

**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 3600  
San Diego, CA 92121  
Telephone: (619) 255-9047  
Facsimile: (858) 404-9203  
[shani@zakaylaw.com](mailto:shani@zakaylaw.com)  
[jackland@zakaylaw.com](mailto:jackland@zakaylaw.com)  
[julieann@zakaylaw.com](mailto:julieann@zakaylaw.com)

**JCL LAW FIRM, APC**

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

Attorneys for PLAINTIFF

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

KAREN TRUDELLER, an individual, on  
behalf of herself, and on behalf of all persons  
similarly situated,

Plaintiffs,

v.

CHILDREN OF THE RAINBOW, INC., a  
California corporation, and DOES 1-50,  
Inclusive,

Defendants.

Case No: 37-2022-00034860-CU-OE-CTL

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

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

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**10/03/2022 at 08:49:00 AM**

Clerk of the Superior Court  
By Taylor Crandall, Deputy Clerk

CAL. LAB. CODE §§ 226.7 & 512 AND  
THE APPLICABLE IWC WAGE  
ORDER;

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

**DEMAND FOR A JURY TRIAL**

PLAINTIFF KAREN TRUELLE (“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 CHILDREN OF THE RAINBOW, INC. (“DEFENDANT”) is a  
California corporation that at all relevant times mentioned herein conducted and continues to  
conduct substantial and regular business throughout California.

2. DEFENDANT owns, operates, and/or manages childcare facilities in the county  
of San Diego, where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANT in California from May of 2019 to  
February of 2022 as a non-exempt employee, paid in part an hourly basis and non-discretionary  
bonuses, 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 the original 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).

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

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

7. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all 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 and rest premiums at the regular rate, failed to  
14 reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and  
15 failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate  
16 itemized wage statements showing, among other things, all applicable hourly rates in effect during  
17 the pay periods and the corresponding amount of time worked at each hourly rate.  
18 DEFENDANT’s uniform policies and practices are intended to purposefully avoid the accurate  
19 and full payment for all time worked as required by California law which allows DEFENDANT  
20 to illegally profit and gain an unfair advantage over competitors who comply with the law. To  
21 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against  
22 DEFENDANT, the CLASS 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'Ss 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 duty and on call.  
22 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with  
23 legally required meal breaks is evidenced by DEFENDANT's business records. PLAINTIFF and  
24 other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional  
25 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

26 **B. Rest Period Violations**

27 17. From time to time during the CLASS PERIOD, PLAINTIFF and other  
28 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without

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

13 **C. Unreimbursed Business Expenses**

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

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

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

6 **D. Wage Statement Violations**

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

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

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

26 23. As a result, DEFENDANT issued PLAINTIFF and other members of the  
27 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,  
28

1 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional  
2 payroll error due to clerical or inadvertent mistake.

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

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

7 25. During the CLASS PERIOD, from time-to-time DEFENDANT required  
8 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift  
9 work, including but not limited to, submitting to Covid-19 health screenings. This resulted in  
10 PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-  
11 clock.

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

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

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

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

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

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

3           32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
4 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and  
5 benefit for the time spent working while off-the-clock, including but not limited to, time spent  
6 submitting to Covid-19 health screenings. DEFENDANT's uniform policy and practice to not  
7 pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in  
8 accordance with applicable law is evidenced by DEFENDANT's business records.

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

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

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

25           35. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
26 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid  
27 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for  
28 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly

1 basis with bonus compensation when the employees met the various performance goals set by  
2 DEFENDANTS.

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

21         37. In violation of the applicable sections of the California Labor Code and the  
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
23 matter of company policy, practice, and procedure, intentionally and knowingly failed to  
24 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate  
25 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.  
26 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment  
27 of the correct overtime and double time compensation, meal and rest period premiums, and sick  
28 pay as required by California law which allowed DEFENDANT to illegally profit and gain an

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

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. Suitable Seating Violations**

24 40. PLAINTIFF further alleges that the station counters in DEFENDANT's stores  
25 provide ample space at work stations to allow for the presence and use of a stool or seat by  
26 DEFENDANT's employees' during the performance of their work duties. DEFENDANT's  
27 employees' working at DEFENDANT's facilities spend a very substantial portion, and, in many  
28

workdays, the vast majority of their working time with children at desks. The nature of the position can reasonably be accomplished while using a seat/stool.

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

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

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

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

**J. Unlawful Deductions**

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

45. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)

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

#### 16 **CLASS ACTION ALLEGATIONS**

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

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

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

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

- 12           a. Whether DEFENDANT maintained legally compliant meal period policies and  
13 practices;
- 14           b. Whether DEFENDANT maintained legally compliant rest period policies and  
15 practices;
- 16           c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
17 Members accurate premium payments for missed meal and rest periods;
- 18           d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
19 Members accurate overtime wages;
- 20           e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
21 Members at least minimum wage for all hours worked;
- 22           f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA  
23 CLASS Members for required business expenses;
- 24           g. Whether DEFENDANT issued legally compliant wage statements;
- 25           h. Whether DEFENDANT committed an act of unfair competition by systematically  
26 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA  
27 CLASS for all time worked;
- 28

- 1           i. Whether DEFENDANT committed an act of unfair competition by systematically  
2           failing to record all meal and rest breaks missed by PLAINTIFF and other  
3           CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit  
4           of this work, required employees to perform this work and permits or suffers to  
5           permit this work;
- 6           j. Whether DEFENDANT committed an act of unfair competition in violation of the  
7           UCL, by failing to provide the PLAINTIFF and the other members of the  
8           CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

13           52. PLAINTIFF will fairly and adequately represent and protect the interests of the  
14 CALIFORNIA CLASS Members.

15           53. PLAINTIFF retained able class counsel with extensive experience in class action  
16 litigation.

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

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

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

26           57. A class action is superior to other available methods for the fair and efficient  
27 adjudication of this controversy because joinder of all class members is impractical. Moreover,  
28 since the damages suffered by individual members of the class may be relatively small, the

1 expense and burden of individual litigation makes it practically impossible for the members of the  
2 class individually to redress the wrongs done to them. Without class certification and  
3 determination of declaratory, injunctive, statutory, and other legal questions within the class  
4 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will  
5 create the risk of:

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

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

### 16 **FIRST CAUSE OF ACTION**

#### 17 **Unlawful Business Practices**

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

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

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

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

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

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

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

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

20 64. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
21 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally  
22 mandated meal and rest periods and the required amount of compensation for missed meal and  
23 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all  
24 necessary business expenses incurred, due to a systematic business practice that cannot be  
25 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission  
26 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should  
27 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including  
28 restitution of wages wrongfully withheld.

65. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
2 DEFENDANT.

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

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

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

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

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

26 71. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
27 and do, seek such relief as may be necessary to restore to them the money and property which  
28 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
2 business practices, including earned but unpaid wages for all time worked.

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

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

14 **SECOND CAUSE OF ACTION**

15 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

24           83. During the CLASS PERIOD, PLAINTIFF and the other members of the  
25 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a  
26 failure to pay all earned wages.

27           84. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
28 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true

1 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have  
2 suffered and will continue to suffer an economic injury in amounts which are presently unknown  
3 to them, and which will be ascertained according to proof at trial.

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

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

19 87. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request  
20 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the  
21 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the  
22 California Labor Code and/or other applicable statutes. To the extent minimum wage  
23 compensation is determined to be owed to the CALIFORNIA CLASS Members who have  
24 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or  
25 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.  
26 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS  
27 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good  
28

1 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and  
2 recover statutory costs.

3 **THIRD CAUSE OF ACTION**

4 **Failure To Pay Overtime Compensation**

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

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

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

10 89. 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 pay these employees for all  
13 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or  
14 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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

1 implementing a uniform policy and practice that failed to accurately record overtime worked by  
2 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to  
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,  
4 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve  
5 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

26 99. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the  
27 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the  
28 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even

1 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required  
2 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT  
3 failed to accurately record and pay as evidenced by DEFENDANT's business records and  
4 witnessed by employees.

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

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

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

25 103. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS  
26 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the  
27 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the  
28 California Labor Code and/or other applicable statutes. To the extent overtime compensation is

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

7 **FOURTH CAUSE OF ACTION**

8 **Failure To Provide Required Meal Periods**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

11 104. 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 First  
13 Amended Complaint.

14 105. During the CLASS PERIOD, DEFENDANT failed to provide all the legally  
15 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as  
16 required by the applicable Wage Order and Labor Code. The nature of the work performed by  
17 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being  
18 relieved of all of their duties for the legally required off-duty meal periods. As a result of their  
19 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not  
20 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's  
21 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required  
22 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business  
23 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS  
24 Members with a second off-duty meal period in some workdays in which these employees were  
25 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other  
26 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation  
27 and in accordance with DEFENDANT's strict corporate policy and practice.  
28

106. 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.

107. 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)**

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

109. 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

1 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest  
2 periods is evidenced by DEFENDANT's business records.

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

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

### 11 **SIXTH CAUSE OF ACTION**

#### 12 **Failure To Reimburse Employees for Required Expenses**

13 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

22 114. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.  
23 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS  
24 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
25 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members  
26 for expenses which included, but were not limited to, personal expenses incurred for the use of  
27 personal cell phones all on behalf of and for the benefit of DEFENDANT. Specifically,  
28 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use

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

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

#### 15 **SEVENTH CAUSE OF ACTION**

##### 16 **Failure To Provide Accurate Itemized Statements**

##### 17 **(Cal. Lab. Code § 226)**

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

19 116. 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 First  
21 Amended Complaint.

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

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

- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

119. 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.

120. 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

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

### 9 **EIGHTH CAUSE OF ACTION**

#### 10 **Failure To Pay Wages When Due**

#### 11 **(Cal. Lab. Code § 203)**

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

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

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

17 As used in this article:

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

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

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

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

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

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

126. Cal. Lab. Code § 203 provides:

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

127. 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.

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

### **NINTH CAUSE OF ACTION**

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

**(Cal. Lab. Code §§2698 et seq.)**

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

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

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

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

4 131. PLAINTIFF, and such persons that may be added from time to time who satisfy  
5 the requirements and exhaust the administrative procedures under the Private Attorney General  
6 Act, bring this Representative Action on behalf of the State of California with respect to himself  
7 and all employees who worked for Defendant in California during the time period of July 28,  
8 2021, until the present (the "AGGRIEVED EMPLOYEES").

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

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

1 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and  
2 the other AGGRIEVED EMPLOYEES.

3  
4 **PRAYER FOR RELIEF**

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

7 1. On behalf of the CALIFORNIA CLASS:

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

18 2. On behalf of the CALIFORNIA CLASS:

- 19 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth  
20 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant  
21 to Cal. Code of Civ. Proc. § 382;  
22 b. Compensatory damages, according to proof at trial, including compensatory  
23 damages for overtime compensation due to PLAINTIFF and the other members of  
24 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest  
25 thereon at the statutory rate;  
26 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
27 the applicable IWC Wage Order;  
28 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in

1 which a violation occurs and one hundred dollars (\$100) per each member of the  
2 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding  
3 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for  
4 violation of Cal. Lab. Code § 226

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

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

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

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1 4. On all claims:

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

7 DATED: October 3, 2022

**ZAKAY LAW GROUP, APLC**

8   
9 By: \_\_\_\_\_

10 Shani O. Zakay, Esq.

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: October 3, 2022

**ZAKAY LAW GROUP, APLC**

16   
17 By: \_\_\_\_\_

18 Shani O. Zakay, Esq.

19 Attorney for PLAINTIFF

20

21

22

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28

# **EXHIBIT 1**



5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Tel: (619) 599-8292  
Fax: (619) 599-8291  
Toll Free: 1-888-498-6999  
[www.jcl-lawfirm.com](http://www.jcl-lawfirm.com)

Jean-Claude Lapuyade, Esq.  
[jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)

Eduardo Garcia, Esq.  
[egarcia@jcl-lawfirm.com](mailto:egarcia@jcl-lawfirm.com)

Sydney Castillo-Johnson, Esq.  
[scastillo@jcl-lawfirm.com](mailto:scastillo@jcl-lawfirm.com)

July 28, 2022

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

**CHILDREN OF THE RAINBOW, INC.**

c/o Gale Walker  
4980 Logan Avenue  
San Diego, CA 92113

***Sent via Certified Mail and Return Receipt 7022 0410 0001 5846 7292***

**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 KAREN TRUDELLE ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant CHILDREN OF THE RAINBOW, INC. ("Defendant"). Plaintiff was employed by Defendant in California from May of 2019 to February 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 contend 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, 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



Jean-Claude Lapuyade, Esq.

**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 3600  
San Diego, CA 92121  
Telephone: (619) 255-9047  
Facsimile: (858) 404-9203  
[shani@zakaylaw.com](mailto:shani@zakaylaw.com)  
[jackland@zakaylaw.com](mailto:jackland@zakaylaw.com)  
[julieann@zakaylaw.com](mailto:julieann@zakaylaw.com)

**JCL LAW FIRM, APC**

Jean-Claude Lapuyade (State Bar #248676)  
Eduardo Garcia (State Bar #290572)  
Sydney Castillo-Johnson (State Bar #343881)  
5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Telephone: (619) 599-8292  
Facsimile: (619) 599-8291  
[jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)  
[egarcia@jcl-lawfirm.com](mailto:egarcia@jcl-lawfirm.com)  
[scastillo@jcl-lawfirm.com](mailto:scastillo@jcl-lawfirm.com)

Attorneys for PLAINTIFF

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

KAREN TRUELLE, an individual, on  
behalf of herself, and on behalf of all persons  
similarly situated,

Plaintiffs,

v.

CHILDREN OF THE RAINBOW, 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;

- 1 5) FAILURE TO PROVIDE REQUIRED  
2 REST PERIODS IN VIOLATION OF  
3 CAL. LAB. CODE §§ 226.7 & 512 AND  
4 THE APPLICABLE IWC WAGE  
5 ORDER;  
6 6) FAILURE TO REIMBURSE  
7 EMPLOYEES FOR REQUIRED  
8 EXPENSES IN VIOLATION OF CAL.  
9 LAB. CODE § 2802;  
10 7) FAILURE TO PROVIDE WAGES WHEN  
11 DUE IN VIOLATION OF CAL. LAB.  
12 CODE §§ 201, 202 AND 203;  
13 8) FAILURE TO PROVIDE ACCURATE  
14 ITEMIZED STATEMENTS IN  
15 VIOLATION OF CAL. LAB. CODE §  
16 226;  
17 9) RETALIATION IN VIOLATION OF  
18 CAL. LAB. CODE § 1102.5.;  
19 10) VIOLATION OF GOVT. CODE § 12940  
20 – DISABILITY DISCRIMINATION;  
21 11) WRONGFUL TERMINATION IN  
22 VIOLATION OF PUBLIC POLICY.

23 **DEMAND FOR A JURY TRIAL**

24 PLAINTIFF KAREN TRUELLE (“PLAINTIFF”), an individual, on behalf of  
25 herself and all other similarly situated current and former employees, allege on information and  
26 belief, except for her own acts and knowledge which are based on personal knowledge, the  
27 following:  
28

**PRELIMINARY ALLEGATIONS**

1. Defendant CHILDREN OF THE RAINBOW, INC. (“DEFENDANT”) is a  
California corporation that at all relevant times mentioned herein conducted and continues to  
conduct substantial and regular business throughout California.

2. DEFENDANT owns, operates, and/or manages childcare facilities in the county  
of San Diego, where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANT in California from May of 2019 to  
February of 2022 as a non-exempt employee, paid in part an hourly basis and non-discretionary

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

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

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

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

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

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

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

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

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

28     ///

1 **JURISDICTION AND VENUE**

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

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

10 **THE CONDUCT**

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

1 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against  
2 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

3 **A. Meal Period Violations**

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

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

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

**B. Rest Period Violations**

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

**C. Unreimbursed Business Expenses**

18. DEFENDANT as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her

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

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

14 **D. Wage Statement Violations**

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

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

1 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed  
2 meal and rest periods.

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

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

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

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

14 25. During the CLASS PERIOD, from time-to-time DEFENDANT required  
15 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift  
16 work, including but not limited to, submitting to Covid-19 health screenings. This resulted in  
17 PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-  
18 clock.

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

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

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

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

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

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

32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and benefit for the time spent working while off-the-clock, including but not limited to, time spent submitting to Covid-19 health screenings. DEFENDANT's uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANT's business records.

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

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

1           34. 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           35. 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           36. 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           37. 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       **G. Unlawful Rounding Practices**

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

25           39. Further, the mutability of DEFENDANTS' timekeeping system and unlawful  
26 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'  
27 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful  
28 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to

1 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without  
2 receiving an off-duty meal break.

3 **H. Suitable Seating Violations**

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

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

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

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

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

28 ///

1     **J. Unlawful Deductions**

2             44. 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             45. 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 also failed to reimburse PLAINTIFF  
18 for required business expenses related to the personal expenses incurred for the use of her personal  
19 cell phone, on behalf of and in furtherance of her employment with DEFENDANT. To date,  
20 DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time  
21 compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203.

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

23             46. Plaintiff was employed by DEFENDANT in California from May of 2019 to June  
24 of 2022. On June 20, 2022, PLAINTIFF was wrongfully constructively discharged from her  
25 employment with DEFENDANT.

26             47. Throughout her employment with DEFENDANT, PLAINTIFF was treated  
27 differently and unfairly by DEFENDANT and its agents, all in retaliation against PLAINTIFF for  
28 various protected activities.

1           48. Throughout her employment, PLAINTIFF complained to DEFENDANT about  
2 DEFENDANT'S unlawful practices. Specifically, PLAINTIFF complained to DEFENDANT  
3 about DEFENDANT'S unlawful wage-and-hour practices, including but not limited to,  
4 DEFENDANT'S failure to provide legally-required meal and rest breaks. Further, PLAINTIFF  
5 complained to DEFENDANT about DEFENDANT'S unlawful staffing ratios which were in  
6 violation of California Education Code section 8264.8(c), which states that the staffing ratio for  
7 children 3 to 6 years old shall be a 1:8 adult-child ratio and/or a 1:24 teacher-child ratio.  
8 PLAINTIFF reported the unlawful conduct to DEFENDANT, but PLAINTIFF'S report fell on  
9 deaf ears.

10           49. In or around February of 2022, after many complaints from PLAINTIFF and from  
11 PLAINTIFF'S colleagues on her behalf, DEFENDANT placed another employee in  
12 PLAINTIFF'S classroom.

13           50. Shortly thereafter, on multiple occasions, DEFENDANT falsely and without merit  
14 wrote up PLAINTIFF for alleged attendance violations.

15           51. In or around February of 2022, in a meeting with DEFENDANT, PLAINTIFF  
16 informed DEFENDANT that she would take disability leave for one week. Additionally,  
17 PLAINTIFF complained again that her classroom was outside of the required staffing ratio.

18           52. When PLAINTIFF'S disability leave ended, DEFENDANT refused to put  
19 PLAINTIFF back on the schedule.

20           53. Thereafter, on or around June 20, 2022, PLAINTIFF was wrongfully  
21 constructively terminated from her employment with DEFENDANT.

22           54. PLAINTIFF is informed and believes, and upon such information and belief  
23 alleges that, during PLAINTIFF'S employment with DEFENDANT and at the time of her  
24 termination, DEFENDANT continuously, without merit, wrote up PLAINTIFF because of her  
25 reports and complaints of DEFENDANT'S unlawful staffing ratios and unlawful wage and hour  
26 practices.

27           55. PLAINTIFF is informed and believes, and upon such information and belief  
28 alleges that, during PLAINTIFF'S employment with DEFENDANT and at the time of her

1 termination, DEFENDANT refused to schedule PLAINTIFF for work because of her reports and  
2 complaints of DEFENDANT'S unlawful staffing ratios, unlawful wage and hour practices, and  
3 because PLAINTIFF took disability leave.

4 56. PLAINTIFF is informed and believes, and upon such information and belief  
5 alleges that, DEFENDANT'S conduct in writing up PLAINTIFF, refusing to put PLAINTIFF  
6 back on DEFENDANT'S work schedule, and terminating PLAINTIFF'S employment was part  
7 of a pattern of behavior by DEFENDANT aimed at discrimination, harassment, and retaliation  
8 against PLAINTIFF.

9 57. PLAINTIFF is informed and believes, and upon such information and belief  
10 alleges that, DEFENDANT forced her to resign for reasons that violate public policy.

11 58. PLAINTIFF is informed and believes, and upon such information and belief  
12 alleges that she was harmed as a result of being forced to resign and that the unlawful staffing  
13 ratios, unlawful wage and hour practices, and discriminatory practices of DEFENDANT were  
14 substantial factors in causing PLAINTIFF'S harm.

15 59. PLAINTIFF is informed and believes, and upon such information and belief  
16 alleges that, DEFENDANTS intentionally created or knowingly permitted these working  
17 conditions, including but not limited to, discriminatory employment practices against employees  
18 with disabilities.

19 60. PLAINTIFF is informed and believes, and upon such information and belief  
20 alleges that, the discriminatory hiring and promoting practices were so intolerable that a  
21 reasonable person in PLAINTIFF'S position would have had no reasonable alternative except to  
22 resign.

23 61. PLAINTIFF filed a complaint with the California Department of Fair Employment  
24 and Housing and received a "right to sue" letter on [REDACTED] thereby exhausting her  
25 administrative remedies.

26 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

5 75. 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 76. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
9 Code § 17021.

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

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

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

28 79. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair  
in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous  
or substantially injurious to employees, and were without valid justification or utility for which

1 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California  
2 Business & Professions Code, including restitution of wages wrongfully withheld.

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

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

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

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

25 84. PLAINTIFF further demands on behalf of herself and on behalf of each  
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was  
27 not timely provided as required by law.  
28

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

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

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

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

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

28 ///

1 **SECOND CAUSE OF ACTION**

2 **Failure To Pay Minimum Wages**

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

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

5 90. 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 91. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
9 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial  
10 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay  
11 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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

24 96. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
25 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
26 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF  
27 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.  
28

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

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

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

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

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

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

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

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

### 16 **THIRD CAUSE OF ACTION**

#### 17 **Failure To Pay Overtime Compensation**

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

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

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

23 105. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
24 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial  
25 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all  
26 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or  
27 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.  
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 21 **FOURTH CAUSE OF ACTION**

##### 22 **Failure To Provide Required Meal Periods**

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

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

25 120. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and  
26 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
27 Complaint.  
28

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

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

20           123. As a proximate result of the aforementioned violations, PLAINTIFF and  
21 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,  
22 and seek all wages earned and due, interest, penalties, expenses and costs of suit.  
23  
24  
25  
26  
27

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1 **FIFTH CAUSE OF ACTION**

2 **Failure To Provide Required Rest Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

5 124. 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.

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

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

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

**SIXTH CAUSE OF ACTION**

**Failure To Reimburse Employees for Required Expenses**

**(Cal. Lab. Code §§ 2802)**

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

128. 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.

129. 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.

130. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, personal expenses incurred for the use of personal cell phones all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their own 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 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,

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.

4 131. 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 statutory  
7 rate and costs under Cal. Lab. Code § 2802.

#### 8 **SEVENTH CAUSE OF ACTION**

##### 9 **Failure To Provide Accurate Itemized Statements**

10 **(Cal. Lab. Code § 226)**

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

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

15 133. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
16 “accurate itemized” statement in writing showing:

- 17 a. Gross wages earned,
- 18 b. (2) total hours worked by the employee, except for any employee whose  
19 compensation is solely based on a salary and who is exempt from payment of  
20 overtime under subdivision (a) of Section 515 or any applicable order of the  
21 Industrial Welfare Commission,
- 22 c. the number of piece-rate units earned and any applicable piece rate if the employee  
23 is paid on a piece-rate basis,
- 24 d. all deductions, provided that all deductions made on written orders of the employee  
25 may be aggregated and shown as one item,
- 26 e. net wages earned,
- 27 f. the inclusive dates of the period for which the employee is paid,
- 28

- 1           g. the name of the employee and his or her social security number, except that by  
2           January 1, 2008, only the last four digits of his or her social security number of an  
3           employee identification number other than social security number may be shown  
4           on the itemized statement,
- 5           h. the name and address of the legal entity that is the employer, and
- 6           i. all applicable hourly rates in effect during the pay period and the corresponding  
7           number of hours worked at each hourly rate by the employee.

8           134. When DEFENDANT did not accurately record PLAINTIFF'S and other  
9 CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed  
10 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal.  
11 Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA  
12 CLASS Members with complete and accurate wage statements which failed to show, among other  
13 things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked  
14 and all applicable hourly rates in effect during the pay period and the corresponding amount of  
15 time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal  
16 and rest periods.

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

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

1 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member  
2 of the CALIFORNIA CLASS herein).

3 **EIGHTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code § 203)**

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

7  
8 137. 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.

11 138. Cal. Lab. Code § 200 provides that:

12 As used in this article:

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

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

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

23 If an employee not having a written contract for a definite period quits his or her  
24 employment, his or her wages shall become due and payable not later than 72 hours  
25 thereafter, unless the employee has given 72 hours previous notice of his or her intention  
26 to quit, in which case the employee is entitled to his or her wages at the time of quitting.  
27 Notwithstanding any other provision of law, an employee who quits without providing a  
28 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.

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

30 142. Cal. Lab. Code § 203 provides:

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

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

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

#### 14 **NINTH CAUSE OF ACTION**

15 **RETALIATION - Cal. Lab. Code §§1102.5 and 6310, and Government Code § 12900, *et seq.***

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

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

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

23 147. At all relevant times, Government Code section 12900 was in effect and was  
24 binding on DEFENDANT. This statute prohibits DEFENDANT from committing unlawful  
25 employment practices, including retaliating against PLAINTIFF for seeking to exercise rights  
26 guaranteed under FEHA, participating in protected activities, and/or opposing DEFENDANT's  
27 failure to provide such rights.

28 148. PLAINTIFF raised complaints of illegality while she worked for DEFENDANT,  
and DEFENDANT retaliated against her by taking adverse employment actions including refusal  
to schedule PLAINTIFF for work and employment termination against her.

1           149. As a proximate result of DEFENDANT's willful, knowing, and intentional  
2 violation(s) of Labor Code section 1102.5 and Government Code section 12900, PLAINTIFF has  
3 suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and  
4 anguish, all to her damage in a sum according to proof.

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

7           151. DEFENDANT's misconduct was committed intentionally, in a malicious,  
8 oppressive manner, and fraudulent manner, entitling PLAINTIFF to punitive damages against  
9 DEFENDANT.

10                                   **TENTH CAUSE OF ACTION**

11                           **VIOLATION OF GOVERNMENT CODE §12940 et seq. – DISABILITY**

12                                   **DISCRIMINATION**

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

15           153. PLAINTIFF was employed by DEFENDANT

16           154. DEFENDANT is an employer covered by Government Code §12940 et seq.

17           155. PLAINTIFF was terminated from her employment and/or suffered other adverse  
18 employment actions.

19           156. PLAINTIFF's disability leave was a substantial motivating reason(s) for her  
20 termination and other adverse employment actions.

21           157. As a result of DEFENDANT'S conduct, PLAINTIFF has suffered substantial  
22 losses in earnings and employment benefits and emotional distress in an amount to be determined  
23 according to proof at trial.

24           158. In doing the acts herein alleged, DEFENDANT acted with malice and oppression,  
25 and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled to exemplary  
26 and punitive damages from DEFENDANT in an amount to be punish DEFENDANT and to deter  
27 such wrongful conduct in the future.  
28

1 **ELEVENTH CAUSE OF ACTION**

2 **CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY**

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

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

6 160. PLAINTIFF's wrongful termination on or about June 20, 2022 was for a pretextual  
7 reason(s) to disguise DEFENDANT's unlawful employment practices directed at PLAINTIFF.

8 161. Within the State of California there exists a substantial and fundamental public  
9 policy, set forth in the California Government Code §12900 et seq., which forbids  
10 harassment/discrimination, retaliation, and wrongful termination. Unlawful harassment includes  
11 the right to be free from unwanted, offensive harassment, and the right to protest such conduct  
12 without fear of retaliation or further harm. This public policy of the state is one that benefits the  
13 public at large and guarantees the rights of an employee to perform their work free from disability  
14 harassment/discrimination/retaliation.

15 162. The motivating reason(s) for PLAINTIFF's termination was disability  
16 discrimination and PLAINTIFF's protests and/or resistance thereof, and PLAINTIFF's  
17 complaints to DEFENDANT that DEFENDANT's staffing ratios were unlawful. PLAINTIFF's  
18 discharge from her position of employment was in violation of the public policies of the State of  
19 California.

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

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

27 165. PLAINTIFF was harmed by DEFENDANT's wrongful and illegal termination of  
28 her employment.

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

167. On \_\_\_\_\_, PLAINTIFF filed a complaint with the Department of Fair Employment & Housing (“DFEH”), and received an immediate Right to Sue that same day. (See Exhibit #\_).

## PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;

c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and

d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;

c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and

1 the applicable IWC Wage Order;

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

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

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

12 3. On PLAINTIFF'S individual claims:

13 a. For all special damages which were sustained as a result of DEFENDANTS'  
14 conduct, including but not limited to, back pay, front pay, lost compensation and  
15 job benefits that PLAINTIFF would have received but for the practices of  
16 DEFENDANTS.

17 b. For all exemplary damages, according to proof, which were sustained as a result  
18 of DEFENDANTS' conduct.

19 c. An award of interest, including prejudgment interest at the legal rate.

20 d. Such other and further relief as the Court deems just and equitable.

21 e. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

22  
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1 4. On all claims:

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

7 DATED: July 28, 2022

**ZAKAY LAW GROUP, APLC**

8

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: July 28, 2022

**ZAKAY LAW GROUP, APLC**

16

17 By: 

18 Shani O. Zakay  
19 Attorney for PLAINTIFF

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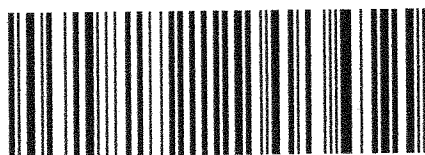
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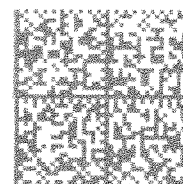
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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

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Children of the Rainbow, Inc.  
c/o Gale Walker  
4890 Logan Avenue  
San Diego, CA 92113



9590 9402 7420 2055 3643 25

2. Article Number (Transfer from service label)

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## COMPLETE THIS SECTION ON DELIVERY

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☐ Agent☐ Addressee

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C. Date of Delivery

D. Is delivery address different from Item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

8/3/22 Trudell 002-353

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Restricted Delivery

Restricted Delivery

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