

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

MOUNTAIN SILVERADO, INC., a California corporation; DENNIS R ERICKSON, an individual; and DOES 1-50, Inclusive,

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

DEANNA RICKETTS, an individual, on behalf of herself, and on behalf of all persons similarly situated,

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

Siskiyou Superior Court
311 4th Street
Yreka, CA 96097

CASE NUMBER:
(Número del Caso):

22CV00794

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

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

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

H. MORGAN

DATE:

(Fecha)

12/8/22

Clerk, by _____

(Secretario)

, Deputy

(Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

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

[SEAL]



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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SISKIYOU

DEANNA RICKETTS, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

MOUNTAIN SILVERADO, INC., a
California corporation; DENNIS R
ERICKSON, an individual; and DOES 1-50,
Inclusive,

Defendants.

Case No: 22CV00796

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.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SISKIYOU
YREKA BRANCH

DEC -9 2022

BY: H. MORGAN
DEPUTY CLERK

LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant MOUNTAIN SILVERADO, INC. (“Defendant Mountain Silverado”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California. Defendant Mountain Silverado owns, operates, and/or manages gas stations throughout the state of California, including the county of Siskiyou, where PLAINTIFF worked

2. Defendant DENNIS R ERICKSON (“Defendant Erickson”), is an individual that at all relevant times mentioned herein acted as the Chief Executive Officer of Defendant Mountain Silverado and was directly involved in – and directly responsible for – the illegal policies and practices articulated herein.

3. Defendant Mountain Silverado and Defendant Erickson were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the

1 conduct alleged herein and collectively referred to herein as “DEFENDANTS” or
2 “DEFENDANT.”

3 4. PLAINTIFF was employed by DEFENDANTS in California from November of
4 2014 to November of 2021 as a non-exempt employee, paid in part an hourly basis and non-
5 discretionary bonuses, and entitled to the legally required meal and rest periods and payment of
6 minimum and overtime wages due for all time worked.

7 5. 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 Mountain Silverado in
9 California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
10 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
11 date as determined by the Court (the “CLASS PERIOD”). The amount in controversy for the
12 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
13 (\$5,000,000.00).

14 6. 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 DEFENDANT’s uniform policy and practice which failed to
17 lawfully compensate these employees. DEFENDANT’s uniform policy and practice alleged
18 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained
19 and continues to retain wages due to 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 DEFENDANT in the future, relief for the named PLAINTIFF and the
22 other members of the CALIFORNIA CLASS who have been economically injured by
23 DEFENDANT’s past and current unlawful conduct, and all other appropriate legal and equitable
24 relief.

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

1 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
2 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
3 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 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 8. 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 9. 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 10. 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 11. DEFENDANT's uniform policies and practices alleged herein were unlawful,
26 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
27 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.
28

12. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and other members of the CALIFORNIA CLASS who has been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

13. 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.

14. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs 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

15. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF and other members of the CALIFORNIA CLASS 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 rest premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay

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

7 **A. Meal Period Violations**

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

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

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

10 **B. Rest Period Violations**

11 18. 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 DEFENDANT’s 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 remain on duty and/or on call. PLAINTIFF
21 and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu*
22 thereof. As a result of their rigorous work schedules and DEFENDANT’s inadequate staffing,
23 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
24 proper rest periods by DEFENDANT and DEFENDANT’s managers.

25 **C. Unreimbursed Business Expenses**

26 19. DEFENDANT 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 DEFENDANT. 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 her
5 employee for all necessary expenditures or losses incurred by the employee in direct consequence
6 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
7 even though unlawful, unless the employee, at the time of obeying the directions, believed them
8 to be unlawful."

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

20 **D. Wage Statement Violations**

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

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

9 23. Further, from time to time, DEFENDANTS included Holiday Bonus,
10 Sick/Bereave, and Underpayment hours into the computation of total hours worked for purposes
11 of Cal. Lab. Code § 226(a)(2), notwithstanding the fact Holiday Bonus, Sick/Bereave, and
12 Underpayment hours are not considered hours worked. DEFENDANTS' inclusion of Holiday
13 Bonus, Sick/Bereave, and Underpayment hours into the total hours worked in itemized wage
14 statements issued to PLAINTIFF and other CALIFORNIA CLASS Members violates Cal. Lab.
15 Code § 226(a)(2).

16 24. Further, DEFENDANT from time to time failed to provide wage statements to
17 PLAINTIFF and the CALIFORNIA CLASS Members that listed the correct address of the legal
18 entity that employed PLAINTIFF and the CALIFORNIA CLASS Members.

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

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

26 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**
27
28

1 27. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
2 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
3 for all hours worked.

4 28. During the CLASS PERIOD, from time-to-time DEFENDANT required
5 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
6 working, including but not limited to, requiring PLAINTIFF and other members of the
7 CALIFORNIA CLASS from time to time to show up fifteen (15) minutes before their scheduled
8 shift began in order to perform work-related tasks. This resulted in PLAINTIFF and other
9 members of the CALIFORNIA CLASS to have to work while off-the-clock.

10 29. DEFENDANT directed and directly benefited from the undercompensated off-the-
11 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

12 30. DEFENDANT controlled the work schedules, duties, and protocols, applications,
13 assignments, and employment conditions of PLAINTIFF and the other members of the
14 CALIFORNIA CLASS.

15 31. DEFENDANT was able to track the amount of time PLAINTIFF and the other
16 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
17 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
18 wages earned and owed for all the work they performed.

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

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

27 34. DEFENDANT 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 DEFENDANT's direction, control, and
3 benefit for the time spent working while off-the-clock. DEFENDANT's 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 DEFENDANT's 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, DEFENDANT 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 DEFENDANT's 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
17 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business
18 records.

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

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

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 bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
5 compensation as part of the employees' "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 premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by
12 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
13 for non-employees shall be calculated in the same manner as the regular rate of pay for the
14 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
15 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
16 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
17 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
18 recoverable under Cal. Labor 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, DEFENDANT 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 sick pay.
24 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
25 of the correct overtime and double time compensation, meal and rest period premiums, and sick
26 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
27 unfair advantage over competitors who complied with the law. To the extent equitable tolling
28

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

G. Violations for Untimely Payment of Wages

41. 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.

H. Unlawful Rounding Violations

42. During the CALIFORNIA CLASS PERIOD, DEFENDANT 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, DEFENDANT was able to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANT's 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.

43. Further, the mutability of DEFENDANT's 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, DEFENDANT's unlawful rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Additionally, DEFENDANT's unlawful rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to perform work as ordered

1 by DEFENDANT for more than ten (10) hours during a shift without receiving a second off-duty
2 meal break.

3 **I. Unlawful Deductions**

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

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

26 **CLASS ACTION ALLEGATIONS**

27 46. PLAINTIFF bring this Class Action on behalf of herself, and a California class
28 defined as all persons who are or previously were employed by Defendant Mountain Silverado in

1 California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
2 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
3 date as determined by the Court (the “CLASS PERIOD”).

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

10 48. The members of the class are so numerous that joinder of all class members is
11 impractical.

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

- 21 a. Whether DEFENDANT maintained legally compliant meal period policies and
22 practices;
- 23 b. Whether DEFENDANT maintained legally compliant rest period policies and
24 practices;
- 25 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
26 Members accurate premium payments for missed meal and rest periods;
- 27 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
28 Members accurate overtime wages;

- 1 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
2 Members at least minimum wage for all hours worked;
- 3 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
4 CLASS Members for required business expenses;
- 5 g. Whether DEFENDANT issued legally compliant wage statements;
- 6 h. Whether DEFENDANT committed an act of unfair competition by systematically
7 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
8 CLASS for all time worked;
- 9 i. Whether DEFENDANT committed an act of unfair competition by systematically
10 failing to record all meal and rest breaks missed by PLAINTIFF and other
11 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
12 of this work, required employees to perform this work and permits or suffers to
13 permit this work;
- 14 j. Whether DEFENDANT committed an act of unfair competition in violation of the
15 UCL, by failing to provide the PLAINTIFF and the other members of the
16 CALIFORNIA CLASS with the legally required meal and rest periods.

17 50. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
18 a result of DEFENDANT's conduct and actions alleged herein.

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

21 52. PLAINTIFF will fairly and adequately represent and protect the interests of the
22 CALIFORNIA CLASS Members.

23 53. PLAINTIFF retained able class counsel with extensive experience in class action
24 litigation.

25 54. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
26 interest of the other CALIFORNIA CLASS Members.

27 55. There is a strong community of interest among PLAINTIFF and the members of
28 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are

1 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
2 sustained.

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

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

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

21 58. Class treatment provides manageable judicial treatment calculated to bring an
22 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
23 the conduct of DEFENDANT.

24 **FIRST CAUSE OF ACTION**

25 **Unlawful Business Practices**

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

27 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**
28

1 59. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
2 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
3 Complaint.

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

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

10 Any person who engages, has engaged, or proposes to engage in unfair competition may
11 be enjoined in any court of competent jurisdiction. The court may make such orders or
12 judgments, including the appointment of a receiver, as may be necessary to prevent the
13 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).

14 62. By the conduct alleged herein, DEFENDANT has engaged and continues to
15 engage in a business practice which violates California law, including but not limited to, the
16 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
17 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
18 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
19 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
20 constitute unfair competition, including restitution of wages wrongfully withheld.

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

26 64. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
27 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
28 mandated meal and rest periods and the required amount of compensation for missed meal and

1 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
2 necessary business expenses incurred, due to a systematic business practice that cannot be
3 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
4 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
5 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
6 restitution of wages wrongfully withheld.

7 65. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
8 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
9 other members of the CALIFORNIA CLASS to be underpaid during their employment with
10 DEFENDANT.

11 66. By the conduct alleged herein, DEFENDANT's practices were also unfair and
12 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
13 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
14 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

23 69. By and through the unlawful and unfair business practices described herein,
24 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
25 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
26 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
27 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
28 to unfairly compete against competitors who comply with the law.

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

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

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

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

SECOND CAUSE OF ACTION

Failure To Pay Minimum Wages

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

Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)

74. 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.

1 75. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
2 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
3 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
4 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

12 79. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
13 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
14 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
15 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
16 CALIFORNIA CLASS.

17 80. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
18 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
19 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
20 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

4 83. During the CLASS PERIOD, PLAINTIFF and the other members of the
5 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
6 failure to pay all earned wages.

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

12 85. DEFENDANT knew or should have known that PLAINTIFF and the other
13 members of the CALIFORNIA CLASS were under-compensated for their time worked.
14 DEFENDANT systematically elected, either through intentional malfeasance or gross
15 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
16 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
17 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
18 for their time worked.

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

27 87. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
28 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the

1 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
2 California Labor Code and/or other applicable statutes. To the extent minimum wage
3 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
4 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
5 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
6 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
7 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
8 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
9 recover statutory costs.

10 **THIRD CAUSE OF ACTION**

11 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

27 92. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
28 including minimum and overtime compensation and interest thereon, together with the costs of

1 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
2 than those fixed by the Industrial Welfare Commission is unlawful.

3 93. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
4 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
5 they worked, including overtime work.

6 94. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
8 implementing a uniform policy and practice that failed to accurately record overtime worked by
9 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
10 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
11 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
12 (12) hours in a workday, and/or forty (40) hours in any workweek.

13 95. In committing these violations of the California Labor Code, DEFENDANT
14 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
15 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
16 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
17 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
18 regulations.

19 96. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
20 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
21 overtime compensation for their time worked for DEFENDANT.

22 97. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
23 from the overtime requirements of the law. None of these exemptions are applicable to
24 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
25 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
26 agreement that would preclude the causes of action contained herein this Complaint. Rather,
27 PLAINTIFF bring this Action on behalf of herself, and the CALIFORNIA CLASS, based on
28

1 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of
2 California.

3 98. During the CLASS PERIOD, PLAINTIFF and the other members of the
4 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
5 a failure to pay all earned wages.

6 99. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
7 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
8 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
9 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
10 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT
11 failed to accurately record and pay as evidenced by DEFENDANT's business records and
12 witnessed by employees.

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

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

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

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

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

15 **FOURTH CAUSE OF ACTION**

16 **Failure To Provide Required Meal Periods**

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

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

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

22 105. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
23 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
24 required by the applicable Wage Order and Labor Code. The nature of the work performed by
25 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
26 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
27 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
28 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's

1 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
2 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
3 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
4 Members with a second off-duty meal period in some workdays in which these employees were
5 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
6 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
7 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

16 **FIFTH CAUSE OF ACTION**

17 **Failure To Provide Required Rest Periods**

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

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

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

23 109. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
24 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
25 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
26 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
27 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
28 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.

1 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
2 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
3 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
4 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
5 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the
6 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
7 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
8 periods is evidenced by DEFENDANT's business records.

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

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

17 **SIXTH CAUSE OF ACTION**

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

19 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

114. From time to time during the CLASS PERIOD, DEFENDANT 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 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, personal expenses incurred for the use of their personal cell phones and the maintenance of their uniforms all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones and maintain their uniforms to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from the use of their personal cell phones and maintenance of their uniforms for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

SEVENTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

1 116. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
2 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
3 Complaint.

4 117. Cal. Labor Code § 226 provides that an employer must furnish employees with an
5 “accurate itemized” statement in writing showing:

- 6 a. Gross wages earned,
- 7 b. (2) total hours worked by the employee, except for any employee whose
8 compensation is solely based on a salary and who is exempt from payment of
9 overtime under subdivision (a) of Section 515 or any applicable order of the
10 Industrial Welfare Commission,
- 11 c. the number of piece-rate units earned and any applicable piece rate if the employee
12 is paid on a piece-rate basis,
- 13 d. all deductions, provided that all deductions made on written orders of the employee
14 may be aggregated and shown as one item,
- 15 e. net wages earned,
- 16 f. the inclusive dates of the period for which the employee is paid,
- 17 g. the name of the employee and his or her social security number, except that by
18 January 1, 2008, only the last four digits of his or her social security number of an
19 employee identification number other than social security number may be shown
20 on the itemized statement,
- 21 h. the name and address of the legal entity that is the employer, and
- 22 i. all applicable hourly rates in effect during the pay period and the corresponding
23 number of hours worked at each hourly rate by the employee.

24 118. When DEFENDANT did not accurately record PLAINTIFF’S and other
25 CALIFORNIA CLASS Members’ missed meal and rest breaks, or were paid inaccurate missed
26 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal.
27 Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA
28 CLASS Members with complete and accurate wage statements which failed to show, among other

1 things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked
2 and all applicable hourly rates in effect during the pay period and the corresponding amount of
3 time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal
4 and rest periods.

5 119. Further, from time to time, DEFENDANTS included Holiday Bonus,
6 Sick/Bereave, and Underpayment hours into the computation of total hours worked for purposes
7 of Cal. Lab. Code § 226(a)(2), notwithstanding the fact that Holiday Bonus, Sick/Bereave, and
8 Underpayment hours are not considered hours worked. DEFENDANTS' inclusion of Holiday
9 Bonus, Sick/Bereave, and Underpayment hours into the total hours worked in itemized wage
10 statements issued to PLAINTIFF and other CALIFORNIA CLASS Members violates Cal. Lab.
11 Code § 226(a)(2).

12 120. Further, DEFENDANT from time to time failed to provide wage statements to
13 PLAINTIFF and the CALIFORNIA CLASS Members that listed the correct address of the legal
14 entity that employed PLAINTIFF and the CALIFORNIA CLASS Members.

15 121. In addition to the foregoing, DEFENDANT failed to provide itemized wage
16 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
17 requirements of California Labor Code Section 226.

18 122. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
19 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
20 CLASS. These damages include, but are not limited to, costs expended calculating the correct
21 wages for all missed meal and rest breaks and the amount of employment taxes which were not
22 properly paid to state and federal tax authorities. These damages are difficult to estimate.
23 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
24 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
25 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
26 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
27 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
28 of the CALIFORNIA CLASS herein).

EIGHTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

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

123. 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.

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

As used in this article:

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

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

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

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

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

128. 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.

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

130. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand 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.

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

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

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

133. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to himself

1 and all employees who worked for Defendant in California during the time period of September
2 28, 2021 until the present (the "AGGRIEVED EMPLOYEES").

3 134. On September 28, 2022, PLAINTIFF gave written notice by certified mail to the
4 Labor and Workforce Development Agency (the "Agency") and the employer of the specific
5 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
6 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
7 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
8 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
9 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
10 EMPLOYEES as herein defined.

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

24
25 **PRAYER FOR RELIEF**

26 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
27 severally, as follows:

28 1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
 - c. An order requiring DEFENDANT 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 DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.
2. On behalf of the CALIFORNIA CLASS:
- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
 - e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

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

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

6 4. On all claims:

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

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

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

11
12 DATED: December 5, 2022

JCL LAW FIRM, APC

13
14 By: 

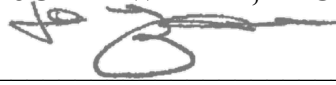
Jean-Claude Lapuyade
Attorney for PLAINTIFF

15
16
17 **DEMAND FOR A JURY TRIAL**

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

19
20 DATED: December 5, 2022

JCL LAW FIRM, APC

21
22 By: 

Jean-Claude Lapuyade
Attorney for PLAINTIFF

EXHIBIT 1

September 28, 2022

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

MOUNTAIN SILVERADO, INC.

DENNIS R ERICKSON

c/o Dennis R. Erickson

1031 Nixon Road

Mount Shasta, CA 96067

Sent via Certified Mail and Return Receipt No. 7021 1970 0001 8870 1262

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

Dear Sir/Madam:

Our offices represent Plaintiff DEANNA RICKETTS (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendants MOUNTAIN SILVERADO, INC. (“Defendant Mountain Silverado”) and DENNIS R ERICKSON (“Defendant Erickson”) (collectively, “Defendants”). Plaintiff was employed by Defendants in California from November of 2014 to November of 2021 as a non-exempt employee, paid on an hourly basis and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. 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, Plaintiff contends that Defendants failed to fully compensate her and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendants’ conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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

A true and correct copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by 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 Act of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Very truly yours,
JCL LAW FIRM, APC

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

Jean-Claude Lapuyade, Esq.

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SISKIYOU

DEANNA RICKETTS, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

MOUNTAIN SILVERADO, INC., a
California corporation; DENNIS R
ERICKSON, an individual; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

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

10 **DEMAND FOR A JURY TRIAL**

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

14 **PRELIMINARY ALLEGATIONS**

15 1. Defendant MOUNTAIN SILVERADO, INC. (“Defendant Mountain Silverado”)
16 is a California corporation that at all relevant times mentioned herein conducted and continues to
17 conduct substantial and regular business throughout California. Defendant Mountain Silverado
18 owns, operates, and/or manages gas stations throughout the state of California, including the
19 county of Siskiyou, where PLAINTIFF worked

20 2. Defendant DENNIS R ERICKSON (“Defendant Erickson”), is an individual that
21 at all relevant times mentioned herein acted as the Chief Executive Officer of Defendant Mountain
22 Silverado and was directly involved in – and directly responsible for – the illegal policies and
23 practices articulated herein.

24 3. Defendant Mountain Silverado and Defendant Erickson were the joint employers
25 of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF
26 performed work for respectively, and are therefore jointly responsible as employers for the
27 conduct alleged herein and collectively referred to herein as “DEFENDANTS” or
28 “DEFENDANT.”

29 4. PLAINTIFF was employed by DEFENDANTS in California from November of
30 2014 to November of 2021 as a non-exempt employee, paid in part an hourly basis and non-

1 discretionary bonuses, and entitled to the legally required meal and rest periods and payment of
2 minimum and overtime wages due for all time worked.

3 5. 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 Mountain Silverado in
5 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
6 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
7 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
8 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
9 (\$5,000,000.00).

10 6. 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 DEFENDANT's uniform policy and practice which failed to
13 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
14 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained
15 and continues to retain wages due to 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 DEFENDANT in the future, relief for the named PLAINTIFF and the
18 other members of the CALIFORNIA CLASS who have been economically injured by
19 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
20 relief.

21 7. 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 PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
24 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF 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. PLAINTIFF 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 8. 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 9. 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 10. 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 11. DEFENDANT's uniform policies and practices alleged herein were unlawful,
23 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
24 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

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

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

3 **JURISDICTION AND VENUE**

4 13. 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 14. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
10 the CALIFORNIA CLASS across California, including in this County, and committed the
11 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

12 **THE CONDUCT**

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

1 and gain an unfair advantage over competitors who comply with the law. To the extent equitable
2 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS
3 PERIOD should be adjusted accordingly.

4 **A. Meal Period Violations**

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

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

duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call. DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by DEFENDANT’s business records. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANT’s strict corporate policy and practice.

B. Rest Period Violations

18. From time to time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and DEFENDANT’s inadequate staffing. Further, for the same reasons, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or on call. 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 and DEFENDANT’s inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their proper rest periods by DEFENDANT and DEFENDANT’s managers.

C. Unreimbursed Business Expenses

19. DEFENDANT as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their

1 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct consequence
3 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
4 even though unlawful, unless the employee, at the time of obeying the directions, believed them
5 to be unlawful."

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

17 **D. Wage Statement Violations**

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

26 22. From time to time during the CLASS PERIOD, when PLAINTIFF and other
27 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
28 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also

1 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
2 accurate wage statements which failed to show, among other things, all deductions, the total hours
3 worked and all applicable hourly rates in effect during the pay period, and the corresponding
4 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
5 meal and rest periods.

6 23. Further, from time to time, DEFENDANTS included Holiday Bonus,
7 Sick/Bereave, and Underpayment hours into the computation of total hours worked for purposes
8 of Cal. Lab. Code § 226(a)(2), notwithstanding the fact Holiday Bonus, Sick/Bereave, and
9 Underpayment hours are not considered hours worked. DEFENDANTS' inclusion of Holiday
10 Bonus, Sick/Bereave, and Underpayment hours into the total hours worked in itemized wage
11 statements issued to PLAINTIFF and other CALIFORNIA CLASS Members violates Cal. Lab.
12 Code § 226(a)(2).

13 24. Further, DEFENDANT from time to time failed to provide wage statements to
14 PLAINTIFF and the CALIFORNIA CLASS Members that listed the correct address of the legal
15 entity that employed PLAINTIFF and the CALIFORNIA CLASS Members.

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

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

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

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

27 28. During the CLASS PERIOD, from time-to-time DEFENDANT required
28 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift

1 working, including but not limited to, requiring PLAINTIFF and other members of the
2 CALIFORNIA CLASS from time to time to show up fifteen (15) minutes before their scheduled
3 shift began in order to perform work-related tasks. This resulted in PLAINTIFF and other
4 members of the CALIFORNIA CLASS to have to work while off-the-clock.

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

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

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

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

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

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

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

1 hours worked in accordance with applicable law is evidenced by DEFENDANT's business
2 records.

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

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

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

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

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

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

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

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

27 41. 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 **H. Unlawful Rounding Violations**

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

17 43. Further, the mutability of DEFENDANT's timekeeping system and unlawful
18 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
19 time being inaccurately recorded. As a result, from time to time, DEFENDANT's unlawful
20 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
21 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
22 receiving an off-duty meal break. Additionally, DEFENDANT's unlawful rounding policy and
23 practice caused PLAINTIFFS and CALIFORNIA CLASS Members to perform work as ordered
24 by DEFENDANT for more than ten (10) hours during a shift without receiving a second off-duty
25 meal break.

26 **I. Unlawful Deductions**

27 44. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
28 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do

1 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
2 DEFENDANTS violated Labor Code § 221.

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

21 **CLASS ACTION ALLEGATIONS**

22 46. PLAINTIFF bring this Class Action on behalf of herself, and a California class
23 defined as all persons who are or previously were employed by Defendant Mountain Silverado in
24 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
25 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
26 date as determined by the Court (the "CLASS PERIOD").

27 47. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
28 deprived of wages and penalties from unpaid wages earned and due, including but not limited to

unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

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

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

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

1 h. Whether DEFENDANT committed an act of unfair competition by systematically
2 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
3 CLASS for all time worked;

4 i. Whether DEFENDANT committed an act of unfair competition by systematically
5 failing to record all meal and rest breaks missed by PLAINTIFF and other
6 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
7 of this work, required employees to perform this work and permits or suffers to
8 permit this work;

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

12 50. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
13 a result of DEFENDANT's conduct and actions alleged herein.

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

16 52. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS Members.

18 53. PLAINTIFF retained able class counsel with extensive experience in class action
19 litigation.

20 54. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
21 interest of the other CALIFORNIA CLASS Members.

22 55. There is a strong community of interest among PLAINTIFF and the members of
23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
25 sustained.

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

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

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

58. 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)

59. 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.

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

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

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

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

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

24 64. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
25 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
26 mandated meal and rest periods and the required amount of compensation for missed meal and
27 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
28 necessary business expenses incurred, due to a systematic business practice that cannot be
justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should

1 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

3 65. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
4 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

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

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

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

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

25 70. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
27 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
28

1 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

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

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

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

26 75. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
27 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
28

1 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
2 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

3 76. 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 77. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a less wage than
7 the minimum so fixed is unlawful.

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

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

15 80. DEFENDANT's 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 denies accurate compensation to PLAINTIFF
18 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

1 83. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
3 failure to pay all earned wages.

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

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

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

24 87. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
25 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
26 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
27 California Labor Code and/or other applicable statutes. To the extent minimum wage
28 compensation is determined to be owed to the CALIFORNIA CLASS Members who have

1 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
2 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
3 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
4 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
5 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
6 recover statutory costs.

7 **THIRD CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

24 92. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
25 including minimum and overtime compensation and interest thereon, together with the costs of
26 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
27 than those fixed by the Industrial Welfare Commission is unlawful.
28

1 93. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
2 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
3 they worked, including overtime work.

4 94. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
5 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
6 implementing a uniform policy and practice that failed to accurately record overtime worked by
7 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
8 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
9 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
10 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

17 96. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
19 overtime compensation for their time worked for DEFENDANT.

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

1 98. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
3 a failure to pay all earned wages.

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

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

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

23 102. In performing the acts and practices herein alleged in violation of California labor
24 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
25 and provide them with the requisite compensation, DEFENDANT acted and continues to act
26 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
28 consequences to them, and with the despicable intent of depriving them of their property and legal

1 rights, and otherwise causing them injury in order to increase company profits at the expense of
2 these employees.

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

13 **FOURTH CAUSE OF ACTION**

14 **Failure To Provide Required Meal Periods**

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

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

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

20 105. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
21 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
22 required by the applicable Wage Order and Labor Code. The nature of the work performed by
23 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
24 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
25 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
26 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
27 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
28 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business

1 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
2 Members with a second off-duty meal period in some workdays in which these employees were
3 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
4 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
5 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

14 **FIFTH CAUSE OF ACTION**

15 **Failure To Provide Required Rest Periods**

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

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

18 108. 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.

21 109. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
22 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
23 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
24 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
25 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
26 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
27 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
28 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other

1 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
2 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
3 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the
4 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
5 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
6 periods is evidenced by DEFENDANT's business records.

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

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

15 **SIXTH CAUSE OF ACTION**

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

17 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

28 114. From time to time during the CLASS PERIOD, DEFENDANT 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 DEFENDANT's

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

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

SEVENTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

(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. 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.

118. When DEFENDANT 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, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

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

8 120. Further, DEFENDANT from time to time failed to provide wage statements to
9 PLAINTIFF and the CALIFORNIA CLASS Members that listed the correct address of the legal
10 entity that employed PLAINTIFF and the CALIFORNIA CLASS Members.

11 121. In addition to the foregoing, DEFENDANT failed to provide itemized wage
12 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
13 requirements of California Labor Code Section 226.

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

25 **EIGHTH CAUSE OF ACTION**

26 **Failure To Pay Wages When Due**

27 **(Cal. Lab. Code § 203)**

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

1 123. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
2 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
3 Complaint.

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

5 As used in this article:

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

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

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

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

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

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

28 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.

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

130. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand 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.

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

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

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, and/or § 1194.

17 d.

18 DATED: September 28, 2022

19 **ZAKAY LAW GROUP, APLC**

20 By: 

21 Shani O. Zakay

22 Attorney for PLAINTIFF

23 **DEMAND FOR A JURY TRIAL**

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

25 DATED: September 28, 2022

26 **ZAKAY LAW GROUP, APLC**

27 By: 

28 Shani O. Zakay

Attorney for PLAINTIFF

7021 1970 0001 8870 1262

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