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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

MARY FRANKLIN, an individual, in her
representative capacity on behalf of the State of
California and fellow Aggrieved Employees,

Plaintiff,

vs.

WINDSOR TWIN PALMS HEALTHCARE
CENTER, LLC, a California limited liability
company; and DOES 1 through 50, Inclusive;

Defendants.

Case No. 23STCV20411

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698 *ET SEQ.*

FILED
Superior Court of California
County of Los Angeles
10/31/2023

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

1 Plaintiff MARY FRANKLIN (“PLAINTIFF”) an individual, in her representative capacity on
2 behalf of the State of California and fellow current and former AGGRIEVED EMPLOYEES, defined
3 *supra*, against Defendant WINDSOR TWIN PALMS HEALTHCARE CENTER, LLC alleges on
4 information and belief, except for her own acts and knowledge which are based on personal knowledge,
5 the following:

6 **INTRODUCTION**

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

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

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

- 15 a. Failure to provide compliant meal and rest periods;
- 16 b. Failure to allow employees to take duty-free meal and rest periods;
- 17 c. Failure to pay all minimum, regular and overtime wages;
- 18 d. Failure to correctly calculate the regular rate of pay;
- 19 e. Failure to maintain true and accurate records;
- 20 f. Failure to reimburse employees for required expenses;
- 21 g. Failure to provide accurate itemized wage statements; and
- 22 h. Failure to timely pay wages due during, and upon termination of employment.

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

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

THE PARTIES

6. Defendant WINDSOR TWIN PALMS HEALTHCARE CENTER, LLC (“DEFENDANT” and/or “DEFENDANTS”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business throughout California.

7. DEFENDANT operates nursing homes in the State of California, including in the county of Los Angeles, where PLAINTIFF worked.

8. PLAINTIFF was employed by DEFENDANTS in California from August of 2015 to September of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages dur for all time worked.

9. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the “AGGRIEVED EMPLOYEES”) during the time period of August 24, 2022 until the present (the “PAGA PERIOD”).

10. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code § 2699(c) because she was employed by DEFENDANTS and suffered one or more of the alleged Labor Code violations committed by DEFENDANTS.

11. 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.

12. Each of the fictitiously named defendants participated in the acts alleged in this Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts alleged in this Complaint.

13. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

JOINT EMPLOYER

15. 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).)

16. 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).);

17. 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).)

18. 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.

1 19. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each
2 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees
3 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and
4 damages alleged herein.

5 20. At all relevant times, each Defendant, whether named or fictitious, was the agent,
6 employee or other person acting on behalf of each other Defendant, and, in participating in the acts
7 alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts
8 of the other.

9 21. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's
10 wages, working hours, and/or working conditions.

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

14 **JURISDICTION AND VENUE**

15 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
16 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Court
17 has jurisdiction over PLAINTIFF's claims for civil penalties under the Private Attorney General
18 Act of 2004, California Labor Code §2698, *et seq.*

19 24. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
20 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
21 and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities
22 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
23 conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED EMPLOYEES.

24 **THE CONDUCT**

25 25. In violation of the applicable sections of the California Labor Code and the requirements
26 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
27 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
28 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other

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

12 **A. Meal Period Violations**

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

27. From time-to-time during the PAGA PERIOD, as a result of their rigorous work schedules, and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off-duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were required from time to time to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work performed by PLAINTIFF and other AGGRIEVED EMPLOYEES does not qualify for limited and narrowly construed "on-duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time, required to remain on duty and on call. PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

B. Rest Period Violations

28. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES were also required from time to time to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work schedule, being required to take orders, receive payments, expedite services, provide janitorial services, and DEFENDANTS' inadequate staffing. Further, for the same reasons these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time, required to remain on DEFENDANTS' premises, on duty and/or on call. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other AGGRIEVED

1 EMPLOYEES were from time to time denied their proper rest periods by DEFENDANTS and
2 DEFENDANTS' managers.

3 **C. Unreimbursed Business Expenses**

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

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

24 **D. Wage Statement Violations**

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

employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

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

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

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

35. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and continues to fail to accurately pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all hours worked.

36. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work, including but not limited to, time spent undergoing Covid-19 health screenings which included temperature checks and questionnaires, and performing document and charting work. This resulted in PLAINTIFF and other AGGRIEVED EMPLOYEES to have to work while off-the-clock.

37. DEFENDANTS directed and directly benefited from the undercompensated off-the-clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

1 38. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
2 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.

3 39. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
4 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or
5 pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all the
6 work they performed.

7 40. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt employees,
8 subject to the requirements of the California Labor Code.

9 41. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
10 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for the
11 off-the-clock work activities. Because PLAINTIFF and the AGGRIEVED EMPLOYEES typically
12 worked over forty (40) hours in a workweek, and more than eight (8) hours per day, DEFENDANTS'
13 policies and practices also deprived them of overtime pay.

14 42. DEFENDANTS knew or should have known that PLAINTIFF and the other
15 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

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

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

23 44. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail
24 to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
25 overtime hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and the
26 other AGGRIEVED EMPLOYEES forfeited wages due to them for working overtime without
27 compensation at the correct overtime, meal and rest period premium, and sick pay rates.
28 DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct

1 overtime rate for all overtime worked, meal and rest period premiums, and sick pay in accordance with
2 applicable law is evidenced by DEFENDANTS' business records.

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

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

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

1 48. In violation of the applicable sections of the California Labor Code and the requirements
2 of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a matter of company
3 policy, practice, and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
4 other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime and double time worked,
5 meal and rest period premiums, and redeemed sick pay as required by California law which allowed
6 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with
7 the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES
8 against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

9 **G. Unlawful Deductions**

10 49. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF and
11 AGGRIEVED EMPLOYEE’ pay without explanations and without authorization to do so or notice to
12 PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS violated Labor Code
13 § 221.

14 **H. Timekeeping Manipulation**

15 50. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
16 immutable timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED
17 EMPLOYEES for the actual time PLAINTIFF and other AGGRIEVED EMPLOYEES worked each
18 day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANT
19 was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANTS’
20 timekeeping system for PLAINTIFF and other AGGRIEVED EMPLOYEES in order to avoid paying
21 these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed
22 meal breaks and missed rest breaks.

23 51. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES, from time-to-time,
24 forfeited time worked by working without their time being accurately recorded and without
25 compensation at the applicable pay rates.

26 52. The mutability of the timekeeping system also allowed DEFENDANTS to alter employee
27 time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS’ timekeeping
28 system so as to create the appearance that PLAINTIFF and other AGGRIEVED EMPLOYEES clocked

1 out for thirty (30) minute meal break when in fact the employees were not at all times provided an off-
2 duty meal break. This practice is a direct result of DEFENDANTS' uniform policy and practice of
3 denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise
4 compensate them for missed meal breaks.

5 53. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due
6 them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
7 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
8 PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
9 applicable law is evidenced by DEFENDANTS' business records.

10 **I. Unlawful Rounding Practices**

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

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

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

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

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

14 58. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying
15 all wages due at time of termination for all AGGRIEVED EMPLOYEES whose employment ended
16 during the PAGA PERIOD.

17 **K. Sick Pay Violations**

18 59. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after July 1,
19 2015, works in California for the same employer for 30 or more days within a year from the
20 commencement of employment is entitled to paid sick days as specified in this section.” Further, Cal.
21 Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to time,
22 DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF and other
23 AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

24 60. California Labor Code Section 246(i) requires an employer to furnish its employees with
25 written wage statements setting forth the amount of paid sick leave available. From time to time,
26 DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF and other
27 AGGRIEVED EMPLOYEES with wage statements setting forth the amount of paid sick leave
28 available.

1 **L. Failure to Provide Personnel Files**

2 61. On June 26, 2023, PLAINTIFF caused a written request via certified mail to be delivered
3 to DEFENDANTS for PLAINTIFF'S personnel and employment records, including but not limited to:
4 (1) payroll records; (2) employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF'S complete
5 employment file.

6 62. DEFENDANTS failed to provide and/or make available to PLAINTIFF her personnel
7 records, payroll records, employment contract, and entire employment file within thirty (30) days of
8 her request stated above. In fact, as of the date of filing of this Complaint, DEFENDANTS have still
9 failed to pay PLAINTIFF the statutory penalty in the amount of \$750. DEFENDANTS violated Cal.
10 Lab. Code Section 1198.5 by failing to respond and provide PLAINTIFF with her employment file.
11 Section 1198.5 states that employees (and former employees) have the right to inspect personnel
12 records maintained by the employer "related to the employee's performance or to any grievance
13 concerning the employee." Employers must allow inspection or copying within thirty (30) days of the
14 request. AGGRIEVED EMPLOYEES who have requested their personnel and employment records
15 who have not received said records within thirty (30) days are entitled to and requests injunctive relief
16 to obtain compliance with Cal. Lab. Code Section 1198.5, a statutory penalty, and an award of
17 attorneys' fees and costs for bringing this action.

18 **FIRST CAUSE OF ACTION**

19 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

20 **[Cal. Lab. Code §§ 2698, et seq.]**

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

22 63. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
23 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

24 64. PAGA is a mechanism by which the State of California itself can enforce state labor laws
25 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
26 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
27 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
28 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private

1 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified
2 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general
3 to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
4 claims cannot be subject to arbitration.

5 65. PLAINTIFF brings this Representative Action on behalf of the State of California with
6 respect to all current and former AGGRIEVED EMPLOYEES employed by DEFENDANTS during
7 the PAGA PERIOD.

8 66. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the
9 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of
10 Labor Code Section 2699(c).

11 67. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
12 PLAINTIFF, on behalf of all current or former employees, to bring a civil action to recover civil
13 penalties pursuant to the procedures specified in Labor Code Section 2699.3

14 68. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
15 Section 2699.3. By certified letter, return receipt requested, dated August 24, 2023, PLAINTIFF gave
16 written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANTS of
17 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
18 to support the alleged violations. See Exhibit #1.

19 69. As of the date of this Complaint, more than sixty-five (65) days after serving the LWDA
20 with notice and amended notice of DEFENDANTS' violations, the LWDA has not provided any notice
21 by certified mail of its intent to investigate the DEFENDANTS' alleged violations as mandated by
22 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A,
23 PLAINTIFF may commence and is authorized to pursue this cause of action.

24 70. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
25 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,
26 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5,
27 1194, 1197, 1197.1, 1197.14 1198, 1199, 2802, and 2804 in the following amounts:

28 a. For violation of Labor Code Sections 201, 202, 203, and 204, one

1 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per
2 pay period for the initial violation and two hundred dollars (\$200)
3 for AGGRIEVED EMPLOYEE per pay period for each subsequent
4 violation [penalty per Labor Code Section 2699(f)(2)];

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

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

14 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil
15 penalty in the amount of fifty dollars (\$50) for each underpaid
16 AGGRIEVED EMPLOYEE for the initial violation and hundred
17 dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for
18 each subsequent violation [penalty per Labor Code Section 558];

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

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

27 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and
28 1199, a civil penalty in the amount of one hundred dollars (\$100)

1 per AGGRIEVED EMPLOYEE per pay period for the initial
2 violation and two hundred dollars fifty (\$250) per AGGRIEVED
3 EMPLOYEE per pay period for each subsequent violation [penalty
4 per Labor Code Section].

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

11 72. To the extent that any of the conduct and violations alleged herein did not affect
12 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected
13 other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519;
14 See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows
15 an "aggrieved employee"—a person affected by at least one Labor Code violation committed by an
16 employer—to pursue penalties for all the Labor Code violations committed by that employer."],
17 Emphasis added, reh'g denied (June 13, 2018).)

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

3 (a) For reasonable attorney's fees and costs of suit to the extent permitted by law, including
4 pursuant to Labor Code § 2699, *et seq.*;

5 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
6 Private Attorneys General Act; and

7 For such other relief as the Court deems just and proper.
8

9 Dated: October 31, 2023

Respectfully Submitted,
ZAKAY LAW GROUP, A.P.L.C.

11 By: 
12 Shani Zakay
13 Attorneys for PLAINTIFF
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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #65501

August 24, 2023

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

WINDSOR TWIN PALMS HEALTHCARE CENTER, LLC

c/o C T Corporation System

330 N Brand Blvd., Ste 700

Glendale, CA 91203

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0880 7024 04

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

Dear Sir/Madam:

Our offices represent Plaintiff MARY FRANKLIN ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant WINDSOR TWIN PALMS HEALTHCARE CENTER, LLC ("Defendant"). Plaintiff was employed by Defendant from August of 2015 to September 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. Defendant, 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, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, 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,



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

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

Sincerely,

Shani O. Zakay, Esq.
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MARY FRANKLIN, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

WINDSOR TWIN PALMS HEALTHCARE
CENTER, LLC, a California limited liability
company; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

- 1 6) FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN
3 VIOLATION OF CAL. LAB. CODE § 226;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO REIMBURSE EMPLOYEES
8 FOR REQUIRED EXPENSES IN
9 VIOLATION OF CAL. LAB. CODE § 2802.

10 **DEMAND FOR A JURY TRIAL**

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

14 **PRELIMINARY ALLEGATIONS**

15 1. Defendant WINDSOR TWIN PALMS HEALTHCARE CENTER, LLC.
16 (“DEFENDANT” and/or “DEFENDANTS”) is a California limited liability company that at all
17 relevant times mentioned herein conducted and continues to conduct substantial and regular
18 business throughout California.

19 2. DEFENDANTS operate nursing homes in the state of California, including in the
20 county of Los Angeles where PLAINTIFF worked.

21 3. PLAINTIFF was employed by DEFENDANTS in California from August of 2015
22 to September of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to the
23 legally required meal and rest periods and payment of minimum and overtime wages due for all
24 time worked.

25 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
26 defined as all persons who are or previously were employed by DEFENDANT in California and
27 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
28 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
by the Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the
CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

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

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

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

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

20 **JURISDICTION AND VENUE**

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

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

THE CONDUCT

14. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal and rest premiums at the regular rate of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS Members redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS’ uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

A. Meal Period Violations

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

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

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

27
28 ///

1 **B. Rest Period Violations**

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

16 **C. Unreimbursed Business Expenses**

17 18. DEFENDANTS as a matter of corporate policy, practice, and procedure,
18 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
19 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
20 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
21 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
22 are required to indemnify employees for all expenses incurred in the course and scope of their
23 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
24 her employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
26 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
27 believed them to be unlawful."
28

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

12 **D. Wage Statement Violations**

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

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

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

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

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

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

25. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift work, including but not limited to, time spent undergoing Covid-19 health screenings which included temperature checks and questionnaires, and performing document and charting work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

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

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

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

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

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

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

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

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

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

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

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

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

27 37. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a

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

8 **G. Unlawful Deductions**

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

13 **H. Timekeeping Manipulation**

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

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

26 41. The mutability of the timekeeping system also allowed DEFENDANTS to alter
27 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
28 timekeeping system so as to create the appearance that PLAINTIFF and other members of the

1 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
2 were not at all times provided an off-duty meal break. This practice is a direct result of
3 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
4 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

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

11 **I. Unlawful Rounding Practices**

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

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

J. Violations for Untimely Payment of Wages

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

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

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

K. Sick Pay Violations

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

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1 49. California Labor Code Section 246(i) requires an employer to furnish its
2 employees with written wage statements setting forth the amount of paid sick leave available.
3 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
4 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
5 forth the amount of paid sick leave available.

6 **L. Failure to Provide Personnel Files**

7 50. On June 26, 2023, PLAINTIFF caused a written request via certified mail to be
8 delivered to DEFENDANTS for PLAINTIFF'S personnel and employment records, including but
9 not limited to: (1) payroll records; (2) employment contracts; (3) itemized pay stubs; and (4)
10 PLAINTIFF'S complete employment file.

11 51. DEFENDANTS failed to provide and/or make available to PLAINTIFF her
12 personnel records, payroll records, employment contract, and entire employment file within thirty
13 (30) days of her request stated above. In fact, as of the date of filing of this complaint,
14 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
15 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
16 PLAINTIFF with her employment file. Section 1198.5 states that employees (and former
17 employees) have the right to inspect personnel records maintained by the employer "related to the
18 employee's performance or to any grievance concerning the employee." Employers must allow
19 inspection or copying within thirty (30) days of the request. PLAINTIFF is now entitled to and
20 requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a statutory
21 penalty, and an award of attorneys' fees and costs for bringing this action.

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

1 rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during
2 what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and
3 rest breaks without additional compensation and in accordance with DEFENDANTS' strict
4 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
5 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed
6 to reimburse PLAINTIFF for required business expenses related to the personal expenses
7 incurred for the use of her personal cell phone and purchase of work uniforms, on behalf of and
8 in furtherance of her employment with DEFENDANTS. Further, failed to provide and/or make
9 available to PLAINTIFF his personnel records, payroll records, employment contracts, and entire
10 employment file within (30) days of all her request on June 26, 2023. To date, DEFENDANTS
11 have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed
12 to her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy
13 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

14 **CLASS ACTION ALLEGATIONS**

15 53. PLAINTIFF brings this Class Action on behalf of herself, and a California class
16 defined as all persons who are or previously were employed by DEFENDANT in California and
17 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
18 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
19 by the Court (the "CLASS PERIOD").

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

26 55. The members of the class are so numerous that joinder of all class members is
27 impractical.

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

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

of this work, required employees to perform this work and permits or suffers to permit this work;

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

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

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

59. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

60. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

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

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

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

64. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory, and other legal questions within the class

1 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
2 create the risk of:

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

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

13 **FIRST CAUSE OF ACTION**

14 **Unlawful Business Practices**

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

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

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

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

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

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

1 money or property, real or personal, which may have been acquired by means of such
2 unfair competition. (Cal. Bus. & Prof. Code § 17203).

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

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

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

25 72. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
26 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
27 other members of the CALIFORNIA CLASS to be underpaid during their employment with
28 DEFENDANTS.

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

Failure To Pay Minimum Wages

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

Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)

80. 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.

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

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

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

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

3 85. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
4 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
5 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
6 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
7 the CALIFORNIA CLASS.

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

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

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

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

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

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

22 99. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
23 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
24 they worked, including overtime work.

25 100. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
27 implementing a uniform policy and practice that failed to accurately record overtime worked by
28 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to

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

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

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

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

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

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

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

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

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

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

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

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

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

114. 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.

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

116. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS

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

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

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

118. 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.

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

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

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

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

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

120. 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.

121. Further, from time to time, DEFENDANTS issued wage statements that failed to provide the accurate name and address of the legal entity that employed PLAINTIFF and other CALIFORNIA CLASS Members, in violation of Cal. Lab. Code § 226(a)(8).

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

123. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period

1 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
2 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
3 of the CALIFORNIA CLASS herein).

4 **SEVENTH CAUSE OF ACTION**

5 **Failure To Pay Wages When Due**

6 **(Cal. Lab. Code § 203)**

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

8 124. 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.

11 125. Cal. Lab. Code § 200 provides that:

12 As used in this article:

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

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

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

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

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

30 129. Cal. Lab. Code § 203 provides:

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

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

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

12 **EIGHTH CAUSE OF ACTION**

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

14 **(Cal. Lab. Code §§ 2802)**

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

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

19 133. Cal. Lab. Code § 2802 provides, in relevant part, that:
20 An employer shall indemnify his or her employee for all necessary expenditures or
21 losses incurred by the employee in direct consequence of the discharge of his or her
22 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.

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

1 other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal
2 cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS'
3 uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA
4 CLASS members for expenses resulting from the use of their personal cell phones within the
5 course and scope of their employment for DEFENDANTS. These expenses were necessary to
6 complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct
7 to assert any waiver of this expectation. Although these expenses were necessary expenses
8 incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANTS failed to
9 indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these
10 expenses as an employer is required to do under the laws and regulations of California.

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

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PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in 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: August 24, 2023

ZAKAY LAW GROUP, APLC

By: 

Shani O Zakay, Esq.

Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: August 24, 2023

ZAKAY LAW GROUP, APLC

By: 

Shani O Zakay, Esq.

Attorney for PLAINTIFF