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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF RIVERSIDE**

EVELIA WINSTON, as an individual, and on  
behalf of all similarly situated employees,

Plaintiff,

v.

VISTANA CALIFORNIA MANAGEMENT,  
INC., and DOES 1-50, inclusive,

Defendants.

Case No.: **CVRI 2404402**

**CLASS ACTION**

**COMPLAINT FOR DAMAGES**

1. Failure to Pay All Wages, Including Minimum and Overtime Wages (Labor Code §§ 510, 1194);
2. Failure to Provide Rest Periods (Labor Code §§ 226.7, 512);
3. Failure to Provide Meal Periods (Labor Code §§ 226.7, 512);
4. Failure to Timely Pay Wages at Separation (Labor Code §§ 201, 202, 203);
5. Failure to Keep Accurate Payroll Records (Labor Code § 1174, 226 (A), (E));
6. Failure to Reimburse Employees for Necessary Business Expenditures (Labor Code § 2802(A)); and
7. Unfair Business Practices (Bus. Prof. Code §§ 17200 et. seq.).

**DEMAND FOR JURY TRIAL**

1 Plaintiff EVELIA WINSTON (“Plaintiff”) on behalf of herself and all others similarly  
2 situated, complains and alleges on information and belief, as follows:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff and the class she seeks to  
5 represent (“Plaintiff Class”) pursuant to California Code of Civil Procedure section 382. Plaintiff  
6 Class consists of all non-exempt, hourly-paid employees currently and/or formerly employed by  
7 Defendant VISTANA CALIFORNIA MANAGEMENT, INC. (“Defendant”) in California,  
8 during the Class Period. The term “Class Period” is defined as four (4) years prior to the filing of  
9 this complaint through the date of certification. Plaintiff reserves the right to amend this complaint  
10 to reflect a different “Class Period” or “Plaintiff Class” as further discovery is conducted.

11 2. Plaintiff individually and on behalf of the class she seeks to represent, seeks relief  
12 against Defendant for Defendant’s practices of violating the applicable wage orders, the  
13 applicable Code of Regulations, and California Labor Codes, including: (1) failure to pay all  
14 wages, including minimum wages and overtime wages at the correct regular rate; (2) failure to  
15 provide rest periods or payments for missed rest periods at the correct regular rate; (3) failure to  
16 provide meal periods or payment for missed meals at the correct regular rate; (4) failure to timely  
17 pay wages at separation; (5) failure to keep accurate payroll records; (6) failure to reimburse  
18 employees for necessary business expenditures; and (7) unfair business practices as set forth more  
19 fully herein. These violations concern current and past employees of Defendant.

20 3. At all relevant times herein, Defendant has consistently maintained and enforced  
21 against Plaintiff and the Plaintiff Class the following unlawful policies and practices: (a) willfully  
22 refusing to pay Plaintiff and Plaintiff Class for all hours worked, including minimum and overtime  
23 wages; (b) willfully refusing to include non-discretionary bonus payments, and other incentive  
24 compensation, including commissions, in the regular rate calculation for overtime and meal/rest  
25 premium purposes; (c) willfully refusing to permit Plaintiff and Plaintiff Class from taking meal  
26 and/or rest periods; (d) willfully refusing to compensate Plaintiff and certain members of the  
27 Plaintiff Class all wages due and owing at the time Plaintiff and Plaintiff Class’ employment with  
28 Defendant ended; (e) willfully refusing to furnish to Plaintiff and Plaintiff Class with accurate

1 itemized wage statements upon payment of wages; and (f) willfully refusing to reimburse Plaintiff  
2 and Plaintiff Class for necessary business expenditures.

3 4. Plaintiff brings this lawsuit seeking injunctive, restitution, and monetary relief  
4 against Defendant, and each of them, on behalf of Plaintiff, individually, and on behalf of all  
5 aggrieved and similarly-situated employees to recover, among other things, unpaid wages and  
6 benefits, interest, penalties, liquidated damages, attorney's fees, and costs pursuant to California  
7 Labor Code sections 201, 202, 203, 204, 210, 226, subdivision (a), 226.3, 226.7, 510, 512, 1174,  
8 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, California Code of Civil Procedure 1021.5,  
9 and provisions of the applicable IWC Wage Order. Plaintiff reserves the right to name additional  
10 representatives throughout the State of California.

#### 11 **JURISDICTION AND VENUE**

12 5. Venue is proper in this judicial district and the County of Riverside, pursuant to  
13 Code of Civil Procedure section 395, because Defendant maintains its office location and  
14 transacts business in this county, the obligations and liability arise in this county, and work was  
15 performed by Plaintiff and Plaintiff Class made the subject of this action in the County of  
16 Riverside.

17 6. Defendant employed Plaintiff and numerous Class Members within the State of  
18 California and the unlawful acts alleged herein have a direct effect on Plaintiff and the Class  
19 Members.

20 7. The California Superior Court has jurisdiction in the matter because the individual  
21 claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional threshold  
22 and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal court  
23 and, upon information and belief, Plaintiff and Defendant are residents of and/or domiciled in the  
24 State of California. Further, there is no federal question at issue as the issues herein is based solely  
25 on California Statutes and law including the California Labor Code, Industrial Welfare  
26 Commission Wage Orders, Code of Civil Procedure, Rule of Court, and Business and Professions  
27 Code. Thus, the above-entitled court maintains appropriate jurisdiction to hear this matter.

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1 **THE PARTIES**

2 **Plaintiff**

3 8. Plaintiff was employed by the Defendant from in or around January 30, 2009  
4 through in or around December 31, 2020. At all relevant times herein, Plaintiff was employed by  
5 Defendant in a non-exempt hourly position, and was entitled to compensation for all hours  
6 worked, including but not limited to minimum wage and overtime wages, as well as the  
7 aforementioned penalties from Defendant.

8 **Defendants**

9 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant  
10 engages in real estate sales and resort management throughout the state of California. On  
11 information and belief, and based thereon, Plaintiff alleges that Defendant is conducting business  
12 in good standing in California, at all times herein mentioned, has regularly conducted business  
13 throughout the State of California.

14 10. On information and belief, Defendant is, and was, the employer for Plaintiff and  
15 Plaintiff Class.

16 11. Plaintiff is ignorant of the true names, capacities, relationships, and extent of  
17 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50,  
18 inclusive, but on information and belief alleges that said Defendants are legally responsible for  
19 the payment of wages, and the payment of rest and meal period compensation, to Plaintiff and  
20 Plaintiff Class by virtue of their unlawful practices, and therefore sues these Defendants by such  
21 fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of the  
22 DOE Defendants when ascertained.

23 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
24 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
25 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant  
26 are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as  
27 the employer and/or joint employer of Plaintiff and Plaintiff Class.

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13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant are legally attributable to the other Defendants.

14. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants sued herein was, at all relevant times, the employer, owner, shareholder, principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer and/or alter-ego of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent and knowledge, approval and/or ratification of the other Defendants. The above co-Defendants, managing agents, and supervisors aided, abetted, condoned, permitted, approved, authorized, and/or ratified the unlawful acts described herein.

## GENERAL ALLEGATIONS

15. Plaintiff and the Plaintiff Class are, and at all times relevant herein have been, non-exempt employees within the meaning of the California Labor Code and the implementing rules and regulations of IWC California Wage Orders.

16. Plaintiff is informed and believes, and based thereon alleges, that Defendant's policies and practices described herein are common across each of Defendant's job sites within the state of California.

17. Plaintiff is informed and believes, and based thereon alleges, that Defendant instituted a policy and practice against its employees wherein minimum wages and overtime wages due were not paid in compliance with California law. Specifically, Defendant failed to compensate Plaintiff and Plaintiff Class for time spent maintaining and donning and doffing Defendant's required work uniform. Plaintiff and Plaintiff Class were required to be dressed in their uniform prior to clocking in for their shift, and were required to be dressed in their uniform

1 at the time they clocked out for their shift. Thus, time spent donning and doffing Defendant's  
2 required work uniform was performed without compensation for their time and in violation of the  
3 Labor Code. Defendant instituted a practice of failing to record all hours that Plaintiff and Plaintiff  
4 Class worked for donning and doffing their uniform in an effort to cut costs and gain an unfair  
5 advantage over the similar businesses thus harming Plaintiff and Plaintiff Class.

6 18. Plaintiff is informed and believes and based thereon alleges that Defendant  
7 instituted a policy and practice against its employees wherein Defendant failed to include all  
8 remuneration paid to all hourly non-exempt employees when calculating Plaintiff's and Plaintiff  
9 Class' regular rate for purposes of overtime rate of pay. Specifically, Defendant paid hourly non-  
10 exempt employee's non-discretionary bonuses and incentive compensation and failed to include  
11 this compensation when calculating Plaintiff's and Plaintiff Class' regular rate for purposes of  
12 overtime rate of pay and meal and rest period premium pay.

13 19. As a matter of policy and/or practice, Defendant's compensation scheme failed to  
14 pay Plaintiff and Plaintiff Class their minimum and overtime wages due to the aforementioned  
15 off-the-clock work and failure to include all remuneration in their regular rate for purposes of  
16 calculating overtime pay and meal and rest period premium pay. The failure to pay Plaintiff Class  
17 minimum and overtime wages for each hour worked violates, among others, Labor Code sections  
18 1194, 1197, IWC Wage Order(s), and the UCL

19 20. Plaintiff is informed and believes, and based thereon alleges, that Defendant was  
20 required to provide Plaintiff and Plaintiff Class with a work-free, thirty (30) minute meal period  
21 within the first five (5) hours of a shift for workdays in excess of six (6) hours, and a second thirty  
22 (30) minute meal period within the (10<sup>th</sup>) tenth hour of a shift for workdays in excess of ten (10)  
23 hours, in compliance with Labor Code section 512. Defendant routinely denied Plaintiff and  
24 Plaintiff Class a full, thirty (30) minute off-duty meal period when they worked in excess of six  
25 (6) hours within the first five (5) hours of their shifts. On information and belief, neither Plaintiff  
26 nor Plaintiff Class waived their lawful meal periods or received compensation from Defendant  
27 for their missed meal periods.

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1           21.     Additionally, Defendant was obligated to provide Plaintiff and Plaintiff Class with  
2 a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each day.  
3 Defendant prevented Plaintiff and Plaintiff Class from taking rest breaks throughout their shifts  
4 in order to complete its jobs more quickly.

5           22.     For at least four (4) years prior to the filing of this action and through to the present,  
6 Plaintiff alleges that Defendant consistently maintained and enforced the following unlawful  
7 practices and policies against its employees, in violation of California state wage and hour laws.

8               a.    Defendant had a consistent policy of not paying Plaintiff and Plaintiff Class  
9                   for all hours worked;

10              b.   Defendant had a consistent policy of requiring Plaintiff Class within the State  
11                   of California, including Plaintiff, to work at least five (5) hours without a  
12                   lawful meal period, and failing to pay such employees one (1) hour of pay at  
13                   the employees' regular rate of compensation for each workday that the meal  
14                   period was not provided, all in violation of, among others, Labor Code sections  
15                   201, 202, 226.7, 512, and applicable Industrial Welfare Commission Wage  
16                   Orders, in one or more of the following manners;

17                   i.   employees were required to work through their daily meal period(s), or  
18                   work an unlawful "on-duty meal period;"

19                   ii.   employees were restricted in their ability to take a meal period; and

20                   iii.   employees were not allowed to leave the workplace during the alleged  
21                   meal periods.

22              c.   Defendant had a consistent policy of failing to provide Plaintiff Class within  
23                   the State of California, including Plaintiff, rest periods of at least (10) minutes  
24                   per four (4) hours worked or major fraction thereof and failing to pay such  
25                   employees one (1) hour of pay at the employees' regular rate of compensation  
26                   for each workday that the rest period is not provided, as required by California  
27                   state wage and hour laws, in one or more of the following manners:  
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1 i. employees were required to work without being provided a minimum  
2 ten (10) minute rest period for every four (4) hours, or major fraction  
3 thereof, worked and were not compensated with one (1) hour of pay at  
4 their regular rate of pay for each workday that a rest period was not  
5 provided; and

6 ii. employees were neither permitted nor authorized to take lawful rest  
7 periods or leave the premises for rest periods when allegedly  
8 authorized

9 d. With respect to the Plaintiff Class who either were discharged, laid off, or  
10 resigned, Defendant failed to pay them in accordance with the requirements of  
11 Labor Code sections 201, 202, and 203;

12 e. Defendant failed to institute policies and procedures that ensured accurate  
13 recording of all hours Plaintiff and Plaintiff Class worked during the class  
14 period;

15 f. Defendant instituted policies and procedures that offset the necessary costs of  
16 doing business on its employees. Plaintiff and Plaintiff class were required to  
17 wash and maintain uniforms with Defendant's logo. Defendant failed to  
18 reimburse Plaintiff and Plaintiff's Class for the cost of washing and  
19 maintaining Defendant's required uniform, cost of using their personal vehicle  
20 and cell phone. Defendant required Plaintiff and Plaintiff class to take on the  
21 burden of these expenses without reimbursement in violation of Labor Code  
22 section 2802.

23 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant  
24 willfully failed to pay Plaintiff Class all wages earned, including minimum and overtime wage  
25 and compensation for missed meal and rest periods, in a timely manner upon or after termination  
26 of their employment with Defendant.

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1           24. Plaintiff is informed and believes, and based thereon alleges, that Defendant  
2 currently employs, and during the relevant liability period has employed hundreds of employees  
3 in the State of California in non-exempt positions.

4           25. At relevant times herein, Plaintiff and the Plaintiff Class were employed by  
5 Defendant in non-exempt hourly positions.

6           26. On information and belief, Plaintiff alleges that Defendant's actions as described  
7 throughout this complaint were willful.

8           27. On information and belief, Plaintiff alleges that Defendant willfully failed to pay  
9 the legal wages, including minimum and overtime wage, failed to provide legal rest and meal  
10 periods, and willfully failed to pay one (1) hour's wages in lieu of rest and meal periods, when  
11 each such employee quit or was discharged.

12           28. Plaintiff, on behalf of herself and all other Plaintiff Class, brings this action  
13 pursuant to Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and 2802,  
14 California Business and Professions Code section 17200 et seq., and Code of Regulations, Title  
15 8, section 11000 et seq., seeking unpaid wages, unpaid rest and meal period compensation,  
16 penalties, injunctive, and other equitable relief, and reasonable attorneys' fees and costs.

17           29. Defendant has made it difficult to account with precision for the unlawfully  
18 withheld wages for time spent donning and doffing their uniform and meal and rest period  
19 compensation owed to Defendant's non-exempt employees, including Plaintiff, during the  
20 liability period, because it did not implement and preserve a record-keeping method as required  
21 for non-exempt employees by California Labor Code sections 226, 1174(d), and section 7 of the  
22 California Wage Orders. Defendant has failed to comply with Labor Code section 226,  
23 subdivision (a) by itemizing in wage statements all deductions from payment of wages and  
24 accurately reporting total hours worked by Plaintiff and the Plaintiff Class. Plaintiff and Plaintiff  
25 Class are therefore entitled to penalties not to exceed four thousand dollars (\$4,000.00) for each  
26 employee pursuant to Labor Code section 226, subdivision (b).

27           30. Defendant has failed to comply with section 7 of the California IWC Wage Orders  
28 by failing to maintain time records showing when the employee begins and ends each work

1 period, meal periods, wages earned pursuant to Labor Code section 226.7, and total daily hours  
2 worked by itemizing in wage statements all deductions from payment of wages and accurately  
3 reporting total hours worked by the Plaintiff Class.

4 31. Plaintiff, on behalf of herself and Class Members, pursuant to Business and  
5 Professions Code sections 17200-17208, also seeks injunctive relief and restitution for the unfair,  
6 unlawful, or fraudulent practices alleged in this complaint.

7 **CLASS ALLEGATIONS**

8 32. Plaintiff brings this action on behalf of herself and all others similarly situated as  
9 a class action pursuant to section 382 of the California Code of Civil Procedure. Plaintiff seeks to  
10 represent Classes composed of and defined as follows:

- 11 a. All persons who are employed or have been employed by Defendant in the  
12 State of California as non-exempt, hourly-paid employees, and who, within the  
13 four (4) years of the filing of this class action complaint to the present, who  
14 work, have worked, and/or have separated their employment from Defendant  
15 as non-exempt employees that were not paid their full and complete wages as  
16 a result of Defendant's failure to pay minimum and overtime wages, and were  
17 subject to Defendant's practice and procedure of donning and doffing their  
18 uniform off-the-clock;
- 19 b. All persons who are employed or have been employed by Defendant in the  
20 State of California, and who, within the four (4) years prior to the filing of this  
21 complaint to the present, have worked as a non-exempt employee and were not  
22 paid all wages owed, including, but not limited to, the legally requisite  
23 overtime rate or meal and rest period premiums at the correct regular rate;
- 24 c. All persons who are employed or have been employed by Defendant as non-  
25 exempt, hourly-paid employees who, within the four (4) years prior to the  
26 filing of this Class Action Complaint to the present, have worked as non-  
27 exempt employees and have not been provided a meal period for every five (5)  
28 hours or major fraction thereof worked per day, and were not provided one (1)

hour's pay at the employees' regular rate for each day on which such meal period was not provided;

- d. All persons who are employed or have been employed by Defendant in the State of California as non-exempt, hourly-paid employees, and who, within the four (4) years prior to the filing of this Class Action Complaint to the present, have worked as non-exempt employees and have not been provided a rest period for every four (4) hours or major fraction thereof worked per day, and were not provided compensation of one (1) hour's pay at the employees' regular rate for each day on which such rest period was not provided;
- e. All persons who have been employed by Defendant in the State of California as non-exempt, hourly-paid employees who, within the three (3) years prior to the filing of this Class Action Complaint to the present, separated their employment from Defendant and have not been paid wages pursuant to Labor Code section 203 and are owed restitution for waiting time penalties deriving from such wages;
- f. All persons who are employed or have been employed by Defendant in the State of California as non-exempt, hourly-paid employees, and who, within the one (1) year prior to the filing of this class action complaint to the present, have worked as non-exempt employees and were not provided an accurate payroll record as required under Labor Code section 226 and Labor Code section 1174;
- g. All persons who are employed or have been employed by Defendant in the State of California as non-exempt, hourly-paid employees, and who, within the four (4) years of the filing of this Class Action Complaint to the present, have worked and were not reimbursed for necessary business expenditures incurred as a result of performing their work for Defendants pursuant to Labor Code section 2802.

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1           33. Plaintiff reserves the right under rule 3.764 of the California Rules of Court, to  
2 amend or modify the class descriptions with greater specificity or further division into subclasses  
3 or limitation to particular issues.

4           34. This action has been brought and may properly be maintained as a class action  
5 under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined  
6 community of interest in the litigation and the proposed Classes are easily ascertainable.

7           **A. Numerosity**

8           35. The potential members of each Class defined herein are so numerous that joinder  
9 of all the members of the Class is impracticable. While the precise number of Plaintiff Class has  
10 not been determined at this time, Plaintiff is informed and believes that Defendant currently  
11 employs, and during the relevant time period employed, at least one hundred (100) employees  
12 worked in hourly positions as Defendant's non-exempt employees in California, who are or have  
13 been affected by Defendant's unlawful practices as alleged herein.

14           36. Accounting for employee turnover during the relevant periods necessarily  
15 increases this number substantially. Upon information and belief, Plaintiff alleges Defendant's  
16 employment records would provide information as to the number and location of all employees  
17 within the Plaintiff Class. Joinder of all members of the proposed Classes is not practicable.

18           **B. Commonality**

19           37. Common questions of law and fact predominate over any questions affecting only  
20 individual Class Members. These common questions of law and fact include, without limitation:

- 21           a. Whether Plaintiff and Plaintiff Class are entitled to wages from Defendant  
22           under applicable IWC Wage Orders, regulations and statutes for hours worked  
23           but not paid;
- 24           b. Whether Defendant violated Labor Code sections 226.7 and 512, section 10 of  
25           the IWC Wage Orders, and Code of Regulations, Title 8, section 11000 et seq.  
26           by failing to provide a lawful meal period to non-exempt employees within the  
27           first five (5) hours of their shifts on days they worked in excess of six (6) hours  
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and by failing to compensate said employees one hour's wages in lieu of meal periods;

- c. Whether Defendant violated Labor Code section 226.7, section 11 of the IWC Wage Orders, and Cal. Code Regs., Title 8, section 11000 et seq. by failing to provide daily rest periods to non-exempt employees for every four (4) hours or major fraction thereof worked and by failing to compensate said employees one (1) hour's wages in lieu of rest periods;
- d. Whether Defendant violated sections 201, 202, and 203 of the Labor Code by failing to pay all earned wages and/or premium wages or return unlawfully deducted wages due and owing at the time that any person in the Plaintiff Class employment with Defendant terminated, voluntarily or involuntarily;
- e. Whether Defendant failed to keep accurate payroll records and provide accurate itemized paystubs in violation of Labor Code section 1174, 226 (A), (E);
- f. Whether Defendant failed to Reimburse Employees for Necessary Business Expenditures in violation of Labor Code section 2802, subdivision (A);
- g. Whether Defendant violated section 17200 et seq. of the Business and Professions Code, Labor Code sections 201, 202, 203, 351, 226.7, 512, 1194, 1199, 1174, and applicable IWC Wage Orders, which violation constitutes a violation of fundamental public policy; and
- h. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business and Professions Code section 17200 et seq.

38. Plaintiff's claims are typical of the claims of the Plaintiff Class. Plaintiff and the Plaintiff Class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

**D. Adequacy of Representation**

39. Plaintiff will fairly and adequately represent and protect the interests of the Plaintiff Class. Counsel is competent and experienced in litigating employment class actions.

40. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all each person in the Plaintiff Class is not practicable, and questions of law and fact common to each Class predominate over any questions affecting only individual members of the Class. Each member of the Plaintiff Class has been damaged and is entitled to recovery by reason of Defendant's unlawful policies and practices alleged in the complaint.

41. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

### FIRST CAUSE OF ACTION

### Failure to Pay All Wages

**(Plaintiff and Plaintiff Class Against All Defendants)**

42. Plaintiff incorporates all previous paragraphs of this complaint as though fully set forth herein.

43. Plaintiff alleges that, Defendant maintained, and has maintained throughout the Class Period, a consistent policy and practice of failing to pay wages, including overtime, and minimum wage due for hours actually worked.

44. Plaintiff alleges that Defendant maintained, and has maintained throughout the Class Period, a consistent policy of failing to pay its employees for all hours worked. Specifically, Defendant maintained a policy of failing to record all hours Plaintiff and Plaintiff Class worked for time spent donning and doffing Defendant's uniform, time spent working prior to clocking in (i.e. gathering supplies) and maintaining Defendant's uniform.

45. Defendant failed to include all remuneration paid to hourly non-exempt employees for non-discretionary bonuses, and other types of incentive compensation, which are not statutory exclusions, when calculating Plaintiff's and Plaintiff Class' regular rate for purposes of overtime rate of pay as well as meal and rest period premium pay.

/ / /

46. As a result of Defendant's unlawful acts, Plaintiff and Plaintiff Class have been deprived of regular wages, minimum wages, and compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code sections 1194 and 1199.

47. Defendant willfully violated the Labor Code with respect to meeting the requirements of paying all wages earned, including minimum wage, as alleged herein.

48. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendant's minimum wage violations including interest thereon, reasonable attorney's fees and costs of suit, penalties, and liquidated damages to the fullest extent permissible including those permitted pursuant to Labor Code sections 1194 and 1194.2 and Code of Civil Procedure section 1021.5 and/or any other statute.

49. WHEREFORE, Plaintiff and Plaintiff Class request relief as described herein and below.

## SECOND CAUSE OF ACTION

### Failure to Provide Rest Periods

**(Plaintiff and Plaintiff Class Against All Defendants)**

50. Plaintiff incorporates all previous paragraphs of this complaint as though fully set forth herein.

51. Labor Code section 226.7 provides that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

52. Labor Code section 226.7, subdivision (b) provides that if an employer fails to provide an employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employees' regular rate of compensation for each workday that the rest period is not provided.

53. Plaintiff alleges that during the class period, Defendant did not permit or authorize Plaintiff and Plaintiff Class to take timely or compliant rest periods. Defendant failed to adequately staffing employees to allow Plaintiff and Class Members an opportunity to be provided timely, lawful duty-free rest periods for every four (4) hours of their shift or major

fraction thereof. Further, Plaintiff and Plaintiff Class were required to remain on Defendant's premises and not free to leave Defendant's premises during the rest periods.

54. At all times relevant hereto, Plaintiff and Plaintiff Class worked more than four (4) hours in a workday, and ten (10) hours in a workday at times.

55. Plaintiff and Plaintiff Class did not voluntarily or willfully waive rest periods.

56. Defendant further failed to implement a policy to pay Plaintiff and Plaintiff Class an additional hour of pay at their regular rate of pay for rest periods not authorized or permitted.

57. By failing to keep adequate records as required by sections 226 and 1174, subdivision (d) of the Labor Code, Defendant has injured Plaintiff and Plaintiff Class and made it difficult to calculate the unpaid rest period compensation (including wages, interest, and penalties thereon) due and owing to Plaintiff and Plaintiff Class.

58. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff and Plaintiff Class, they have been deprived of compliant rest periods and/or premium wages in lieu thereof in amounts to be determined at trial and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys fees, costs, to the fullest extent permissible under the Labor Code 226.7, applicable IWC Wage Orders, Code of Civil Procedure section 1021.5.

59. WHEREFORE, Plaintiff and Class Members request relief as described herein and below. Plaintiff incorporates all previous paragraphs of this complaint as though fully set forth herein.

### **THIRD CAUSE OF ACTION**

#### **Failure to Provide Meal Periods**

#### **(Plaintiff and Plaintiff Class Against All Defendants)**

60. Plaintiff incorporates all previous paragraphs of this complaint as though fully set forth herein.

61. Labor Code sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second (2<sup>nd</sup>) meal period of not less than thirty (30) minutes.

62. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section.

63. Defendant maintains, and has maintained throughout the Class Period, a policy and practice of failing to provide lawful work-free meal periods to Plaintiff and Plaintiff Class, for the days on which non-exempt employees work periods in excess of six (6) hours and a second (2<sup>nd</sup>) meal period on days which non-exempt employees work periods in excess of ten (10) hours. Plaintiff and Plaintiff Class were routinely denied the opportunity to be completely relieved of all work duties for a thirty (30) minute meal period as a result of Defendant's failure to provide adequate staffing. In fact, if Plaintiff and Class members were provided the opportunity to take a meal period, their meal periods were interrupted because they had to attend to task such attending to customers, answering phones, amongst other things. Further, Plaintiff and Plaintiff Class were required to remain on Defendant's premises and not free to leave Defendant's premises during the meal periods. Defendant failed to provide Plaintiff and Plaintiff Class with compensation for their missed meal periods.

64. Plaintiff and Plaintiff Class did not voluntarily or willfully waive meal periods.

65. At all times relevant hereto, the Defendant, failed to provide Plaintiff and Plaintiff Class similarly a compliant duty-free meal period as required by Labor Code sections 226.7 and 512.

66. By virtue of the Defendant's unlawful failure to provide meal periods to Plaintiff and Plaintiff Class, Plaintiff and the Plaintiff Class have been deprived of compliant meal periods and/or premium wages at the appropriate regular rate in lieu thereof in amounts to be determined at trial and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys fees, costs, to the fullest extent permissible under the Labor Code sections 226.7 and 512, applicable IWC Wage Orders, Code of Civil Procedure section 1021.5, and/or any other statute.

67. WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

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1           74. Labor Code section 1174, subdivision (d), requires an employer to keep at a central  
2 location in California or at the plant or establishment at which the employee is employed, payroll  
3 records showing the hours worked daily, and the wages paid to, each employee. Labor Code  
4 section 226, subdivision (a) requires an employer to provide employees—either as a detachable  
5 part of the check, draft, or voucher paying the employee’s wages, or separately when wages are  
6 paid by personal check or cash—an accurate itemized wage statement in writing.

7           75. Labor Code section 226, subdivision (e) provides that if an employer knowingly  
8 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,  
9 the total hours worked by the employee and the applicable hourly overtime rates, causing the  
10 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty  
11 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent  
12 violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes that  
13 Defendant willfully failed to make or keep accurate records for Plaintiff and Plaintiff Class.

14           76. IWC Wage Orders require that every employer shall keep accurate information  
15 with respect to each employee, including time records showing when each employee begins and  
16 ends each work periods, the total daily hours worked by each employee and the total hours worked  
17 in each payroll period, and applicable rates of pay. Plaintiff alleges that Defendant willfully and  
18 intentionally failed to make and/or keep records which accurately reflect the hours worked by  
19 Plaintiff and Plaintiff Class. Specifically, Plaintiff believes that Defendant’s records do not  
20 accurately reflect where Plaintiff and Plaintiff Class worked during their meal and/or rest breaks.  
21 Furthermore, Defendant’s records do not reflect all hours worked, specifically the hours Plaintiff  
22 and Plaintiff Class were required to work off the clock for maintaining and donning and doffing  
23 Defendant’s uniform.

24           77. Plaintiff is informed and believes that Defendant’s failure to keep accurate payroll  
25 records, as described above, violated Labor Code sections 1174, subdivision (d) and 226,  
26 subdivision (a), and the applicable wage order.

27           78. Plaintiff is informed and believes that Defendant’s failure to keep and maintain  
28 accurate records and information, as described above, was willful, and Plaintiff and the Plaintiff

1 Class are entitled to statutory penalties pursuant to Labor Code sections 226 and 1174.5.

2 79. WHEREFORE, Plaintiff and Plaintiff Class request relief as described herein and  
3 below.

4 **SIXTH CAUSE OF ACTION**

5 **Failure to Reimburse Employees for Necessary Business Expenditures**

6 **(Plaintiff and Plaintiff Class Against All Defendants)**

7 80. Plaintiff realleges and incorporates by reference all preceding paragraphs of this  
8 complaint as though fully set forth herein.

9 81. Under California Labor Code section 2802, subdivision (a), an employer is legally  
10 to reimburse its employees for necessary business expenditures incurred as a result of performing  
11 their work.

12 82. California Labor Code section 2802 states, “An employer shall indemnify his or  
13 his employee for all necessary expenditures or losses incurred by the employee in direct  
14 consequence of the discharge of his or his duties...”

15 83. Plaintiff and Plaintiff Class has incurred out-of-pocket losses because of  
16 Defendant's failure to reimburse Plaintiff and Plaintiff Class appropriately for all necessary  
17 uniform purchase and cleaning, use of personal vehicles and personal cell phone expenses that  
18 Plaintiff and Plaintiff Class incurred while performing work for Defendant. To date, Defendant  
19 has failed to indemnify Plaintiff and Plaintiff Class for all these out-of-pocket losses.

20 84. Defendant knowingly, willingly and intentionally attempted to offset the cost of  
21 doing business on the Plaintiff and Plaintiff Class.

22 85. Defendant has and or had a practice and policy of requiring Plaintiff and Plaintiff  
23 Class to shoulder the burden of Defendant's cost of doing business by failing to reimburse  
24 Plaintiff and Plaintiff Class for necessary business expenditures, specifically the cost to wash and  
25 maintain their work uniforms which contains Defendant's logo at their own expense. Plaintiff and  
26 the class had to wash their uniforms separate from their personal clothing because of their  
27 uniforms were heavily soiled as a result of carrying out their job duties. Defendant failed to  
28 reimburse Plaintiff and Plaintiff Class for the cost of washing and maintaining Defendant's

uniform which is required in their employment. Defendant failed to reimbursement Plaintiff and the class for these expenditures incurred in carrying out their job duties by Plaintiff and the class under Defendant's policy.

86. Accordingly, Plaintiff and Plaintiff Class are entitled to an award of "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees and interest.

87. WHEREFORE, Plaintiff and the Plaintiff Class request relief as described herein and below.

### **SEVENTH CAUSE OF ACTION**

#### **Unfair Business Practices**

#### **(Plaintiff and Plaintiff Class Against All Defendants)**

88. Plaintiff incorporates all previous paragraphs of this complaint as though fully set forth herein.

89. On information and belief, Plaintiff alleges that Defendant engaged in conduct and maintained policies and practices that constitute false, fraudulent, unlawful, unfair, and deceptive business practices in violation of Business and Professions Code section 17200 et seq. (hereinafter the "Unfair Competition Law"). Plaintiff alleges that each of the following policies and practices of Defendant violate the Unfair Competition Law:

- a. requiring employees to work in excess of six (6) hours per day without being provided a lawful meal period, and failing to compensate such employees with one (1) hour of pay at their regular rate of compensation for each workday that a meal period was not provided;
- b. requiring employees to work in excess of ten (10) hours per day without being provided a lawful second meal period, and failing to compensate such employees with one (1) hour of pay at their regular rate of compensation for each workday that a meal period was not provided;
- c. requiring employees to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked,

1 and failing to compensate such employees with one (1) hour of pay at their  
2 regular rate of compensation for each workday that a rest period was not  
3 provided;

4 d. requiring employees to work without being provided a thirty-minute (30) duty  
5 free lunch period with for every five (5) hours worked;

6 e. for failing to institute policies and procedure that ensure accurate timekeeping  
7 and accurate itemized paystubs to Plaintiff and Plaintiff Class;

8 f. failing to pay all earned wages, including minimum and overtime wages, to  
9 Plaintiff and Plaintiff Class; and

10 g. failing to reimburse Plaintiff and Plaintiff Class for necessary business  
11 expenses.

12 90. The actions of Defendant as alleged within this Complaint constitute false,  
13 fraudulent, unlawful, unfair, and deceptive business practices, within the meaning of Business  
14 and Professions Code section 17200 et seq.

15 91. Plaintiff and the Plaintiff Class are entitled to other equitable relief against such  
16 unlawful practices in order to prevent future damage, for which there is no adequate remedy at  
17 law, and to avoid a multiplicity of lawsuits.

18 92. As a result of its unlawful acts, Defendant has reaped and continue to reap unfair  
19 benefits and unlawful profits at the expense of Plaintiff and Plaintiff Class. Defendant should be  
20 required to restore to Plaintiff and Class Members the wrongfully withheld wages pursuant to  
21 Business and Professions Code section 17203. Plaintiff is informed and believes, and thereon  
22 alleges, that Defendant has been unjustly enriched through Defendant's unlawful, unfair, and  
23 fraudulent business practices as alleged throughout this Complaint. Plaintiff is informed and  
24 believes, and based thereon alleges, that Plaintiff and Plaintiff Class are prejudiced by  
25 Defendant's unfair trade practices.

26 93. As a direct and proximate result of Defendant's unfair business practices, Plaintiff,  
27 and Plaintiff Class are entitled to equitable including full restitution of all wages which have been

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unlawfully withheld from Plaintiff and Plaintiff Class as a result of the business acts and practices described herein.

94. WHEREFORE, Plaintiff and Plaintiff Class request relief as described herein and below and as deemed just.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and Class Members pray for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. That Plaintiff be appointed the representative of each proposed Class, as appropriate;
3. That the attorneys of record for Plaintiff whose name appears in this complaint be appointed class counsel;
4. For compensatory damages in an amount according to proof with interest thereon;
5. For economic and/or special damages in an amount according to proof with interest thereon;
6. That Defendant be found to have engaged in unfair competition in violation of Business and Professions Code section 17200 *et seq.*;
7. That Defendant be ordered to make restitution to each Class due to its unfair competition, pursuant to Business and Professions Code sections 17203 and 17204;
8. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission, including, but not limited to, waiting time penalties under Labor Code section 203, and penalties under Labor Code sections 226, subdivision (e), 226.3, 210, 226.7, and 1174.5;
9. For attorneys' fees, interest, and costs of suit under Labor Code sections 218.5, 1194 and other applicable provisions of law outside the Labor Code; and

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Dated: July 30, 2024



Attorneys for Plaintiff EVELIA WINSTON and on  
behalf of all employees similarly situated