

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

LOS PERICOS FOOD PRODUCTS LLC, a California limited liability company; EMPLOYEE FORCE PROVIDER, INC., a California corporation; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

CHARLENE MANUYCO, an individual, on behalf of herself and on behalf of the State of California and other Aggrieved Employees,

Electronically FILED by
Superior Court of California,
County of Los Angeles
6/09/2023 8:42 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Abraham, Deputy Clerk

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Los Angeles Superior Court - Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso):

23STCV12776

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

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JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

David W. Slayton, Executive Officer/Clerk of Court

DATE: 06/09/2023
(Fecha)

Clerk, by J. Abraham, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):



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Superior Court of California,
County of Los Angeles
6/05/2023 6:36 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By E. Galicia, Deputy Clerk

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHARLENE MANUYCO, an individual, on
behalf of herself and on behalf of the State of
California and other Aggrieved Employees,

Plaintiff,

v.

LOS PERICOS FOOD PRODUCTS LLC, a
California limited liability company;
EMPLOYEE FORCE PROVIDER, INC., a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No: **23STCV12776**

COMPLAINT FOR:

- 1) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 *ET SEQ*;
- 2) RETALIATION IN VIOLATION OF CAL.
LAB. CODE §§ 98.6, 1102.5 & 6310;
- 3) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY.

DEMAND FOR A JURY TRIAL

1 PLAINTIFF CHARLENE MANUYCO (“PLAINTIFF”), an individual, in her
2 representative capacity on behalf of herself, the State of California, and fellow current and former
3 AGGRIEVED EMPLOYEES, defined *supra* against Defendant LOS PERICOS FOOD
4 PRODUCTS LLC (“Defendant Los Pericos”), Defendant EMPLOYEE FORCE PROVIDER, INC.
5 (“Defendant Employee Force Provider”) and DOES 1-50 (hereinafter collectively referred to as
6 “DEFENDANT and/or DEFENDANTS”), alleges on information and belief, except for her own
7 acts and knowledge which are based on personal knowledge, the following:

8 **INTRODUCTION**

9 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys
10 General Act of 2004, California Labor Code §2698, et seq. (“PAGA”) on behalf of other current
11 and former AGGRIEVED EMPLOYEES of DEFENDANTS for engaging in a pattern and practice
12 of wage and hour violations under the California Labor Code.

13 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
14 decreased their employment-related costs by systematically violating California wage and hour
15 laws.

16 3. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order
17 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 18 a. Failure to provide compliant meal and rest periods;
- 19 b. Failure to pay all minimum, regular and overtime wages;
- 20 c. Failure to maintain true and accurate records;
- 21 d. Failure to provide accurate itemized wage statements; and
- 22 e. Failure to timely pay wages due during, and upon termination of employment
- 23 f. Failure to reimburse employees for necessary expenditures

24 4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of
25 herself and all other aggrieved employees of DEFENDANTS in California seeking all civil
26 penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq*

27 5. PLAINTIFF reserves the right to name additional representatives throughout the
28 State of California.

THE PARTIES

6. Defendant LOS PERICOS FOOD PRODUCTS LLC (“Defendant Los Pericos”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California. Defendant Los Pericos is a manufacturer of food products throughout the state of California, including in the county of Los Angeles where PLAINTIFF worked

7. Defendant EMPLOYEE FORCE PROVIDER, INC. (“Defendant Employee Force Provider”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California. Defendant Employee Force Provider is a staffing agency that operates throughout the state of California, including in the county of Los Angeles where PLAINTIFF worked.

8. Defendant Los Pericos and Defendant Employee Force Provider were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

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

10. The agents, servants, and/or employees of the DEFENDANTS and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the DEFENDANTS, and personally participated in the conduct alleged herein on behalf of the DEFENDANTS with respect to the

1 conduct alleged herein. Consequently, the acts of each DEFENDANT are legally attributable to
2 the other DEFENDANT and all DEFENDANTS are jointly and severally liable to PLAINTIFF
3 and the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct
4 of the DEFENDANTS' agents, servants and/or employees.

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

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

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

20 1. PLAINTIFF brings this action in her representative capacity on behalf of the State
21 of California and on behalf of all persons who are or previously were employed by Defendant Los
22 Pericos and/or Defendant Employee Force Provider who performed work for Defendant Los
23 Pericos in California and classified as non-exempt employees (hereinafter "AGGRIEVED
24 EMPLOYEES") between March 30, 2022 and the present ("PAGA PERIOD").

25 2. PLAINTIFF is an "AGGRIEVED EMPLOYEE" within the meaning of Labor
26 Code § 2699(c) because she was employed by DEFENDANTS and suffered one or more of the
27 alleged Labor Code violations committed by DEFENDANTS.

28 3. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant
times were, employees of DEFENDANTS, within the meanings set forth in the California Labor

Code and the applicable Industrial Welfare Commission Wage Order.

JOINT EMPLOYER

4. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a)).

5. Section 558 of the California Labor Code provides that “any employer *or other person* acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).);

6. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person* acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

7. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that a corporate employer’s owners, officers and directors, are subject to civil penalties for the employer’s failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

8. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each of them, are subject to civil penalties for their failure to pay PLAINTIFF and the AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately caused the complaints, injuries, and damages alleged herein.

9. At all relevant times, each DEFENDANT, whether named or fictitious, was the agent, employee or other person acting on behalf of each other DEFENDANT, and, in

1 participating in the acts alleged in this Complaint, acted within the scope of such agency or
2 employment and ratified the acts of the other.

3 10. Each DEFENDANT, whether named or fictitious, exercised control over
4 PLAINTIFF'S wages, working hours, and/or working conditions.

5 11. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to
6 this action as the agent of the other DEFENDANT, carried out a joint scheme, business plan or
7 policy, and the acts of each DEFENDANT are legally attributable to the other DEFENDANT.

8 **JURISDICTION AND VENUE**

9 12. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
11 Court has jurisdiction over PLAINTIFF'S claims for civil penalties under the Private Attorney
12 General Act of 2004, California Labor Code §2698, *et seq.*

13 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employs
15 AGGRIEVED EMPLOYEES across California, including in this County, and committed the
16 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
17 EMPLOYEES.

18 **THE CONDUCT**

19 14. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
21 matter of company policy, practice and procedure, intentionally, knowingly and systematically
22 failed to provide legally compliant meal and rest periods, failed to accurately compensate
23 PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest periods, failed
24 to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked, failed
25 compensate PLAINTIFF and other AGGRIEVED EMPLOYEES for off-the-clock work, failed
26 to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES overtime at the correct regular
27 rate of pay, failed to compensate PLAINTIFF and other AGGRIEVED EMPLOYEES meal rest
28 premiums at the regular rate, and failed to issue to PLAINTIFF and the AGGRIEVED

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

9 **A. Meal Period Violations**

10 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
11 were required to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all their time
12 worked, meaning the time during which an employee is subject to the control of an employer,
13 including all the time the employee is suffered or permitted to work. From time-to-time during
14 the PAGA PERIOD, DEFENDANTS required PLAINTIFF and the other AGGRIEVED
15 EMPLOYEES to work without paying them for all the time they were under DEFENDANTS'
16 control. Specifically, as a result of PLAINTIFF's demanding work requirements and
17 DEFENDANTS' understaffing, DEFENDANTS required PLAINTIFF to work during what was
18 supposed to be PLAINTIFF's off-duty meal break. Indeed, there were many days where
19 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and the other
20 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime wages by regularly working
21 without their time being accurately recorded and without compensation at the applicable
22 minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay
23 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked is evidenced by
24 DEFENDANTS' business records.

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

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

12 **B. Rest Period Violations**

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

28 ///

1 **C. Wage Statement Violations**

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

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

18 20. Further, from time to time, DEFENDANTS failed to wage statements to
19 PLAINTIFF and the AGGRIEVED EMPLOYEES that provided the correct name and address of
20 the legal entity of the employer, in violation of Cal. Lab. Code § 226(a)(8).

21 21. In addition, DEFENDANTS, from time to time, failed to provide PLAINTIFF and
22 the other AGGRIEVED EMPLOYEES with wage statements that comply with Cal. Lab. Code §
23 226.

24 22. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED
25 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
26 violations are knowing and intentional, were not isolated or due to an unintentional payroll error
27 due to clerical or inadvertent mistake.

28 ///

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

2 23. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and
3 continue to fail to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all
4 hours worked.

5 24. During the PAGA PERIOD, from time-to-time DEFENDANTS required
6 PLAINTIFF and the other AGGRIEVED EMPLOYEES to perform pre-shift and post-shift work
7 all while off-the-clock, including but not limited to, time spent donning and doffing pre-shift and
8 post-shift, and underdoing off-the-clock pre-shift Covid-19 health screenings. This resulted in
9 PLAINTIFF and the other AGGRIEVED EMPLOYEES to have to work while off-the-clock.

10 25. DEFENDANTS directed and directly benefited from the uncompensated off-the-
11 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

12 26. DEFENDANTS controlled the work schedules, duties, protocols, applications,
13 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED
14 EMPLOYEES.

15 27. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
16 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document,
17 track, or pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed
18 for all the work they performed.

19 28. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt
20 employees, subject to the requirements of the California Labor Code.

21 29. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
22 AGGRIEVED EMPLOYEES of all minimum, regular, overtime, and double time wages owed
23 for the off-the-clock work activities. Because PLAINTIFF and the other AGGRIEVED
24 EMPLOYEES typically worked over 40 hours in a workweek, and more than eight (8) hours per
25 day, DEFENDANTS' policies and practices also deprived them of overtime pay.

26 30. DEFENDANTS knew or should have known that PLAINTIFF and the other
27 AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

28 ///

1 31. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited
2 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the
3 time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay
4 PLAINTIFF and the other AGGRIEVED EMPLOYEES wages for all hours worked in
5 accordance with applicable law is evidenced by DEFENDANTS' business records.

6 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
7 **Sick Pay**

8 32. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and
9 continue to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED
10 EMPLOYEES for their overtime and double time hours worked, meal and rest period premiums,
11 and sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited
12 wages due them for working overtime without compensation at the correct overtime and double
13 time rates, meal and rest period premiums, and sick pay rates. DEFENDANTS' uniform policy
14 and practice to not pay PLAINTIFF and the other AGGRIEVED EMPLOYEES the correct rate
15 for all overtime and double time worked, meal and rest period premiums, and sick pay in
16 accordance with applicable law is evidenced by DEFENDANTS' business records.

17 33. State law provides that employees must be paid overtime at one-and-one-half times
18 their "regular rate of pay." PLAINTIFF and the other AGGRIEVED EMPLOYEES were
19 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
20 employee's performance.

21 34. The second component of PLAINTIFF's and the other AGGRIEVED
22 EMPLOYEES' compensation was DEFENDANTS' non-discretionary incentive program that
23 paid PLAINTIFF and the other AGGRIEVED EMPLOYEES incentive wages based on their
24 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
25 paid on an hourly basis with bonus compensation when the employees met the various
26 performance goals set by DEFENDANTS.

27 35. However, from time-to-time, when calculating the regular rate of pay, in those pay
28 periods where PLAINTIFF and the other AGGRIEVED EMPLOYEES worked overtime, double

1 time, paid meal and rest period premium payments, and/or sick pay, and earned this non-
2 discretionary bonus or incentive, DEFENDANTS failed to accurately include the non-
3 discretionary bonus compensation and/or incentive and/or shift differential paid as part of the
4 employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-
5 overtime hours worked. Management and supervisors described the incentive/bonus program to
6 potential and new employees as part of the compensation package. As a matter of law, the
7 incentive compensation received by PLAINTIFF and the other AGGRIEVED EMPLOYEES
8 must be included in the "regular rate of pay." The failure to do so has resulting in a systematic
9 underpayment of overtime and double time compensation, meal and rest period premiums, and
10 redeemed sick pay to PLAINTIFF and the other AGGRIEVED EMPLOYEES by
11 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
12 for non-employees shall be calculated in the same manner as the regular rate of pay for the
13 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
14 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
15 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
16 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
17 recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

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

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

2 37. Pursuant to California Labor Code section 204, PLAINTIFF and the other
3 AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their employment.
4 PLAINTIFF and the other AGGRIEVED EMPLOYEES, from time to time, did not receive
5 payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period
6 premium wages, and rest period premium wages within permissible time period.

7 **G. Unlawful Rounding Violations**

8 38. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable
9 timekeeping system to accurately record and pay PLAINTIFF and the other AGGRIEVED
10 EMPLOYEES for the actual time these employees worked each day, including overtime hours.
11 Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted
12 in PLAINTIFF and the other AGGRIEVED EMPLOYEES being undercompensated for all of
13 their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and
14 unilaterally round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and
15 the other AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time
16 worked, including the applicable overtime compensation for overtime worked. As a result,
17 PLAINTIFF, and the other AGGRIEVED EMPLOYEES, from time to time, forfeited
18 compensation for their time worked by working without their time being accurately recorded and
19 without compensation at the applicable overtime rates.

20 39. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
21 rounding policy and practice resulted in PLAINTIFF and the other AGGRIEVED EMPLOYEES
22 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
23 rounding policy and practice caused PLAINTIFF and the other AGGRIEVED EMPLOYEES to
24 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
25 receiving an off-duty meal break. Additionally, DEFENDANTS' unlawful rounding policy and
26 practice caused PLAINTIFF and the other AGGRIEVED EMPLOYEES to perform work as
27 ordered by DEFENDANTS for more than ten (10) hours during a shift without receiving a second
28 off-duty meal break.

1 **H. Timekeeping Manipulation**

2 40. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
3 immutable timekeeping system to accurately record and pay PLAINTIFF and the other
4 AGGRIEVED EMPLOYEES for the actual time PLAINTIFF and the other AGGRIEVED
5 EMPLOYEES worked each day, including regular time, overtime hours, sick pay, meal and rest
6 breaks. As a result, DEFENDANTS were able to and did in fact, unlawfully, and unilaterally alter
7 the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and the other
8 AGGRIEVED EMPLOYEES in order to avoid paying these employees for all hours worked,
9 applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest break.

10 41. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES, from time-
11 to-time, forfeited time worked by working without their time being accurately recorded and
12 without compensation at the applicable pay rates.

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

20 43. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited
21 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the
22 time the timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to
23 not pay PLAINTIFF and the other AGGRIEVED EMPLOYEES wages for all hours worked in
24 accordance with applicable law is evidenced by DEFENDANTS' business records.

25 **I. Unlawful Deductions**

26 44. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
27 the other AGGRIEVED EMPLOYEES' pay without explanations and without authorization to
28

1 do so or notice to PLAINTIFF and the other AGGRIEVED EMPLOYEES. As a result,
2 DEFENDANTS violated Labor Code § 221.

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

21 **J. Plaintiff's Retaliation and Wrongful Termination Claims**

22 46. PLAINTIFF was employed by DEFENDANT in California from July of 2022 to
23 August 22, 2022. On or around August 22, 2022, PLAINTIFF was wrongfully terminated from
24 her employment with DEFENDANT.

25 47. Throughout her employment with DEFENDANT, PLAINTIFF was treated
26 differently and unfairly by DEFENDANT and its agents, all in retaliation against PLAINTIFF
27 for various protected activities.

28 ///

1 48. During her employment, PLAINTIFF complained to DEFENDANT about
2 DEFENDANT'S unlawful practices. Specifically, PLAINTIFF complained to DEFENDANT
3 about DEFENDANT'S unsafe workplace conditions, including but not limited to, gloves that
4 failed to provide any protection to PLAINTIFFS and other employees' hands from harsh
5 chemicals used in DEFENDANT'S workplace and harsh chemicals and cleaning agents that
6 harmed PLAINTIFF. PLAINTIFF reported the unsafe workplace conditions to DEFENDANT,
7 but PLAINTIFF'S report fell on deaf ears. Rather, DEFENDANT terminated PLAINTIFF'S
8 employment on or around August 22, 2022

9 49. PLAINTIFF is informed and believes, and upon such information and belief
10 alleges that, during PLAINTIFF'S employment with DEFENDANT, DEFENDANT wrongfully
11 terminated her because of her reports and complaints of DEFENDANT'S unsafe workplace
12 conditions and practices.

13 50. PLAINTIFF is informed and believes, and upon such information and belief
14 alleges that, during PLAINTIFF'S employment with DEFENDANT and at the time of her
15 termination, DEFENDANT maintained a hostile work environment directed at PLAINTIFF
16 because of her reports and complaints regarding DEFENDANT'S unsafe workplace conditions
17 and practices.

18 51. PLAINTIFF is informed and believes, and upon such information and belief
19 alleges that, DEFENDANT'S conduct in wrongfully terminating PLAINTIFF'S employment
20 was part of a pattern of behavior by DEFENDANT aimed at retaliation against PLAINTIFF.

21 52. PLAINTIFF is informed and believes, and upon such information and belief
22 alleges that, DEFENDANT wrongfully terminated her for reasons that violate public policy.

23 53. PLAINTIFF is informed and believes, and upon such information and belief
24 alleges that she was harmed as a result of the wrongful termination and that the unlawful and
25 retaliatory practices of DEFENDANT were substantial factors in causing PLAINTIFF'S harm.

26 54. PLAINTIFF is informed and believes, and upon such information and belief
27 alleges that, DEFENDANTS intentionally created or knowingly permitted these working
28

1 conditions, including but not limited to, retaliatory employment practices against employees who
2 reported unsafe workplace conditions and practices.

3 **FIRST CAUSE OF ACTION**

4 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

5 **(Cal. Lab. Code §§2698 et seq.)**

6 **(Alleged by PLAINTIFF against all DEFENDANTS)**

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

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

19 57. PLAINTIFF, and such persons that may be added from time to time who satisfy
20 the requirements and exhaust the administrative procedures under the Private Attorney General
21 Act, bring this Representative Action on behalf of the State of California with respect to herself
22 and all persons who are or previously were employed by Defendant Los Pericos and/or
23 Defendant Employee Force Provider who performed work for Defendant Los Pericos in
24 California and classified as non-exempt employees (hereinafter "AGGRIEVED EMPLOYEES")
25 between March 30, 2022 and the present (the "PAGA PERIOD").

26 58. On March 30, 2023, PLAINTIFF gave written notice by certified mail to the Labor
27 and Workforce Development Agency (the "Agency") and the employer of the specific
28 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See

Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

59. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14 1198, 1198.5, 1199, 2802, and 2804 in the following amounts:

a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)];

b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred

dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198, 1198.5, and 1199, a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

60. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

61. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor

1 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
2 committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

3 **SECOND CAUSE OF ACTION**

4 **RETALIATION - Cal. Lab. Code §§ 98.6, 1102.5 and 6310**

5 **(Alleged by PLAINTIFF and against all DEFENDANTS)**

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

8 63. At all relevant times, California Labor Code section 98.6 was in effect and was
9 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any
10 employee, including PLAINTIFF, for raising complaints of illegality and/or belief that the
11 employee may disclose illegality regarding Labor Code violations.

12 64. At all relevant times, California Labor Code section 1102.5 was in effect and was
13 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any
14 employee, including PLAINTIFF, for raising complaints of illegality and/or belief that the
15 employee may disclose illegality.

16 65. At all relevant times, California Labor Code section 6310 was in effect and was
17 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any
18 employee, including PLAINTIFF, for raising complaints about safety conditions or practices at the
19 workplace.

20 66. PLAINTIFF raised complaints of illegality and unsafe workplace conditions while
21 she worked for DEFENDANT, and DEFENDANT retaliated against her by taking adverse
22 employment actions including wrongfully terminating PLAINTIFF.

23 67. As a proximate result of DEFENDANT's willful, knowing, and intentional
24 violation(s) of Labor Code sections 98.6, 1102.5 and 6310, PLAINTIFF has suffered and continues
25 to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to her
26 damage in a sum according to proof.

27 68. As a result of DEFENDANT's adverse employment actions against PLAINTIFF,
28 PLAINTIFF has suffered general and special damages in sums according to proof.

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

4 **THIRD CAUSE OF ACTION**

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

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

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

9 71. PLAINTIFF's wrongful termination on or about August 22, 2022 was for a
10 pretextual reason(s) to disguise DEFENDANT's unlawful employment practices and unsafe
11 workplace conditions directed at PLAINTIFF.

12 72. 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 73. 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 74. 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 75. The motivating reason(s) for PLAINTIFF's termination was PLAINTIFF'S
25 complaints to DEFENDANT regarding DEFENDANT'S unsafe workplace conditions.
26 PLAINTIFF's wrongful termination from her position of employment was in violation of the public
27 policies of the State of California.

28 76. As a result of DEFENDANT's actions, PLAINTIFF has suffered substantial losses
 in earnings and employment benefits and emotional distress in an amount to be determined

1 according to proof at trial.

2 77. In doing the acts herein alleged, DEFENDANT acted with malice and oppression,
3 and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled to exemplary
4 and punitive damages from DEFENDANT in an amount to be determined to punish DEFENDANT
5 and to deter such wrongful conduct in the future.

6 78. PLAINTIFF was harmed by DEFENDANT's wrongful and illegal termination of
7 her employment.

8 79. The wrongful termination of the employment of PLAINTIFF was and is a
9 substantial factor causing harm to PLAINTIFF.

10 **PRAYER FOR RELIEF**

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

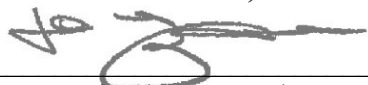
- 13 1. On behalf of the State of California and with respect to all AGGRIEVED
14 EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private
15 Attorneys General Act of 2004;
- 16 2. For reasonable attorney's fees and costs of suit to the extent permitted by law,
17 including pursuant to Labor Code §2699, et. seq.;
- 18 3. For all special damages which were sustained as a result of DEFENDANTS'
19 conduct, including but not limited to, back pay, front pay, lost compensation and
20 job benefits that PLAINTIFF would have received but for the practices of
21 DEFENDANTS.
- 22 4. For all exemplary damages, according to proof, which were sustained as a result of
23 DEFENDANTS' conduct.
- 24 5. An award of interest, including prejudgment interest at the legal rate.
- 25 6. Such other and further relief as the Court deems just and equitable.

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28 ///

1 7. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

2
3 DATED: June 5, 2023

JCL LAW FIRM, APC

4
5 By: 

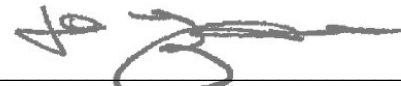
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

6
7
8 **DEMAND FOR A JURY TRIAL**

9 PLAINTIFFS demands a jury trial on issues triable to a jury.

10
11 DATED: June 5, 2023

JCL LAW FIRM, APC

12 By: 

Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

EXHIBIT 1



Client # 60201

March 30, 2023

Via Online Filing to LWDA and Certified Mail to Defendants
Labor and Workforce Development Agency
Online Filing

LOS PERICOS FOOD PRODUCTS LLC

c/o Luis Ortega
2301 Valley Blvd
Pomona, CA 91768

Via Certified U.S. Mail with Return Receipt No. 7022 1670 0001 3652 8882

EMPLOYEE FORCE PROVIDER, INC.

c/o Walter L. Ramirez
3400 Inland Empire Blvd., Suite 210
Ontario, CA 91764

Via Certified U.S. Mail with Return Receipt No. 7022 1670 0001 3652 8899

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, 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 CHARLENE MANUYCO ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant LOS PERICOS FOOD PRODUCTS LLC ("Defendant Los Pericos") and Defendant EMPLOYEE FORCE PROVIDER, INC. ("Defendant Employee Force Provider") (collectively, hereinafter, "Defendants"). Plaintiff was employed by Defendants from July of 2022 to August 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, 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 Los Pericos and/or Defendant Employee Force Provider who performed work for Defendant Los Pericos 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 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,



Shani O. Zakay
Attorney for Plaintiff

JCL LAW FIRM, APC

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shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHARLENE MANUYCO, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

LOS PERICOS FOOD PRODUCTS LLC, a
California limited liability company;
EMPLOYEE FORCE PROVIDER, INC., a
California 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;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant LOS PERICOS FOOD PRODUCTS LLC (“Defendant Los Pericos”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California. Defendant Los Pericos is a manufacturer of food products throughout the state of California, including in the county of Los Angeles where PLAINTIFF worked

2. Defendant EMPLOYEE FORCE PROVIDER, INC. (“Defendant Employee Force Provider”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California. Defendant Employee Force Provider is a staffing agency that operates throughout the state of California, including in the county of Los Angeles where PLAINTIFF worked.

3. Defendant Los Pericos and Defendant Employee Force Provider were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

1 4. PLAINTIFF was employed by DEFENDANTS in California from July of 2022 to
2 August of 2022 as a non-exempt employee, paid on an hourly basis and entitled to the legally
3 required meal and rest periods and payment of minimum and overtime wages due for all time
4 worked.

5 5. PLAINTIFF brings this Class Action on behalf of herself and a California class,
6 defined as all persons who are or previously were employed Defendant Los Pericos and/or
7 Defendant Employee Force Provider who performed work for Defendant Los Pericos in
8 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
9 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
10 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
11 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
12 (\$5,000,000.00).

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

24 7. The true names and capacities, whether individual, corporate, subsidiary,
25 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
26 presently unknown to PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious
27 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
28 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are

1 ascertained. PLAINTIFFS is informed and believes, and based upon that information and belief
2 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
3 inclusive, are responsible in some manner for one or more of the events and happenings that
4 proximately caused the injuries and damages hereinafter alleged.

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

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

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

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

27 12. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
28 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and

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

4 **JURISDICTION AND VENUE**

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

9 14. Venue is proper in this Court pursuant to California Code of Civil Procedure,
10 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ
11 the CALIFORNIA CLASS across California, including in this County, and committed the
12 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

13 **THE CONDUCT**

14 15. In violation of the applicable sections of the California Labor Code and the
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
16 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
17 failed to provide legally compliant meal and rest periods, failed to accurately compensate
18 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
19 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
20 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
21 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
22 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal and rest
23 premiums at the regular rate of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS
24 Members redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFF and other
25 CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and
26 the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,
27 among other things, all applicable hourly rates in effect during the pay periods and the
28 corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and

1 practices are intended to purposefully avoid the accurate and full payment for all time worked as
2 required by California law which allows DEFENDANTS to illegally profit and gain an unfair
3 advantage over competitors who comply with the law. To the extent equitable tolling operates to
4 toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should
5 be adjusted accordingly.

6 **A. Meal Period Violations**

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

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

1 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
2 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and
3 narrowly construed “on-duty” meal period exception. Further, from time to time, DEFENDANT
4 required PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless
5 communication devices in order to receive and/or respond to work-related communications during
6 their off-duty meal periods. When they were provided with meal periods, PLAINTIFF and other
7 CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on
8 duty and on call. DEFENDANTS’ failure to provide PLAINTIFF and the CALIFORNIA CLASS
9 Members with legally required meal breaks is evidenced by DEFENDANTS’ business records.
10 As a result of their rigorous work schedules and DEFENDANTS’ inadequate staffing,
11 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks
12 without additional compensation and in accordance with DEFENDANTS’ strict corporate policy
13 and practice.

14 **B. Rest Period Violations**

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

1 a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF
2 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
3 periods by DEFENDANT and DEFENDANTS' managers.

4 **C. Unreimbursed Business Expenses**

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

16 20. In the course of their employment, DEFENDANTS required PLAINTIFF and
17 other CALIFORNIA CLASS Members to incur personal expenses for the maintenance of their
18 uniforms as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
19 CALIFORNIA CLASS Members were required to maintain and clean their own uniforms in
20 order to perform work related tasks. However, DEFENDANTS unlawfully failed to reimburse
21 PLAINTIFF and other CALIFORNIA CLASS Members for the maintenance and cleaning of
22 their uniforms. As a result, in the course of their employment with DEFENDANTS, the
23 PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business
24 expenses that included, but were not limited to, costs related to the maintenance and cleaning of
25 their uniforms, all on behalf of and for the benefit of DEFENDANT.

26 **D. Wage Statement Violations**

27 21. California Labor Code Section 226 required an employer to furnish its employees
28 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours

1 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
2 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
3 name of the employee and only the last four digits of the employee's social security number or an
4 employee identification number other than a social security number, (8) the name and address of
5 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
6 period and the corresponding number of hours worked at each hourly rate by the employee.

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

15 23. Further, from time to time, DEFENDANTS failed to wage statements to
16 PLAINTIFF and the CALIFORNIA CLASS Members that provided the correct name and address
17 of the legal entity of the employer, in violation of Cal. Lab. Code § 226(a)(8).

18 24. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
19 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
20 Cal. Lab. Code § 226.

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

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

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

1 27. During the CLASS PERIOD, from time-to-time DEFENDANTS required
2 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
3 work, including but not limited to, time spent donning and doffing pre-shift and post-shift, and
4 underdoing off-the-clock pre-shift Covid-19 health screenings. This resulted in PLAINTIFF and
5 other members of the CALIFORNIA CLASS to have to work while off-the-clock.

6 28. DEFENDANTS directed and directly benefited from the undercompensated off-
7 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

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

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

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

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

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

25 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
26 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and
27 benefit for the time spent working while off-the-clock, including but not limited to, time spent
28 unlocking gas tanks, unlocking markets, turning on/off electronic machines, locking up, cleaning,

1 and taking out the trash. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF
2 and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with
3 applicable law is evidenced by DEFENDANTS' business records.

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

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

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

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

25 38. However, from time to time, when calculating the regular rate of pay in those pay
26 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
27 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
28 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus

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

15 39. In violation of the applicable sections of the California Labor Code and the
16 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
17 matter of company policy, practice, and procedure, intentionally and knowingly failed to
18 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
19 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
20 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
21 an 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 DEFENDANTS, the
23 CLASS PERIOD should be adjusted accordingly.

24 **G. Unlawful Deductions**

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

H. Timekeeping Manipulation

41. 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.

42. 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.

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

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

I. Unlawful Rounding Practices

1 45. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
2 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
3 CALIFORNIA CLASS Members for the actual time these employees worked each day,
4 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
5 policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
6 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
7 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
8 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
9 these employees for all their time worked, including the applicable overtime compensation for
10 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
11 time to time, forfeited compensation for their time worked by working without their time being
12 accurately recorded and without compensation at the applicable overtime rates.

13 46. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
14 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
15 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
16 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
17 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
18 receiving an off-duty meal break.

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

20 47. Pursuant to California Labor Code section 204, PLAINTIFF and the
21 CALIFORNIA CLASS members were entitled to timely payment of wages during their
22 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
23 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
24 meal period premium wages, and rest period premium wages within permissible time period.

25 48. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
26 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
27 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
28 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to

1 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
2 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
3 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
4 DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during what was
5 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
6 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
7 and practice. Moreover, DEFENDANTS also provided PLAINTIFF with paystubs that failed to
8 comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF
9 for required business expenses related to the personal expenses incurred for the maintenance and
10 cleaning of her uniform, on behalf of and in furtherance of her employment with DEFENDANTS.
11 To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double
12 time compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code §
13 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value
14 of \$75,000.

15 **CLASS ACTION ALLEGATIONS**

16 49. PLAINTIFF brings this Class Action on behalf of herself, and a California class
17 defined as all persons who are or previously were employed by Defendant Los Pericos and/or
18 Defendant Employee Force Provider who performed work for Defendant Los Pericos in
19 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
20 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
21 date as determined by the Court (the "CLASS PERIOD").

22 50. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
23 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
24 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
25 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
26 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
27 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.
28

1 51. The members of the class are so numerous that joinder of all class members is
2 impractical.

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

- 12 a. Whether DEFENDANT maintained legally compliant meal period policies and
13 practices;
- 14 b. Whether DEFENDANT maintained legally compliant rest period policies and
15 practices;
- 16 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
17 Members accurate premium payments for missed meal and rest periods;
- 18 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
19 Members accurate overtime wages;
- 20 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
21 Members at least minimum wage for all hours worked;
- 22 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
23 CLASS Members for required business expenses;
- 24 g. Whether DEFENDANT issued legally compliant wage statements;
- 25 h. Whether DEFENDANT committed an act of unfair competition by systematically
26 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
27 CLASS for all time worked;

- 1 i. Whether DEFENDANT committed an act of unfair competition by systematically
2 failing to record all meal and rest breaks missed by PLAINTIFF and other
3 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
4 of this work, required employees to perform this work and permits or suffers to
5 permit this work;
- 6 j. Whether DEFENDANT committed an act of unfair competition in violation of the
7 UCL, by failing to provide the PLAINTIFF and the other members of the
8 CALIFORNIA CLASS with the legally required meal and rest periods.

9 53. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
10 a result of DEFENDANTS' conduct and actions alleged herein.

11 54. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
12 PLAINTIFF has the same interests as the other members of the class.

13 55. PLAINTIFF will fairly and adequately represent and protect the interests of the
14 CALIFORNIA CLASS Members.

15 56. PLAINTIFF retained able class counsel with extensive experience in class action
16 litigation.

17 57. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
18 interest of the other CALIFORNIA CLASS Members.

19 58. There is a strong community of interest among PLAINTIFF and the members of
20 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
21 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
22 sustained.

23 59. The questions of law and fact common to the CALIFORNIA CLASS Members
24 predominate over any questions affecting only individual members, including legal and factual
25 issues relating to liability and damages.

26 60. A class action is superior to other available methods for the fair and efficient
27 adjudication of this controversy because joinder of all class members is impractical. Moreover,
28 since the damages suffered by individual members of the class may be relatively small, the

1 expense and burden of individual litigation makes it practically impossible for the members of
2 the class individually to redress the wrongs done to them. Without class certification and
3 determination of declaratory, injunctive, statutory, and other legal questions within the class
4 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
5 create the risk of:

- 6 a. Inconsistent or varying adjudications with respect to individual members of the
7 CALIFORNIA CLASS which would establish incompatible standards of conduct
8 for the parties opposing the CALIFORNIA CLASS; and/or,
- 9 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
10 which would as a practical matter be dispositive of the interests of the other
11 members not party to the adjudication or substantially impair or impeded their
12 ability to protect their interests.

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

16 ///

17 **FIRST CAUSE OF ACTION**

18 **Unlawful Business Practices**

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

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

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

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

26 64. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
27 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
28

1 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
2 as follows:

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

10 65. By the conduct alleged herein, DEFENDANTS have engaged and continue to
11 engage in a business practice which violates California law, including but not limited to, the
12 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
13 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
14 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
15 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
16 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

23 73. All the acts described herein as violations of, among other things, the Industrial
24 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
25 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
26 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business
27 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*
28

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

6 75. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
7 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
8 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
9 engaging in any unlawful and unfair business practices in the future.

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

17 ///

18 **SECOND CAUSE OF ACTION**

19 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

8 81. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
9 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
10 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
11 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
12 the CALIFORNIA CLASS.

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

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

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

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

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

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

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

21 89. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
22 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
23 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
24 California Labor Code and/or other applicable statutes. To the extent minimum wage
25 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
26 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
27 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
28 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS

1 Members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
2 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
3 recover statutory costs.

4 **THIRD CAUSE OF ACTION**

5 **Failure To Pay Overtime Compensation**

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

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

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

11 91. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
12 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
13 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees
14 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
15 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

16 92. 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 93. Cal. Lab. Code § 510 provides that employees in California shall not be employed
19 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless
20 they receive additional compensation beyond their regular wages in amounts specified by law.

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

25 95. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
26 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
27 they worked, including overtime work.

1 96. 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 failed to accurately record overtime worked by
4 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
5 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
6 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
7 (12) hours in a workday, and/or forty (40) hours in any workweek.

8 97. In committing these violations of the California Labor Code, DEFENDANTS
9 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
10 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
11 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
12 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
13 regulations.

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

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

25 100. During the CLASS PERIOD, PLAINTIFF and the other members of the
26 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
27 a failure to pay all earned wages.
28

1 101. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
2 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
3 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
4 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
5 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANTS
6 failed to accurately record and pay as evidenced by DEFENDANTS' business records and
7 witnessed by employees.

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

13 103. DEFENDANTS knew or should have known that PLAINTIFF and the other
14 members of the CALIFORNIA CLASS were undercompensated for their time worked.
15 DEFENDANTS systematically elected, either through intentional malfeasance or gross
16 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
17 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
18 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
19 their overtime worked.

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

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

FOURTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

106. 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.

107. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which these employees were

1 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
2 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
3 and in accordance with DEFENDANTS' strict corporate policy and practice.

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

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

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18 **FIFTH CAUSE OF ACTION**

19 **Failure To Provide Required Rest Periods**

20 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

25 111. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
26 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
27 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
28 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)

1 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
2 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
3 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
4 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
5 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
6 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
7 compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as
8 required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to
9 provide PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid
10 rest periods is evidenced by DEFENDANTS' business records.

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

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

19 **SIXTH CAUSE OF ACTION**

20 **Failure To Provide Accurate Itemized Statements**

21 **(Cal. Lab. Code § 226)**

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

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

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

28 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.

116. 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.

117. Further, from time to time, DEFENDANTS included Meal Premium hours into the computation of total hours worked for purposes of Cal. Lab. Code §226(a)(2), notwithstanding

1 the fact that Meal Premium hours are not considered hours worked. DEFENDANTS' inclusion
2 of Meal Premium hours into the total hours worked in itemized wage statements issued to
3 PLAINTIFFS and other CALIFORNIA CLASS Members violates Cal. Lab. Code §226(a)(2

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

7 119. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
8 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
9 CLASS. These damages include, but are not limited to, costs expended calculating the correct
10 wages for all missed meal and rest breaks and the amount of employment taxes which were not
11 properly paid to state and federal tax authorities. These damages are difficult to estimate.
12 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
13 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
14 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
15 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
16 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
17 of the CALIFORNIA CLASS herein).

18 **SEVENTH CAUSE OF ACTION**

19 **Failure To Pay Wages When Due**

20 **(Cal. Lab. Code § 203)**

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

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

25 121. Cal. Lab. Code § 200 provides that:

26 As used in this article:

- 27 (d) "Wages" includes all amounts for labor performed by employees of every
28 description, whether the amount is fixed or ascertained by the standard of time,
task, piece, Commission basis, or other method of calculation.

1 (e) "Labor" includes labor, work, or service whether rendered or performed under
2 contract, subcontract, partnership, station plan, or other agreement if the to be
3 paid for is performed personally by the person demanding payment.

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

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

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

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

19 125. Cal. Lab. Code § 203 provides:

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

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

28 127. 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)

128. 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.

129. 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.

130. 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, personal expenses incurred for the maintenance and cleaning of their uniforms, all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to clean and maintain their uniforms to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from the maintenance and cleaning of their uniforms within the course and scope of their employment for DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

131. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred by her and the CALIFORNIA CLASS members in the discharge of their job duties for

1 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
2 statutory rate and costs under Cal. Lab. Code § 2802.

3 **PRAYER FOR RELIEF**

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

6 1. On behalf of the CALIFORNIA CLASS:

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

17 2. On behalf of the CALIFORNIA CLASS:

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
19 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
20 to Cal. Code of Civ. Proc. § 382;
21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for overtime compensation due to PLAINTIFF and the other members of
23 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
24 thereon at the statutory rate;
25 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
26 the applicable IWC Wage Order;
27 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
28 which a violation occurs and one hundred dollars (\$100) per each member of the

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

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

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

3. On all claims:

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

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

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

DATED: March __, 2023

JCL LAW FIRM, APC

By: _____
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFFS

DEMAND FOR A JURY TRIAL

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

DATED: March __, 2023

JCL LAW FIRM, APC

By: _____
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF