



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client #80701

April 11, 2024

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

GIRLS INCORPORATED OF THE ISLAND CITY dba ALAMEDA ISLAND KIDS

c/o Christine Chilcott

1724 Santa Clara Ave

Alameda, CA 94501

Via Certified U.S. Mail with Return Receipt. 9589 0710 5270 0298 7787 87

GIRLS INCORPORATED

c/o Veronica Escobedo

13521 Ramona Dr

Whittier, CA 90602

Via Certified U.S. Mail with Return Receipt. 9589 0710 5270 0298 7788 17

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 California Regulations, and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Britanni Powell ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant Girls Incorporated of the Island City dba Alameda Island Kids ("Defendant Girls Incorporated of Island City") and Defendant Girls Incorporated ("Defendant Girls Incorporated"). Plaintiff was employed by Defendants in California from August 2023 to December 2023, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. 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 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 California Regulations, 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 Girls Incorporated of Island City and/or Defendant Girls Incorporated 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 their 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 Statue 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 ALAMEDA

BRITANNI POWELL, an individual, on behalf
of herself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

GIRLS INCORPORATED OF THE ISLAND
CITY dba ALAMEDA ISLAND KIDS, a
California corporation; GIRLS
INCORPORATED, a Massachusetts
corporation; 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 REIMBURSE EMPLOYEES
2 FOR REQUIRED EXPENSES IN
3 VIOLATION OF CAL. LAB. CODE § 2802;
4 7) FAILURE TO PROVIDE ACCURATE
5 ITEMIZED STATEMENTS IN
6 VIOLATION OF CAL. LAB. CODE § 226;
7 8) FAILURE TO PROVIDE WAGES WHEN
8 DUE IN VIOLATION OF CAL. LAB.
9 CODE §§ 201, 202 AND 203.

10 **DEMAND FOR A JURY TRIAL**

11 PLAINTIFF BRITANNI POWELL (“PLAINTIFF”), an individual, on behalf of herself
12 and all other similarly situated current and former employees, allege on information and belief,
13 except for her own acts and knowledge which are based on personal knowledge, the following:

14 **PRELIMINARY ALLEGATIONS**

15 1. Defendant GIRLS INCORPORATED OF THE ISLAND CITY (“Defendant Girls
16 Incorporated of Island City”) is a California corporation that at all relevant times mentioned herein
17 conducted and continues to conduct substantial and regular business throughout California.

18 2. Defendant GIRLS INCORPORATED (“Defendant Girls Incorporated”) is a
19 Massachusetts corporation that at all relevant times mentioned herein conducted and continues to
20 conduct substantial and regular business throughout California.

21 3. Defendant Girls Incorporated of Island City and Defendant Girls Incorporated
22 were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF
23 and by the company PLAINTIFF performed work for respectively and are therefore jointly
24 responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or
25 “DEFENDANT.”

26 4. DEFENDANT owns, operates, and/or manages development programs for girls in
27 the state of California, including the county of Alameda, where PLAINTIFF worked.

28 5. PLAINTIFF was employed by DEFENDANT in California from August of 2023
to December of 2023 as a non-exempt employee, paid an hourly basis, and entitled to the legally
required meal and rest periods and payment of minimum and overtime wages due for all time
worked.

1 6. PLAINTIFF brings this Class Action on behalf of herself and a California class,
2 defined as all persons who are or previously were employed by Defendant Girls Incorporated of
3 Island City and/or Defendant Girls Incorporated in California and classified as non-exempt
4 employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years
5 prior to the filing of this Complaint and ending on the date as determined by the Court (the
6 "CLASS PERIOD"). The amount in controversy for the aggregate claim of the CALIFORNIA
7 CLASS Members is under five million dollars (\$5,000,000.00).

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

19 8. The true names and capacities, whether individual, corporate, subsidiary,
20 partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently
21 unknown to PLAINTIFF who therefore sues DEFENDANT by such fictitious names pursuant to
22 Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the
23 true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF
24 is informed and believes, and based upon that information and belief alleges, that the
25 DEFENDANT named in this Complaint, including DOES 1 through 50, inclusive, are responsible
26 in some manner for one or more of the events and happenings that proximately caused the injuries
27 and damages hereinafter alleged.

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

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

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

20 12. DEFENDANT's uniform policies and practices alleged herein were unlawful,
21 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
22 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

23 13. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
24 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
25 other members of the CALIFORNIA CLASS who has been economically injured by
26 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
27 relief.

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

3 **A. Meal Period Violations**

4 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
5 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
6 meaning the time during which an employee is subject to the control of an employer, including
7 all the time the employee is suffered or permitted to work. From time to time during the CLASS
8 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
9 without paying them for all the time they were under DEFENDANT's control. Specifically,
10 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
11 PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
12 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
13 Members forfeited minimum wage and overtime compensation by regularly working without their
14 time being accurately recorded and without compensation at the applicable minimum wage and
15 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
16 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
17 records.

18 18. From time to time during the CLASS PERIOD, as a result of their rigorous work
19 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
20 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
21 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
22 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
23 more than five (5) hours during some shifts without receiving a meal break. Further,
24 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
25 off-duty meal period for some workdays in which these employees are required by DEFENDANT
26 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
27 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-
28 duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other

1 CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call.
2 Further, DEFENDANT required PLAINTIFF and the CALIFORNIA CLASS Members to
3 maintain cordless communication devices on them during meal periods in order to receive and
4 respond to work-related communications. DEFENDANT's failure to provide PLAINTIFF and
5 the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
6 DEFENDANT's business records. PLAINTIFF and other members of the CALIFORNIA CLASS
7 therefore forfeit meal breaks without additional compensation and in accordance with
8 DEFENDANT's strict corporate policy and practice.

9 **B. Rest Period Violations**

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

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1 **C. Unreimbursed Business Expenses**

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

13 21. In the course of their employment, DEFENDANT required PLAINTIFF and other
14 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell
15 phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
16 CALIFORNIA CLASS Members were required to use their personal cell phones in order to
17 perform work related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF
18 and other CALIFORNIA CLASS Members for the use of their personal cell phones. As a result,
19 in the course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA
20 CLASS Members incurred unreimbursed business expenses that included, but were not limited
21 to, costs related to the use of their personal cell phones on behalf of and for the benefit of
22 DEFENDANT.

23 **D. Wage Statement Violations**

24 22. California Labor Code Section 226 required an employer to furnish its employees
25 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
26 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
27 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
28 name of the employee and only the last four digits of the employee's social security number or an

1 employee identification number other than a social security number, (8) the name and address of
2 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
3 period and the corresponding number of hours worked at each hourly rate by the employee.

4 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
5 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
6 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
7 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
8 accurate wage statements which failed to show the complete requirements under California Labor
9 Code sections 226(a)(1)-(9), including but not limited to, all deductions, the total hours worked
10 and all applicable hourly rates in effect during the pay period and the corresponding amount of
11 time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
12 periods.

13 24. Further, DEFENDANT from time to time issued wage statements to PLAINTIFF
14 and other CALIFORNIA CLASS Members that failed to show the accurate name and address of
15 the legal entity that is the employer, in violation of Cal. Lab. Code § 226(a)(8).

16 25. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
17 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
18 Cal. Lab. Code § 226(a)(1)-(9).

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

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

24 27. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
25 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
26 for all hours worked.

27 28. During the CLASS PERIOD, from time-to-time DEFENDANT required
28 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift

1 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS having to
2 work while off-the-clock.

3 29. DEFENDANT directed and directly benefited from the undercompensated off-the-
4 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

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

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

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

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

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

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

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

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

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

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

23 39. However, from-time-to-time, when calculating the regular rate of pay, in those pay
24 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
25 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
26 discretionary bonus, DEFENDANT failed to accurately include the non-discretionary bonus
27 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
28 rather than just all non-overtime hours worked. Management and supervisors described the

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

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

24 **G. Violations for Untimely Payment of Wages**

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

3 42. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
4 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant
5 to Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall
6 become due and payable not later than 72 hours thereafter, unless the employee has given 72
7 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
8 or her wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members
9 were, from time to time, not timely provided the wages earned and unpaid at the time of their
10 discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

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

14 **H. Unlawful Deductions**

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

19 **I. Timekeeping Manipulation**

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

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

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

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

17 **J. Unlawful Rounding Practices**

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

3 50. Further, the mutability of DEFENDANT's timekeeping system and unlawful
4 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
5 being inaccurately recorded. As a result, from time to time, DEFENDANT's unlawful rounding
6 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
7 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
8 duty meal break.

9 **K. Sick Pay Violations**

10 51. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after
11 July 1, 2015, works in California for the same employer for 30 or more days within a year from the
12 commencement of employment is entitled to paid sick days as specified in this section." Further,
13 Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to
14 time, DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF and other
15 members of the CALIFORNIA CLASS with sick days and/or paid sick leave.

16 52. California Labor Code Section 246(i) requires an employer to furnish its employees
17 with written wage statements setting forth the amount of paid sick leave available. From time to
18 time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF and other
19 members of the CALIFORNIA CLASS with wage statements setting forth the amount of paid sick
20 leave available.

21 53. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
22 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
23 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
24 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
25 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
26 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
27 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
28 DEFENDANT's policy caused PLAINTIFF to remain on-call and on-duty during what was

1 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
2 without additional compensation and in accordance with DEFENDANT's strict corporate policy
3 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
4 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF
5 for required business expenses related to the personal expenses incurred for the use of her personal
6 cell phone on behalf of and in furtherance of her employment with DEFENDANT. To date,
7 DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
8 compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203. The
9 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

10 **CLASS ACTION ALLEGATIONS**

11 54. PLAINTIFF bring this Class Action on behalf of herself, and a California class
12 defined as all persons who are or previously were employed by Defendant Girls Incorporated of
13 Island City and/or Defendant Girls Incorporated in California and classified as non-exempt
14 employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years
15 prior to the filing of this Complaint and ending on the date as determined by the Court (the
16 "CLASS PERIOD").

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

23 56. The members of the class are so numerous that joinder of all class members is
24 impractical.

25 57. Common questions of law and fact regarding DEFENDANT's conduct, including
26 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
27 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
28 regular rate of compensation for missed meal and rest period premiums, failing to provide legally

1 compliant meal and rest periods, failed to reimburse for business expenses, failure to provide
2 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum
3 wage and overtime, exist as to all members of the class and predominate over any questions
4 affecting solely any individual members of the class. Among the questions of law and fact
5 common to the class are:

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

1 j. Whether DEFENDANT committed an act of unfair competition in violation of the
2 UCL, by failing to provide the PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with the legally required meal and rest periods.

4 58. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
5 a result of DEFENDANT's conduct and actions alleged herein.

6 59. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
7 PLAINTIFF has the same interests as the other members of the class.

8 60. PLAINTIFF will fairly and adequately represent and protect the interests of the
9 CALIFORNIA CLASS Members.

10 61. PLAINTIFF retained able class counsel with extensive experience in class action
11 litigation.

12 62. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
13 interest of the other CALIFORNIA CLASS Members.

14 63. There is a strong community of interest among PLAINTIFF and the members of
15 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
16 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
17 sustained.

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

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

1 70. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
4 including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
5 1198, and 2802, for which this Court should issue declaratory and other equitable relief pursuant
6 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
7 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

26 74. By the conduct alleged herein, DEFENDANT's practices were also unfair and
27 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
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1 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
2 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

27 80. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
2 engaging in any unlawful and unfair business practices in the future.

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

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

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

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

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

17 83. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
18 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
19 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
20 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

23 85. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
24 commission is the minimum wage to be paid to employees, and the payment of a less wage than
25 the minimum so fixed is unlawful.

26 86. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including minimum wage compensation and interest thereon, together with the costs of suit.
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1 87. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
2 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
3 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
4 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
5 CALIFORNIA CLASS.

6 88. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
8 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
9 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

10 89. In committing these violations of the California Labor Code, DEFENDANT
11 inaccurately calculated the correct time worked and consequently underpaid the actual time
12 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
13 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
14 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
15 laws and regulations.

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

19 91. During the CLASS PERIOD, PLAINTIFF and the other members of the
20 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
21 failure to pay all earned wages.

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

27 93. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were under-compensated for their time worked.

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

6 94. 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, DEFENDANT acted and continues to act
9 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with a conscious 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 95. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
15 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
16 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
17 California Labor Code and/or other applicable statutes. To the extent minimum wage
18 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
19 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
20 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
21 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
22 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
23 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
24 recover statutory costs.

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1 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
2 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
3 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

10 104. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
11 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
12 overtime compensation for their time worked for DEFENDANT.

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

21 106. During the CLASS PERIOD, PLAINTIFF and the other members of the
22 CALIFORNIA CLASS were paid less for overtime worked than they were entitled to, constituting
23 a failure to pay all earned wages.

24 107. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
25 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
26 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
27 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
28 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT

1 failed to accurately record and pay as evidenced by DEFENDANT's business records and
2 witnessed by employees.

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

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

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

23 111. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
25 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
26 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
27 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
28 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore

1 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
2 penalties are sought herein. DEFENDANT's conduct as alleged herein was willful, intentional,
3 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
4 entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

9 112. 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.

12 113. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
13 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
14 required by the applicable Wage Order and Labor Code. The nature of the work performed by
15 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
16 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
17 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
18 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
19 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
20 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
21 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
22 Members with a second off-duty meal period in some workdays in which DEFENDANT required
23 these employees to work ten (10) hours of work. As a result, PLAINTIFF and other members of
24 the CALIFORNIA CLASS forfeited meal breaks without additional compensation and in
25 accordance with DEFENDANT's strict corporate policy and practice.

26 114. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
28 who were not provided a meal period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that a
2 meal period was not provided.

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

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

27 118. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members

1 who were not provided a rest period, in accordance with the applicable Wage Order, one
2 additional hour of compensation at each employee's regular rate of pay for each workday that rest
3 period was not provided.

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

7 **SIXTH CAUSE OF ACTION**

8 **Failure To Reimburse Employees for Required Expenses**

9 **(Cal. Lab. Code §§ 2802)**

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

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

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

15 An employer shall indemnify his or her employee for all necessary expenditures or
16 losses incurred by the employee in direct consequence of the discharge of his or her
17 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.

18 122. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
19 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
20 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
21 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members
22 for expenses which included, but were not limited to, personal expenses incurred for the use of
23 their personal cell phones, all on behalf of and for the benefit of DEFENDANT. Specifically,
24 DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to use their
25 personal cell phones to execute their essential job duties on behalf of DEFENDANT.
26 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and
27 the CALIFORNIA CLASS members for expenses resulting from the use of their personal cell
28 phones for DEFENDANT within the course and scope of their employment for DEFENDANT.

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

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

11 **SEVENTH CAUSE OF ACTION**

12 **Failure To Provide Accurate Itemized Statements**

13 **(Cal. Lab. Code § 226)**

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

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

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

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

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

126. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show the complete requirements under California Labor Code sections 226(a)(1)-(9), including but not limited to, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

127. Specifically, DEFENDANT from time to time failed to issue wage statements to PLAINTIFF and other CALIFORNIA CLASS Members that included hours, including but not limited to, holiday pay, sick pay, paid time off, and bereavement into the calculation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2). However, hours for holiday pay, sick pay, paid time off, and bereavement are not considered hours worked for purposes of Cal. Lab. Code § 226(a)(2). Therefore, DEFENDANT from time to time issued wage statements to PLAINTIFF and other CALIFORNIA CLASS Members that violated Cal. Lab. Code § 226(a)(2).

128. In addition to the foregoing, DEFENDANT 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(a)(1)-(9).

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

EIGHTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

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

130. 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.

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

As used in this article:

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

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

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

1 If an employee not having a written contract for a definite period quits his or her
2 employment, his or her wages shall become due and payable not later than 72 hours
3 thereafter, unless the employee has given 72 hours previous notice of his or her intention
4 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
5 Notwithstanding any other provision of law, an employee who quits without providing a
6 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
7 designates a mailing address. The date of the mailing shall constitute the date of payment
8 for purposes of the requirement to provide payment within 72 hours of the notice of
9 quitting.

10 134. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS
11 Members' employment contract.

12 135. Cal. Lab. Code § 203 provides:

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

18 136. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
19 terminated, and DEFENDANT has not tendered payment of wages to these employees who
20 missed meal and rest breaks, as required by law.

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

26 **PRAYER FOR RELIEF**

27 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANT, jointly and
28 severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining
DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all overtime wages and all sums

1 unlawfully withheld from compensation due to PLAINTIFF and the other members
2 of the CALIFORNIA CLASS; and

3 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
4 for restitution of the sums incidental to DEFENDANT's violations due to
5 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

6 2. On behalf of the CALIFORNIA CLASS:

7 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
8 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
9 to Cal. Code of Civ. Proc. § 382;

10 b. Compensatory damages, according to proof at trial, including compensatory
11 damages for overtime compensation due to PLAINTIFF and the other members of
12 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
13 thereon at the statutory rate;

14 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
15 the applicable IWC Wage Order;

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

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

24 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
25 CLASS incurred in the course of their job duties, plus interest, and costs of suit.

26 3. On all claims:

27 a. An award of interest, including prejudgment interest at the legal rate;

28 b. Such other and further relief as the Court deems just and equitable; and

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, and/or § 1194.
3

4 DATED: March __, 2024

ZAKAY LAW GROUP, APLC

5 By: 
6 Shani O. Zakay
7 Attorney for PLAINTIFF
8

9 **DEMAND FOR A JURY TRIAL**

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

12 DATED: March __, 2024

ZAKAY LAW GROUP, APLC

13 By: 
14 Shani O. Zakay
15 Attorney for PLAINTIFF
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