
7 of hours worked at each hourly rate by the employee.

8 105. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other  
9 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed  
10 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides  
11 that every employer shall furnish each of his or her employees with an accurate itemized wage  
12 statement in writing showing, among other things, gross wages earned and all applicable hourly  
13 rates in effect during the pay period and the corresponding amount of time worked at each hourly  
14 rate. PLAINTIFFS and CALIFORNIA CLASS Members were paid on an hourly basis. As such,  
15 the wage statements should reflect all applicable hourly rates during the pay period and the total  
16 hours worked, and the applicable pay period in which the wages were earned pursuant to California  
17 Labor Code Section 226(a). The wage statements DEFENDANT provided to PLAINTIFFS and  
18 other CALIFORNIA CLASS Members failed to identify such information. More specifically, the  
19 wage statements failed to identify the accurate total hours worked each pay period. When the hours  
20 shown on the wage statements were added up, they did not equal the actual total hours worked  
21 during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed  
22 above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement  
23 that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT  
24 from time to time provided PLAINTIFFS and the other members of the CALIFORNIA CLASS  
25 with wage statements which violated Cal. Lab. Code § 226.

26 106. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code  
27 § 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA  
28 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.

1 Therefore, PLAINTIFFS and the other members of the CALIFORNIA CLASS may elect to recover  
2 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation  
3 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant  
4 to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more  
5 than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the  
6 CALIFORNIA CLASS herein).

7 **SEVENTH CAUSE OF ACTION**

8 **For Failure to Reimburse Employees for Required Expenses**

9 **[Cal. Lab. Code § 2802]**

10 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

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

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

19 109. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
20 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA CLASS members for  
21 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.  
22 DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA CLASS members for  
23 expenses which included, but were not limited to, costs related to using their personal cellular  
24 phones on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFFS and other  
25 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cellular  
26 phones and home offices in order to perform work related job tasks. DEFENDANT's policy and  
27 practice was to not reimburse PLAINTIFFS and the CALIFORNIA CLASS members for expenses  
28 resulting from using their personal cellular phones and home offices for DEFENDANT within the

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

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

11 **EIGHTH CAUSE OF ACTION**

12 **For Failure to Pay Sick Pay Wages**

13 **[Cal. Lab. Code §§ 201-203, 210, 233, 246]**

14 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

17 112. Cal Lab. Code § 233 provides that an employer must permit an employee to use  
18 accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate of  
19 entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for use  
20 of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is  
21 used as paid sick time, an employee has a vested right to sick pay wages, which an employer must  
22 calculate and compensate based on one of two calculations: (i) "Paid sick time for nonexempt  
23 employees shall be calculated in the same manner as the regular rate of pay for the workweek in  
24 which the employee uses paid sick time, whether or not the employee actually works overtime in  
25 that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated by dividing  
26 the employee's total wages, not including overtime premium pay, by the employee's total hours  
27 worked in the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218  
28

1 and 233, employees may sue to recover underpaid sick pay wages as damages.

2 113. As a matter of policy and practice, DEFENDANT pays sick pay wages to  
3 PLAINTIFFS and the other members of the CALIFORNIA CLASS at the incorrect rate of pay.  
4 PLAINTIFFS and the other members of the CALIFORNIA CLASS regularly use accrued sick  
5 leave in the workweeks in which they also earn non-hourly remuneration. As a matter of policy  
6 and practice, DEFENDANT pays sick pay wages to PLAINTIFFS and the other members of the  
7 CALIFORNIA CLASS at the base hourly pay, as opposed to the regular rate of pay, which would  
8 consider all non-hourly remuneration in addition to base hourly wages, or the rate resulting from  
9 dividing the employee's total wages, not including overtime premium pay, by the employee's total  
10 hours worked in the full pay periods of the prior 90 days of employment. As a result,  
11 DEFENDANT underpaid sick pay wages to PLAINTIFFS and the other members of the  
12 CALIFORNIA CLASS.

13 114. Cal. Lab. Code § 246 specifically requires that, upon use of accrued sick leave,  
14 vested sick pay wages are due and to be paid no later than the payday for the next regular payroll  
15 period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code § 201 provides  
16 that if an employer discharges an employee, wages earned and unpaid at the time of discharge are  
17 due and payable immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive  
18 all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the  
19 employee has given 72-hour notice of his or her intention to quit, in which case the employee is  
20 entitled to his or her wages at the time of quitting. The Labor Code penalizes untimely payments.  
21 For example, Cal. Lab. Code § 203 provides that if an employer willfully fails to pay wages owed  
22 in accordance with Cal. Lab. Code §§ 201-202, then the wages of the employee shall continue as a  
23 penalty from the due date, and at the same rate until paid, but the wages shall not continue for more  
24 than thirty (30) days. Likewise, Cal. Lab. Code § 210 provides penalties for untimely payments  
25 during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may sue to recover  
26 applicable penalties.

27 115. As alleged herein and as a matter of policy and practice, DEFENDANT routinely  
28 underpays sick pay wages and thus did not timely pay PLAINTIFFS and the other members of the

1 CALIFORNIA CLASS all owing and underpaid sick pay wages. As a result, DEFENDANT  
2 violates Cal. Lab. Code §§ 201-203, 210, 233, and 246, among other Labor Code provisions.  
3 PLAINTIFFS are informed and believe that DEFENDANT was advised by skilled lawyers and  
4 knew, or should have known, of the mandates of the Labor Code as it relates to PLAINTIFFS’  
5 allegations, especially since the California Supreme Court has explained that “[c]ourts have  
6 recognized that ‘wages’ also include those benefits to which an employee is entitled as a part of his  
7 or her compensation, including money, room, board, clothing, vacation pay, *and sick pay.*” *Murphy*  
8 *v. Kenneth Cole Prods., Inc.*, 40 Cal. 4<sup>th</sup> 1094, 1103 (2007)(emphasis added). Because  
9 DEFENDANT willfully fails to timely pay PLAINTIFFS and the other members of the  
10 CALIFORNIA CLASS all sick pay wages due, DEFENDANT is subject to applicable penalties.

11 116. Such a pattern, practice, and uniform administration of corporate policy is unlawful  
12 and entitles PLAINTIFFS and the other members of the CALIFORNIA CLASS to underpaid sick  
13 pay wages, including interest thereon, applicable penalties, attorney’s fees, and costs of suit.

#### 14 **NINTH CAUSE OF ACTION**

##### 15 **For Failure to Maintain Accurate Records**

16 **[Cal. Lab. Code §§ 226, 1174, 1174.5, and IWC Wage Order No. 7-2001]**

17 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

18 117. PLAINTIFFS reallege and incorporate by this reference as though fully set forth  
19 herein, the prior paragraphs of this complaint.

20 118. Cal. Lab. Code § 226(a) provides, in pertinent part, that “[t]he deductions made from  
21 payment of wages shall be recorded in ink or other indelible form, properly dated, showing the  
22 month, day, and year, and a copy of the statement and the record of the deductions shall be kept on  
23 file by the employer for at least three years at the place of employment or at a central location  
24 within the State of California.

25 119. Cal. Lab. Code § 1174(c) requires every employer to “keep a recording showing the  
26 names and addresses of all employees employed....” Labor Code section 1174(d) further provides,  
27 in pertinent part, “[e]very person employing labor in this state shall...[k]eep, at a central location  
28 in the state or at the plants or establishments at which employees are employed, payroll records

1 showing the hours worked daily by and the wages paid to, ..., employees employed at the respective  
2 plants or establishments.”

3 120. The “Records” section of IWC Wage Order No. 7-2001 states that every employer  
4 shall keep accurate information with respect to each one of its employees, including time records  
5 showing when the employee begins and ends each work period, meal periods, total daily hours  
6 worked, total wages paid each payroll period, and total hours worked in the payroll period and  
7 applicable rates of pay.

8 121. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure  
9 to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of  
10 \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code  
11 section 2699 for a violation of Labor Code section 1174(d).

12 122. Labor Code section 226(e)(1) further provides, “[a]n employee suffering injury as a  
13 result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor  
14 Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the  
15 initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each  
16 violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars  
17 (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

18 123. At all relevant times herein, DEFENDANT failed to maintain accurate and complete  
19 records for PLAINTIFFS and other CALIFORNIA CLASS Members, including but not limited to,  
20 failure to keep time records showing when PLAINTIFFS and other CALIFORNIA CLASS  
21 Members began and ended each shift and meal period.

22 124. PLAINTIFFS and other CALIFORNIA CLASS Members have suffered, and  
23 continue to suffer, injuries and damages as a consequence of DEFENDANT’s deliberate failure to  
24 maintain accurate records as required by the Labor Code and IWC Wage Order(s). Specifically,  
25 PLAINTIFFS and other CALIFORNIA CLASS Members were denied their legal right and  
26 protected interest in having accurate and complete payroll and employment records available to  
27 them.

28 125. PLAINTIFFS and other CALIFORNIA CLASS Members are entitled to, and now

1 seek damages and penalties, as outlined in Labor Code section 226(e)(1) and 1174.5. PLAINTIFFS  
2 and other CALIFORNIA CLASS Members are also entitled to, and now seek recovery of  
3 reasonable attorneys' fees and costs as provided by Labor Code section 226(e)(1).

4 **TENTH CAUSE OF ACTION**

5 **For Violation of the Private Attorneys General Act**

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

7 **(By PLAINTIFFS and Against All Defendants)**

8 126. PLAINTIFFS reallege and incorporate by this reference as though fully set forth  
9 herein, the prior paragraphs of this complaint.

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

19 128. PLAINTIFFS, and such persons that may be added from time to time who satisfy  
20 the requirements and exhaust the administrative procedures under the Private Attorney General  
21 Act, brings this Representative Action on behalf of the State of California with respect to  
22 themselves and all individuals who are or previously were employed by DEFENDANT in  
23 California, and any of its subsidiaries and classified as non-exempt employees ("AGGRIEVED  
24 EMPLOYEES") from September 8, 2022 to December 31, 2024 (the "PAGA PERIOD").

25 129. On September 8, 2023, Plaintiff Marlin Mejia gave written notice by electronic mail  
26 to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the  
27 employer of the specific provisions of this code alleged to have been violated as required by Labor  
28 Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein (*PAGA*

1 *Notice only without draft complaint*). On April 15, 2024, Plaintiffs Marlin Mejia and Basilia Konde  
2 gave amended written notice by electronic mail to the Agency and by certified mail to the employer  
3 of the specific provisions of this code alleged to have been violated as required by Labor Code  
4 § 2699.3. See **Exhibit #2**, attached hereto and incorporated by this reference herein (*Amended*  
5 *PAGA Notice only without draft complaint*). The statutory waiting period for PLAINTIFFS to add  
6 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,  
7 PLAINTIFFS may now commence a representative civil action under PAGA pursuant to  
8 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED  
9 EMPLOYEES as herein defined.

10 130. The policies, acts and practices heretofore described were and are an unlawful  
11 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the  
12 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record and  
13 provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay  
14 overtime wages and sick pay wages, (e) failed to pay reporting time pay, (f) failed to maintain  
15 accurate records, (g) failed to reimburse employees for required expenses, (h) failed to provide  
16 wages when due, and (i) failed to provide suitable seating, all in violation of the applicable Labor  
17 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226, 226(a), 226.7,  
18 227.3, 246, 510, 512, 558(a)(1)(2), 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, California Code  
19 of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations,  
20 Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), and  
21 thereby gives rise to civil penalties as a result of such conduct.<sup>1</sup> PLAINTIFFS hereby seeks  
22 recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of  
23 2004 as the representative of the State of California for the illegal conduct perpetrated on  
24 PLAINTIFFS and the AGGRIEVED EMPLOYEES.

25 131. All of the conduct and violations alleged herein occurred during the PAGA  
26 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect  
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28 <sup>1</sup> Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).

1 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that  
2 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 30 Cal. App.  
3 5th 504 (2018).

4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and  
6 severally, as follows:

7 On behalf of the CALIFORNIA CLASS:

- 8 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA  
9 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 10 B) An order temporarily, preliminarily and permanently enjoining and restraining  
11 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 12 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld  
13 from compensation due to PLAINTIFFS and the other members of the  
14 CALIFORNIA CLASS; and,
- 15 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund  
16 for restitution of the sums incidental to DEFENDANT's violations due to  
17 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

18 On behalf of the CALIFORNIA CLASS:

- 19 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth  
20 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant  
21 to Cal. Code of Civ. Proc. § 382;
- 22 B) Compensatory damages, according to proof at trial, including compensatory  
23 damages for minimum and overtime compensation due PLAINTIFFS and the other  
24 members of the CALIFORNIA CLASS, during the applicable CALIFORNIA  
25 CLASS PERIOD plus interest thereon at the statutory rate;
- 26 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
27 which a violation occurs and one hundred dollars (\$100) per each member of the  
28 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding

1 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for  
2 violation of Cal. Lab. Code § 226;

3 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
4 the applicable IWC Wage Order;

5 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and  
6 1197;

7 F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA  
8 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and  
9 costs of suit.; and,

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

13 On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

14 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys  
15 General Act of 2004; and,

16 B) An award of attorneys' fees and cost of suit as allowable under the law, including,  
17 but not limited to, pursuant to Labor Code §2699.

18 On all claims:

19 C) An award of interest, including prejudgment interest at the legal rate;

20 D) Such other and further relief as the Court deems just and equitable; and,

21 E) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,  
22 including, but not limited to, pursuant to Labor Code §221, §226, §1174.5, §1194,  
23 and/or §2802.

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Dated: March 18, 2025

BLUMENTHAL NORDREHAUG  
BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw  
Norman B. Blumenthal  
Nicholas J. De Blouw  
  
*Attorneys for Plaintiffs*

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**DEMAND FOR A JURY TRIAL**

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

Dated: March 18, 2025

BLUMENTHAL NORDREHAUG  
BHOWMIK DE BLOUW LLP

By:           /s/ Nicholas J. De Blouw            
Norman B. Blumenthal  
Nicholas J. De Blouw  
  
*Attorneys for Plaintiffs*

# **EXHIBIT 1**

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

**2255 CALLE CLARA**

**LA JOLLA, CALIFORNIA 92037**

Web Site: [www.bamlawca.com](http://www.bamlawca.com)

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

[Nick@bamlawca.com](mailto:Nick@bamlawca.com)

WRITERS EXT:

1004

September 8, 2023

CA3039

**VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT**

Labor and Workforce Development Agency  
Online Filing

Chico's FAS, Inc.  
Certified Mail #9589071052700182374378  
Corporate Creations Network Inc.  
Sarah Clemens  
5901 W. Century Blvd., #750  
Los Angeles, CA 90045

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Chico's FAS, Inc. in California, including any employees staffed with Chico's FAS, Inc. by a third party, and classified as non-exempt employees during the time period of September 8, 2022 until a date as determined by the Court. Our offices represent Plaintiff Marlin Mejia (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Chico's FAS, Inc. (“Defendant”). Plaintiff has been employed since March of 2023 by Defendant in California. Plaintiff has been at times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods 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, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee's usual or scheduled day's work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved

Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5<sup>th</sup> 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) 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.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *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 Statute of 2004 on behalf of Plaintiff and all Aggrieved 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.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

## **EXHIBIT 2**

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

**2255 CALLE CLARA  
LA JOLLA, CALIFORNIA 92037**

**Web Site: [www.bamlawca.com](http://www.bamlawca.com)**

**San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago**

**Phone: (858) 551-1223**

**Fax: (858) 551-1232**

**WRITERS E-MAIL:**

**[SergioJulian@bamlawca.com](mailto:SergioJulian@bamlawca.com)**

**WRITERS EXT:**

**1001**

April 15, 2024

CA3039

**VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT**

Labor and Workforce Development Agency  
Online Filing

Chico's FAS, Inc.  
Certified Mail #9589071052700408543687  
ORRICK HERRINGTON & SUTCLIFFE, LLP  
Melinda S. Riechert  
Julia C. Riechert  
1000 Marsh Road  
Menlo Park, CA 94025

Certified Mail #9589071052700408543670  
ORRICK HERRINGTON & SUTCLIFFE, LLP  
Mariam Bicknell  
2040 Main Street, Suite 1100  
Irvine, CA 92614

**AMENDED PAGA NOTICE LWDA Case No: CM-980505-23**

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Plaintiffs Marlin Mejia and Basilia Konde (collectively referred to as "Plaintiffs") and other Aggrieved Employees in a lawsuit against Chico's FAC, Inc., ("Defendants").

Plaintiff Marlin Mejia originally sent a PAGA Notice on September 8, 2023, which gave notice to the LWDA and Defendant to enable Plaintiff Mejia to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.*

This Amended Notice is intended to add Plaintiff Basilia Konde.

"Aggrieved Employees" refers to all individuals who are or previously were employed by Chico's FAS, Inc. in California, including any employees staffed with Chico's FAS, Inc. by a third party, and classified as non-exempt employees during the time period of September 8,

2022 until a date as determined by the Court. Our offices represent Plaintiffs Marlin Mejia and Basilia Konde (“Plaintiffs”) and other Aggrieved Employees in a lawsuit against Chico’s FAS, Inc. (“Defendant”). Plaintiff Mejia has been employed since March of 2023 by Defendant in California. Plaintiff Basilia Konde was employed from July 2023 to February 2024 by Defendant in California. Plaintiffs have been at times classified by Defendant as a non-exempt employees, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiffs and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiffs and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5<sup>th</sup> 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendant failed to provide accurate wage statements to Plaintiffs, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiffs and the Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiffs and the Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiffs and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiffs against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (iv) 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. Plaintiffs

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.

This notice is provided to enable Plaintiffs to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *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 Statute of 2004 on behalf of Plaintiffs and all Aggrieved 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.

Respectfully,

*/s/ Sergio J. Puche*

Sergio J. Puche, Esq.