

FIRST AMENDED SUMMONS

(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/16/2023 at 03:07:00 PM

Clerk of the Superior Court
By Katie Winburn, Deputy Clerk

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

KAMAL CREATIONS, INC., a California corporation; JASJEET DHILLON, INC, a California corporation; (Additional Parties Attachment form is attached)

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

MELANIE DIAZ, an individual, on behalf of herself, and on behalf of all persons similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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.sucorte.ca.gov), 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.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Diego Superior Court

Hall of Justice Courthouse - 330 West Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

37-2023-00024595-CU-OE-CTL

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. T: (619)599-8292 JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600. San Diego, CA 92121

DATE: 08/17/2023
(Fecha)

Clerk, by K. Winburn, Deputy
(Secretario) K. Winburn (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)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☐ 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):
- ☐ by personal delivery on (date):

SHORT TITLE: _Melanie Diaz v. Kamal Creations, Inc., et al.	CASE NUMBER: 37-2023-00024595-CU-OE-CTL
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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

JASJEET DHILLON, an individual, previously named as fictitious DOE 1; and DOES 2-50, Inclusive,

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MELANIE DIAZ, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

KAMAL CREATIONS, INC., a California
corporation; JASJEET DHILLON, INC, a
California corporation; JASJEET DHILLON,
an individual, previously named as fictitious
DOE 1; and DOES 2-50, Inclusive,

Defendants.

Case No: 37-2023-00024595-CU-OE-CTL

**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 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 9) UNPAID SICK PAY IN VIOLATION OF
11 CAL. LAB. CODE § 246.
12 10) VIOLATION OF THE PRIVATE
13 ATTORNEYS GENERAL ACT [LABOR
14 CODE §§ 2698 ET SEQ.

15 **DEMAND FOR A JURY TRIAL**

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

19 **PRELIMINARY ALLEGATIONS**

20 1. Defendant KAMAL CREATIONS, INC. (“Defendant Kamal Creations”) is a
21 California corporation that at all relevant times mentioned herein conducted and continues to
22 conduct substantial and regular business throughout California.

23 2. Defendant JASJEET DHILLON, INC (“Defendant Jasjeet Dhillon”) is a
24 California corporation that at all relevant times mentioned herein conducted and continues to
25 conduct substantial and regular business throughout California.

26 3. Defendant JASJEET DHILLON (“Defendant Dhillon”) is an individual previously
27 named as fictitious DOE 1 acted as a managing agent, officer, director, and/or employee of
28 Defendant Jasjeet Dhillon and Defendant Kamal Creations.

4. Defendant Kamal Creations, Defendant Jasjeet Dhillon, and/or Defendant Dhillon
were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF
and by the company PLAINTIFF performed work for respectively and are therefore jointly
responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or
“DEFENDANT.”

1 5. DEFENDANTS operate 7-11 convenience store franchises in the state of
2 California, including in the county of San Diego, where PLAINTIFF worked.

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

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

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

25 9. The true names and capacities, whether individual, corporate, subsidiary,
26 partnership, associate or otherwise of DEFENDANTS DOES 2 through 50, inclusive, are
27 presently unknown to PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious
28 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this

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

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

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

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

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

28 ///

14. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and other members of the CALIFORNIA CLASS who has 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 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

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, 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,

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

8 **A. Meal Period Violations**

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

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

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

13 **B. Rest Period Violations**

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

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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
9 her employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
11 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
12 believed them to be unlawful."

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

26 **D. Wage Statement Violations**

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

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

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

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

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

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

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

26 28. During the CLASS PERIOD, from time-to-time DEFENDANTS required
27 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
28 work, including but not limited to time spent waiting to for DEFENDANTS' timekeeping system

1 to become available in order to clock in for their shifts. This resulted in PLAINTIFF and other
2 members of the CALIFORNIA CLASS to have to work while off-the-clock.

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

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

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

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

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

20 34. Further, DEFENDANTS from time to time engaged in a policy and practice to
21 purposely evade California's overtime laws and in order to avoid paying PLAINTIFF and other
22 CALIFORNIA CLASS Members with overtime pay. Specifically, DEFENDANTS from time to
23 time purposely scheduled PLAINTIFF and other CALIFORNIA CLASS Members to work at
24 multiple work locations in a day in order to avoid paying overtime compensation for any hours
25 worked over forty (40) in a workweek or more than eight (8) hours per day. For example,
26 PLAINTIFF from time to time worked over 8 hours in a single day for DEFENDANTS. However,
27 since DEFENDANTS assigned her to work at one location for a set duration of hours, then at
28 another location for another set of hours, and DEFENDANTS' stores were each separate entities,

1 DEFENDANTS were able to avoid paying PLAINTIFF and other CALIFORNIA CLASS
2 Members with overtime and double time wages owed.

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

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

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

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

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

26 39. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
27 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
28 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their

1 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
2 paid on an hourly basis with bonus compensation when the employees met the various
3 performance goals set by DEFENDANTS.

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

22 41. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
24 matter of company policy, practice, and procedure, intentionally and knowingly failed to
25 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
26 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
27 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
28 an unfair advantage over competitors who complied with the law. To the extent equitable tolling

operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

G. Unlawful Deductions

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

H. Timekeeping Manipulation

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

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

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

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

7 **I. Unlawful Rounding Practices**

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

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

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

27 49. Pursuant to California Labor Code section 204, PLAINTIFF and the
28 CALIFORNIA CLASS members were entitled to timely payment of wages during their

1 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
2 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
3 meal period premium wages, and rest period premium wages within permissible time period.

4 **K. Suitable Seating Violations**

5 50. PLAINTIFFS further allege that the station counters in DEFENDANTS' stores
6 provide ample space at work stations to allow for the presence and use of a stool or seat by
7 DEFENDANTS' employees' during the performance of their work duties. DEFENDANTS'
8 employees' working at DEFENDANTS' facilities spend a very substantial portion, and, in many
9 workdays, the vast majority of their working time with customers at the counter. The nature of
10 the position can reasonably be accomplished while using a seat/stool.

11 51. In violation of the applicable sections of the California Labor Code and the
12 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
13 DEFENDANTS as a matter of company policy, practice, and procedure, intentionally,
14 knowingly and systematically failed to provide PLAINTIFFS and the other Aggrieved
15 Employees suitable seating when the nature of these employees' work reasonably permitted
16 sitting.

17 52. DEFENDANTS knew or should have known that PLAINTIFFS and other
18 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not
19 interfere with the performance of their duties, and that DEFENDANTS did not provide suitable
20 seating and/or did not allow them to sit when it did not interfere with the performance of their
21 duties. By reason of this conduct applicable to PLAINTIFFS and all Aggrieved Employees,
22 DEFENDANTS violated California Labor Code Section 1198 and Wage Order 4-2001, Section
23 14 by failing to provide suitable seats.

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

25 53. On or around August 18, 2022, PLAINTIFF requested her personnel and
26 employment records from DEFENDANTS, including but not limited to: (1) payroll records; (2)
27 employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF'S complete employment file.

28 54. DEFENDANTS failed to provide and/or make available to PLAINTIFF her

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

11 55. 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 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 personal expenses
24 incurred for the use of her personal cell phone, purchase of uniforms and maintenance of said
25 uniforms, on behalf of and in furtherance of her employment with DEFENDANTS. Additionally,
26 DEFENDANTS failed to provide suitable seating to PLAINTIFF during her employment.
27 Moreover, DEFENDANTS failed to provide PLAINTIFF with a copy of her personnel and
28 employment records upon request, in violation of Cal. Lab. Code § 1198.5. To date,

1 DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time
2 compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203.
3 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
4 \$75,000.

5 **CLASS ACTION ALLEGATIONS**

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

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

18 58. The members of the class are so numerous that joinder of all class members is
19 impractical.

20 59. Common questions of law and fact regarding DEFENDANTS’ conduct, including
21 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
22 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
23 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
24 compliant meal and rest periods, failure to reimburse for business expenses, failure to provide
25 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum
26 wage and overtime, exist as to all members of the class and predominate over any questions
27 affecting solely any individual members of the class. Among the questions of law and fact
28 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;
- 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.

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

61. 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.

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

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

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

7 65. 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 66. 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 67. 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
18 the 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.

68. 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 DEFENDANT.

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)

69. 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.

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

71. 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).

72. By the conduct alleged herein, DEFENDANTS have engaged and continue 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.

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1 73. 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 74. 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 75. 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 76. 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 77. 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 78. PLAINTIFF further demands on behalf of herself and on behalf of each
2 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
3 not timely provided as required by law.

4 79. 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 80. 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 81. 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 82. 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 DEFENDANT. 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 83. 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
9 Complaint.

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

14 85. 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 86. 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 87. 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 88. 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
25 the CALIFORNIA CLASS.

26 89. 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 90. 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 91. 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 92. 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 93. 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 94. 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 95. 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 96. 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 97. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
23 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
24 Complaint.

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

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

3 99. 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.

5 100. 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.

8 101. 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.

12 102. 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.

15 103. 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.

22 104. 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 ///

1 105. 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.

4 106. 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.

12 107. 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.

15 108. 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.

22 109. 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.

27 110. 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.

6 111. 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 continue 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.

14 112. 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.

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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.

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)

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

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

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

120. 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)

121. 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.

122. 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.

123. 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.

124. 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.

125. 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)**

5 126. 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.

8 127. 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.

16 128. 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."

19 129. 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.

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

131. 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.

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132. 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.

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

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

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

134. 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.

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

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

136. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, the use of personal cell phones, purchase of uniforms and maintenance of said uniforms, all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of DEFENDANTS and required to purchase and maintain uniforms in order to perform

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

10 137. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
11 by her 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 **NINTH CAUSE OF ACTION**

15 **UNPAID SICK PAY**

16 **(Cal. Lab. Code § 246, *et seq.*)**

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

18 138. 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
20 Complaint.

21 139. Cal. Labor Code Sections 246(I)(1) mandates that “[p]aid sick time for nonexempt
22 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
23 which the employee uses paid sick time, whether or not the employee actually works overtime in
24 that workweek.”

25 140. From time-to-time, during the PLAINTIFF and other members of the
26 CALIFORNIA CLASS were compensated at an hourly rate plus either non-discretionary incentive
27 pay. As a matter of law, the non-discretionary incentive compensation received by PLAINTIFF
28 and other members of the CALIFORNIA CLASS must be included in the “regular rate of pay.”

1 141. From time-to-time during the CLASS PERIOD, in those pay periods where
2 PLAINTIFF and other members of the CALIFORNIA CLASS earned hourly compensation and
3 either non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to
4 properly calculate the regular rate of pay for purposes of compensating paid sick time by omitting
5 non-discretionary incentive pay from the regular rate of pay.

6 142. DEFENDANT's uniform policy and practice of omitting non-discretionary
7 incentive pay and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick
8 pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the
9 CALIFORNIA CLASS. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
10 request recovery of all unpaid wages, including sick pay wages, according to proof, interest,
11 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
12 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
13 overtime compensation is determined to be owed to other members of the CALIFORNIA CLASS
14 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
15 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
16 Cal. Lab. Code § 203, which penalties are sought herein on behalf of other members of the
17 CALIFORNIA CLASS. DEFENDANT'S conduct as alleged herein was willful, intentional and
18 not in good faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are
19 entitled to seek and recover statutory costs.

20 143. Cal. Lab. Code § 246(i) provides that:

21 An employer shall provide an employee with written notice that sets forth the
22 amount of paid sick leave available, or paid time off leave an employer provides in
23 lieu of sick leave, for use on either the employee's itemized wage statement
24 described in Section 226 or in a separate writing provided on the designated pay
25 date with the employee's payment of wages. If an employer provides unlimited paid
26 sick leave or unlimited paid time off to an employee, the employer may satisfy this
27 section by indicating on the notice or the employee's itemized wage statement
28 "unlimited."

26 144. From time to time, DEFENDANT failed to furnish PLAINTIFF and other
27 members of the CALIFORNIA CLASS with written wage statements setting forth the amount of
28 paid sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.* As a result,

1 PLAINTIFF and other members of the CALIFORNIA CLASS are entitled to seek and recover
2 statutory costs.

3 145. PLAINTIFF seeks to recover damages from DEFENDANTS for their violations
4 as alleged herein pursuant to Labor Code §§ 232, 1102.5 on behalf of herself and on behalf of the
5 CALIFORNIA CLASS.

6 **TENTH CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§2698 et seq.)**

9 **(Alleged by PLAINTIFF against all Defendants)**

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

12 147. 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.

21 148. 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 all non-
24 exempt employees who worked for Defendant Kamal Creations, Defendant Jasjeet Dhillon,
25 and/or Defendant Dhillon in California during the time period of June 12, 2022, until the present
26 (the "AGGRIEVED EMPLOYEES").

27 149. On June 12, 2023, PLAINTIFF gave written notice by certified mail to the Labor
28 and Workforce Development Agency (the "Agency") and the employer of the specific provisions

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

7 150. The policies, acts and practices heretofore described were and are an unlawful
8 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES
9 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
10 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct
11 regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e)
12 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor
13 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
14 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,
15 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, and the applicable Industrial Wage
16 Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF
17 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General
18 Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on
19 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

20 **PRAYER FOR RELIEF**

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

23 1. On behalf of the CALIFORNIA CLASS:

- 24 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
25 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
26 b. An order temporarily, preliminarily and permanently enjoining and restraining
27 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
28 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, Eighth, and Ninth 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;

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1 4. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
- 5 including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or
- 6 § 1194.

7

8 DATED: August 16, 2023

ZAKAY LAW GROUP, APLC

9 By: 

10 Shani O. Zakay, Esq.
11 Attorney for PLAINTIFFS

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17 **DEMAND FOR A JURY TRIAL**

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

19

20 DATED: August 16, 2023

ZAKAY LAW GROUP, APLC

21 By: 

22 Shani O. Zakay, Esq.
23 Attorney for PLAINTIFFS

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EXHIBIT 1

June 12, 2023

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

KAMAL CREATIONS, INC.

c/o Jasjeet Dhillon

3603 College Ave.

San Diego, CA 92115

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0625 6788 89

JASJEET DHILLON, INC

c/o Jasjeet Dhillon

735 E Bradley Ave

El Cajon, CA 92021

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0625 6788 72

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 MELANIE DIAZ ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant KAMAL CREATIONS, INC. ("Defendant Kamal Creations") and Defendant JASJEET DHILLON, INC ("Defendant Jasjeet Dhillon") (collectively, hereinafter, "Defendants"). Plaintiff was employed by Defendants from March of 2022 to August of 2022, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 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 Kamal Creations and/or Defendant Jasjeet Dhillon in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

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

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

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'Jean-Claude Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
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shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MELANIE DIAZ, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

KAMAL CREATIONS, INC., a California
corporation; JASJEET DHILLON, INC, a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 9) UNPAID SICK PAY IN VIOLATION OF CAL. LAB. CODE § 246.

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant KAMAL CREATIONS, INC. (“Defendant Kamal Creations”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant JASJEET DHILLON, INC (“Defendant Jasjeet Dhillon”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant Kamal Creations and Defendant Jasjeet Dhillon were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

4. DEFENDANTS operate 7-11 convenience store franchises in the state of California, including in the county of San Diego, where PLAINTIFF worked.

5. PLAINTIFF was employed by DEFENDANTS in California from March of 2022 to August of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to the legally

1 required meal and rest periods and payment of minimum and overtime wages due for all time
2 worked.

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

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

21 8. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
23 presently unknown to PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious
24 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
25 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
26 ascertained. PLAINTIFFS is informed and believes, and based upon that information and belief
27 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
28

1 inclusive, are responsible in some manner for one or more of the events and happenings that
2 proximately caused the injuries and damages hereinafter alleged.

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

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

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

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

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

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

3 **JURISDICTION AND VENUE**

4 14. 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 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

8 15. 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, employ
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 16. 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 PLAINTIFFS 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 and rest
22 premiums at the regular rate of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS
23 Members redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFF and other
24 CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and
25 the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,
26 among other things, all applicable hourly rates in effect during the pay periods and the
27 corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and
28 practices are intended to purposefully avoid the accurate and full payment for all time worked as

1 required by California law which allows DEFENDANTS to illegally profit and gain an unfair
2 advantage over competitors who comply with the law. To the extent equitable tolling operates to
3 toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should
4 be adjusted accordingly.

5 **A. Meal Period Violations**

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

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

1 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and
2 narrowly construed “on-duty” meal period exception. When they were provided with meal
3 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
4 required to remain on premises, on duty and on call. DEFENDANTS’ failure to provide
5 PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is
6 evidenced by DEFENDANTS’ business records. As a result of their rigorous work schedules and
7 DEFENDANTS’ inadequate staffing, PLAINTIFF and other members of the CALIFORNIA
8 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
9 DEFENDANTS’ strict corporate policy and practice.

10 **B. Rest Period Violations**

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

25 **C. Unreimbursed Business Expenses**

26 20. DEFENDANTS as a matter of corporate policy, practice, and procedure,
27 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
28 and the other CALIFORNIA CLASS Members for required business expenses incurred by the

1 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
2 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
3 are required to indemnify employees for all expenses incurred in the course and scope of their
4 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
5 her employee for all necessary expenditures or losses incurred by the employee in direct
6 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
7 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
8 believed them to be unlawful."

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

22 **D. Wage Statement Violations**

23 22. California Labor Code Section 226 required an employer to furnish its employees
24 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
25 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
26 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
27 name of the employee and only the last four digits of the employee's social security number or an
28 employee identification number other than a social security number, (8) the name and address of

1 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the employee.

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

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

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

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

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

22 27. During the CLASS PERIOD, from time-to-time DEFENDANTS required
23 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
24 work, including but not limited to time spent waiting to for DEFENDANTS' timekeeping system
25 to become available in order to clock in for their shifts. This resulted in PLAINTIFF and other
26 members of the CALIFORNIA CLASS to have to work while off-the-clock.

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

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

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

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

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

16 33. Further, DEFENDANTS from time to time engaged in a policy and practice to
17 purposely evade California's overtime laws and in order to avoid paying PLAINTIFF and other
18 CALIFORNIA CLASS Members with overtime pay. Specifically, DEFENDANTS from time to
19 time purposely scheduled PLAINTIFF and other CALIFORNIA CLASS Members to work at
20 multiple work locations in a day in order to avoid paying overtime compensation for any hours
21 worked over forty (40) in a workweek or more than eight (8) hours per day. For example,
22 PLAINTIFF from time to time worked over 8 hours in a single day for DEFENDANTS. However,
23 since DEFENDANTS assigned her to work at one location for a set duration of hours, then at
24 another location for another set of hours, and DEFENDANTS' stores were each separate entities,
25 DEFENDANTS were able to avoid paying PLAINTIFF and other CALIFORNIA CLASS
26 Members with overtime and double time wages owed.

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

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

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

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

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

22 38. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
23 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
24 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
25 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
26 paid on an hourly basis with bonus compensation when the employees met the various
27 performance goals set by DEFENDANTS.
28

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

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

28 ///

1 **G. Unlawful Deductions**

2 41. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
3 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
4 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
5 DEFENDANTS violated Labor Code § 221.

6 **H. Timekeeping Manipulation**

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

16 43. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
17 time-to-time, forfeited time worked by working without their time being accurately recorded and
18 without compensation at the applicable pay rates.

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

26 45. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
27 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
28 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and

practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

I. Unlawful Rounding Practices

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

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

J. Violations for Untimely Payment of Wages

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

1 **K. Suitable Seating Violations**

2 49. PLAINTIFFS further allege that the station counters in DEFENDANTS' stores
3 provide ample space at work stations to allow for the presence and use of a stool or seat by
4 DEFENDANTS' employees' during the performance of their work duties. DEFENDANTS'
5 employees' working at DEFENDANTS' facilities spend a very substantial portion, and, in many
6 workdays, the vast majority of their working time with customers at the counter. The nature of
7 the position can reasonably be accomplished while using a seat/stool.

8 50. In violation of the applicable sections of the California Labor Code and the
9 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
10 DEFENDANTS as a matter of company policy, practice, and procedure, intentionally,
11 knowingly and systematically failed to provide PLAINTIFFS and the other Aggrieved
12 Employees suitable seating when the nature of these employees' work reasonably permitted
13 sitting.

14 51. DEFENDANTS knew or should have known that PLAINTIFFS and other
15 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not
16 interfere with the performance of their duties, and that DEFENDANTS did not provide suitable
17 seating and/or did not allow them to sit when it did not interfere with the performance of their
18 duties. By reason of this conduct applicable to PLAINTIFFS and all Aggrieved Employees,
19 DEFENDANTS violated California Labor Code Section 1198 and Wage Order 4-2001, Section
20 14 by failing to provide suitable seats.

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

22 52. On or around August 18, 2022, PLAINTIFF requested her personnel and
23 employment records from DEFENDANTS, including but not limited to: (1) payroll records; (2)
24 employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF'S complete employment file.

25 53. DEFENDANTS failed to provide and/or make available to PLAINTIFF her
26 personnel records, payroll records, employment contract, and entire employment file within thirty
27 (30) days of her requests stated above. In fact, as of the date of filing of this complaint,
28 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.

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

8 54. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
9 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
10 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
11 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
12 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
13 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
14 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
15 rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during
16 what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and
17 rest breaks without additional compensation and in accordance with DEFENDANTS’ strict
18 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
19 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed
20 to reimburse PLAINTIFF for required business expenses related to the personal expenses
21 incurred for the use of her personal cell phone, purchase of uniforms and maintenance of said
22 uniforms, on behalf of and in furtherance of her employment with DEFENDANTS. Additionally,
23 DEFENDANTS failed to provide suitable seating to PLAINTIFF during her employment.
24 Moreover, DEFENDANTS failed to provide PLAINTIFF with a copy of her personnel and
25 employment records upon request, in violation of Cal. Lab. Code § 1198.5. To date,
26 DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time
27 compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203.
28

1 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
2 \$75,000.

3 **CLASS ACTION ALLEGATIONS**

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

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

16 57. The members of the class are so numerous that joinder of all class members is
17 impractical.

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

- 27 a. Whether DEFENDANT maintained legally compliant meal period policies and
28 practices;

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

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

60. 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.

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

1 62. PLAINTIFF retained able class counsel with extensive experience in class action
2 litigation.

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

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

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

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

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

1 67. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
3 the conduct of DEFENDANT.

4 **FIRST CAUSE OF ACTION**

5 **Unlawful Business Practices**

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

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

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

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

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

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

24 71. By the conduct alleged herein, DEFENDANTS have engaged and continue to
25 engage in a business practice which violates California law, including but not limited to, the
26 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
27 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
28 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 72. 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 73. 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 74. 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 75. 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 76. 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 77. PLAINTIFF further demands on behalf of herself and on behalf of each
2 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
3 not timely provided as required by law.

4 78. 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 79. 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 80. 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 81. 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 DEFENDANT. 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 82. 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
9 Complaint.

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

14 84. 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 85. 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 86. 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 87. 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
25 the CALIFORNIA CLASS.

26 88. 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 89. 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 90. 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 91. 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 92. 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 93. 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 94. 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 95. 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 96. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
23 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
24 Complaint.

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

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

3 98. 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 99. 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.

8 100. 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.

12 101. 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.

15 102. 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.

22 103. 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.

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1 104. 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.

4 105. 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.

12 106. 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.

15 107. 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.

22 108. 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.

27 109. 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.

6 110. 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 continue 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.

14 111. 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.

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115. 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)

116. 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.

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

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

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

119. 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)

120. 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.

121. 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.

122. 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.

123. 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.

124. 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)**

5 125. 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.

8 126. 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.

16 127. 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."

19 128. 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.

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

31 130. 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.

131. 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.

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

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

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

133. 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.

134. Cal. Lab. Code § 2802 provides, in relevant part, that:
An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

135. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, the use of personal cell phones, purchase of uniforms and maintenance of said uniforms, all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of DEFENDANTS and required to purchase and maintain uniforms in order to perform

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

10 136. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
11 by her 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 **NINTH CAUSE OF ACTION**

15 **UNPAID SICK PAY**

16 **(Cal. Lab. Code § 246, *et seq.*)**

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

18 137. 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
20 Complaint.

21 138. Cal. Labor Code Sections 246(I)(1) mandates that "[p]aid sick time for nonexempt
22 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
23 which the employee uses paid sick time, whether or not the employee actually works overtime in
24 that workweek."

25 139. From time-to-time, during the PLAINTIFF and other members of the
26 CALIFORNIA CLASS were compensated at an hourly rate plus either non-discretionary incentive
27 pay. As a matter of law, the non-discretionary incentive compensation received by PLAINTIFF
28 and other members of the CALIFORNIA CLASS must be included in the "regular rate of pay."

1 140. From time-to-time during the CLASS PERIOD, in those pay periods where
2 PLAINTIFF and other members of the CALIFORNIA CLASS earned hourly compensation and
3 either non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to
4 properly calculate the regular rate of pay for purposes of compensating paid sick time by omitting
5 non-discretionary incentive pay from the regular rate of pay.

6 141. DEFENDANT's uniform policy and practice of omitting non-discretionary
7 incentive pay and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick
8 pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the
9 CALIFORNIA CLASS. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
10 request recovery of all unpaid wages, including sick pay wages, according to proof, interest,
11 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
12 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
13 overtime compensation is determined to be owed to other members of the CALIFORNIA CLASS
14 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
15 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
16 Cal. Lab. Code § 203, which penalties are sought herein on behalf of other members of the
17 CALIFORNIA CLASS. DEFENDANT'S conduct as alleged herein was willful, intentional and
18 not in good faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are
19 entitled to seek and recover statutory costs.

20 142. Cal. Lab. Code § 246(i) provides that:

21 An employer shall provide an employee with written notice that sets forth the
22 amount of paid sick leave available, or paid time off leave an employer provides in
23 lieu of sick leave, for use on either the employee's itemized wage statement
24 described in Section 226 or in a separate writing provided on the designated pay
25 date with the employee's payment of wages. If an employer provides unlimited paid
26 sick leave or unlimited paid time off to an employee, the employer may satisfy this
27 section by indicating on the notice or the employee's itemized wage statement
28 "unlimited."

26 143. From time to time, DEFENDANT failed to furnish PLAINTIFF and other
27 members of the CALIFORNIA CLASS with written wage statements setting forth the amount of
28 paid sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.* As a result,

1 PLAINTIFF and other members of the CALIFORNIA CLASS are entitled to seek and recover
2 statutory costs.

3 144. PLAINTIFF seeks to recover damages from DEFENDANTS for their violations
4 as alleged herein pursuant to Labor Code §§ 232, 1102.5 on behalf of herself and on behalf of the
5 CALIFORNIA CLASS.

6 **PRAYER FOR RELIEF**

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

9 1. On behalf of the CALIFORNIA CLASS:

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

20 2. On behalf of the CALIFORNIA CLASS:

- 21 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and
22 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
23 pursuant to Cal. Code of Civ. Proc. § 382;
24 b. Compensatory damages, according to proof at trial, including compensatory
25 damages for overtime compensation due to PLAINTIFF and the other members of
26 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
27 thereon at the statutory rate;
28 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and

1 the applicable IWC Wage Order;

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

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

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

12 3. On all claims:

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

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

15 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
16 including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or
17 § 1194.

18
19 DATED: June 12, 2023

ZAKAY LAW GROUP, APLC

20 By: 

21 Shani O. Zakay, Esq.
22 Attorney for PLAINTIFFS
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DEMAND FOR A JURY TRIAL

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

DATED: June 12, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay, Esq.
Attorney for PLAINTIFFS

EXHIBIT