

FIRST AMENDED SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

GSSI, INC., a California corporation; SAMANTHA HANHART, an individual previously named as fictitious DOE 1; (Additional Parties Attachment form is attached)

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

CYNTHIA MILLER, an individual, on behalf of herself, and on behalf of all persons similarly situated,

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

Riverside Superior Court - Riverside Historic Courthouse
4050 Main Street
Riverside, CA 92501

CASE NUMBER:
(Número del Caso):

CVRI 2301179

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

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

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (858) 599-8291

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

DATE: 05/15/2023
(Fecha)

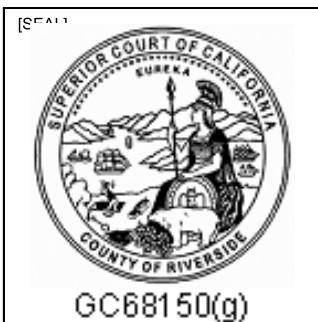
Clerk, by _____, Deputy
(Secretario) (Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):



SHORT TITLE: Cynthia Miller v. GSSI, Inc., et al.	CASE NUMBER: CVRI2301179
--	-----------------------------

INSTRUCTIONS FOR USE

- ➔ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ➔ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff
 ☒ Defendant
 ☐ Cross-Complainant
 ☐ Cross-Defendant

WILLIAM A. PATERSON, an individual previously named as fictitious DOE 2; and DOES 3-50, Inclusive,

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 5400
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

CYNTHIA MILLER, an individual, on behalf
of herself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

GSSI, INC., a California corporation;
SAMANTHA HANHART, an individual
previously named as fictitious DOE 1;
WILLIAM A. PATERSON, an individual
previously named as fictitious DOE 2; and
DOES 3-50, Inclusive,

Defendants.

Case No: CVRI2301179

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

- 1 6) FAILURE TO REIMBURSE EMPLOYEES
2 FOR REQUIRED EXPENSES IN
3 VIOLATION OF CAL. LAB. CODE § 2802;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO PROVIDE ACCURATE
8 ITEMIZED STATEMENTS IN
9 VIOLATION OF CAL. LAB. CODE § 226.
10 9) VIOLATION OF THE PRIVATE
11 ATTORNEYS GENERAL ACT [LABOR
12 CODE §§ 2698 ET SEQ.

13 **DEMAND FOR A JURY TRIAL**

14 PLAINTIFF CYNTHIA MILLER (“PLAINTIFF”), an individual, on behalf of herself and
15 all other similarly situated current and former employees, allege on information and belief, except
16 for her own acts and knowledge which are based on personal knowledge, the following:

17 **PRELIMINARY ALLEGATIONS**

18 1. Defendant GSSI, INC. (“Defendant GSSI”) is a California corporation that at all
19 relevant times mentioned herein conducted and continues to conduct substantial and regular
20 business throughout California.

21 2. Defendant SAMANTHA HANHART (“Defendant Hanhart”) is an individual
22 previously named as fictitious DOE 1 acted as a managing agent, officer, director, and/or
23 employee of Defendant GSSI.

24 3. Defendant WILLIAM A. PATERSON (“Defendant Paterson”) is an individual
25 previously named as fictitious DOE 2 acted as a managing agent, officer, director, and/or
26 employee of Defendant GSSI.

27 4. Defendant GSSI, Defendant Hanhart, and/or Defendant Paterson were the joint
28 employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the
company PLAINTIFF performed work for respectively and are therefore jointly responsible as
employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

5. DEFENDANTS provide security services throughout the state of California,
including the county of Los Angeles, where PLAINTIFF worked.

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

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

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

23 9. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of DEFENDANTS DOES 3 through 50, inclusive, are
25 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
26 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this First
27 Amended Complaint to allege the true names and capacities of Does 3 through 50, inclusive, when
28 they are ascertained. PLAINTIFF is informed and believes, and based upon that information and

1 belief alleges, that the DEFENDANTS named in this First Amended Complaint, including DOES
2 3 through 50, inclusive, are responsible in some manner for one or more of the events and
3 happenings that proximately caused the injuries and damages hereinafter alleged.

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

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

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

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

26 14. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
27 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and
28 other members of the CALIFORNIA CLASS who has been economically injured by

1 DEFENDANTS’ past and current unlawful conduct, and all other appropriate legal and equitable
2 relief.

3 **JURISDICTION AND VENUE**

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

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

12 **THE CONDUCT**

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

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

19. From time to time during the CLASS PERIOD, as a result of their rigorous work schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS fail to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees are required by DEFENDANTS to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and

1 narrowly construed “on-duty” meal period exception. When they were provided with meal
2 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
3 required to remain on premises, on duty and on call. Further, from time to time, DEFENDANTS
4 required PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless
5 communication devices in order to receive and/or respond to work-related communications during
6 their off-duty meal periods. DEFENDANTS’ failure to provide PLAINTIFF and the
7 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
8 DEFENDANTS’ business records. PLAINTIFF and other members of the CALIFORNIA
9 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
10 DEFENDANTS’ strict corporate policy and practice.

11 **B. Rest Period Violations**

12 20. From time to time during the CLASS PERIOD, PLAINTIFF and other
13 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
14 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
15 DEFENDANTS’ inadequate staffing. Further, for the same reasons, these employees were denied
16 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
17 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
18 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
19 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
20 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
21 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.
22 Further, from time to time, DEFENDANTS required PLAINTIFF and other CALIFORNIA
23 CLASS Members to maintain cordless communication devices in order to receive and/or respond
24 to work-related communications during their off-duty rest periods. PLAINTIFF and other
25 CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As
26 a result of their rigorous work schedules and DEFENDANTS’ inadequate staffing, PLAINTIFF
27 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
28 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 PLAINTIFF
4 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
5 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
6 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
7 are required to indemnify employees for all expenses incurred in the course and scope of their
8 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence
10 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
11 even though unlawful, unless the employee, at the time of obeying the directions, believed them
12 to be unlawful."

13 22. In the course of their employment, DEFENDANTS required PLAINTIFF and
14 other CALIFORNIA CLASS Members to use their personal cellular phones as a result of and in
15 furtherance of their job duties, including but not limited to receiving and/or responding to work-
16 related communications and perform work-related duties. Further, DEFENDANTS from time to
17 time also required PLAINTIFF and other CALIFORNIA CLASS Members to purchase uniforms
18 and incur personal expenses for the maintenance of said uniforms as a result of and in furtherance
19 of their job duties. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
20 other CALIFORNIA CLASS Members for the use of their personal cellular phones and for
21 personal expenses incurred for the purchase and maintenance of uniforms. As a result, in the
22 course of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA
23 CLASS Members incurred unreimbursed business expenses that included, but were not limited
24 to, costs related to the use of their personal cellular phones and for personal expenses incurred for
25 the purchase of and maintenance of uniforms, all on behalf of and for the benefit of
26 DEFENDANTS.

27
28 ///

1 **D. Wage Statement Violations**

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

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

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

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

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

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

1 28. During the CLASS PERIOD, from time-to-time DEFENDANTS required
2 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
3 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to
4 work while off-the-clock.

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

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

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

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

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

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

24 35. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
25 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and
26 benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and
27 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
28

1 hours worked in accordance with applicable law is evidenced by DEFENDANTS’ business
2 records.

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

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

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

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

24 39. However, from time to time, when calculating the regular rate of pay in those pay
25 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
26 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
27 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
28 compensation as part of the employee’s “regular rate of pay” and/or calculated all hours worked

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

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

23 **G. Reporting Time Violations**

24 41. Further, DEFENDANTS from time to time required PLAINTIFF and other
25 CALIFORNIA CLASS Members to report to work, but were furnished less than half their
26 scheduled shift’s worth of work and were not paid reporting time pay as required by Cal. Code
27 Regs., tit. 8 § 11040, subdivision(A). Specifically, Subdivision 5(A) states, “(A) Each workday
28 an employee is required to report for work and does report, but is not put to work or is furnished

1 less than half said employee's usual or scheduled day's work, the employee shall be paid for half
2 the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four
3 (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.”

4 In addition, when DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS
5 Members to engage in additional work, this sometimes resulted in a second reporting for work in
6 a single workday. In such a circumstance of a second reporting for work in a single workday,
7 DEFENDANTS failed to pay these employees reporting time pay as required by Cal. Code Regs.,
8 tit. 8 § 11040. Subdivision 5(B) states: “If an employee is required to report for work a second
9 time in any one workday and is furnished less than two (2) hours of work on the second reporting,
10 said employee shall be paid for two (2) hours at the employee’s regular rate of pay, which shall
11 be not less than the minimum wage.” Cal. Code Regs., tit. 8 § 11040, subd. 5(B).

12 **H. Violations for Untimely Payment of Wages**

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

18 **I. Violations for Failure to Pay Vacation Wages**

19 43. Upon PLAINTIFF’S and CALIFORNIA CLASS Members' separation of
20 employment, they had not used all of their vested vacation and thus their unused, vested vacation
21 was required to have been paid at their final rate upon separation of employment.
22 DEFENDANTS, however failed to pay the vested vacation time, and when it did, it paid it at the
23 wrong rate. As a result, DEFENDANTS violated Labor Code §227.3

24 **J. Unlawful Deductions**

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

1 **K. Timekeeping Manipulation**

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

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

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

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

27
28 ///

1 **L. Unlawful Rounding Practices**

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

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

20 **M. Failure to Provide Personnel Files**

21 51. Subsequent to PLAINTIFF'S employment with DEFENDANTS, on December 5,
22 2022 and January 24, 2023, PLAINTIFF caused written requests via certified mail to be delivered
23 to DEFENDANTS for PLAINTIFF'S personnel and employment records, including but not
24 limited to (1) payroll records; (2) employment contracts; (3) itemized pay stubs; and (4)
25 PLAINTIFF'S complete employment file.

26 52. DEFENDANTS failed to provide and/or make available to PLAINTIFF her
27 personnel records, payroll records, employment contracts, and entire employment file within
28 (30) days of all her requests stated above. In fact, as of the date of filing of this complaint,

1 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
2 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
3 PLAINTIFF with her employment file. Section 1198.5 states that employees (and former
4 employees) have the right to inspect personnel records maintained by the employer “related to
5 the employee’s performance or to any grievance concerning the employee.” Employers must
6 allow inspection or copying within thirty (30) days of the request. PLAINTIFF requested his
7 employment file via certified mail and DEFENDANTS failed to respond. As a result,
8 PLAINTIFF is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab.
9 Code Section 1198.5, a statutory penalty, and an award of attorneys’ fees and costs for bringing
10 this action.

11 53. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
12 off duty meal and rest breaks and were 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 they were
16 required 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 her 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 use of her personal
24 cellular phones, and for personal expenses incurred for the purchase and maintenance of
25 uniforms, on behalf of and in furtherance of her employment with DEFENDANTS.
26 Additionally, DEFENDANTS failed to provide PLAINTIFF with her personnel and employment
27 records within the statutory times to do so, in violation of Cal. Lab. Code § 1198.5. To date,
28 DEFENDANTS has not fully paid PLAINTIFF the minimum, overtime and double time

1 compensation still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203.
2 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
3 \$75,000.

4 **CLASS ACTION ALLEGATIONS**

5 54. PLAINTIFF brings this Class Action on behalf of herself, and a California class
6 defined as all persons who are or previously were employed by Defendant GSSI and/or Defendant
7 Hanhart, and/or Defendant Paterson in California and classified as non-exempt employees (the
8 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing
9 of the original Complaint and ending on the date as determined by the Court (the “CLASS
10 PERIOD”).

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

17 56. The members of the class are so numerous that joinder of all class members is
18 impractical.

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

28 ///

- a. Whether DEFENDANTS maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANTS maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANTS failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANTS issued legally compliant wage statements;
- h. Whether DEFENDANTS 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 DEFENDANTS 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 DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- j. Whether DEFENDANTS 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.

58. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

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

1 60. PLAINTIFF will fairly and adequately represent and protect the interests of the
2 CALIFORNIA CLASS Members.

3 61. PLAINTIFF retained able class counsel with extensive experience in class action
4 litigation.

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

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

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

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

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

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

FIRST CAUSE OF ACTION

Unlawful Business Practices

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

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

67. 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 First Amended Complaint.

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

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

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

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

/ / /

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

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

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

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

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

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

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

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

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

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

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

1 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
2 unlawful and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

26 87. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
28

1 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
2 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

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

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

27 93. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked

1 and provide them with the requisite compensation, DEFENDANTS acted and continues to act
2 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
4 consequences to them, and with the despicable intent of depriving them of their property and legal
5 rights, and otherwise causing them injury in order to increase company profits at the expense of
6 these employees.

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

18 **THIRD CAUSE OF ACTION**

19 **Failure To Pay Overtime Compensation**

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

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

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

25 96. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
26 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
27 Welfare Commission requirements for DEFENDANTS' failure to pay these employees for all
28

1 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
2 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

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

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

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

24
25
26
27
28 ///

1 **FOURTH CAUSE OF ACTION**

2 **Failure To Provide Required Meal Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

5 111. 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 First
7 Amended Complaint.

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

22 113. 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 meal 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 a meal period was not provided.

27
28 ///

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

115. 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 First Amended Complaint.

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Reimburse Employees For Required Expenses**

8 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

17 121. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
18 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
19 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
20 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
21 members for expenses which included, but were not limited to, their personal cellular phones as
22 a result of and in furtherance of their job duties, including but not limited to receiving and/or
23 responding to work-related communications and perform work-related duties. Further,
24 DEFENDANTS from time to time also required PLAINTIFF and other CALIFORNIA CLASS
25 Members to purchase uniforms and incur personal expenses for the maintenance of said uniforms
26 as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
27 CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cellular
28 phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS'

1 uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA
2 CLASS members for expenses resulting from using their personal cellular phones for
3 DEFENDANTS within the course and scope of their employment for DEFENDANTS. These
4 expenses were 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.

10 122. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
11 by them 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 **SEVENTH CAUSE OF ACTION**

15 **Failure To Provide Accurate Itemized Statements**

16 **(Cal. Lab. Code § 226)**

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

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

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

- 23 a. Gross wages earned,
- 24 b. (2) total hours worked by the employee, except for any employee whose
25 compensation is solely based on a salary and who is exempt from payment of
26 overtime under subdivision (a) of Section 515 or any applicable order of the
27 Industrial Welfare Commission,

28 ///

- 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.

125. 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 PLAINTIFF 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.

126. 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.

127. 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

1 wages for all missed meal and rest breaks and the amount of employment taxes which were not
2 properly paid to state and federal tax authorities. These damages are difficult to estimate.
3 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
4 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
5 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
6 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
7 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
8 of the CALIFORNIA CLASS herein).

9 **EIGHTH CAUSE OF ACTION**

10 **Failure To Pay Wages When Due**

11 **(Cal. Lab. Code § 203)**

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

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

16 129. Cal. Lab. Code § 200 provides that:

17 As used in this article:

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

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

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

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

designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

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

133. Cal. Lab. Code § 203 provides:

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

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

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

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

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

137. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting

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

4 138. PLAINTIFF, and such persons that may be added from time to time who satisfy
5 the requirements and exhaust the administrative procedures under the Private Attorney General
6 Act, bring this Representative Action on behalf of the State of California with respect to herself
7 and all non-exempt employees who worked for Defendant in California during the time period of
8 March 8, 2022, until the present (the "AGGRIEVED EMPLOYEES").

9 139. On March 8, 2023, PLAINTIFF gave written notice by certified mail to the Labor
10 and Workforce Development Agency (the "Agency") and the employer of the specific provisions
11 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,
12 attached hereto and incorporated by this reference herein. The statutory waiting period for
13 Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section
14 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to
15 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
16 EMPLOYEES as herein defined.

17 140. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES
19 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
20 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct
21 regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e)
22 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor
23 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
24 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,
25 1197.14, 1198, 1198.5, 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and
26 thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks
27 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
28 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
and the other AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF pray for a judgment against each Defendants, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

violation of Cal. Lab. Code § 226

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

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

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004;

4. On all claims:

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

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

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

DATED: May 15, 2023

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: May 15, 2023

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for PLAINTIFF

EXHIBIT 1

March 8, 2023

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

GSSI, INC.

c/o Registered Agents Inc.
1401 21st Street, Suite R
Sacramento, CA 95811

Sent Via Certified Mail and Return Receipt No. 7022 1670 0001 3653 2513

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, 2804, and 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 CYNTHIA MILLER ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant GSSI, INC. ("Defendant"). Plaintiff was employed by Defendant in California from March of 2022 to June 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 and payment of minimum and overtime wages due for all time worked. 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, Plaintiff contends that Defendant failed to fully compensate her and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant's conduct violated 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, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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 is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) 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 Act 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 black ink, appearing to read 'Jean-Claude Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.