

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

AMERICAN TRADERS, INC, a California corporation; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JESSICA L. MUTO, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Electronically Filed
3/7/2023 9:19 AM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Erin Barnett, Deputy

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):

Stanislaus Superior Court- City Towers Courthouse
801 10th Street
Modesto, CA 95354

CASE NUMBER: CV-23-001192
(Número del Caso):

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):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203

Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 3/7/2023 9:19 AM

(Fecha)

Clerk, by
(Secretario)

Erin Barnett

, Deputy
(Adjunto)

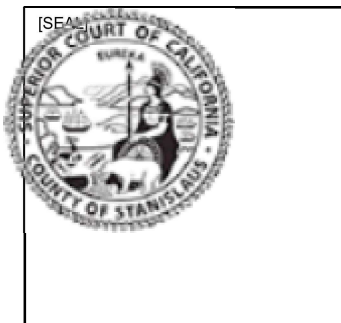
(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(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):



Electronically Filed
3/7/2023 9:19 AM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Erin Barnett, Deputy

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 5400
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

\$1,435 PAID

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF STANISLAUS

JESSICA L. MUTO, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

AMERICAN TRADERS, INC, a California
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: CV-23-001192

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;

Freeland, John D

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

13 **DEMAND FOR A JURY TRIAL**

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

17 **PRELIMINARY ALLEGATIONS**

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

21 2. DEFENDANT operates hotels in California, including in Stanislaus County where
22 PLAINTIFF worked.

23 3. PLAINTIFF was employed by DEFENDANT in California from May of 2022 to
24 October of 2022 as a non-exempt employee, paid on an hourly basis and entitled to the legally
25 required meal and rest periods and payment of minimum and overtime wages due for all time
26 worked.

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

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

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

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

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

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

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

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

20 **JURISDICTION AND VENUE**

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

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

THE CONDUCT

14. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, 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 periods and the corresponding amount of time worked at each hourly rate. DEFENDANT’s uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

A. Meal Period Violations

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

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

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

25 **B. Rest Period Violations**

26 17. From time to time during the CLASS PERIOD, PLAINTIFF and other
27 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
28 being provided ten (10) minute rest periods as a result of their rigorous work requirements and

1 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
2 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
3 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
4 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
5 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
6 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
7 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.
8 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
9 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's inadequate
10 staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied
11 their proper rest periods by DEFENDANT and DEFENDANT's managers.

12 **C. Wage Statement Violations**

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

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

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

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

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

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

23. During the CLASS PERIOD, from time-to-time DEFENDANT required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift work, including but not limited to, receiving and responding to work-related communications and assisting DEFENDANT'S guests. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

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

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

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

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

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

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

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

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

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

27 32. State law provides that employees must be paid overtime at one-and-one-half times
28 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were

1 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
2 employee's performance.

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

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

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

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

10 **F. Unreimbursed Business Expenses**

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

22 37. In the course of their employment, DEFENDANT required PLAINTIFF and other
23 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell
24 phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
25 CALIFORNIA CLASS Members were required to use their personal cell phones in order to
26 perform work related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF
27 and other CALIFORNIA CLASS Members for the use of their personal cell phones. As a result,
28 in the course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA

1 CLASS Members incurred unreimbursed business expenses that included, but were not limited
2 to, costs related to the use of their personal cell phones, all on behalf of and for the benefit of
3 DEFENDANT.

4 **G. Unlawful Rounding Practices**

5 38. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
6 place 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, DEFENDANTS were able to and did
11 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
12 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
13 these employees for all their time worked, including the applicable overtime compensation for
14 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
15 time to time, forfeited compensation for their time worked by working without their time being
16 accurately recorded and without compensation at the applicable overtime rates.

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

23 **H. Timekeeping Manipulation**

24 40. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
25 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
26 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
27 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
28 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally

1 alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other
2 members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours
3 worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed
4 rest break.

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

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

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

21 **I. Violations for Untimely Payment of Wages**

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

27
28 ///

1 **J. Unlawful Deductions**

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

6 46. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
7 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
8 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
9 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
10 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
11 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
12 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
13 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was
14 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
15 without additional compensation and in accordance with DEFENDANT'S strict corporate policy
16 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
17 comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse PLAINTIFF for
18 required business expenses related to the use of her personal cell phone, in violation of Cal. Lab.
19 Code § 2802. To date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and
20 double time compensation still owed to her or any penalty wages owed to her under Cal. Lab.
21 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or
22 value of \$75,000.

23 **CLASS ACTION ALLEGATIONS**

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

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

7 49. The members of the class are so numerous that joinder of all class members is
8 impractical.

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

- 18 a. Whether DEFENDANT maintained legally compliant meal period policies and
19 practices;
- 20 b. Whether DEFENDANT maintained legally compliant rest period policies and
21 practices;
- 22 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
23 Members accurate premium payments for missed meal and rest periods;
- 24 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
25 Members accurate overtime wages;
- 26 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
27 Members at least minimum wage for all hours worked;
- 28

- f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANT issued legally compliant wage statements;
- h. Whether DEFENDANT committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- i. Whether DEFENDANT committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- j. Whether DEFENDANT committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

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

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

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

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

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

58. 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.

59. 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)

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

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

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

11 63. By the conduct alleged herein, DEFENDANT has engaged and continues to
12 engage in a business practice which violates California law, including but not limited to, the
13 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
14 including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
15 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
16 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
17 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

3 66. 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 67. 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 68. 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 69. 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 70. 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 71. 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 72. 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 73. 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 74. 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 75. 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 76. 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 77. 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 78. 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 79. 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 80. 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 81. 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 82. 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 83. 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 84. 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 85. 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 86. 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 87. 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 88. 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 89. 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 90. 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 91. 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 92. 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 93. 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 94. 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 95. 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 96. 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 97. 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 98. 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 99. 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.

4 100. 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.

11 101. 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.

16 102. 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.

23 103. 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.

3 104. 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)**

17 105. 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.

20 106. 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.

6 107. 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.

11 108. 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)**

18 109. 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.

21 110. 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.

7 111. 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.

12 112. 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 Pay Wages When Due**

17 **(Cal. Lab. Code § 203)**

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

19 113. 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.

22 114. Cal. Lab. Code § 200 provides that:

23 As used in this article:

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

1 115. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges
2 an employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately.”

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

5 If an employee not having a written contract for a definite period quits his or her
6 employment, his or her wages shall become due and payable not later than 72 hours
7 thereafter, unless the employee has given 72 hours previous notice of his or her intention
8 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
9 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.

10 117. There was no definite term in PLAINTIFF’S or any CALIFORNIA CLASS
11 Members’ employment contract.

12 118. Cal. Lab. Code § 203 provides:

13 If an employer willfully fails to pay, without abatement or reduction, in accordance with
14 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
15 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.

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

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

24
25
26
27
28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

3

4

5
6
7

8
9

- 10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

28

1 CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed
2 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal.
3 Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA
4 CLASS Members with complete and accurate wage statements which failed to show, among other
5 things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked
6 and all applicable hourly rates in effect during the pay period and the corresponding amount of
7 time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal
8 and rest periods.

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

12 125. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
13 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
14 CLASS. These damages include, but are not limited to, costs expended calculating the correct
15 wages for all missed meal and rest breaks and the amount of employment taxes which were not
16 properly paid to state and federal tax authorities. These damages are difficult to estimate.
17 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
18 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
19 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
20 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
21 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
22 of the CALIFORNIA CLASS herein).

23
24
25
26
27 ///

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

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

126. 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.

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

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

128. 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, the use of their personal cell phone 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 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 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.

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

5 **NINTH CAUSE OF ACTION**

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

7 **(Cal. Lab. Code §§2698 et seq.)**

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

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

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

20 132. PLAINTIFF, and such persons that may be added from time to time who satisfy
21 the requirements and exhaust the administrative procedures under the Private Attorney General
22 Act, bring this Representative Action on behalf of the State of California with respect to himself
23 and all employees who worked for Defendant in California during the time period of December
24 29, 2021 until the present (the "AGGRIEVED EMPLOYEES").

25 133. On December 29, 2022, PLAINTIFF gave written notice by certified mail to the
26 Labor and Workforce Development Agency (the "Agency") and the employer of the specific
27 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
28 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting

1 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
2 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
3 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
4 EMPLOYEES as herein defined.

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

18 **PRAYER FOR RELIEF**

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

21 1. On behalf of the CALIFORNIA CLASS:

- 22 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
23 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
24 b. An order temporarily, preliminarily and permanently enjoining and restraining
25 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
26 c. An order requiring DEFENDANT to pay all overtime wages and all sums
27 unlawfully withheld from compensation due to PLAINTIFF and the other members
28 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.

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

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

///

1 4. On all claims:

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

7 DATED: March 6, 2023

ZAKAY LAW GROUP, APLC

9 By: 
10 Shani O. Zakay
11 Attorney for PLAINTIFF

12 **DEMAND FOR A JURY TRIAL**

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

14

15 DATED: March 6, 2023

ZAKAY LAW GROUP, APLC

17 By: 
18 Shani O. Zakay
19 Attorney for PLAINTIFF

20

21

22

23

24

25

26

27

28

EXHIBIT 1

December 29, 2022

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

AMERICAN TRADERS, INC

c/o Daljeet Singh Mann
2520 Piazza Court
Modesto, CA 95356

Sent via Certified Mail and Return Receipt No. 7022 2410 0000 2184 0386

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 JESSICA L. MUTO ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant AMERICAN TRADERS, INC ("Defendant"). Plaintiff was employed by Defendant in California from May of 2022 to October of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence, Plaintiff contends that Defendant failed to fully compensate her and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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

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

Plaintiff, and (v) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

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

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

Very truly yours,
JCL LAW FIRM, APC

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

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

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

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 5400
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF STANISLAUS

JESSICA L. MUTO, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

AMERICAN TRADERS, INC, a California
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8) RETALIATION IN VIOLATION OF CAL. LAB. CODE §§ 98.6, 6310 & 1102.5.;
9) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY.

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant AMERICAN TRADERS, INC (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT operates hotels in California, including in Stanislaus County where PLAINTIFF worked.

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

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

1 by the Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the
2 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

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

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

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

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

22 **JURISDICTION AND VENUE**

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

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

1 the CALIFORNIA CLASS across California, including in this County, and committed the
2 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

3 **THE CONDUCT**

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

23 **A. Meal Period Violations**

24 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. From time to time during the CLASS
28 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work

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

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

27 **B. Rest Period Violations**
28

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

15 **C. Wage Statement Violations**

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

24 19. From time to time during the CLASS PERIOD, when PLAINTIFF and other
25 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
26 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
27 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
28 accurate wage statements which failed to show, among other things, all deductions, the total hours

1 worked and all applicable hourly rates in effect during the pay period, and the corresponding
2 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
3 meal and rest periods.

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

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

11 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

12 22. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
13 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
14 for all hours worked.

15 23. During the CLASS PERIOD, from time-to-time DEFENDANT required
16 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
17 work, including but not limited to, receiving and responding to work-related communications and
18 assisting DEFENDANT'S guests. This resulted in PLAINTIFF and other members of the
19 CALIFORNIA CLASS to have to work while off-the-clock.

20 24. DEFENDANT directed and directly benefited from the undercompensated off-the-
21 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

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

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

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

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

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

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

17 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
18 **and Redeemed Sick Pay**

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

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

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

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

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

12 **F. Unreimbursed Business Expenses**

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

24 37. In the course of their employment, DEFENDANT required PLAINTIFF and other
25 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell
26 phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
27 CALIFORNIA CLASS Members were required to use their personal cell phones in order to
28 perform work related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF

1 and other CALIFORNIA CLASS Members for the use of their personal cell phones. As a result,
2 in the course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA
3 CLASS Members incurred unreimbursed business expenses that included, but were not limited
4 to, costs related to the use of their personal cell phones, all on behalf of and for the benefit of
5 DEFENDANT.

6 **G. Unlawful Rounding Practices**

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

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

25 **H. Timekeeping Manipulation**

26 40. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
27 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
28 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the

1 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
2 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally
3 alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other
4 members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours
5 worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed
6 rest break.

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

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

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

23 **I. Violations for Untimely Payment of Wages**

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

1 **J. Unlawful Deductions**

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

6 46. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
7 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
8 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
9 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
10 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
11 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
12 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
13 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was
14 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
15 without additional compensation and in accordance with DEFENDANT'S strict corporate policy
16 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
17 comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse PLAINTIFF for
18 required business expenses related to the use of her personal cell phone, in violation of Cal. Lab.
19 Code § 2802. To date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and
20 double time compensation still owed to her or any penalty wages owed to her under Cal. Lab.
21 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or
22 value of \$75,000.

23 **K. Plaintiff's Individual Claims**

24 47. Plaintiff was employed by DEFENDANT in California from May of 2022 to
25 October of 2022. On October 31, 2022, PLAINTIFF was wrongfully terminated from her
26 employment with DEFENDANT.

1 48. Throughout her employment with DEFENDANT, PLAINTIFF was treated
2 differently and unfairly by DEFENDANT and its agents, all in retaliation against PLAINTIFF for
3 various protected activities.

4 49. Throughout her employment, PLAINTIFF complained to DEFENDANT about
5 DEFENDANT'S unlawful practices. Specifically, PLAINTIFF complained to DEFENDANT
6 about DEFENDANT'S unlawful practices, including but not limited to, DEFENDANT'S failure
7 to provide off-duty and timely meal and rest breaks and various violations of the Labor Code.

8 50. In response to PLAINTIFF'S complaints to DEFENDANT, DEFENDANT
9 wrongfully terminated PLAINTIFF on October 31, 2022.

10 51. PLAINTIFF is informed and believes, and upon such information and belief
11 alleges that, during PLAINTIFF'S employment with DEFENDANT and at the time of her
12 termination, DEFENDANT' maintained a hostile work environment directed at PLAINTIFF
13 because she reported DEFENDANT'S violations of the Labor Code.

14 52. PLAINTIFF is informed and believes, and upon such information and belief
15 alleges that, DEFENDANT'S conduct in maintaining a hostile work environment and terminating
16 PLAINTIFF'S employment was part of a pattern of behavior by DEFENDANT aimed at
17 retaliation against PLAINTIFF.

18 53. PLAINTIFF is informed and believes, and upon such information and belief
19 alleges that, DEFENDANT wrongfully terminated PLAINTIFF for reasons that violate public
20 policy.

21 54. PLAINTIFF is informed and believes, and upon such information and belief
22 alleges that she was harmed as a result of being wrongfully terminated and that the unlawful and
23 retaliatory practices of DEFENDANT were substantial factors in causing PLAINTIFF'S harm.

24 55. PLAINTIFF is informed and believes, and upon such information and belief
25 alleges that, DEFENDANTS intentionally created or knowingly permitted these working
26 conditions, including but not limited to, retaliatory employment practices against employees who
27 reported and/or complained about DEFENDANT'S Labor Code violations.
28

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

3 **CLASS ACTION ALLEGATIONS**

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

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

15 59. The members of the class are so numerous that joinder of all class members is
16 impractical.

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

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

- b. Whether DEFENDANT maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANT issued legally compliant wage statements;
- h. Whether DEFENDANT committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- i. Whether DEFENDANT committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- j. Whether DEFENDANT committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

61. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANT’s conduct and actions alleged herein.

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

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

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

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

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

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

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

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

69. 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)

70. 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.

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

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

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

73. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

14 76. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
15 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
16 other members of the CALIFORNIA CLASS to be underpaid during their employment with
17 DEFENDANT.

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

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

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

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

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

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

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

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

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

3 **SECOND CAUSE OF ACTION**

4 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **THIRD CAUSE OF ACTION**

19 **Failure To Pay Overtime Compensation**

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

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

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

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

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

3 101. 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.

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

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

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

15 105. 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 failed to accurately record overtime worked by
18 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
19 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
20 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
21 (12) hours in a workday, and/or forty (40) hours in any workweek.

22 106. In committing these violations of the California Labor Code, DEFENDANT
23 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
24 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
25 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
26 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
27 regulations.
28

1 107. 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 overtime compensation for their time worked for DEFENDANT.

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

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

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

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

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

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

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

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

24 **FOURTH CAUSE OF ACTION**

25 **Failure To Provide Required Meal Periods**

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

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

28

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

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

119. 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.

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

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

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

1 **SIXTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code § 203)**

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

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

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

9 As used in this article:

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

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

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

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

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

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

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

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.

SEVENTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

131. 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.

132. 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.

133. 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.

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

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

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

4 **EIGHTH CAUSE OF ACTION**

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

6 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

15 138. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
16 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
17 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
18 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
19 members for expenses which included, but were not limited to, the use of their personal cell
20 phone all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other
21 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell
22 phones to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's
23 uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA
24 CLASS members for expenses resulting from the use of their personal cell phones for
25 DEFENDANT within the course and scope of their employment for DEFENDANT. These
26 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
27 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
28 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,

1 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
2 members for these expenses as an employer is required to do under the laws and regulations of
3 California.

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

8 **NINTH CAUSE OF ACTION**

9 **RETALIATION - Cal. Lab. Code §§ 98.6, 1102.5 and 6310**

10 **(Alleged by PLAINTIFF and against all DEFENDANTS)**

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

13 141. At all relevant times, California Labor Code section 98.6 was in effect and was
14 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any
15 employee, including PLAINTIFF, for raising complaints of illegality and/or belief that the
16 employee may disclose illegality regarding Labor Code violations.

17 142. At all relevant times, California Labor Code section 1102.5 was in effect and was
18 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any
19 employee, including PLAINTIFF, for raising complaints of illegality and/or belief that the
20 employee may disclose illegality.

21 143. At all relevant times, California Labor Code section 6310 was in effect and was
22 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any
23 employee, including PLAINTIFF, for raising complaints of illegality and unsafe workplace
24 conditions and/or belief that the employee may disclose illegality and unsafe workplace conditions.

25 144. PLAINTIFF raised complaints of illegality while he worked for DEFENDANT, and
26 DEFENDANT retaliated against her by taking adverse employment actions including wrongfully
27 terminating PLAINTIFF'S employment.

28 145. As a proximate result of DEFENDANT's willful, knowing, and intentional
violation(s) of Labor Code sections 98.6, 1102.5 and 6310 PLAINTIFF has suffered and continues

1 to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to her
2 damage in a sum according to proof.

3 146. As a result of DEFENDANT's adverse employment actions against PLAINTIFF,
4 PLAINTIFF has suffered general and special damages in sums according to proof.

5 147. DEFENDANT's misconduct was committed intentionally, in a malicious,
6 oppressive manner, and fraudulent manner, entitling PLAINTIFF to punitive damages against
7 DEFENDANT.

TENTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

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

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

13 149. PLAINTIFF's wrongful termination on or about October 31, 2022 was for a
14 pretextual reason(s) to disguise DEFENDANT's unlawful employment practices directed at
15 PLAINTIFF.

16 150. Within the State of California there exists a substantial and fundamental public
17 policy, set forth in the California Government Code §§ 98.6, 6310 and 1102.5, which forbids
18 retaliation and wrongful termination. These public policies include the right to be free from
19 retaliation, hostile work environments and wrongful termination as a result of reporting a
20 Defendant's violations of the law, including but not limited to, violations of the Labor Code and
21 reports of such violations to a Defendant and/or the Labor Commissioner. This public policy of
22 the state is one that benefits the public at large and guarantees the rights of an employee to perform
their work free from retaliation.

23 151. The motivating reason(s) for PLAINTIFF's termination PLAINTIFF's reports of
24 DEFENDANT'S Labor Code violations and PLAINTIFF's protests and/or resistance thereof.
25 PLAINTIFF's wrongful termination from her position of employment was in violation of the
26 public policies of the State of California.

152. As a result of DEFENDANT's actions, PLAINTIFF has suffered substantial losses in earnings and employment benefits and emotional distress in an amount to be determined according to proof at trial.

153. In doing the acts herein alleged, DEFENDANT acted with malice and oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled to exemplary and punitive damages from DEFENDANT in an amount to be determined to punish DEFENDANT and to deter such wrongful conduct in the future.

154. PLAINTIFF was harmed by DEFENDANT's wrongful and illegal termination of her employment.

155. The wrongful termination of the employment of PLAINTIFF was and is a substantial factor causing harm to PLAINTIFF.

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 the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
 - e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
 - f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.
3. On PLAINTIFF'S individual claims:
- a. For all special damages which were sustained as a result of DEFENDANTS' conduct, including but not limited to, back pay, front pay, lost compensation and job benefits that PLAINTIFF would have received but for the practices of DEFENDANTS.
 - b. For all exemplary damages, according to proof, which were sustained as a result of DEFENDANTS' conduct.
 - c. An award of interest, including prejudgment interest at the legal rate.
 - d. Such other and further relief as the Court deems just and equitable.
 - e. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
4. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;

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

5 DATED: December 29, 2022

ZAKAY LAW GROUP, APLC

7 By: 
8 Shani O. Zakay
9 Attorney for PLAINTIFF

10 **DEMAND FOR A JURY TRIAL**

11 PLAINTIFF demands a jury trial on issues triable to a jury.
12

13 DATED: December 29, 2022

ZAKAY LAW GROUP, APLC

15 By: 
16 Shani O. Zakay
17 Attorney for PLAINTIFF
18
19
20
21
22
23
24
25
26
27
28

7022 2410 0000 2184 0386

U.S. Postal Service[™]
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com[®].

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$ _____
☐ Return Receipt (electronic) \$ _____
☐ Certified Mail Restricted Delivery \$ _____
☐ Adult Signature Required \$ _____
☐ Adult Signature Restricted Delivery \$ _____

Postage

\$

Total Postage and Fees

\$

Sent To

C/o Daljeet Singh Mann

Street and Apt. No., or PO Box No.

City, State, ZIP+4[®]

Postmark
Here

002-419

12/29 MUTO

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions