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20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **IN AND FOR THE COUNTY OF SACRAMENTO**

22 GRETA BARTEK, an individual, on behalf of
23 all persons similarly situated,

24 Plaintiff,

25 v.

26 ASTON CARTER INC., a Maryland
27 corporation; and DOES 1-50, Inclusive,

28 Defendants.

Filed

Superior Court of California,
Sacramento

09/27/2023

morenoa

By _____, Deputy

23CV005885

Case No: 23CV005885

FIRST AMENDED COMPLAINT FOR:

1) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.

Via Fax

1 PLAINTIFF GRETA BARTEK (“PLAINTIFF”), an individual, in her representative
2 capacity on behalf of herself, the State of California, and all other similarly situated current and
3 former AGGRIEVED EMPLOYEES, defined *supra*, alleges on information and belief, except for
4 her own acts and knowledge which are based on personal knowledge, the following:

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant ASTON CARTER INC. (“DEFENDANT” and/or “DEFENDANTS”)
7 is a Maryland corporation that at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout California.

9 2. PLAINTIFF reserves the right to name additional representatives throughout the
10 State of California.

11 3. DEFENDANT operates a staffing company throughout the state of California,
12 including in the county of Sacramento, where PLAINTIFF worked.

13 4. PLAINTIFF was employed by DEFENDANT in California from April of 2022 to
14 September of 2022 as a non-exempt employee, paid on an hourly basis and entitled to the legally
15 required meal and rest periods and payment of minimum and overtime wages due for all time
16 worked.

17 5. PLAINTIFF brings this representative action against DEFENDANT on behalf of
18 herself and all other aggrieved employees of DEFENDANT in California seeking all civil
19 penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

20 6. PLAINTIFF brings this action in her representative capacity on behalf of the State
21 of California and on behalf of non-exempt employees who worked for DEFENDANT in
22 California during the time period of February 8, 2022, until the present (“PAGA Period”).

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

26 8. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times
27 were, employees of DEFENDANT, within the meanings set forth in the California Labor Code
28 and the applicable Industrial Welfare Commission Wage Order.

1 9. The true names and capacities, whether individual, corporate, subsidiary,
2 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
3 presently unknown to PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious
4 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this First
5 Amended Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
6 they are ascertained. PLAINTIFFS is informed and believes, and based upon that information and
7 belief alleges, that the DEFENDANTS named in this First Amended Complaint, including DOES
8 1 through 50, inclusive, are responsible in some manner for one or more of the events and
9 happenings that proximately caused the injuries and damages hereinafter alleged.

10 10. The agents, servants and/or employees of the Defendant and each of them acting
11 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
12 agent, servant and/or employee of the Defendant, and personally participated in the conduct
13 alleged herein on behalf of the Defendant with respect to the conduct alleged herein.
14 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
15 Defendants are jointly and severally liable to the AGGRIEVED EMPLOYEES, including
16 PLAINTIFF, for the loss sustained as a proximate result of the conduct of the Defendant's agents,
17 servants and/or employees.

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

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

13. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain wages due to the AGGRIEVED EMPLOYEES, including PLAINTIFF.

14. PLAINTIFF and AGGRIEVED EMPLOYEES seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and AGGRIEVED EMPLOYEES who have been economically injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

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

16. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against the AGGRIEVED EMPLOYEES, including PLAINTIFF.

THE CONDUCT

17. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT 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 AGGRIEVED EMPLOYEES, including PLAINTIFF, for missed meal and rest periods, failed to pay AGGRIEVED EMPLOYEES, including PLAINTIFF, for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to AGGRIEVED EMPLOYEES, including PLAINTIFF, overtime at the correct regular rate of pay, failed to compensate AGGRIEVED EMPLOYEES, including PLAINTIFF, meal and rest premiums at the regular rate of pay, failed to pay AGGRIEVED EMPLOYEES, including PLAINTIFF, redeemed sick pay at the regular

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

10 **A. Meal Period Violations**

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

24 19. From time to time during the PAGA PERIOD, as a result of their rigorous work
25 schedules and DEFENDANTS' inadequate staffing practices, AGGRIEVED EMPLOYEES,
26 including PLAINTIFF, are from time to time unable to take thirty (30) minute off duty meal
27 breaks and were not fully relieved of duty for their meal periods. The AGGRIEVED
28 EMPLOYEES, including PLAINTIFF, are required to perform work as ordered by

1 DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break.
2 Further, DEFENDANTS failed to provide AGGRIEVED EMPLOYEES, including PLAINTIFF,
3 with a second off-duty meal period for some workdays in which these employees are required by
4 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
5 AGGRIEVED EMPLOYEES, including PLAINTIFF, does not qualify for the limited and
6 narrowly construed “on-duty” meal period exception. When they were provided with meal
7 periods, AGGRIEVED EMPLOYEES, including PLAINTIFF, were, from time to time, required
8 to remain on duty and on call. DEFENDANTS’ failure to provide PLAINTIFF and
9 AGGRIEVED EMPLOYEES with legally required meal breaks is evidenced by DEFENDANTS’
10 business records. As a result of their rigorous work schedules and DEFENDANTS’ inadequate
11 staffing, The AGGRIEVED EMPLOYEES, including PLAINTIFF, therefore forfeited meal
12 breaks without additional compensation and in accordance with DEFENDANTS’ strict corporate
13 policy and practice.

14 **B. Rest Period Violations**

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

1 **C. Unreimbursed Business Expenses**

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

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

24 **D. Wage Statement Violations**

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

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

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

13 25. Further, from time to time, DEFENDANTS included Sick hours into the
14 computation of total hours worked for purposes of Cal. Lab. Code §226(a)(2), notwithstanding
15 the fact that Sick hours are not considered hours worked. DEFENDANTS' inclusion of Sick hours
16 into the total hours worked in itemized wage statements issued the AGGRIEVED EMPLOYEES,
17 including PLAINTIFF, violates Cal. Lab. Code §226(a)(2).

18 26. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
19 the AGGRIEVED EMPLOYEES, including PLAINTIFF, with wage statements that comply with
20 Cal. Lab. Code § 226.

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

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

26 28. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and
27 continue to fail to accurately pay the AGGRIEVED EMPLOYEES, including PLAINTIFF, for
28 all hours worked.

1 29. During the PAGA PERIOD, from time-to-time DEFENDANTS required the
2 AGGRIEVED EMPLOYEES, including PLAINTIFF, to perform pre-shift or post-shift work.
3 This resulted the AGGRIEVED EMPLOYEES, including PLAINTIFF, to have to work while
4 off-the-clock.

5 30. DEFENDANTS directed and directly benefited from the undercompensated off-
6 the-clock work performed by the AGGRIEVED EMPLOYEES, including PLAINTIFF, .

7 31. DEFENDANT controlled the work schedules, duties, and protocols, applications,
8 assignments, and employment conditions of the AGGRIEVED EMPLOYEES, including
9 PLAINTIFF.

10 32. DEFENDANTS were able to track the amount of time the AGGRIEVED
11 EMPLOYEES, including PLAINTIFF, spent working; however, DEFENDANTS failed to
12 document, track, or pay the AGGRIEVED EMPLOYEES, including PLAINTIFF, all wages
13 earned and owed for all the work they performed.

14 33. The AGGRIEVED EMPLOYEES, including PLAINTIFF, were non-exempt
15 employees, subject to the requirements of the California Labor Code.

16 34. DEFENDANTS' policies and practices deprived the AGGRIEVED
17 EMPLOYEES, including PLAINTIFF, of all minimum regular, overtime, and double time wages
18 owed for the off-the-clock work activities. Because the AGGRIEVED EMPLOYEES, including
19 PLAINTIFF, typically worked over forty (40) hours in a workweek, and more than eight (8) hours
20 per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

21 35. DEFENDANTS knew or should have known that the AGGRIEVED
22 EMPLOYEES, including PLAINTIFF, off-the-clock work was compensable under the law.

23 36. As a result, the AGGRIEVED EMPLOYEES, including PLAINTIFF, forfeited
24 wages due to them for all hours worked at DEFENDANTS' direction, control, and benefit for the
25 time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay
26 the AGGRIEVED EMPLOYEES, including PLAINTIFF, wages for all hours worked in
27 accordance with applicable law is evidenced by DEFENDANTS' business records.
28

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

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

13 38. State law provides that employees must be paid overtime at one-and-one-half times
14 their "regular rate of pay." The AGGRIEVED EMPLOYEES, including PLAINTIFF, were
15 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
16 employee's performance.

17 39. The second component of the AGGRIEVED EMPLOYEES' compensation was
18 DEFENDANTS' non-discretionary incentive program that paid the AGGRIEVED EMPLOYEES
19 incentive wages based on their performance for DEFENDANTS. The non-discretionary bonus
20 program provided all employees paid on an hourly basis with bonus compensation when the
21 employees met the various performance goals set by DEFENDANT.

22 40. However, from time to time, when calculating the regular rate of pay in those pay
23 periods where the AGGRIEVED EMPLOYEES, including PLAINTIFF, worked overtime,
24 double time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned
25 non-discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary
26 bonus compensation as part of the employee's "regular rate of pay" and/or calculated all hours
27 worked rather than just all non-overtime hours worked. Management and supervisors described
28 the incentive/bonus program to potential and new employees as part of the compensation package.

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

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

21 **G. Unlawful Deductions**

22 42. DEFENDANTS, from time-to-time unlawfully deducted wages from the
23 AGGRIEVED EMPLOYEES’ pay without explanations and without authorization to do so or
24 notice to the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS violated Labor Code §
25 221.

26 **H. Timekeeping Manipulation**

27 43. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
28 immutable timekeeping system to accurately record and pay the AGGRIEVED EMPLOYEES

1 for the actual time the AGGRIEVED EMPLOYEES worked each day, including regular time,
2 overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANTS were able to and did
3 in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANTS' timekeeping
4 system for the AGGRIEVED EMPLOYEES in order to avoid paying these employees for all
5 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
6 missed rest breaks.

7 44. As a result, the AGGRIEVED EMPLOYEES,, including PLAINTIFF, from time-
8 to-time, forfeited time worked by working without their time being accurately recorded and
9 without compensation at the applicable pay rates.

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

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

22 **I. Unlawful Rounding Practices**

23 47. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable
24 timekeeping system to accurately record and pay the AGGRIEVED EMPLOYEES for the actual
25 time these employees worked each day, including overtime hours. Specifically, DEFENDANTS
26 had in place an unlawful rounding policy and practice that resulted in the AGGRIEVED
27 EMPLOYEES being undercompensated for all of their time worked. As a result,
28 DEFENDANTS were able to and did in fact unlawfully, and unilaterally round the time recorded

1 in DEFENDANTS' timekeeping system for the AGGRIEVED EMPLOYEES in order to avoid
2 paying these employees for all their time worked, including the applicable overtime
3 compensation for overtime worked. As a result, the AGGRIEVED EMPLOYEES, including
4 PLAINTIFF, from time to time, forfeited compensation for their time worked by working
5 without their time being accurately recorded and without compensation at the applicable
6 overtime rates.

7 48. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
8 rounding policy and practice resulted in the AGGRIEVED EMPLOYEES' time being
9 inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy
10 and practice caused the AGGRIEVED EMPLOYEES, including PLAINTIFF, to perform work
11 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
12 off-duty meal break.

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

14 49. Pursuant to California Labor Code section 204, the AGGRIEVED EMPLOYEES,
15 including PLAINTIFF, were entitled to timely payment of wages during their employment. The
16 AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages,
17 including, but not limited to, overtime wages, minimum wages, meal period premium wages,
18 and rest period premium wages within permissible time period.

19 50. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the
20 wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant
21 to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall
22 become due and payable not later than 72 hours thereafter, unless the employee has given 72
23 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
24 or her wages at the time of quitting." The AGGRIEVED EMPLOYEES, including PLAINTIFF,
25 were, from time to time, not timely provided the wages earned and unpaid at the time of their
26 discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

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

4 **K. Sick Pay Violations**

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

11 53. California Labor Code Section 246(i) requires an employer to furnish its
12 employees with written wage statements setting forth the amount of paid sick leave available.
13 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish the
14 AGGRIEVED EMPLOYEES, including PLAINTIFF, with wage statements setting forth the
15 amount of paid sick leave available.

16 54. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
17 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
18 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
19 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
20 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
21 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
22 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
23 DEFENDANT’S policy caused PLAINTIFF to remain on-call and on-duty during what was
24 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
25 without additional compensation and in accordance with DEFENDANT’S strict corporate policy
26 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
27 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF
28 for required business expenses related to the personal expenses incurred for the use of their

1 personal cell phone, computers, and home internet on behalf of and in furtherance of her
2 employment with DEFENDANT. To date, DEFENDANT have not fully paid PLAINTIFF the
3 minimum, overtime and double time compensation still owed to her or any penalty wages owed
4 to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does
5 not exceed the sum or value of \$75,000.

6 **FIRST CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§2698 et seq.)**

9 **(Alleged by PLAINTIFF, in her representative capacity, against all DEFENDANTS)**

10 55. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
11 herein, the prior paragraphs of this First Amended Complaint.

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

21 57. PLAINTIFF, and such persons that may be added from time to time who satisfy
22 the requirements and exhaust the administrative procedures under the Private Attorney General
23 Act, bring this Representative Action on behalf of the State of California with respect to herself
24 and all employees who worked for Defendant in California during the time period of February 15,
25 2022 until the present (the "AGGRIEVED EMPLOYEES").

26 58. On February 8, 2023, PLAINTIFF gave written notice by certified mail to the
27 Labor and Workforce Development Agency (the "Agency") and the employer of the specific
28 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See

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

6 59. The policies, acts and practices heretofore described were and are an unlawful
7 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES
8 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
9 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct
10 regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e)
11 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor
12 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
13 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,
14 1197.14, 1198, 1199, 2802, 2804, and the applicable Industrial Wage Order(s), and thereby gives
15 rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
16 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
17 representative of the State of California for the illegal conduct perpetrated on the AGGRIEVED
18 EMPLOYEES, including PLAINTIFF.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for a judgment against each DEFENDANT, jointly
3 and severally, as follows:

- 4 1. For reasonable attorney's fees and costs of suit to the extent permitted by law, including
5 pursuant to Labor Code § 2699, *et seq.*;
- 6 2. For civil penalties to the extent permitted by law pursuant to the Labor Code under the
7 Private Attorneys General Act; and
- 8 3. For such other relief as the Court deems just and proper.

9
10 DATED: September 26, 2023

JCL LAW FIRM, APC

11 By: 
12 Jean-Claude Lapuyade, Esq.
13 Attorney for PLAINTIFF
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EXHIBIT 1

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

ASTON CARTER, INC.

c/o CSC - Lawyers Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0880 7029 47

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 GRETA BARTEK ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant ASTON CARTER, INC. ("Defendant"). Plaintiff was employed by Defendant from April of 2022 to September of 2022, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. 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, 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.

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'JC Lapuyade', with a stylized flourish extending to the right.

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

GRETA BARTEK, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

ASTON CARTER INC., a Maryland
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

- 1 6) FAILURE TO 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 PLAINTIFF GRETA BARTEK (“PLAINTIFF”), an individual, on behalf of herself and all
12 other similarly situated current and former employees, alleges on information and belief, except for
13 her own acts and knowledge which are based on personal knowledge, the following:

14 **PRELIMINARY ALLEGATIONS**

15 1. Defendant ASTON CARTER INC. (“DEFENDANT” and/or “DEFENDANTS”)
16 is a Maryland corporation that at all relevant times mentioned herein conducted and continues to
17 conduct substantial and regular business throughout California.

18 2. DEFENDANT operates a staffing company throughout the state of California,
19 including in the county of Sacramento, where PLAINTIFF worked.

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

24 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
25 defined as all persons who are or previously were employed by DEFENDANT in California and
26 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
27 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
28 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).

5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during

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

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

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

27 8. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of the
28 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or

1 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
2 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
3 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
4 at all relevant times.

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

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

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

18 **JURISDICTION AND VENUE**

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

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

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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 duty and on call. DEFENDANTS' failure to provide PLAINTIFF and the
22 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
23 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.

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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 on duty and/or on call. PLAINTIFF and
12 other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu*
13 thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing,
14 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
15 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."

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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, computers, and home internet 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, computers, and home internet in order to perform work related tasks.
6 However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA
7 CLASS Members for the use of their personal cell phones, computers, and home internet. As a
8 result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other
9 CALIFORNIA CLASS Members incurred unreimbursed business expenses that included, but
10 were not limited to, costs related to the use of their personal cell phones, computers, and home
11 internet, all on behalf of 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.

1 22. Further, from time to time, DEFENDANT included Sick hours into the
2 computation of total hours worked for purposes of Cal. Lab. Code §226(a)(2), notwithstanding
3 the fact that Sick hours are not considered hours worked. DEFENDANTS' inclusion of Sick hours
4 into the total hours worked in itemized wage statements issued to PLAINTIFFS and other
5 CALIFORNIA CLASS Members violates Cal. Lab. Code §226(a)(2).

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

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

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

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

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

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

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

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

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

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

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

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

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

34. From time to time during the CLASS PERIOD, DEFENDANTS failed and continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS Members for their overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members forfeited wages due to them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANTS' uniform policy and practice not to pay the CALIFORNIA CLASS Members at

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

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

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

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

1 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
2 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

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

12 **G. Unlawful Deductions**

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

17 **H. Timekeeping Manipulation**

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

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

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

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

17 **I. Unlawful Rounding Practices**

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

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

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

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

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

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

26 **K. Sick Pay Violations**

27 49. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after
28 July 1, 2015, works in California for the same employer for 30 or more days within a year from

1 the commencement of employment is entitled to paid sick days as specified in this section.”
2 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
3 From time to time, DEFENDANT failed to have a policy or practice in place that provided
4 PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick
5 leave.

6 50. California Labor Code Section 246(i) requires an employer to furnish its
7 employees with written wage statements setting forth the amount of paid sick leave available.
8 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
9 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
10 forth the amount of paid sick leave available.

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

CLASS ACTION ALLEGATIONS

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

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

54. The members of the class are so numerous that joinder of all class members is impractical.

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

- a. Whether DEFENDANT maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANT maintained legally compliant rest period policies and practices;

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- c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANT issued legally compliant wage statements;
- h. Whether DEFENDANT committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- i. Whether DEFENDANT committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other 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.

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

57. 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.

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

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

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

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

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

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

- 18 a. Inconsistent or varying adjudications with respect to individual members of the
19 CALIFORNIA CLASS which would establish incompatible standards of conduct
20 for the parties opposing the CALIFORNIA CLASS; and/or,
21 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
22 which would as a practical matter be dispositive of the interests of the other
23 members not party to the adjudication or substantially impair or impeded their
24 ability to protect their interests.

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

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

5 65. 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 66. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 68. By the conduct alleged herein, DEFENDANTS have engaged and continue to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
25 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
26 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
27 constitute unfair competition, including restitution of wages wrongfully withheld.

28 69. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and
unfair in that these practices violated public policy, were immoral, unethical, oppressive
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

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

12 71. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
13 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
14 other members of the CALIFORNIA CLASS to be underpaid during their employment with
15 DEFENDANTS.

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

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

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

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

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

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

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

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

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1 **SECOND CAUSE OF ACTION**

2 **Failure To Pay Minimum Wages**

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

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

5 79. 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 80. 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 accurately calculate
11 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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

24 85. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
25 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
26 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
27 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

10 88. During the CLASS PERIOD, PLAINTIFF and the other members of the
11 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
12 failure to pay all earned wages.

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

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

25 91. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
27 and provide them with the requisite compensation, DEFENDANTS acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the

1 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
2 consequences to them, and with the despicable intent of depriving them of their property and legal
3 rights, and otherwise causing them injury in order to increase company profits at the expense of
4 these employees.

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

10 98. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
11 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
12 they worked, including overtime work.

13 99. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
15 implementing a uniform policy and practice that failed to accurately record overtime worked by
16 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
18 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
19 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

9 103. During the CLASS PERIOD, PLAINTIFF and the other members of the
10 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
11 a failure to pay all earned wages.

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

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

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

1 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
2 their overtime worked.

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

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

21 **FOURTH CAUSE OF ACTION**

22 **Failure To Provide Required Meal Periods**

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

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

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

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

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

20 112. As a proximate result of the aforementioned violations, PLAINTIFF and
21 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
22 and seek all wages earned and due, interest, penalties, expenses and costs of suit.
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1 **FIFTH CAUSE OF ACTION**

2 **Failure To Provide Required Rest Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

5 113. 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.

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

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

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116. 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)

117. 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.

118. 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.

119. 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.

120. Further, from time to time, DEFENDANTS issued wage statements that included items such as vacation pay, meal break penalties, sick pay and double-counted shift differential payments into the calculation for total hours worked, in violation of Cal. Lab. Code § 226(a)(2).

121. 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.

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

1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code § 203)**

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

5 123. 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.

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

9 As used in this article:

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

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

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

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

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

31 128. Cal. Lab. Code § 203 provides:

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

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

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

14 **PRAYER FOR RELIEF**

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

17 1. On behalf of the CALIFORNIA CLASS:

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

28 2. On behalf of the CALIFORNIA CLASS:

- 1 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
2 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
3 to Cal. Code of Civ. Proc. § 382;
- 4 b. Compensatory damages, according to proof at trial, including compensatory
5 damages for overtime compensation due to PLAINTIFF and the other members of
6 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
7 thereon at the statutory rate;
- 8 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
9 the applicable IWC Wage Order;
- 10 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
11 which a violation occurs and one hundred dollars (\$100) per each member of the
12 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
13 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
14 violation of Cal. Lab. Code § 226
- 15 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
16 penalty from the due date thereof at the same rate until paid or until an action
17 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 18 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
19 CLASS incurred in the course of their job duties, plus interest, and costs of suit.
- 20 3. On all claims:
- 21 a. An award of interest, including prejudgment interest at the legal rate;
- 22 b. Such other and further relief as the Court deems just and equitable; and
- 23 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
24 including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or
25 § 1194.

26 DATED: August 2, 2023

JCL LAW FIRM, APC

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

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DEMAND FOR A JURY TRIAL

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

DATED: August 2, 2023

JCL LAW FIRM, APC

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

EXHIBIT

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Sacramento, CA 95833



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