



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client # 55501

July 3, 2023

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

**ENVISION FOODS, LLC
JIB HOLDINGS I, LLC
TNH PARTNERS, LLC
ALLIED RESTAURANT MANAGEMENT, LLC
ENV MANAGEMENT, LLC**

c/o Navid Sharafatian
15401 Anacapa Road
Victorville, CA 92392

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0625 6793 67

DESERT JACK, LLC

c/o Navid Sharafatian
11661 San Vicente Blvd., Suite 812
Los Angeles, CA 90049

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0625 6793 50

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff BREANNA GORTAREZ ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant ENVISION FOODS, LLC ("Defendant Envision Foods"), Defendant JIB HOLDINGS I, LLC ("Defendant JIB Holdings"), Defendant DESERT JACK, LLC ("Defendant Desert Jack"), Defendant TNH PARTNERS, LLC ("Defendant TNH Partners"), Defendant ALLIED RESTAURANT MANAGEMENT, LLC ("Defendant Allied Restaurant Management") and Defendant ENV MANAGEMENT, LLC ("Defendant ENV Management") (collectively, hereinafter, "Defendants"). Plaintiff was employed by Defendants from September of 2021 to October of 2022, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants 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, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable

Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant Envision Foods and/or Defendant JIB Holdings and/or Defendant Desert Jack and/or Defendant TNH Partners and/or Defendant Allied Restaurant Management and/or Defendant ENV Management in California 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 incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Plaintiff

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

BREANNA GORTAREZ, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

ENVISION FOODS, LLC, a California limited
liability company; JIB HOLDINGS I, LLC, a
California limited liability company; DESERT
JACK, LLC, a California limited liability
company; TNH PARTNERS, LLC, a California
limited liability company; ALLIED
RESTAURANT MANAGEMENT, LLC, a
California limited liability company; ENV
MANAGEMENT, LLC, a California limited
liability company; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §17200 *et*
seq;
- 2) FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF CAL.
LAB. CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;

- 1 6) FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN
3 VIOLATION OF CAL. LAB. CODE § 226;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO REIMBURSE EMPLOYEES
8 FOR REQUIRED EXPENSES IN
9 VIOLATION OF CAL. LAB. CODE § 2802;
10 9) UNPAID SICK PAY IN VIOLATION OF
11 CAL. LAB. CODE § 246;
12 10) RETALIATION IN VIOLATION OF
13 CAL. LAB. CODE §§ 98.6 & 1102.5.;
14 11) WRONGFUL TERMINATION IN
15 VIOLATION OF PUBLIC POLICY.

16 **DEMAND FOR A JURY TRIAL**

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

20 **PRELIMINARY ALLEGATIONS**

21 1. Defendant ENVISION FOODS, LLC (“Defendant Envision Foods”) is a
22 California limited liability company that at all relevant times mentioned herein conducted and
23 continues to conduct substantial and regular business throughout California.

24 2. Defendant JIB HOLDINGS I, LLC (“Defendant JIB Holdings”) is a California
25 limited liability company that at all relevant times mentioned herein conducted and continues to
26 conduct substantial and regular business throughout California.

27 3. Defendant DESERT JACK, LLC (“Defendant Desert Jack”) is a California limited
28 liability company that at all relevant times mentioned herein conducted and continues to conduct
substantial and regular business throughout California.

4. Defendant TNH PARTNERS, LLC (“Defendant TNH Partners”) is a California
limited liability company that at all relevant times mentioned herein conducted and continues to
conduct substantial and regular business throughout California.

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1 5. Defendant ALLIED RESTAURANT MANAGEMENT, LLC (“Defendant Allied
2 Restaurant Management”) is a California limited liability company that at all relevant times
3 mentioned herein conducted and continues to conduct substantial and regular business throughout
4 California.

5 6. Defendant ENV MANAGEMENT, LLC (“Defendant ENV Management”) is a
6 California limited liability company that at all relevant times mentioned herein conducted and
7 continues to conduct substantial and regular business throughout California.

8 7. Defendant Envision Foods, Defendant JIB Holdings, Defendant Desert Jack,
9 Defendant TNH Partners, Defendant Allied Restaurant Management and Defendant ENV
10 Management were the joint employers of PLAINTIFF as evidenced by the documents issued to
11 PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore
12 jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or
13 “DEFENDANT.”

14 8. DEFENDANTS operate fast food chain restaurants such as Jack In The Box in the
15 state of California, including in the county of San Bernardino, where PLAINTIFF worked.

16 9. PLAINTIFF was employed by DEFENDANTS in California from September of
17 2021 to October of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to the
18 legally required meal and rest periods and payment of minimum and overtime wages due for all
19 time worked.

20 10. PLAINTIFF brings this Class Action on behalf of herself and a California class,
21 defined as all persons who are or previously were employed by Defendant Envision Foods and/or
22 Defendant JIB Holdings and/or Defendant Desert Jack and/or Defendant TNH Partners and/or
23 Defendant Allied Restaurant Management and/or Defendant ENV Management in California and
24 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
25 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
26 by the Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the
27 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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1 11. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
3 the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which failed to
4 lawfully compensate these employees. DEFENDANTS' uniform policy and practice alleged
5 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS retained
6 and continue to retain wages due PLAINTIFF and the other members of the CALIFORNIA
7 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
8 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and
9 the other members of the CALIFORNIA CLASS who have been economically injured by
10 DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable
11 relief.

12 12. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
14 presently unknown to PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious
15 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
16 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
17 ascertained. PLAINTIFFS is informed and believes, and based upon that information and belief
18 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
19 inclusive, are responsible in some manner for one or more of the events and happenings that
20 proximately caused the injuries and damages hereinafter alleged.

21 13. The agents, servants and/or employees of the Defendants and each of them acting
22 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
23 agent, servant and/or employee of the Defendants, and personally participated in the conduct
24 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
25 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
26 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
27 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
28 Defendants' agents, servants and/or employees.

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

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

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

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

20 **JURISDICTION AND VENUE**

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

25 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ
27 the CALIFORNIA CLASS across California, including in this County, and committed the
28 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

THE CONDUCT

20. 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 PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal and rest premiums at the regular rate of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS Members redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS’ uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

A. Meal Period Violations

21. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the CLASS PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS’ control. Specifically,

1 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
2 be PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
3 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
4 Members forfeited minimum wage and overtime compensation by regularly working without their
5 time being accurately recorded and without compensation at the applicable minimum wage and
6 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
7 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
8 records.

9 22. From time to time during the CLASS PERIOD, as a result of their rigorous work
10 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
11 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
12 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
13 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for
14 more than five (5) hours during some shifts without receiving a meal break. Further,
15 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
16 second off-duty meal period for some workdays in which these employees are required by
17 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
18 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and
19 narrowly construed "on-duty" meal period exception. When they were provided with meal
20 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
21 required to remain on premises, on duty and on call. Further, DEFENDANTS from time to time
22 required PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless
23 communication devices in order to receive and respond to work-related communications during
24 what was supposed to be their off-duty meal breaks. DEFENDANTS' failure to provide
25 PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is
26 evidenced by DEFENDANTS' business records. As a result of their rigorous work schedules and
27 DEFENDANTS' inadequate staffing, PLAINTIFF and other members of the CALIFORNIA
28

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

3 **B. Rest Period Violations**

4 23. From time to time during the CLASS PERIOD, PLAINTIFF and other
5 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
6 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
7 DEFENDANTS' inadequate staffing. Further, for the same reasons, these employees were denied
8 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
9 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
10 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
11 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
12 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
13 CLASS Members were, from time to time, required to on premises, on duty and/or on call.
14 Further, DEFENDANTS from time to time required PLAINTIFF and other CALIFORNIA
15 CLASS Members to maintain cordless communication devices in order to receive and respond to
16 work-related communications during what was supposed to be their off-duty rest breaks.
17 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
18 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS'
19 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
20 time denied their proper rest periods by DEFENDANT and DEFENDANTS' managers.

21 **C. Unreimbursed Business Expenses**

22 24. DEFENDANTS as a matter of corporate policy, practice, and procedure,
23 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
24 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
25 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
26 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
27 are required to indemnify employees for all expenses incurred in the course and scope of their
28 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or

1 her employee for all necessary expenditures or losses incurred by the employee in direct
2 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
3 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
4 believed them to be unlawful.”

5 25. In the course of their employment, DEFENDANTS required PLAINTIFF and
6 other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal
7 cell phones and personal vehicles as a result of and in furtherance of their job duties. Specifically,
8 PLAINTIFF and other CALIFORNIA CLASS Members were required to use their personal cell
9 phones in order to perform work related tasks. However, DEFENDANTS unlawfully failed to
10 reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the use of their personal
11 cell phones. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF
12 and other CALIFORNIA CLASS Members incurred unreimbursed business expenses that
13 included, but were not limited to, costs related to the use of their personal cell phones, all on
14 behalf of and for the benefit of DEFENDANT.

15 **D. Wage Statement Violations**

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

24 27. From time to time during the CLASS PERIOD, when PLAINTIFF and other
25 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
26 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
27 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
28 accurate wage statements which failed to show, among other things, all deductions, the total hours

1 worked and all applicable hourly rates in effect during the pay period and the corresponding
2 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
3 meal and rest periods.

4 28. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
5 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
6 Cal. Lab. Code § 226.

7 29. As a result, DEFENDANTS issued PLAINTIFF and other members of the
8 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
9 DEFENDANTS' violations are knowing and intentional, were not isolated due to an unintentional
10 payroll error due to clerical or inadvertent mistake.

11 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

12 30. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
13 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
14 for all hours worked.

15 31. During the CLASS PERIOD, from time-to-time DEFENDANTS required
16 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
17 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to
18 work while off-the-clock.

19 32. DEFENDANTS directed and directly benefited from the undercompensated off-
20 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

21 33. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
22 assignments, and employment conditions of PLAINTIFF and the other members of the
23 CALIFORNIA CLASS.

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

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

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

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

11 38. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
12 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and
13 benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and
14 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
15 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
16 records.

17 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
18 **and Redeemed Sick Pay**

19 39. From time to time during the CLASS PERIOD, DEFENDANTS failed and
20 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
21 Members for their overtime and double time hours worked, meal and rest period premiums, and
22 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
23 forfeited wages due to them for working overtime without compensation at the correct overtime
24 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
25 DEFENDANTS' uniform policy and practice not to pay the CALIFORNIA CLASS Members at
26 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick
27 pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

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1 40. State law provides that employees must be paid overtime at one-and-one-half times
2 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

5 41. The second component of PLAINTIFF’S and other CALIFORNIA CLASS
6 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
7 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
8 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
9 paid on an hourly basis with bonus compensation when the employees met the various
10 performance goals set by DEFENDANTS.

11 42. However, from time to time, when calculating the regular rate of pay in those pay
12 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
13 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
14 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
15 compensation as part of the employee’s “regular rate of pay” and/or calculated all hours worked
16 rather than just all non-overtime hours worked. Management and supervisors described the
17 incentive/bonus program to potential and new employees as part of the compensation package.
18 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
19 CLASS Members must be included in the “regular rate of pay.” The failure to do so has resulted
20 in a systematic underpayment of overtime and double time compensation, meal and rest period
21 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
22 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that
23 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
24 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
25 not the employee actually works overtime in that workweek. DEFENDANTS’ conduct, as
26 articulated herein, by failing to include the incentive compensation as part of the “regular rate of
27 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
28 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

43. 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 and knowingly failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime and double time worked, meal and rest period premiums, and redeemed sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

G. Unlawful Deductions

44. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANTS violated Labor Code § 221.

H. Timekeeping Manipulation

45. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an immutable timekeeping system to accurately record and pay PLAINTIFF and other members of the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANTS’ timekeeping system for PLAINTIFF and other members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest breaks.

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

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1 47. The mutability of the timekeeping system also allowed DEFENDANTS to alter
2 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
3 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
4 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
5 were not at all times provided an off-duty meal break. This practice is a direct result of
6 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
7 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

8 48. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
9 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
10 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and
11 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
12 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
13 records.

14 **I. Unlawful Rounding Practices**

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

27 50. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
28 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'

1 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
2 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
3 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
4 receiving an off-duty meal break.

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

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

11 52. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the
12 wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant
13 to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall
14 become due and payable not later than 72 hours thereafter, unless the employee has given 72
15 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
16 or her wages at the time of quitting." PLAINTIFF and the CALIFORNIA CLASS Members
17 were, from time to time, not timely provided the wages earned and unpaid at the time of their
18 discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

19 53. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
20 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose
21 employment ended during the CLASS PERIOD.

22 **K. Failure to Provide Personnel Files**

23 54. Beginning on or around February of 2023, PLAINTIFF made two separate
24 requests for her personnel and employment records from DEFENDANT, including but not
25 limited to: (1) payroll records; (2) employment contracts; (3) itemized pay stubs; and (4)
26 PLAINTIFF'S complete employment file.

27 55. DEFENDANTS failed to provide and/or make available to PLAINTIFF her
28 personnel records, payroll records, employment contract, and entire employment file within

thirty (30) days of her requests stated above. In fact, as of the date of filing of this Complaint, DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750. DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide PLAINTIFF with her employment file. Section 1198.5 states that employees (and former employees) have the right to inspect personnel records maintained by the employer “related to the employee’s performance or to any grievance concerning the employee.” Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a statutory penalty, and an award of attorneys’ fees and costs for bringing this action

56. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF with a second off-duty meal period each workday in which she was required by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF with a rest break, they required PLAINTIFF to remain on premises, on-duty and on-call for the rest break. DEFENDANTS policy caused PLAINTIFF to remain on premises, on-call and on-duty during what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANTS’ strict corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to the personal expenses incurred for the use of her personal cell phone, on behalf of and in furtherance of her employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

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1 **L. Plaintiff's Individual Claims**

2 57. PLAINTIFF was employed by DEFENDANT in California from September of
3 2021 to October of 2022. On or around October 10, 2022, PLAINTIFF was terminated from her
4 employment with DEFENDANT as a result of DEFENDANT'S retaliatory practices.

5 58. Throughout her employment with DEFENDANT, PLAINTIFF was treated
6 differently and unfairly by DEFENDANT and its agents, all in retaliation against PLAINTIFF
7 for various protected activities.

8 59. During her employment, and continuing until her termination in October of 2022,
9 PLAINTIFF complained to DEFENDANT about DEFENDANT'S unsafe workplace conditions,
10 including but not limited to, receiving kidnapping threats from DEFENDANT'S customers,
11 being subjected to violence by DEFENDANT'S customers and being stalked by
12 DEFENDANT'S customers. PLAINTIFF reported the unsafe workplace conditions to
13 DEFENDANT, but PLAINTIFF'S report fell on deaf ears. Rather, DEFENDANT terminated
14 PLAINTIFF'S employment on October 10, 2022.

15 60. PLAINTIFF is informed and believes, and upon such information and belief
16 alleges that, during PLAINTIFF'S employment with DEFENDANT, DEFENDANT retaliated
17 against PLAINTIFF for reporting DEFENDANT'S unsafe workplace conditions.

18 61. PLAINTIFF is informed and believes, and upon such information and belief
19 alleges that, during PLAINTIFF'S employment with DEFENDANT and at the time of her
20 termination, DEFENDANT maintained a hostile work environment directed at PLAINTIFF
21 because PLAINTIFF reported DEFENDANT'S unsafe workplace conditions.

22 62. PLAINTIFF is informed and believes, and upon such information and belief
23 alleges that, DEFENDANT'S conduct in terminating PLAINTIFF was part of a pattern of
24 behavior by DEFENDANT aimed at retaliation against PLAINTIFF.

25 63. PLAINTIFF is informed and believes, and upon such information and belief
26 alleges that, DEFENDANT suspended/placed her on leave for reasons that violate public policy.

27 64. PLAINTIFF is informed and believes, and upon such information and belief
28 alleges that she was harmed as a result and that the unlawful and retaliatory practices of

1 DEFENDANT were substantial factors in causing PLAINTIFF’S harm.

2 65. PLAINTIFF is informed and believes, and upon such information and belief
3 alleges that, DEFENDANTS intentionally created or knowingly permitted these working
4 conditions, including but not limited to, retaliatory employment practices against employees like
5 PLAINTIFF reported DEFENDANT’S unsafe workplace conditions.

6 **CLASS ACTION ALLEGATIONS**

7 66. PLAINTIFF brings this Class Action on behalf of herself, and a California class
8 defined as all persons who are or previously were employed by Defendant Envision Foods and/or
9 Defendant JIB Holdings and/or Defendant Desert Jack and/or Defendant TNH Partners and/or
10 Defendant Allied Restaurant Management and/or Defendant ENV Management in California and
11 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
12 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
13 by the Court (the “CLASS PERIOD”).

14 67. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
15 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
16 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
17 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
18 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
19 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

20 68. The members of the class are so numerous that joinder of all class members is
21 impractical.

22 69. Common questions of law and fact regarding DEFENDANTS’ conduct, including
23 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
24 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
25 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
26 compliant meal and rest periods, failure to reimburse for business expenses, failure to provide
27 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum
28 wage and overtime, exist as to all members of the class and predominate over any questions

1 affecting solely any individual members of the class. Among the questions of law and fact
2 common to the class are:

- 3 a. Whether DEFENDANT maintained legally compliant meal period policies and
4 practices;
- 5 b. Whether DEFENDANT maintained legally compliant rest period policies and
6 practices;
- 7 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
8 Members accurate premium payments for missed meal and rest periods;
- 9 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
10 Members accurate overtime wages;
- 11 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
12 Members at least minimum wage for all hours worked;
- 13 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
14 CLASS Members for required business expenses;
- 15 g. Whether DEFENDANT issued legally compliant wage statements;
- 16 h. Whether DEFENDANT committed an act of unfair competition by systematically
17 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
18 CLASS for all time worked;
- 19 i. Whether DEFENDANT committed an act of unfair competition by systematically
20 failing to record all meal and rest breaks missed by PLAINTIFF and other
21 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
22 of this work, required employees to perform this work and permits or suffers to
23 permit this work;
- 24 j. Whether DEFENDANT committed an act of unfair competition in violation of the
25 UCL, by failing to provide the PLAINTIFF and the other members of the
26 CALIFORNIA CLASS with the legally required meal and rest periods.

27 70. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
28 a result of DEFENDANTS' conduct and actions alleged herein.

1 71. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
2 PLAINTIFF has the same interests as the other members of the class.

3 72. PLAINTIFF will fairly and adequately represent and protect the interests of the
4 CALIFORNIA CLASS Members.

5 73. PLAINTIFF retained able class counsel with extensive experience in class action
6 litigation.

7 74. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
8 interest of the other CALIFORNIA CLASS Members.

9 75. There is a strong community of interest among PLAINTIFF and the members of
10 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
11 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
12 sustained.

13 76. The questions of law and fact common to the CALIFORNIA CLASS Members
14 predominate over any questions affecting only individual members, including legal and factual
15 issues relating to liability and damages.

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

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

27 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
28 which would as a practical matter be dispositive of the interests of the other

members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

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

FIRST CAUSE OF ACTION

Unlawful Business Practices

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

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

79. 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.

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

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

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

82. By the conduct alleged herein, DEFENDANTS have engaged and continue to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.

1 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
2 constitute unfair competition, including restitution of wages wrongfully withheld.

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

9 84. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
10 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
11 mandated meal and rest periods and the required amount of compensation for missed meal and
12 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
13 necessary business expenses incurred, due to a systematic business practice that cannot be
14 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
15 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
16 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
17 restitution of wages wrongfully withheld.

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

22 86. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
23 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
24 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
25 required by Cal. Lab. Code §§ 226.7 and 512.

26 87. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
28 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

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

6 89. By and through the unlawful and unfair business practices described herein,
7 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
8 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
9 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
10 detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS
11 to unfairly compete against competitors who comply with the law.

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

17 91. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
18 and do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
20 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
21 business practices, including earned but unpaid wages for all time worked.

22 92. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
23 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
24 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
25 engaging in any unlawful and unfair business practices in the future.

26 PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
27 and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **Failure To Pay Minimum Wages**

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

8 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

12 94. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
13 for DEFENDANT's willful and intentional violations of the California Labor Code and the
14 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate
15 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

18 96. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
19 commission is the minimum wage to be paid to employees, and the payment of a less wage than
20 the minimum so fixed is unlawful.

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

23 98. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
24 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
25 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
26 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
27 the CALIFORNIA CLASS.

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1 99. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

5 100. In committing these violations of the California Labor Code, DEFENDANTS
6 inaccurately calculated the correct time worked and consequently underpaid the actual time
7 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted
8 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
9 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
10 laws and regulations.

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

14 102. 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.

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **Failure To Pay Overtime Compensation**

22 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

23 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

27 108. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
28 for DEFENDANTS' willful and intentional violations of the California Labor Code and the

1 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees
2 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
3 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

13 112. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
14 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
15 they worked, including overtime work.

16 113. 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 failed to accurately record overtime worked by
19 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
20 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
21 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
22 (12) hours in a workday, and/or forty (40) hours in any workweek.

23 114. In committing these violations of the California Labor Code, DEFENDANTS
24 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
25 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
26 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
27 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
28 regulations.

1 115. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
2 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
3 overtime compensation for their time worked for DEFENDANTS.

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

12 117. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
14 a failure to pay all earned wages.

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

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

27 120. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

1 DEFENDANTS systematically elected, either through intentional malfeasance or gross
2 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
3 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
4 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
5 their overtime worked.

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

127. 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.

128. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to provide PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid rest periods is evidenced by DEFENDANTS' business records.

129. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order,

one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

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

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

131. 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.

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

- a. Gross wages earned,
- b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an

employee identification number other than social security number may be shown on the itemized statement,

h. the name and address of the legal entity that is the employer, and

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

133. When DEFENDANTS did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

134. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

135. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code § 203)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 136. 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.

8 137. Cal. Lab. Code § 200 provides that:

9 As used in this article:

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

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

19 139. Cal. Lab. Code § 202 provides, in relevant part, that:

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

140. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS
Members' employment contract.

141. Cal. Lab. Code § 203 provides:

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

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

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

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

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

144. 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.

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

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

146. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, the use of their personal cell phones, all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members 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 CALIFORNIA

1 CLASS members for expenses resulting from the use of their personal cell phones within the
2 course and scope of their employment for DEFENDANTS. These expenses were necessary to
3 complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct
4 to assert any waiver of this expectation. Although these expenses were necessary expenses
5 incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANTS failed to
6 indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these
7 expenses as an employer is required to do under the laws and regulations of California.

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

12 **NINTH CAUSE OF ACTION**

13 **UNPAID SICK PAY**

14 **(Cal. Lab. Code § 246, *et seq.*)**

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

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

19 149. Cal. Labor Code Sections 246(I)(1) mandates that “[p]aid sick time for nonexempt
20 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
21 which the employee uses paid sick time, whether or not the employee actually works overtime in
22 that workweek.”

23 150. From time-to-time, during the PLAINTIFF and other members of the
24 CALIFORNIA CLASS were compensated at an hourly rate plus either non-discretionary incentive
25 pay. As a matter of law, the non-discretionary incentive compensation received by PLAINTIFF
26 and other members of the CALIFORNIA CLASS must be included in the “regular rate of pay.”

27 151. From time-to-time during the CLASS PERIOD, in those pay periods where
28 PLAINTIFF and other members of the CALIFORNIA CLASS earned hourly compensation and

1 either non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to
2 properly calculate the regular rate of pay for purposes of compensating paid sick time by omitting
3 non-discretionary incentive pay from the regular rate of pay.

4 152. DEFENDANT's uniform policy and practice of omitting non-discretionary
5 incentive pay and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick
6 pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the
7 CALIFORNIA CLASS. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
8 request recovery of all unpaid wages, including sick pay wages, according to proof, interest,
9 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
10 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
11 overtime compensation is determined to be owed to other members of the CALIFORNIA CLASS
12 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
13 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
14 Cal. Lab. Code § 203, which penalties are sought herein on behalf of other members of the
15 CALIFORNIA CLASS. DEFENDANT'S conduct as alleged herein was willful, intentional and
16 not in good faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are
17 entitled to seek and recover statutory costs.

18 153. Cal. Lab. Code § 246(i) provides that:

19 An employer shall provide an employee with written notice that sets forth the
20 amount of paid sick leave available, or paid time off leave an employer provides in
21 lieu of sick leave, for use on either the employee's itemized wage statement
22 described in Section 226 or in a separate writing provided on the designated pay
23 date with the employee's payment of wages. If an employer provides unlimited paid
24 sick leave or unlimited paid time off to an employee, the employer may satisfy this
25 section by indicating on the notice or the employee's itemized wage statement
26 "unlimited."

27 154. From time to time, DEFENDANT failed to furnish PLAINTIFF and other
28 members of the CALIFORNIA CLASS with written wage statements setting forth the amount of
paid sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.* As a result,
PLAINTIFF and other members of the CALIFORNIA CLASS are entitled to seek and recover
statutory costs.

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1 162. DEFENDANT's misconduct was committed intentionally, in a malicious,
2 oppressive manner, and fraudulent manner, entitling PLAINTIFF to punitive damages against
3 DEFENDANT.

4 **ELEVENTH CAUSE OF ACTION**

5 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

6 **(Alleged by PLAINTIFF and against all Defendants)**

7 163. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

9 164. PLAINTIFF's wrongful termination on or about October 10, 2022 was for a
10 pretextual reason(s) to disguise DEFENDANT's unlawful employment practices directed at
11 PLAINTIFF.

12 165. Within the State of California there exists a substantial and fundamental public
13 policy, set forth in the California Labor Code § 98.6 et seq., which forbids retaliation and wrongful
14 termination. This public policy of the state is one that benefits the public at large and guarantees
15 the rights of an employee to perform their work free from retaliation.

16 166. Within the State of California there exists a substantial and fundamental public
17 policy, set forth in the California Labor Code § 1102.5 et seq., which forbids retaliation and
18 wrongful termination. This public policy of the state is one that benefits the public at large and
19 guarantees the rights of an employee to perform their work free from retaliation.

20 167. Within the State of California there exists a substantial and fundamental public
21 policy, set forth in the California Labor Code § 6310 et seq., which forbids retaliation and wrongful
22 termination. This public policy of the state is one that benefits the public at large and guarantees
23 the rights of an employee to perform their work free from retaliation.

24 168. As a result of DEFENDANT's actions, PLAINTIFF has suffered substantial losses
25 in earnings and employment benefits and emotional distress in an amount to be determined
26 according to proof at trial.

27 169. In doing the acts herein alleged, DEFENDANT acted with malice and oppression,
28 and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled to exemplary

1 and punitive damages from DEFENDANT in an amount to be determined to punish DEFENDANT
2 and to deter such wrongful conduct in the future.

3 170. PLAINTIFF was harmed by DEFENDANT's wrongful and illegal termination of
4 her employment.

5 171. The wrongful termination of the employment of PLAINTIFF was and is a
6 substantial factor causing harm to PLAINTIFF.

7 **PRAYER FOR RELIEF**

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

10 1. On behalf of the CALIFORNIA CLASS:

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

21 2. On behalf of the CALIFORNIA CLASS:

- 22 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
23 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
24 pursuant to Cal. Code of Civ. Proc. § 382;
25 b. Compensatory damages, according to proof at trial, including compensatory
26 damages for overtime compensation due to PLAINTIFF and the other members of
27 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
28 thereon at the statutory rate;

- 1 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
2 the applicable IWC Wage Order;
- 3 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
4 which a violation occurs and one hundred dollars (\$100) per each member of the
5 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
6 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
7 violation of Cal. Lab. Code § 226
- 8 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
9 penalty from the due date thereof at the same rate until paid or until an action
10 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 11 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
12 CLASS incurred in the course of their job duties, plus interest, and costs of suit.
- 13 3. On PLAINTIFF'S individual claims:
- 14 a. For all special damages which were sustained as a result of DEFENDANTS'
15 conduct, including but not limited to, back pay, front pay, lost compensation and job
16 benefits that PLAINTIFF would have received but for the practices of
17 DEFENDANTS.
- 18 b. For all exemplary damages, according to proof, which were sustained as a result of
19 DEFENDANTS' conduct.
- 20 c. An award of interest, including prejudgment interest at the legal rate.
- 21 d. Such other and further relief as the Court deems just and equitable.
- 22 e. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 23 4. On all claims:
- 24 a. An award of interest, including prejudgment interest at the legal rate;
- 25 b. Such other and further relief as the Court deems just and equitable; and

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1 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
2 including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or
3 § 1194.
4

5 DATED: July 3, 2023

ZAKAY LAW GROUP, APLC

6 By: 
7 Shani O. Zakay, Esq.
8 Attorney for PLAINTIFFS

9 **DEMAND FOR A JURY TRIAL**

10 PLAINTIFFS demands a jury trial on issues triable to a jury.
11

12 DATED: July 3, 2023

ZAKAY LAW GROUP, APLC

13 By: 
14 Shani O. Zakay, Esq.
15 Attorney for PLAINTIFFS
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