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David W. Slayton,
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Attorney for Francisca Hernandez,
Individually and on behalf of all other similarly situated

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 FRANCISCA HERNANDEZ, an individual,
11 on behalf of herself, and on behalf of all persons
12 similarly situated,

13 Plaintiff,

14 v.

15 PROMINENT COMMERCIAL SERVICES,
16 INC., a California Corporation; JORGE
17 ROSALES, an individual; and DOES 1 through
18 50, Inclusive;

19 Defendants.

Case No. **24STCV04081**

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§ 226 and 226.2; and
8. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202, 203 AND 227.3.

**[ADDITIONAL CAUSES OF ACTION
CONTINUED ON NEXT PAGE]**

9. FAILURE TO PROVIDE PERSONNEL FILES IN VIOLATION OF CAL. LAB. CODE §1198; and
10. Civil Penalties Pursuant to Labor Code §2699, *et seq.*, for violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, and the California Code of Regulations

DEMAND FOR JURY TRIAL

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

THE PARTIES

1. Defendant PROMINENT COMMERCIAL SERVICES, INC. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, County of Los Angeles. Defendant provides commercial and residential cleaning services.

2. Defendant JORGE ROSALES is the Founder and Owner of PROMINENT COMMERCIAL SERVICES, INC. JORGE ROSALES resides in the state of California, County of Los Angeles.

3. PLAINTIFF Francisca Hernandez is a California resident that worked for Defendants in the State of California providing cleaning services to commercial buildings.

4. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

5. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege

1 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
2 PLAINTIFF is informed and believes, and based upon that information and belief allege, that the
3 Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter
4 collectively with “DEFENDANTS”), are responsible in some manner for one or more of the
5 events and happenings that proximately caused the injuries and damages hereinafter alleged.

6 6. The agents, servants and/or employees of the DEFENDANTS and each of them
7 acting on behalf of the DEFENDANTS acted within the course and scope of her, her or its
8 authority as the agent, servant and/or employee of the DEFENDANTS, and personally
9 participated in the conduct alleged herein on behalf of the DEFENDANTS with respect to the
10 conduct alleged herein. Consequently, the acts of each of the DEFENDANTS are legally
11 attributable to the other and all DEFENDANTS are jointly and severally liable to PLAINTIFF
12 and those similarly situated, for the loss sustained as a proximate result of the conduct of the
13 DEFENDANTS’ agents, servants and/or employees.

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

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

25 9. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on
26 an hourly basis and entitled to minimum wages, overtime pay, and legally compliant meal and
27 rest periods from December 2019 to present.
28

1 10. PLAINTIFF brings this Class Action under California Code of Civil Procedure §
2 382 on behalf of herself and on behalf of all of DEFENDANTS current and former non-exempt
3 California employees (the “CALIFORNIA CLASS”) at any time during the period beginning
4 four years from the date of the filing of this Complaint and ending on a date determined by the
5 Court (the “CLASS PERIOD”).

6 11. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
7 members is under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend
8 the following class definitions before the Court determines whether class certification is
9 appropriate, or thereafter upon leave of Court.

10 12. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
11 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
12 incurred during the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice
13 which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant
14 meal and rest periods or an additional hour of pay at the regular rate of compensation in *lieu*
15 thereof in violation of California Labor Code Sections 226.7(c), 512(a) and the applicable
16 Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFF and the
17 CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code
18 Sections 510, 1194, 1197, and 1197.1, failed to reimburse PLAINTIFF and the CALIFORNIA
19 CLASS for required expenses in violation for California Labor Code Section 2802, and (3) failed
20 to provide accurate itemized wage statements in violation of California Labor Code Sections 226
21 and 226.2.

22 13. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of
23 themselves and all others similarly situated in California to recover, among other things, unpaid
24 wages and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant to Labor
25 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5,
26 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, and 2698, *et seq.*

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

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

JURISDICTION AND VENUE

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

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

THE CONDUCT

18. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses and failed to issue to PLAINTIFF, and the members of the CALIFORNIA CLASS with accurate itemized

1 wage statements showing, among other things, all applicable hourly rates in effect during the pay
2 periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS'
3 uniform policies and practices are intended to purposefully avoid the accurate and full payment
4 for all time worked as required by California law which allows DEFENDANTS to illegally profit
5 and gain an unfair advantage over competitors who comply with the law. To the extent equitable
6 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS
7 PERIOD should be adjusted accordingly.

8 **A. Meal Period Violations**

9 19. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
10 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
11 meaning the time during which an employee is subject to the control of an employer, including
12 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
13 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work
14 without paying them for all the time they were under DEFENDANTS' control. Specifically, as
15 a result of, among other reasons, PLAINTIFF's demanding work requirements, and
16 DEFENDANTS' under staffing, from time-to-time, DEFENDANTS required PLAINTIFF to
17 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
18 Additionally, PLAINTIFF was from time-to-time interrupted by work assignments while clocked
19 out for what should have been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF
20 and other CALIFORNIA CLASS members forfeited minimum wage and overtime wages by
21 regularly working without their time being accurately recorded and without compensation at the
22 applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not
23 to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked is evidenced
24 by DEFENDANTS' business records.

25 20. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
26 schedules, and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
27 CALIFORNIA CLASS members were from time-to-time unable to take thirty (30) minute off
28 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and

1 other members of the CALIFORNIA CLASS were required from time-to-time to perform work
2 as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving
3 a meal break. Further, DEFENDANTS from time-to-time failed to provide PLAINTIFF and
4 CALIFORNIA CLASS members with a second off-duty meal period for some workdays in which
5 these employees were required by DEFENDANTS to work ten (10) hours of work from time-to-
6 time. The nature of the work performed by the PLAINTIFF and the members of the
7 CALIFORNIA CLASS does not qualify for limited and narrowly construed “on-duty” meal
8 period exception. When they were provided with meal periods, PLAINTIFF and other
9 CALIFORNIA CLASS Members were, from time to time, required to remain on the premises,
10 on duty and/or on call. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
11 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS’
12 strict corporate policy and practice.

13 **B. Rest Period Violations**

14 21. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
15 CALIFORNIA CLASS members were also required from time-to-time to work in excess of four
16 (4) hours without being provided ten (10) minute rest periods as a result of, among other reasons,
17 their rigorous work schedules, and DEFENDANTS’ inadequate staffing. Further, for the same
18 reasons these employees were denied their first rest periods of at least ten (10) minutes for some
19 shifts worked of at least two (2) to four (4) hours from time-to-time, a first and second rest period
20 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from
21 time-to-time, and a first, second, and third rest period of at least ten (10) minutes for some shifts
22 worked of ten (10) hours or more from time-to-time. PLAINTIFF and other CALIFORNIA
23 CLASS members were also not provided with one-hour wages in lieu thereof. When they were
24 provided with rest periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from
25 time to time, required to remain on the premises, on duty and/or on call. As a result of their
26 rigorous work schedules and DEFENDANTS’ inadequate staffing, PLAINTIFF and other
27 CALIFORNIA CLASS members were from time-to-time denied their proper rest periods by
28 DEFENDANTS and DEFENDANTS’ managers.

1 **C. Unreimbursed Business Expenses**

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

12 23. From time-to-time during the CLASS PERIOD, PLAINTIFF and members of the
13 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular
14 phones, as a result of and in furtherance of their job duties as employees for DEFENDANTS.
15 Specifically, Plaintiff and members of the CALIFORNIA CLASS, used their personal cellular
16 phones to execute their job duties. But for the use of their personal cell phones, PLAINTIFF and
17 the members of the CALIFORNIA CLASS could not complete their essential job duties.
18 Notwithstanding, DEFENDANTS did not reimburse or indemnify PLAINTIFF or the members
19 of the CALIFORNIA CLASS for the cost associated with the use of their personal cellular phones
20 for DEFENDANTS' benefit. As a result, in the course of their employment with
21 DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred
22 unreimbursed business expenses which included, but were not limited to, costs related to the use
23 of their personal cellular, all on behalf of and for the benefit of DEFENDANTS.

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

25 9. During the CLASS PERIOD, from time-to-time, DEFENDANTS failed and
26 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS
27 for all hours worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the
28 other members of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding,

1 from time-to-time DEFENDANTS failed to pay PLAINTIFF and other members of the
2 CALIFORNIA CLASS necessary wages for performing work at DEFENDANTS' direction,
3 request and benefit, while off-the clock pre-shift, post-shift, and during meal periods.

4 10. During the CLASS PERIOD, from time-to-time DEFENDANTS required
5 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work, including
6 but not limited to, cleaning a home or commercial building before clocking in to start her shift.
7 Further, as discussed *supra*, PLAINTIFF and other members of the CALIFORNIA CLASS were
8 from time to time interrupted with work assignments during their off-duty meal periods without
9 additional compensation from DEFENDANTS.

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

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

15 13. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
16 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
17 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
18 wages earned and owed for all the work they performed, including off-the-clock work.

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

21 15. DEFENDANTS' policies and practices deprived PLAINTIFF and the other members
22 of the CALIFORNIA CLASS of all minimum, regular and overtime wages owed for the off-the-
23 clock work activities and their required meal periods. Because PLAINTIFF and the other members
24 of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight
25 (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

26 16. DEFENDANTS knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.
28

1 17. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
2 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
3 for the time spent working off-the-clock pre-shift, and during meal periods. DEFENDANTS'
4 uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS
5 wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS'
6 business records.

7 **E. Wage Statement Violations**

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

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

23 20. In addition to the violations described above, DEFENDANTS, from time-to-time,
24 failed to provide PLAINTIFF and the CALIFORNIA CLASS members with wage statements that
25 comply with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other
26 members of the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226.
27 Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an
28 unintentional payroll error due to clerical or inadvertent mistake.

1 21. DEFENDANTS also failed to timely pay PLAINTIFF and the CALIFORNIA
2 CLASS members in compliance of Cal. Lab. Code §204. DEFENDANTS' violations are knowing
3 and intentional, were not isolated or due to an unintentional payroll error due to clerical or
4 inadvertent mistake.

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

6 22. Pursuant to California Labor Code section 204, PLAINTIFF AND THE
7 AGGRIEVED EMPLOYEES members were entitled to timely payment of wages during their
8 employment. Plaintiff and the Aggrieved Employees members, from time to time, did not receive
9 payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period
10 premium wages, and rest period premium wages within permissible time period.

11 **G. Unlawful Deductions**

12 23. DEFENDANTS, from time to time unlawfully deducted wages from PLAINTIFF
13 and AGGRIEVED EMPLOYEES' pay without explanation and without authorization to do so or
14 notice to Plaintiff and the AGGRIEVED EMPLOYEES members. As a result, Defendant violated
15 Labor Code §221.

16 **H. Unlawful Rounding Practices**

17 24. During the AGGRIEVED EMPLOYEES PERIOD, DEFENDANTS did not have
18 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
19 AGGRIEVED EMPLOYEES for the actual time these employees worked each day, including
20 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and
21 practice that resulted in PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated
22 for all of their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully,
23 and unilaterally round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF
24 and AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time
25 worked, including the applicable overtime compensation for overtime worked. As a result,
26 PLAINTIFF and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation
27 for their time worked by working without their time being accurately recorded and without
28 compensation at the applicable overtime rates.

1 25. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
2 rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time
3 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
4 policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as
5 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off
6 duty meal break.

7 **I. Timekeeping Manipulation**

8 26. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
9 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED
10 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each
11 day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result,
12 DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded in
13 DEFENDANTS' timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in order
14 to avoid paying these employees for all hours worked, applicable overtime compensation, applicable
15 sick pay, missed meal breaks and missed rest break.

16 27. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time-to-time,
17 forfeited time worked by working without their time being accurately recorded and without
18 compensation at the applicable pay rates.

19 28. The mutability of the timekeeping system also allowed DEFENDANTS to alter
20 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
21 timekeeping system so as to create the appearance that PLAINTIFF and AGGRIEVED
22 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not
23 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANT'S
24 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
25 breaks each day or otherwise compensate them for missed meal breaks.

26 29. As a result, Plaintiff and Aggrieved Employees forfeited wages due to them for all
27 hours worked at DEFENDANTS' direction, control and benefit for the time the timekeeping system
28 was inoperable. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and

1 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
2 evidenced by DEFENDANTS' business records.

3 30. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off
4 duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
5 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5) hours
6 during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide
7 PLAINTIFF with a second off-duty meal period each workday in which she was required by
8 DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
9 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
10 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was supposed
11 to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks without
12 additional compensation and in accordance with DEFENDANT'S strict corporate policy and
13 practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to comply
14 with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF for required
15 business expenses related to the personal expenses incurred for the use of her personal cell phone
16 and vehicle, on behalf of and in furtherance of her employment with DEFENDANT. To date,
17 DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
18 compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203.

19 **CLASS ACTION ALLEGATIONS**

20 31. PLAINTIFF brings the First through Ninth Causes of Action as a class action
21 pursuant to California Code of Civil Procedure § 382 on behalf the CALIFORNIA CLASS,
22 defined *supra*, that worked for DEFENDANT in California at any time beginning four (4) years
23 prior to the filing of this Complaint and ending on the date as determined by the Court
24 ("CLASS PERIOD").

25 32. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been
26 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
27 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
28 illegal meal and rest period policies, failure to separately compensate rest periods, failure to

1 separately compensate, failure to provide accurate itemized wage statements, failure to maintain
2 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

3 33. The members of the class are so numerous that joinder of all class members is
4 impractical.

5 34. Common questions of law and fact regarding DEFENDANTS' conduct, including
6 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to provide
7 legally compliant meal and rest periods, failing to reimburse business expenses, failure to provide
8 accurate itemized wage statements accurate, and failure ensure they are paid at least minimum
9 wage and split shift premiums and overtime, exist as to all members of the class and predominate
10 over any questions affecting solely any individual members of the class. Among the questions of
11 law and fact common to the class are:

12 a. Whether DEFENDANTS maintained legally compliant meal
13 period policies and practices;

14 b. Whether DEFENDANTS maintained legally compliant rest
15 period policies and practices;

16 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
17 CALIFORNIA CLASS members accurate premium payments for
18 missed meal and rest periods;

19 d. Whether DEFENDANTS failed to pay PLAINTIFF and the
20 CALIFORNIA CLASS members accurate overtime wages and sick
21 pay;

22 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
23 CALIFORNIA CLASS members at least minimum wage for all hours
24 worked;

25 f. Whether DEFENDANTS reimbursed PLAINTIFF and the
26 CALIFORNIA CLASS members for required business expenses;

27 g. Whether DEFENDANTS issued legally compliant wage
28 statements;

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

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

11 j. Whether DEFENDANTS committed an act of unfair
12 competition in violation of the UCL, by failing to provide the
13 PLAINTIFF and the other members of the CALIFORNIA CLASS
14 with the legally required meal and rest periods.

15 k. Violating Cal. Lab Code §201, 202 and/or 203, which
16 provides that when an employee is discharged or quits from
17 employment, the employer must pay the employee all wages due
18 without abatement, by failing to tender full payment and/or restitution
19 of wages owed or in the manner required by California law to the
20 members of the California Class who have terminated their
21 employment.

22 35. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a
23 result of DEFENDANTS' conduct and actions alleged herein.

24 36. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the
25 same interests as the other members of the class.

26 37. PLAINTIFF will fairly and adequately represent and protect the interests of the
27 CALIFORNIA CLASS members.

28 38. PLAINTIFF retained able class counsel with extensive experience in class action

1 litigation.

2 39. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
3 interests of the other CALIFORNIA CLASS members.

4 40. There is a strong community of interest among PLAINTIFF and the members of the
5 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are
6 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
7 sustained;

8 41. The questions of law and fact common to the CALIFORNIA CLASS members
9 predominate over any questions affecting only individual members, including legal and factual
10 issues relating to liability and damages.

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

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

22 b. Adjudication with respect to individual members of the CALIFORNIA
23 CLASS which would as a practical matter be dispositive of the interests of the other
24 members not party to the adjudication or substantially impair or impeded their
25 ability to protect their interests.

26 43. Class treatment provides manageable judicial treatment calculated to bring an
27 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
28 the conduct of DEFENDANTS.

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

8 45. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof.
9 Code § 17021.

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

14 Any person who engages, has engaged, or proposes to engage in
15 unfair competition may be enjoined in any court of competent
16 jurisdiction. The court may make such orders or judgments,
17 including the appointment of a receiver, as may be necessary to
18 prevent the use or employment by any person of any practice which
19 constitutes unfair competition, as defined in this chapter, or as may
20 be necessary to restore to any person in interest any money or
21 property, real or personal, which may have been acquired by means
22 of such unfair competition.

23 Cal. Bus. & Prof. Code § 17203.

24 47. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
25 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair
26 competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§
27 17200, *et seq.* (the “UCL”), by engaging and continuing to engage in business practices which
28 violates California law, including but not limited to, the applicable Industrial Wage Order(s), the

1 California Code of Regulations and the California Labor Code including Sections 201, 202, 203,
2 204 *et seq.*, 210, 221, 226(a), 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1182.12, 1194,
3 1194.2, 1197, 1197.1, 1198, & 2802, for which this Court should issue declaratory and other
4 equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and
5 remedy the conduct held to constitute unfair competition, including restitution of wages
6 wrongfully withheld.

7 48. By the conduct alleged herein, DEFENDANTS' practices were unlawful and unfair
8 in that these practices violated public policy, were immoral, unethical, oppressive, unscrupulous
9 or substantially injurious to employees, and were without valid justification or utility for which
10 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
11 Business & Professions Code, including restitution of wages wrongfully withheld.

12 49. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
13 fraudulent in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the
14 legally mandated meal and rest periods, the required accurate amount of compensation for missed
15 meal and rest periods, split shift premiums, overtime and minimum wages owed, provide accurate
16 itemized wage statements, due to a systematic business practice that cannot be justified, pursuant
17 to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of
18 Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
19 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
20 withheld.

21 50. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
22 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
23 other members of the CALIFORNIA CLASS to be underpaid during their employment with
24 DEFENDANTS.

25 51. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
26 unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to,
27 *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of
28 compensation for missed meal and rest periods, overtime and minimum wages owed, provide

1 accurate itemized wage statements, to PLAINTIFF and the other members of the CALIFORNIA
2 CLASS as required by Cal. Labor Code.

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

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

11 54. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of
12 the CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
13 calculated overtime and missed meal and rest periods premiums.

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

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

25 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
26 and do, seek such relief as may be necessary to restore to them the money and property which
27 DEFENDANTS has acquired, or of which PLAINTIFF and the other members of the
28 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair

1 business practices, including earned but unpaid wages for all overtime worked.

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

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

13 **SECOND CAUSE OF ACTION**

14 **For Failure to Pay Overtime Compensation**

15 **[Cal. Lab. Code §§ 510, *et seq.*]**

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

17 60. PLAINTIFF, 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 61. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period
21 beginning four years prior to the filing of the Complaint and the present (“CLASS PERIOD”)
22 bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code
23 and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these
24 employees for all overtime worked, including, work performed in excess of eight (8) hours in a
25 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

28 63. Cal. Lab. Code § 510 further provides that employees in California shall not be

1 employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek
2 unless they receive additional compensation beyond their regular wages in amounts specified by
3 law.

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

8 65. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
9 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
10 they worked or were not accurately compensated for all overtime hours worked.

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

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

24 68. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
25 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
26 compensation for all overtime worked.

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

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

6 70. During the CLASS PERIOD, PLAINTIFF and the other members of the
7 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
8 failure to pay all earned wages.

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

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

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

27 74. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked

1 and provide them with the requisite overtime compensation, DEFENDANTS acted and continues
2 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
3 the CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
4 consequences to them, and with the despicable intent of depriving them of their property and legal
5 rights, and otherwise causing them injury in order to increase company profits at the expense of
6 these employees.

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

18 **THIRD CAUSE OF ACTION**

19 **For Failure to Pay Minimum Wages**

20 **[Cal. Lab. Code §§ 1194, 1194.2, 1197 and 1197.1]**

21 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

25 77. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
26 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
27 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and
28 pay minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members

1 during the CLASS PERIOD.

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

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

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

9 81. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the
10 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
11 work. For instance, as set forth herein, DEFENDANTS maintained a uniform policy that required
12 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
13 meal break without compensation. Further, as set forth herein, DEFENDANTS' uniform policy
14 and practice was to unlawfully and intentionally deny timely payment of wages due to
15 PLAINTIFF and the other members of the CALIFORNIA CLASS.

16 82. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
17 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
18 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
19 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

26 84. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
27 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
28 minimum wage compensation for their time worked for DEFENDANTS.

1 85. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
3 failure to pay all earned wages.

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

9 87. DEFENDANTS knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA CLASS were under compensated for their time worked.
11 DEFENDANTS systematically elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
13 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
14 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
15 for their time worked.

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

24 89. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
25 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment
26 of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor
27 Code and/or other applicable statutes. To the extent minimum wage compensation is determined
28 to be owed to the CALIFORNIA CLASS members who have terminated their employment,

1 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these
2 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
3 penalties are sought herein on behalf of these CALIFORNIA CLASS members. DEFENDANTS'
4 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and
5 other CALIFORNIA CLASS members are entitled to seek and recover statutory costs.

6 90. Pursuant to Labor Code § 1194.2, Plaintiff and CALIFORNIA CLASS are entitled
7 to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
8 thereon.

9 **FOURTH CAUSE OF ACTION**

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

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

12 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

1 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS'
2 strict corporate policy and practice.

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

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

11 **FIFTH CAUSE OF ACTION**

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

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

14 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

1 97. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable
2 IWC Wage Order by failing to compensate PLAINTIFF and other members of the CALIFORNIA
3 CLASS who were not provided a rest period, in accordance with the applicable Wage Order, one
4 additional hour of compensation at each employee's regular rate of compensation for each
5 workday that rest period was not provided.

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

9 **SIXTH CAUSE OF ACTION**

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

11 **[Cal. Lab. Code §§ 2800 and 2802, and the Applicable IWC Wage Order § 9]**

12 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

16 100. Cal. Labor Code §2800 provides, in pertinent part, "[a]n employer shall in all cases
17 indemnify his employee for losses caused by the employer's want of ordinary care."

18 101. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

23 102. Further, Cal. Labor Code §2902 additionally provides, in pertinent part: "(c) ... the
24 term 'necessary expenditures or losses' shall include all reasonable costs, including but not limited
25 to, attorney's fees incurred by the employee enforcing the rights granted by this section."

26 103. The Applicable IWC Wage Order §9 provides that "When tools or equipment are
27 required by the employer or are necessary to the performance of a job, such tools and equipment
28 shall be provided and maintained by the employer..."

104. California Labor Code section 2804 mandates that this statutory right cannot be waived.

105. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using their personal cellular phones for DEFENDANTS within the course and scope of their employment for DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and regulations of California.

106. PLAINTIFF therefore demands reimbursement on behalf of the members of the CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

SEVENTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code §§ 226 and 226.2]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

107. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and

1 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
2 Complaint.

3 108. Cal. Labor Code § 226 provides that an employer must furnish employees with an
4 “accurate itemized” statement in writing showing:

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

27 109. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF
28 and the other members of the CALIFORNIA CLASS with complete and accurate wage

1 statements which failed to accurately show, among other things, (1) total number of hours
2 worked, (2) net wages earned, (3) gross wages earned and (4) all applicable hourly rates in effect
3 during the pay period and the corresponding number of hours worked at each hourly rate by the
4 employee in violation of California Labor Code Section 226.

5 110. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code
6 § 226, causing injury and damages to the PLAINTIFF and the other members of the
7 CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS may
8 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
9 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
10 period pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant
11 to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no
12 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
13 of the CALIFORNIA CLASS herein.

14 **EIGHTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES WHEN DUE**

16 **(Cal Lab. Code §§ 201, 202, 203, and 204)**

17 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

18 111. PLAINTIFF, 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.

21 112. Cal. Lab. Code § 200 provides that:

22 As used in this article: (a) "Wages" includes all amounts for
23 labor performed by employees of every description, whether
24 the amount is fixed or ascertained by the standard of time,
25 task, piece, Commission basis, or other method of calculation.
26 (b) "Labor" includes labor, work, or service whether rendered
27 or performed under contract, subcontract, partnership, station
28

1 plan, or other agreement if the labor to be paid for is
2 performed personally by the person demanding payment.

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

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

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

19 115. There was no definite term in PLAINTIFF’s or any CALIFORNIA CLASS
20 Members’ employment contract.

21 116. Cal. Lab. Code § 203 provides:

22 If an employer willfully fails to pay, without abatement or
23 reduction, in accordance with Sections 201, 201.5, 202, and
24 205.5, any wages of an employee who is discharged or who
25 quits, the wages of the employee shall continue as a penalty
26 from the due date thereof at the same rate until paid or until an
27 action therefor is commenced; but the wages shall not
28 continue for more than 30 days.

1 117. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
2 terminated, and DEFENDANTS has not tendered payment of wages, to these employees who
3 missed meal and rest breaks, as required by law.

4 118. Cal. Lab. Code § 204 provides in part:

5 All wages, ...earned by any person in any employment are due and payable
6 twice during each calendar month, on days designated in advance by the
7 employer as the regular paydays.

8 119. During the relevant time period, Defendants willfully failed to pay Plaintiff and the
9 waiting time subclass members all their earned wages upon termination including, but not limited
10 to , proper minimum wages, accrued vacation pay, and overtime and double-time compensation,
11 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
12 employ.

13 120. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
14 members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to
15 thirty days of pay as penalty for not paying all wages due at time of termination for all employees
16 who terminated employment during the CLASS PERIOD, and demands an accounting and
17 payment of all wages due, plus interest and statutory costs as allowed by law.

18 **NINTH CAUSE OF ACTION**

19 **For Failure to Provide Personnel Files**

20 **[Cal. Lab. Code §1198.5]**

21 **(By PLAINTIFF and Against All DEFENDANTS)**

22
23 121. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs
24 as though fully set forth herein.

25 122. On October 12, 2023, Plaintiff Hernandez' counsel of record, as Plaintiff
26 Hernandez' legal representative, caused a written request via certified mail to be delivered to
27 Defendant for Plaintiff Hernandez' personnel and employment records, including but not limited
28 to (1) payroll records, (2) employment contracts; (3) itemized pay stubs, and (4) Plaintiff

1 Hernandez' complete employment file, true and correct copies of which are attached hereto as
2 Exhibit 2.

3 123. On November 14, 2023, Plaintiff Hernandez' counsel of record, as Plaintiff
4 Hernandez' legal representative, caused a second written request via certified mail to be
5 delivered to Defendant for Plaintiff Hernandez' personnel and employment records, including
6 but not limited to (1) payroll records, (2) employment contracts; (3) itemized pay stubs, and (4)
7 Plaintiff Hernandez' complete employment file, true and correct copies of which are attached
8 hereto as Exhibit 2.

9 124. Defendant failed to provide and/or make available to Plaintiff Hernandez her
10 personnel records, payroll records, employment contracts, and entire employment file within
11 thirty (30) days of all her requests as stated above. In fact, as of the filing of this Complaint,
12 Defendant still has not provided Plaintiff Hernandez her personnel records, pay stubs, and
13 employment file and Defendant has failed to pay Plaintiff Hernandez the statutory penalty in the
14 amount of \$750.00.

15 125. Defendant has violated Cal. Lab. Code Section 1198.5 by failing to respond and
16 provide Plaintiff with her employment file. Section 1198.5 states that employees (and former
17 employees) have the right to inspect personnel records maintained by the employer "related to
18 the employee's performance or to any grievance concerning the employee." Employers must
19 allow inspection or copying within thirty (30) days of the request. Plaintiff requested her
20 employment file via certified mail—twice—and DEFENDANT failed to respond. As a result,
21 Plaintiff is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab.
22 Code Section 1198.5, a statutory penalty of \$750, and an award of attorneys' fees and costs for
23 bringing this action.

24 **TENTH CAUSE OF ACTION**

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

26 **[Cal. Lab . Code §§ 2698 ET SEQ. ("PAGA")]**

27 **(By PLAINTIFF and Against All DEFENDANTS)**

1 126. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs
2 as though fully set forth herein.

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

13 128. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
14 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
15 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees
16 for violation of the Labor Code may, as an alternative, be recovered through civil action brought
17 by an aggrieved employee on behalf of himself or herself and other current or former employees
18 pursuant to the procedures specified in Labor Code § 2699.3.

19 129. For all provisions of the Labor Code except those for which a civil penalty is
20 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
21 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
22 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent pay
23 period in which Defendants violated these provisions of the Labor Code.

24 130. Defendants' conduct violates numerous Wage Orders and Labor Code sections
25 including, but not limited to, the following:

- 26 a. Violation of Labor Code § 201, 202, 203, 204, 210, 221, 226, 226.2, 226.3, 226.7,
27 227.3, 246, 510, 512, 1182.12, 1194, 1197, 1198, 1198.5, 2802, 2698 for failure to
28 timely pay all earned wages (including minimum wage and overtime wages) owed

1 to Plaintiff and other aggrieved employees during employment and upon separation
2 of employment as herein alleged;

3 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
4 Plaintiff and other aggrieved employees failure to pay premium wages for missed
5 meal periods and herein alleged;

6 c. Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
7 other aggrieved employees and failure to pay premium wages for missed rest
8 periods as herein alleged;

9 d. Violation of Labor Code § 226 for failure to provide accurate itemized wage
10 statements to Plaintiff and other aggrieved employees as herein alleged;

11 e. Violation of Labor Code § 1174 and 1174.5 for failure to maintain accurate and
12 complete records showing, among other things, the hours worked daily by and
13 the wages paid to aggrieved employees; and

14 f. Violation of Labor Code § 2800 and 2802 for failure to reimburse Plaintiff and
15 other aggrieved employees as herein alleged.

16 131. Plaintiff is an “AGGRIEVED EMPLOYEE” because she was employed by the
17 alleged violator and had one or more of the violations committed against her, and therefore is
18 properly suited to represent the interest of all the other AGGRIEVED EMPLOYEES.

19 132. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
20 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and
21 all other aggrieved employees under PAGA.

22 133. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
23 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
24 cited above.

25 134. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
26 herein.

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF, on her own behalf and on behalf of all other similarly
3 situated, prays for judgment against each DEFENDANT, jointly and severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

5 A) That the Court certify the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
6 and Ninth by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. §
7 382;

8 B) An order temporarily, preliminarily and permanently enjoining and restraining
9 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

10 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully
11 withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA
12 CLASS;

13 D) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
14 for restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and to the
15 other members of the CALIFORNIA CLASS; and,

16 E) Compensatory damages, according to proof at trial, including compensatory
17 damages for overtime compensation due PLAINTIFF and the other members of the
18 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest
19 thereon at the statutory rate;

20 F) For economic and/or special damages in an amount according to proof with interest
21 thereon;

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

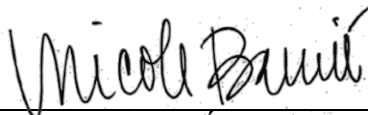
26 H) Meal and rest period compensation pursuant to California Labor Code Sections
27 226.7, 512 and the applicable IWC Wage Order; and
28

- 1 I) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
2 1197.
- 3 J) For Statutory penalties to the extent permitted by law, including those pursuant to
4 the Labor Code and IWC Wage Orders;
- 5 2. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 6 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
7 General Act of 2004; and
- 8 b. An Award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 9 3. On all claims:
- 10 A) An award of interest, including prejudgment interest at the legal rate;
- 11 B) Such other and further relief as the Court deems just and equitable; and,
- 12 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
13 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.
- 14 D) For prejudgment and post judgment interest on each of the foregoing at the legal
15 rate from the date the obligation became due through the date of judgment in this matter.
- 16 E) For any other relief that is just and proper.

17
18 Dated: February 14, 2024

19 **BARVIÉ LAW, APC**

20
21 By



NICOLE BARVIÉ, Esq.
Attorneys for Plaintiff(s)

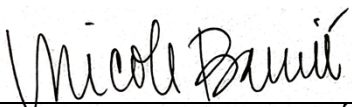
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DEMAND FOR A JURY TRIAL

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

Dated: February 14, 2024

BARVIÉ LAW, APC

By 

NICOLE BARVIÉ
Attorneys for Plaintiff(s)

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EXHIBIT 1

December 15, 2023

VIA ONLINE FILING TO LWDA and CERTIFIED MAIL TO DEFENDANT

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

Prominent Commercial Services, Inc.
Attn: Human Resources
643 S. Olive St. Ste 260
Los Angeles, CA
90014

Prominent Commercial Services, Inc.
Attn: Jorge S. Rosales
7356 Lugo Avenue
Paramount, CA
90723

Via Certified & Return Receipt

Re: **Notice of Violation of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 221, 226(a), 226(f), 226.2, 226.3, 226.7, 227.3, 246 et seq., 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1195.5, 2802, Violations of Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our office represents Plaintiff Francisca Hernandez (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Prominent Commercial Services, Inc., a California Corporation and Mr. Jorge Rosales, an individual (herein referred collectively as “Defendants”)

“Aggrieved Employees” refers to all individuals who are or were previously employed by Defendant Prominent Commercial Services, Inc. in California and classified as non-exempt employees during the time period of December 15, 2022 until a date as determined by the Court. Plaintiff was employed by Defendants in California beginning November 2021 to September 2023 non-exempt employee, entitled to payment of all wages and the legally required meal and rest





breaks, as well as timely and accurate wage statements. 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 for all of their missed meal breaks and rest breaks, and for all of their time spent working off the clock.

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. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant fails to timely provide Plaintiff and other Aggrieved Employees with their wages. To date, Defendant has failed to pay Plaintiff for almost four months of pay. 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 Aggrieved Employees are paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the correct total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). Defendants also failed to correctly calculate Plaintiff's regular rate of pay for purposes of payment of overtime and sick time pay. Further, Defendants unlawfully failed to timely pay Plaintiff and other Aggrieved Employees for earned wages. As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226(f), 226.2, 226.3, 226.7, 227.3, 246 *et seq.*, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2802, Violations of Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.5

Plaintiff seeks to represent a group of Aggrieved Employees defined as all non-exempt and exempt employees who worked for Defendants during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, 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 incorporate the allegations of the attached Complaint into this letter as if fully set forth herein as Exhibit 1.. 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 Defendants 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 California Employees.

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

Respectfully,

Nicole Barvié
Attorney for Plaintiff

NB: Enclosures: Exhibit 1.

1 **BARVIÉ LAW, ACP**
2 NICOLE BARVIÉ, State Bar No. 282352
3 nicole@barvielaw.com
4 550 West B Street, 4th Floor
5 San Diego, CA 92101-3598
6 Telephone: 858.255.0928

7 Attorney for Francisca Hernandez,
8 Individually and on behalf of all other similarly situated

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11
12 **FOR THE COUNTY OF LOS ANGELES**

13 FRANCISCA HERNANDEZ, an individual,
14 on behalf of herself, and on behalf of all persons
15 similarly situated,

16 Plaintiff,

17 v.

18 PROMINENT COMMERCIAL SERVICES,
19 INC., a California Corporation; JORGE
20 ROSALES, an individual; and DOES 1 through
21 50, Inclusive;

22 Defendants.

Case No.

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§ 226 and 226.2; and
8. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202, 203 AND 227.3.

***[ADDITIONAL CAUSES OF ACTION
CONTINUED ON NEXT PAGE]***

9. FAILURE TO PROVIDE
PERSONNEL FILES IN VIOLATION
OF CAL. LAB. CODE §1198; and
10. Civil Penalties Pursuant to Labor Code
§2699, *et seq.*, for violations of Labor
Code §§ 201, 202, 203, 204, 226(a),
226.3, 226.7, 510, 512, 558, 1194,
1197, 1197.1, 1198, 2802, and the
California Code of Regulations

DEMAND FOR JURY TRIAL

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

THE PARTIES

1. Defendant PROMINENT COMMERCIAL SERVICES, INC. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, County of Los Angeles. Defendant provides commercial and residential cleaning services.

2. Defendant JORGE ROSALES is the Founder and Owner of PROMINENT COMMERCIAL SERVICES, INC. JORGE ROSALES resides in the state of California, County of Los Angeles.

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

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

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

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

20 7. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on
21 an hourly basis and entitled to minimum wages, overtime pay, and legally compliant meal and
22 rest periods from December 2019 to present.

23 8. PLAINTIFF brings this Class Action under California Code of Civil Procedure §
24 382 on behalf of herself and on behalf of all of DEFENDANTS current and former non-exempt
25 California employees (the "CALIFORNIA CLASS") at any time during the period beginning
26 four years from the date of the filing of this Complaint and ending on a date determined by the
27 Court (the "CLASS PERIOD").
28

1 9. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
2 members is under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend
3 the following class definitions before the Court determines whether class certification is
4 appropriate, or thereafter upon leave of Court.

5 10. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
6 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
7 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
8 which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant
9 meal and rest periods or an additional hour of pay at the regular rate of compensation in *lieu*
10 thereof in violation of California Labor Code Sections 226.7(c), 512(a) and the applicable
11 Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFF and the
12 CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code
13 Sections 510, 1194, 1197, and 1197.1, failed to reimburse PLAINTIFF and the CALIFORNIA
14 CLASS for required expenses in violation for California Labor Code Section 2802, and (3) failed
15 to provide accurate itemized wage statements in violation of California Labor Code Sections 226
16 and 226.2.

17 11. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of
18 themselves and all others similarly situated in California to recover, among other things, unpaid
19 wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant to Labor
20 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5,
21 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, and 2698, *et seq.*

22 12. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
23 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
24 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

25 13. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
26 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
27 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
28

1 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal
2 and equitable relief.

3 **JURISDICTION AND VENUE**

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

8 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, and
10 DEFENDANTS (i) currently maintain and at all relevant times, maintained offices and facilities
11 in this County and/or conducts substantial business in this County, and (ii) committed the
12 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

13 **THE CONDUCT**

14 16. In violation of the applicable sections of the California Labor Code and the
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
16 matter of company policy, practice and procedure, intentionally, knowingly and systematically
17 failed to provide legally compliant meal and rest periods, failed to accurately compensate
18 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
19 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
20 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to reimburse
21 PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses and failed to
22 issue to PLAINTIFF, and the members of the CALIFORNIA CLASS with accurate itemized
23 wage statements showing, among other things, all applicable hourly rates in effect during the pay
24 periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS'
25 uniform policies and practices are intended to purposefully avoid the accurate and full payment
26 for all time worked as required by California law which allows DEFENDANTS to illegally profit
27 and gain an unfair advantage over competitors who comply with the law. To the extent equitable
28

1 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS
2 PERIOD should be adjusted accordingly.

3 **A. Meal Period Violations**

4 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
5 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
6 meaning the time during which an employee is subject to the control of an employer, including
7 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
8 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work
9 without paying them for all the time they were under DEFENDANTS' control. Specifically, as
10 a result of, among other reasons, PLAINTIFF's demanding work requirements, and
11 DEFENDANTS' under staffing, from time-to-time, DEFENDANTS required PLAINTIFF to
12 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
13 Additionally, PLAINTIFF was from time-to-time interrupted by work assignments while clocked
14 out for what should have been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF
15 and other CALIFORNIA CLASS members forfeited minimum wage and overtime wages by
16 regularly working without their time being accurately recorded and without compensation at the
17 applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not
18 to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked is evidenced
19 by DEFENDANTS' business records.

20 18. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
21 schedules, and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
22 CALIFORNIA CLASS members were from time-to-time unable to take thirty (30) minute off
23 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
24 other members of the CALIFORNIA CLASS were required from time-to-time to perform work
25 as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving
26 a meal break. Further, DEFENDANTS from time-to-time failed to provide PLAINTIFF and
27 CALIFORNIA CLASS members with a second off-duty meal period for some workdays in which
28 these employees were required by DEFENDANTS to work ten (10) hours of work from time-to-

1 time. The nature of the work performed by the PLAINTIFF and the members of the
2 CALIFORNIA CLASS does not qualify for limited and narrowly construed “on-duty” meal
3 period exception. When they were provided with meal periods, PLAINTIFF and other
4 CALIFORNIA CLASS Members were, from time to time, required to remain on the premises,
5 on duty and/or on call. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
6 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS’
7 strict corporate policy and practice.

8 **B. Rest Period Violations**

9 19. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
10 CALIFORNIA CLASS members were also required from time-to-time to work in excess of four
11 (4) hours without being provided ten (10) minute rest periods as a result of, among other reasons,
12 their rigorous work schedules, and DEFENDANTS’ inadequate staffing. Further, for the same
13 reasons these employees were denied their first rest periods of at least ten (10) minutes for some
14 shifts worked of at least two (2) to four (4) hours from time-to-time, a first and second rest period
15 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from
16 time-to-time, and a first, second, and third rest period of at least ten (10) minutes for some shifts
17 worked of ten (10) hours or more from time-to-time. PLAINTIFF and other CALIFORNIA
18 CLASS members were also not provided with one-hour wages in lieu thereof. When they were
19 provided with rest periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from
20 time to time, required to remain on the premises, on duty and/or on call. As a result of their
21 rigorous work schedules and DEFENDANTS’ inadequate staffing, PLAINTIFF and other
22 CALIFORNIA CLASS members were from time-to-time denied their proper rest periods by
23 DEFENDANTS and DEFENDANTS’ managers.

24 **C. Unreimbursed Business Expenses**

25 20. DEFENDANTS as a matter of corporate policy, practice and procedure,
26 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and
27 the members of the CALIFORNIA CLASS for required business expenses they incurred in direct
28 consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor

1 Code Section 2802, employers are required to indemnify employees for all expenses incurred in
2 the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an
3 employer shall indemnify his or her employee for all necessary expenditures or losses incurred
4 by the employee in direct consequence of the discharge of his or her duties, or of his or her
5 obedience to the directions of the employer, even though unlawful, unless the employee, at the
6 time of obeying the directions, believed them to be unlawful."

7 21. From time-to-time during the CLASS PERIOD, PLAINTIFF and members of the
8 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular
9 phones, as a result of and in furtherance of their job duties as employees for DEFENDANTS.
10 Specifically, Plaintiff and members of the CALIFORNIA CLASS, used their personal cellular
11 phones to execute their job duties. But for the use of their personal cell phones, PLAINTIFF and
12 the members of the CALIFORNIA CLASS could not complete their essential job duties.
13 Notwithstanding, DEFENDANTS did not reimburse or indemnify PLAINTIFF or the members
14 of the CALIFORNIA CLASS for the cost associated with the use of their personal cellular phones
15 for DEFENDANTS' benefit. As a result, in the course of their employment with
16 DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred
17 unreimbursed business expenses which included, but were not limited to, costs related to the use
18 of their personal cellular, all on behalf of and for the benefit of DEFENDANTS.

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

20 9. During the CLASS PERIOD, from time-to-time, DEFENDANTS failed and
21 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS
22 for all hours worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the
23 other members of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding,
24 from time-to-time DEFENDANTS failed to pay PLAINTIFF and other members of the
25 CALIFORNIA CLASS necessary wages for performing work at DEFENDANTS' direction,
26 request and benefit, while off-the clock pre-shift, post-shift, and during meal periods.

27 10. During the CLASS PERIOD, from time-to-time DEFENDANTS required
28 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work, including

1 but not limited to, cleaning a home or commercial building before clocking in to start her shift.
2 Further, as discussed *supra*, PLAINTIFF and other members of the CALIFORNIA CLASS were
3 from time to time interrupted with work assignments during their off-duty meal periods without
4 additional compensation from DEFENDANTS.

5 11. DEFENDANTS directed and directly benefited from the uncompensated off-the-
6 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

7 12. DEFENDANTS controlled the work schedules, duties, protocols, applications,
8 assignments and employment conditions of PLAINTIFF and the other members of the
9 CALIFORNIA CLASS.

10 13. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
11 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
12 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
13 wages earned and owed for all the work they performed, including off-the-clock work.

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

16 15. DEFENDANTS' policies and practices deprived PLAINTIFF and the other members
17 of the CALIFORNIA CLASS of all minimum, regular and overtime wages owed for the off-the-
18 clock work activities and their required meal periods. Because PLAINTIFF and the other members
19 of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight
20 (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

21 16. DEFENDANTS knew or should have known that PLAINTIFF and the other
22 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

23 17. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
25 for the time spent working off-the-clock pre-shift, and during meal periods. DEFENDANTS'
26 uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS
27 wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS'
28 business records.

1 **E. Wage Statement Violations**

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

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

17 20. In addition to the violations described above, DEFENDANTS, from time-to-time,
18 failed to provide PLAINTIFF and the CALIFORNIA CLASS members with wage statements that
19 comply with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other
20 members of the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226.
21 Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an
22 unintentional payroll error due to clerical or inadvertent mistake.

23 21. DEFENDANTS also failed to timely pay PLAINTIFF and the CALIFORNIA
24 CLASS members in compliance of Cal. Lab. Code §204. DEFENDANTS' violations are knowing
25 and intentional, were not isolated or due to an unintentional payroll error due to clerical or
26 inadvertent mistake.

27 **CLASS ACTION ALLEGATIONS**

28 22. PLAINTIFF brings the First through Ninth Causes of Action as a class action

1 pursuant to California Code of Civil Procedure § 382 on behalf the CALIFORNIA CLASS,
2 defined *supra*, that worked for DEFENDANT in California at any time beginning four (4) years
3 prior to the filing of this Complaint and ending on the date as determined by the Court (“CLASS
4 PERIOD”).

5 23. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been
6 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
7 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
8 illegal meal and rest period policies, failure to separately compensate rest periods, failure to
9 separately compensate, failure to provide accurate itemized wage statements, failure to maintain
10 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

11 24. The members of the class are so numerous that joinder of all class members is
12 impractical.

13 25. Common questions of law and fact regarding DEFENDANTS’ conduct, including
14 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to provide
15 legally compliant meal and rest periods, failing to reimburse business expenses, failure to provide
16 accurate itemized wage statements accurate, and failure ensure they are paid at least minimum
17 wage and split shift premiums and overtime, exist as to all members of the class and predominate
18 over any questions affecting solely any individual members of the class. Among the questions of
19 law and fact common to the class are:

- 20 a. Whether DEFENDANTS maintained legally compliant meal
21 period policies and practices;
- 22 b. Whether DEFENDANTS maintained legally compliant rest
23 period policies and practices;
- 24 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
25 CALIFORNIA CLASS members accurate premium payments for
26 missed meal and rest periods;
- 27 d. Whether DEFENDANTS failed to pay PLAINTIFF and the
28 CALIFORNIA CLASS members accurate overtime wages and sick

1 pay;

2 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
3 CALIFORNIA CLASS members at least minimum wage for all hours
4 worked;

5 f. Whether DEFENDANTS reimbursed PLAINTIFF and the
6 CALIFORNIA CLASS members for required business expenses;

7 g. Whether DEFENDANTS issued legally compliant wage
8 statements;

9 h. Whether DEFENDANTS committed an act of unfair
10 competition by systematically failing to record and pay PLAINTIFF
11 and the other members of the CALIFORNIA CLASS for all time
12 worked;

13 i. Whether DEFENDANTS committed an act of unfair
14 competition by systematically failing to record all meal and rest
15 breaks missed by PLAINTIFF and other CALIFORNIA CLASS
16 members, even though DEFENDANTS enjoyed the benefit of this
17 work, required employees to perform this work and permits or suffers
18 to permit this work;

19 j. Whether DEFENDANTS committed an act of unfair
20 competition in violation of the UCL, by failing to provide the
21 PLAINTIFF and the other members of the CALIFORNIA CLASS
22 with the legally required meal and rest periods.

23 k. Violating Cal. Lab Code §201, 202 and/or 203, which
24 provides that when an employee is discharged or quits from
25 employment, the employer must pay the employee all wages due
26 without abatement, by failing to tender full payment and/or restitution
27 of wages owed or in the manner required by California law to the
28 members of the California Class who have terminated their

1 employment.

2 26. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a
3 result of DEFENDANTS' conduct and actions alleged herein.

4 27. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the
5 same interests as the other members of the class.

6 28. PLAINTIFF will fairly and adequately represent and protect the interests of the
7 CALIFORNIA CLASS members.

8 29. PLAINTIFF retained able class counsel with extensive experience in class action
9 litigation.

10 30. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
11 interests of the other CALIFORNIA CLASS members.

12 31. There is a strong community of interest among PLAINTIFF and the members of the
13 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are
14 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
15 sustained;

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

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

27 a. Inconsistent or varying adjudications with respect to individual members of
28 the CALIFORNIA CLASS which would establish incompatible standards of

1 conduct for the parties opposing the CALIFORNIA CLASS; and/or,

2 b. Adjudication with respect to individual members of the CALIFORNIA
3 CLASS which would as a practical matter be dispositive of the interests of the other
4 members not party to the adjudication or substantially impair or impeded their
5 ability to protect their interests.

6 34. Class treatment provides manageable judicial treatment calculated to bring an
7 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
8 the conduct of DEFENDANTS.

9 **FIRST CAUSE OF ACTION**

10 **For Unlawful Business Practices**

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

12 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

16 36. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof.
17 Code § 17021.

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

22 Any person who engages, has engaged, or proposes to engage in
23 unfair competition may be enjoined in any court of competent
24 jurisdiction. The court may make such orders or judgments,
25 including the appointment of a receiver, as may be necessary to
26 prevent the use or employment by any person of any practice which
27 constitutes unfair competition, as defined in this chapter, or as may
28 be necessary to restore to any person in interest any money or

1 property, real or personal, which may have been acquired by means
2 of such unfair competition.

3 Cal. Bus. & Prof. Code § 17203.

4 38. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
5 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair
6 competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§
7 17200, *et seq.* (the “UCL”), by engaging and continuing to engage in business practices which
8 violates California law, including but not limited to, the applicable Industrial Wage Order(s), the
9 California Code of Regulations and the California Labor Code including Sections 201, 202, 203,
10 204 *et seq.*, 210, 221, 226(a), 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1182.12, 1194,
11 1194.2, 1197, 1197.1, 1198, & 2802, for which this Court should issue declaratory and other
12 equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and
13 remedy the conduct held to constitute unfair competition, including restitution of wages
14 wrongfully withheld.

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

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

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

5 42. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
6 unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to,
7 *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of
8 compensation for missed meal and rest periods, overtime and minimum wages owed, provide
9 accurate itemized wage statements, to PLAINTIFF and the other members of the CALIFORNIA
10 CLASS as required by Cal. Labor Code.

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

16 44. PLAINTIFF further demands on behalf of herself and on behalf of each
17 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty paid
18 rest period was not timely provided as required by law.

19 45. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of
20 the CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
21 calculated overtime and missed meal and rest periods premiums.

22 46. By and through the unlawful and unfair business practices described herein,
23 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the
24 other members of the CALIFORNIA CLASS, including earned wages for all overtime worked,
25 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
26 detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS
27 to unfairly compete against competitors who comply with the law.

28 47. All the acts described herein as violations of, among other things, the Industrial

1 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
2 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
3 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
4 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

5 48. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
6 and do, seek such relief as may be necessary to restore to them the money and property which
7 DEFENDANTS has acquired, or of which PLAINTIFF and the other members of the
8 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
9 business practices, including earned but unpaid wages for all overtime worked.

10 49. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
11 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
12 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
13 engaging in any unlawful and unfair business practices in the future.

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

21 **SECOND CAUSE OF ACTION**

22 **For Failure to Pay Overtime Compensation**

23 **[Cal. Lab. Code §§ 510, *et seq.*]**

24 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

28 52. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period

1 beginning four years prior to the filing of the Complaint and the present (“CLASS PERIOD”)
2 bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code
3 and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these
4 employees for all overtime worked, including, work performed in excess of eight (8) hours in a
5 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

16 56. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
17 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
18 they worked or were not accurately compensated for all overtime hours worked.

19 57. DEFENDANTS’ uniform pattern of unlawful wage and hour practices manifested,
20 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
21 implementing a uniform policy and practice that failed to accurately record overtime worked by
22 PLAINTIFF and other CALIFORNIA CLASS members and denied accurate compensation to
23 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
24 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
25 (12) hours in a workday, and/or forty (40) hours in any workweek.

26 58. In committing these violations of the California Labor Code, DEFENDANTS
27 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
28 consequently underpaid the actual time worked by PLAINTIFF and other members of the

1 CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid the payment of all
2 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
3 Commission requirements and other applicable laws and regulations.

4 59. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
5 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
6 compensation for all overtime worked.

7 60. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
8 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
9 and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other
10 members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement
11 that would preclude the causes of action contained herein this Complaint. Rather, the PLAINTIFF
12 brings this Action on behalf of herself and the CALIFORNIA CLASS based on DEFENDANTS'
13 violations of non-negotiable, non-waivable rights provided by the State of California.

14 61. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
16 failure to pay all earned wages.

17 62. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
18 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
19 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
20 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
21 and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay
22 using the applicable overtime rate as evidenced by DEFENDANTS' business records and
23 witnessed by employees.

24 63. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
25 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
26 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
27 suffered and will continue to suffer an economic injury in amounts which are presently unknown
28 to them and which will be ascertained according to proof at trial.

1 64. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
3 DEFENDANTS systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
5 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

15 66. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
16 recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory
17 costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as
18 provided by the California Labor Code and/or other applicable statutes. To the extent overtime
19 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
20 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
21 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
22 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS members.
23 DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further,
24 PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory
25 costs.

26 **THIRD CAUSE OF ACTION**

27 **For Failure to Pay Minimum Wages**

28 **[Cal. Lab. Code §§ 1194, 1194.2, 1197 and 1197.1]**

1 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

5 68. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
6 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
7 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and
8 pay minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members
9 during the CLASS PERIOD.

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

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

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

17 72. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the
18 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
19 work. For instance, as set forth herein, DEFENDANTS maintained a uniform policy that required
20 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
21 meal break without compensation. Further, as set forth herein, DEFENDANTS' uniform policy
22 and practice was to unlawfully and intentionally deny timely payment of wages due to
23 PLAINTIFF and the other members of the CALIFORNIA CLASS.

24 73. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
25 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
26 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
27 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

28 74. In committing these violations of the California Labor Code, DEFENDANTS

1 inaccurately calculated the correct time worked and consequently underpaid the actual time
2 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted
3 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
4 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
5 laws and regulations.

6 75. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
7 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
8 minimum wage compensation for their time worked for DEFENDANTS.

9 76. During the CLASS PERIOD, PLAINTIFF and the other members of the
10 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
11 failure to pay all earned wages.

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

17 78. DEFENDANTS knew or should have known that PLAINTIFF and the other
18 members of the CALIFORNIA CLASS were under compensated for their time worked.
19 DEFENDANTS systematically elected, either through intentional malfeasance or gross
20 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
21 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
22 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
23 for their time worked.

24 79. In performing the acts and practices herein alleged in violation of California labor
25 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
26 and provide them with the requisite compensation, DEFENDANTS acted and continues to act
27 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
28 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the

1 consequences to them, and with the despicable intent of depriving them of their property and legal
2 rights, and otherwise causing them injury in order to increase company profits at the expense of
3 these employees.

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

14 81. Pursuant to Labor Code § 1194.2, Plaintiff and CALIFORNIA CLASS are entitled
15 to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
16 thereon.

17 **FOURTH CAUSE OF ACTION**

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

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

20 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

24 83. During the CLASS PERIOD, from time-to-time, DEFENDANTS failed to provide
25 all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS
26 members as required by the applicable Wage Order and Labor Code. The nature of the work
27 performed by PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees
28 from being relieved of all of their duties for the legally required off-duty meal periods. As a result

1 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were
2 from time-to-time not fully relieved of duty by DEFENDANTS for their meal periods.
3 Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS
4 members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
5 DEFENDANTS' business records from time-to-time. Further, DEFENDANTS failed to provide
6 PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period in some
7 workdays in which these employees were required by DEFENDANTS to work ten (10) hours of
8 work. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore
9 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS'
10 strict corporate policy and practice.

11 84. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable
12 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS members
13 who were not provided a meal period, in accordance with the applicable Wage Order, one
14 additional hour of compensation at each employee's regular rate of compensation for each
15 workday that a meal period was not provided.

16 85. As a proximate result of the aforementioned violations, PLAINTIFF and
17 CALIFORNIA CLASS members have been damaged in an amount according to proof at trial, and
18 seek all wages earned and due, interest, penalties, expenses and costs of suit.

19 **FIFTH CAUSE OF ACTION**

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

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

22 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

26 87. During the CLASS PERIOD, PLAINTIFF and other members of the CALIFORNIA
27 CLASS were from time-to-time required to work in excess of four (4) hours without being
28 provided ten (10) minute rest periods. Further, these employees were denied their first rest periods

1 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
2 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight
3 (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts
4 worked of ten (10) hours or more from time-to-time. PLAINTIFF and other members of the
5 CALIFORNIA CLASS were also not provided with one-hour wages in lieu thereof. As a result
6 of their rigorous work schedules, PLAINTIFF and other members of the CALIFORNIA CLASS
7 were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS'
8 managers.

9 88. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable
10 IWC Wage Order by failing to compensate PLAINTIFF and other members of the CALIFORNIA
11 CLASS who were not provided a rest period, in accordance with the applicable Wage Order, one
12 additional hour of compensation at each employee's regular rate of compensation for each
13 workday that rest period was not provided.

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

17 **SIXTH CAUSE OF ACTION**

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

19 **[Cal. Lab. Code §§ 2800 and 2802, and the Applicable IWC Wage Order § 9]**

20 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

24 91. Cal. Labor Code §2800 provides, in pertinent part, "[a]n employer shall in all cases
25 indemnify his employee for losses caused by the employer's want of ordinary care."

26 92. Cal. Lab. Code § 2802 provides, in relevant part, that:

27 An employer shall indemnify his or her employee for all necessary expenditures or losses
28 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or

1 her obedience to the directions of the employer, even though unlawful, unless the employee, at the
2 time of obeying the directions, believed them to be unlawful.

3 93. Further, Cal. Labor Code §2902 additionally provides, in pertinent part: “(c) ... the
4 term ‘necessary expenditures or losses’ shall include all reasonable costs, including but not limited
5 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

6 94. The Applicable IWC Wage Order §9 provides that “When tools or equipment are
7 required by the employer or are necessary to the performance of a job, such tools and equipment
8 shall be provided and maintained by the employer...”

9 95. California Labor Code section 2804 mandates that this statutory right cannot be
10 waived.

11 96. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
12 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
13 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
14 DEFENDANTS’ benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
15 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
16 using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS.
17 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
18 DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of
19 DEFENDANTS. DEFENDANTS’ uniform policy, practice and procedure was to not reimburse
20 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
21 their personal cellular phones for DEFENDANTS within the course and scope of their employment
22 for DEFENDANTS. These expenses were necessary to complete their principal job duties.
23 DEFENDANTS are estopped by DEFENDANTS’ conduct to assert any waiver of their
24 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
25 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
26 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is
27 required to do under the laws and regulations of California.

28 97. PLAINTIFF therefore demands reimbursement on behalf of the members of the

1 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on
2 behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with interest at
3 the statutory rate and costs under Cal. Lab. Code § 2802.

4 **SEVENTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 226 and 226.2]**

7 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

11 99. Cal. Labor Code § 226 provides that an employer must furnish employees with an
12 “accurate itemized” statement in writing showing:

- 13 1. Gross wages earned;
- 14 2. Total hours worked by the employee, except for any employee
15 whose compensation is solely based on a salary and who is exempt
16 from payment of overtime under subdivision (a) of Section 515 or any
17 applicable order of the Industrial Welfare Commission;
- 18 3. The number of piece-rate units earned and any applicable
19 piece rate if the employee is paid on a piece-rate basis;
- 20 4. All deductions, provided that all deductions made on written
21 orders of the employee may be aggregated and shown as one item;
- 22 5. Net wages earned;
- 23 6. The inclusive dates of the period for which the employee is
24 paid;
- 25 7. The name of the employee and his or her social security
26 number, except that by January 1, 2008, only the last four digits of his
27 or her social security number or an employee identification number
28 other than a social security number may be shown on the itemized

statement;

8. The name and address of the legal entity that is the employer;
and

9. All applicable hourly rates in effect during the pay period and
the corresponding number of hours worked at each hourly rate by the
employee.

100. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF
and the other members of the CALIFORNIA CLASS with complete and accurate wage
statements which failed to accurately show, among other things, (1) total number of hours
worked, (2) net wages earned, (3) gross wages earned and (4) all applicable hourly rates in effect
during the pay period and the corresponding number of hours worked at each hourly rate by the
employee in violation of California Labor Code Section 226.

101. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code
§ 226, causing injury and damages to the PLAINTIFF and the other members of the
CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS may
elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
period pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant
to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no
event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
of the CALIFORNIA CLASS herein.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN DUE

(Cal Lab. Code §§ 201, 202, 203, and 204)

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

1 103. Cal. Lab. Code § 200 provides that:

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

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

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

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

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

28 107. Cal. Lab. Code § 203 provides:

1 If an employer willfully fails to pay, without abatement or
2 reduction, in accordance with Sections 201, 201.5, 202, and
3 205.5, any wages of an employee who is discharged or who
4 quits, the wages of the employee shall continue as a penalty
5 from the due date thereof at the same rate until paid or until an
6 action therefor is commenced; but the wages shall not
7 continue for more than 30 days.

8 108. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
9 terminated, and DEFENDANTS has not tendered payment of wages, to these employees who
10 missed meal and rest breaks, as required by law.

11 109. Cal. Lab. Code § 204 provides in part:

12 All wages, ...earned by any person in any employment are due and payable
13 twice during each calendar month, on days designated in advance by the
14 employer as the regular paydays.

15 110. During the relevant time period, Defendants willfully failed to pay Plaintiff and the
16 waiting time subclass members all their earned wages upon termination including, but not limited
17 to , proper minimum wages, accrued vacation pay, and overtime and double-time compensation,
18 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
19 employ.

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

25 **NINTH CAUSE OF ACTION**

26 **For Failure to Provide Personnel Files**

27 **[Cal. Lab. Code §1198.5]**

28 **(By PLAINTIFF and Against All DEFENDANTS)**

1
2 112. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs
3 as though fully set forth herein.

4 113. On October 12, 2023, Plaintiff Hernandez' counsel of record, as Plaintiff
5 Hernandez' legal representative, caused a written request via certified mail to be delivered to
6 Defendant for Plaintiff Hernandez' personnel and employment records, including but not limited
7 to (1) payroll records, (2) employment contracts; (3) itemized pay stubs, and (4) Plaintiff
8 Hernandez' complete employment file, true and correct copies of which are attached hereto as
9 Exhibit 2.

10 114. On November 14, 2023, Plaintiff Hernandez' counsel of record, as Plaintiff
11 Hernandez' legal representative, caused a second written request via certified mail to be
12 delivered to Defendant for Plaintiff Hernandez' personnel and employment records, including
13 but not limited to (1) payroll records, (2) employment contracts; (3) itemized pay stubs, and (4)
14 Plaintiff Hernandez' complete employment file, true and correct copies of which are attached
15 hereto as Exhibit 2.

16 115. Defendant failed to provide and/or make available to Plaintiff Hernandez her
17 personnel records, payroll records, employment contracts, and entire employment file within
18 thirty (30) days of all her requests as stated above. In fact, as of the filing of this Complaint,
19 Defendant still has not provided Plaintiff Hernandez her personnel records, pay stubs, and
20 employment file and Defendant has failed to pay Plaintiff Hernandez the statutory penalty in the
21 amount of \$750.00.

22 116. Defendant has violated Cal. Lab. Code Section 1198.5 by failing to respond and
23 provide Plaintiff with her employment file. Section 1198.5 states that employees (and former
24 employees) have the right to inspect personnel records maintained by the employer "related to
25 the employee's performance or to any grievance concerning the employee." Employers must
26 allow inspection or copying within thirty (30) days of the request. Plaintiff requested her
27 employment file via certified mail—twice—and DEFENDANT failed to respond. As a result,
28 Plaintiff is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab.

1 Code Section 1198.5, a statutory penalty of \$750, and an award of attorneys' fees and costs for
2 bringing this action.

3 **TENTH CAUSE OF ACTION**

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

5 **[Cal. Lab . Code §§ 2698 ET SEQ. ("PAGA")]**

6 **(By PLAINTIFF and Against All DEFENDANTS)**

7 117. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs
8 as though fully set forth herein.

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

19 119. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
20 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
21 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees
22 for violation of the Labor Code may, as an alternative, be recovered through civil action brought
23 by an aggrieved employee on behalf of himself or herself and other current or former employees
24 pursuant to the procedures specified in Labor Code § 2699.3.

25 120. For all provisions of the Labor Code except those for which a civil penalty is
26 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
27 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
28

1 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent pay
2 period in which Defendants violated these provisions of the Labor Code.

3 121. Defendants' conduct violates numerous Wage Orders and Labor Code sections
4 including, but not limited to, the following:

- 5 a. Violation of Labor Code § 201, 202, 203, 204, 210, 221, 226, 226.2, 226.3, 226.7,
6 227.3, 246, 510, 512, 1182.12, 1194, 1197, 1198, 1198.5, 2802, 2698 for failure to
7 timely pay all earned wages (including minimum wage and overtime wages) owed
8 to Plaintiff and other aggrieved employees during employment and upon separation
9 of employment as herein alleged;
- 10 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
11 Plaintiff and other aggrieved employees failure to pay premium wages for missed
12 meal periods and herein alleged;
- 13 c. Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
14 other aggrieved employees and failure to pay premium wages for missed rest
15 periods as herein alleged;
- 16 d. Violation of Labor Code § 226 for failure to provide accurate itemized wage
17 statements to Plaintiff and other aggrieved employees as herein alleged;
- 18 e. Violation of Labor Code § 1174 and 1174.5 for failure to maintain accurate and
19 complete records showing, among other things, the hours worked daily by and
20 the wages paid to aggrieved employees; and
- 21 f. Violation of Labor Code § 2800 and 2802 for failure to reimburse Plaintiff and
22 other aggrieved employees as herein alleged.

23 122. Plaintiff is an "AGGRIEVED EMPLOYEE" because she was employed by the
24 alleged violator and had one or more of the violations committed against her, and therefore is
25 properly suited to represent the interest of all the other AGGRIEVED EMPLOYEES.

26 123. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
27 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and
28 all other aggrieved employees under PAGA.

1 CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four
2 thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

3 H) Meal and rest period compensation pursuant to California Labor Code Sections
4 226.7, 512 and the applicable IWC Wage Order; and

5 I) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
6 1197.

7 J) For Statutory penalties to the extent permitted by law, including those pursuant to
8 the Labor Code and IWC Wage Orders;

9 2. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

10 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
11 General Act of 2004; and

12 b. An Award of penalties, attorneys' fees and costs of suit, as allowable under the law.

13 3. On all claims:

14 A) An award of interest, including prejudgment interest at the legal rate;

15 B) Such other and further relief as the Court deems just and equitable; and,

16 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
17 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

18 D) For prejudgment and post judgment interest on each of the foregoing at the legal
19 rate from the date the obligation became due through the date of judgment in this matter.

20 E) For any other relief that is just and proper.

21
22 Dated: December 14, 2023

23 **BARVIÉ LAW, APC**

24
25 By _____
26 NICOLE BARVIÉ, Esq.

27 Attorneys for Plaintiff(s)

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