

SUM-100

SUMMONS
(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

SEAL BEACH ENVY, INC., dba MASSAGE ENVY, a California corporation; and DOES 1-50, Inclusive,

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

CHRISTIE MARIE UNTORIA, an individual, on behalf of herself and on behalf of all persons similarly situated,

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

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Stanley Mosk Courthouse
111 North Hill Street, Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso):

23STCV01669

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq. (SBN: 277924) 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121; T: (619) 599-8292

DATE: David W. Slayton, Executive Officer/Clerk of Court Clerk, by _____, Deputy
(Fecha) 01/26/2023 (Secretario) Y. Tarasyuk (Adjunto)

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

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

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

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

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Yolanda Orozco

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Attorneys for Plaintiff CHRISTIE MARIE UNTORIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHRISTIE MARIE UNTORIA, an individual,
on behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

v.

SEAL BEACH ENVY, INC., dba MASSAGE
ENVY, a California corporation; and DOES 1-
50, Inclusive,

Defendants.

Case No.: 23STCV01669

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698, *et*
seq.

1 Plaintiff CHRISTIE MARIE UNTORIA (“PLAINTIFF”), an individual, on behalf of
2 herself and on behalf of the people of the State of California and as “aggrieved employees” acting
3 as a private attorney general under the Labor Code Private Attorney General Action of 2004, §
4 2699, *et seq.* (“PAGA”) only, alleges on information and belief, except for her own acts and
5 knowledge which are based on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against SEAL BEACH ENVY, INC., dba
8 MESSAGE ENVY (“DEFENDANT”) seeking only to recover PAGA civil penalties for herself,
9 and on behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations in this action, but simply the civil penalties permitted by California Labor Code § 2699.
14 Notwithstanding, PLAINTIFF is not abandoning her right to pursue her individual claims for,
15 *inter alia*, DEFENDANT’s alleged wage violations, and/or general or special damages arising
16 from those violations, and she fully intends to, at a future date, pursue claims for those individual
17 claims and damages.

18 2. California has enacted the PAGA to permit an individual to bring an action on
19 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
20 nature of this action.

21 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT’s
22 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and
23 any other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should
24 be construed as attempting to obtain any relief that would not be available in a PAGA-only action.

25 **THE PARTIES**

26 4. Defendant SEAL BEACH ENVY, INC., dba MESSAGE ENVY
27 (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein
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1 conducted and continues to conduct substantial and regular business in the state of California,
2 owns, operates, and/or manages massage and beauty spas in Los Angeles.

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

12 6. The agents, servants and/or employees of the DEFENDANTS and each of them
13 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its
14 authority as the agent, servant and/or employee of the DEFENDANTS, and personally
15 participated in the conduct alleged herein on behalf of the DEFENDANTS with respect to the
16 conduct alleged herein. Consequently, the acts of each of the DEFENDANTS are legally
17 attributable to the other and all DEFENDANTS are jointly and severally liable to PLAINTIFF
18 and those similarly situated, for the loss sustained as a proximate result of the conduct of the
19 DEFENDANTS’ agents, servants and/or employees.

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

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

4 9. PLAINTIFF was employed by DEFENDANT in California from 2015 to June of
5 2021 and at all times was classified by DEFENDANT as a non-exempt employee, paid on an
6 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
7 and overtime wages due for all time worked.

8 10. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, bring this Representative Action on behalf of the State of California with respect to herself
11 and all non-exempt employees who worked for DEFENDANTS in California (the
12 "AGGRIEVED EMPLOYEES") during the time period of April 26, 2021 until the present (the
13 "PAGA PERIOD").

14 11. On July 1, 2022, PLAINTIFF and DEFENDANT entered into a tolling agreement
15 whereby all applicable statutes of limitation were tolled to January 31, 2023.

16 12. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
17 or formerly employed by DEFENDANTS during the PAGA PERIOD, brings this representative
18 action pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANTS' violation of
19 California Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3,
20 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199,
21 2802, & 2804 and the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all
22 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
23 2699, *et seq.*

24 **JURISDICTION AND VENUE**

25 13. This Court has jurisdiction over this Action pursuant to California Code of Civil
26 Procedure, Section 410.10.

27 14. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because DEFENDANTS (i) currently maintains and at all relevant times

maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED EMPLOYEES.

THE CONDUCT

15. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked, failed to compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other AGGRIEVED EMPLOYEES meal rest premiums at the regular rate, failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for business expenses, and failed to issue to PLAINTIFF and the AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

A. Meal Period Violations

16. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD, DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying

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

10 17. From time-to-time during the PAGA PERIOD, as a result of their rigorous work
11 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
12 AGGRIEVED EMPLOYEES were 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 AGGRIEVED EMPLOYEES were required from time to time to perform work as ordered by
15 DEFENDANT for more than five (5) hours during some shifts without receiving a meal break.
16 Further, DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED
17 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
18 were required by DEFENDANT to work ten (10) hours of work from time to time. The nature
19 of the work performed by PLAINTIFF and other AGGRIEVED EMPLOYEES does not qualify
20 for limited and narrowly construed "on-duty" meal period exception. When they were provided
21 with meal periods, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time,
22 required to remain on premises, on duty and on call. PLAINTIFF and other AGGRIEVED
23 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
24 accordance with DEFENDANT's strict corporate policy and practice.

25 **B. Rest Period Violations**

26 18. From time-to-time during the PAGA PERIOD, PLAINTIFF and other
27 AGGRIEVED EMPLOYEES were also required from time to time to work in excess of four (4)
28 hours without being provided ten (10) minute rest periods as a result of their rigorous work

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

13 **C. Unreimbursed Business Expenses**

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

25 20. In the course of their employment, DEFENDANT required PLAINTIFF and other
26 AGGRIEVED EMPLOYEES to purchase their own uniforms and materials as a result of and in
27 furtherance of their job duties as employees for DEFENDANT. But for the use of their personal
28 expenses for the purchase of uniforms and materials, PLAINTIFF and the AGGRIEVED

1 EMPLOYEES could not complete their essential job duties. However, DEFENDANT unlawfully
2 failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES the purchase of their
3 uniforms and materials. As a result, in the course of their employment with DEFENDANT, the
4 PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses,
5 but were not limited to, costs related to the purchase of their uniforms and materials, all on behalf
6 of and for the benefit of DEFENDANT.

7 **D. Wage Statement Violations**

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

16 22. From time to time during the PAGA PERIOD, when PLAINTIFF and other
17 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal
18 and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to
19 provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage
20 statements which failed to show, among other things, the total hours worked and all applicable
21 hourly rates in effect during the pay period and the corresponding amount of time worked at each
22 hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Further,
23 DEFENDANT from time to time provided wage statements to PLAINTIFF and other
24 AGGRIEVED EMPLOYEES that failed to list the accurate name and address of the legal entity
25 was PLAINTIFF'S and other AGGRIEVED EMPLOYEES' employer. DEFENDANTS'
26 inclusion of rest period premiums into the total hours worked in itemized wage statements issued
27 to PLAINTIFF and other AGGRIEVED EMPLOYEES violates Cal. Lab. Code § 226(a)(2).
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23. DEFENDANT, from time to time, failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal. Lab. Code § 226.

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

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

25. During the PAGA PERIOD, from time-to-time DEFENDANT failed and continue to fail to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.

26. During the PAGA PERIOD, from time-to-time DEFENDANT required PLAINTIFF and other AGGRIEVED EMPLOYEES to perform pre-shift work, including but not limited to, preparing for clients by organizing and setting up products in treatment rooms, and undergoing COVID-19 health screenings, which included temperature checks and health questionnaires before the beginning of their shifts, and spending time under DEFENDANT's control for which they were not compensated. This resulted in PLAINTIFF and other AGGRIEVED EMPLOYEES to have to work while off-the-clock. Additionally, DEFENDANT required PLAINTIFF and other AGGRIEVED EMPLOYEES to perform post-shift work, including but not limited to, undergoing loss prevention inspections, finishing up tasks from the day, setting up products, and cleaning and organizing treatment rooms.

27. DEFENDANT directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

28. DEFENDANT controlled the work schedules, duties, protocols, applications, assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.

29. DEFENDANT was able to track the amount of time PLAINTIFF and the other AGGRIEVED EMPLOYEES spent working; however, DEFENDANT failed to document, track,

1 or pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for
2 all the work they performed, including submitting to pre-shift COVID-19 health screenings, and
3 performing other pre-shift and post-shift tasks.

4 30. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt
5 employees, subject to the requirements of the California Labor Code.

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

11 32. DEFENDANT knew or should have known that PLAINTIFF and the other
12 AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

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

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

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

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

5 36. The second component of PLAINTIFF’s and other AGGRIEVED EMPLOYEES’
6 compensation was DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF
7 and other AGGRIEVED EMPLOYEES incentive and/or commission wages based on their
8 performance for DEFENDANT. The non-discretionary bonus program provided all employees
9 paid on an hourly basis with bonus and/or commission compensation when the employees met
10 the various performance goals set by DEFENDANT.

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

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

G. Violations for Untimely Payment of Wages

39. DEFENDANTS, from time-to-time, failed to timely pay PLAINTIFF and other AGGRIEVED EMPLOYEES for wages earned and unpaid at the time of discharge. However, despite DEFENDANT'S failure to pay wages earned and unpaid immediately at the time of discharge, DEFENDANTS from time-to-time failed to pay waiting time penalties as required by Cal. Lab. Code §203. Pursuant to California Labor Code section 204, PLAINTIFF and the AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFF and the AGGRIEVED EMPLOYEES, 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. As a result, DEFENDANTS violated Labor Code Sections 201, 202, 203 and/or 204.

H. Unlawful Deductions

40. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF and AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do so

1 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS
2 violated Labor Code § 221.

3 **I. Timekeeping Manipulation**

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

12 42. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES, from time-to-time,
13 forfeited time worked by working without their time being accurately recorded and without
14 compensation at the applicable pay rates.

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

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

27 ///

1 **J. Unlawful Rounding Violations**

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

14 46. Further, the mutability of DEFENDANT'S timekeeping system and unlawful
15 rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time
16 being inaccurately recorded. As a result, from time to time, DEFENDANT'S unlawful rounding
17 policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as
18 ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
19 duty meal break. Additionally, DEFENDANT'S unlawful rounding policy and practice caused
20 PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as ordered by DEFENDANT for
21 more than ten (10) hours during a shift without receiving a second off-duty meal break.

22 47. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
23 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
24 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
25 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
26 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
27 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
28

1 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for
2 the rest break. DEFENDANT'S policy caused PLAINTIFF to remain on-call and on-duty during
3 what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest
4 breaks without additional compensation and in accordance with DEFENDANT'S strict corporate
5 policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with a paystub that
6 failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse
7 PLAINTIFF for required business expenses related to the use of her personal expenses for the
8 purchase of uniforms and materials, on behalf of and in furtherance of her employment with
9 DEFENDANT. To date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime
10 and double time compensation still owed to her or any penalty wages owed to her under Cal. Lab.
11 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or
12 value of \$75,000.

13 **FIRST CAUSE OF ACTION**

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

15 **[Cal. Lab. Code §§ 2698 et seq.]**

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

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

19 44. PAGA is a mechanism by which the State of California itself can enforce state
20 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
21 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
22 fundamentally a law enforcement action designed to protect the public and not to benefit private
23 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
24 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
25 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
26 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
27 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.
28

1 45. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, bring this Representative Action on behalf of the State of California with respect to herself
4 and all non-exempt employees who worked for DEFENDANT in California during the time
5 period of April 26, 2021, until the present (the "AGGRIEVED EMPLOYEES").

6 46. On April 26, 2022, PLAINTIFF gave written notice by certified mail to the Labor
7 and Workforce Development Agency (the "Agency") and the employer of the specific provisions
8 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,
9 attached hereto and incorporated by this reference herein. The statutory waiting period for
10 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
11 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
12 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
13 EMPLOYEES as herein defined.

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

48. Some or all of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one** Labor Code violation committed by an employer—to **pursue penalties for all the Labor Code violations committed by that employer.**”], Emphasis added, reh'g denied (June 13, 2018).)

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

(a) For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;

(b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and

For such other relief as the Court deems just and proper.

Dated: January 26, 2023

ZAKAY LAW GROUP, APLC



Shani O. Zakay
Attorney for PLAINTIFF

Dated: January 26, 2023

ZAKAY LAW GROUP, APLC



Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



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Eduardo Garcia, Esq.
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April 26, 2022

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

SEAL BEACH ENVY, INC. dba MASSAGE ENVY
c/o Tresp, Day & Associates, Incorporated
341 South Cedros Avenue, Suite C
Solana Beach, CA 92075
Sent via Certified Mail and Return Receipt No. 7021 2720 0000 9972 6808

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, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff CHRISTIE MARIE UNTORIA (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant SEAL BEACH ENVY, INC., dba MASSAGE ENVY (“Defendant”). Plaintiff was employed by Defendant in California from June of 2015 to June of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. 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 of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by 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 Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Very truly yours,
JCL LAW FIRM, APC

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

Jean-Claude Lapuyade, Esq.

Enclosure (1)

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff CHRISTIE MARIE UNTORIA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

CHRISTIE MARIE UNTORIA, an individual,
on behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

v.

SEAL BEACH ENVY, INC., dba MASSAGE
ENVY, a California corporation; and DOES 1-
50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN

DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CALIFORNIA LABOR
CODE §2802.

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant SEAL BEACH ENVY, INC., dba MASSAGE ENVY (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, owns, operates, and/or manages massage and beauty spas in Los Angeles.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this 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 DEFENDANT named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

3. The agents, servants, and/or employees of the DEFENDANT and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendant, and personally participated in the conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and all DEFENDANT 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 Defendant's agents, servants and/or employees.

3 4. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
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 5. 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 6. PLAINTIFF was employed by DEFENDANT in California from 2015 to June of
15 2021 and at all times was classified by DEFENDANT as a non-exempt employee, paid on an
16 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
17 and overtime wages due for all time worked.

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

24 8. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
26 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
27 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
28 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction

1 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
2 other members of the CALIFORNIA CLASS who have been economically injured by
3 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
4 relief.

5 9. DEFENDANT's uniform policies and practices alleged herein were unlawful,
6 unfair, and deceptive business practices whereby DEFENDANT retained and continues to retain
7 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

13 **JURISDICTION AND VENUE**

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

18 12. Venue is proper in this Court pursuant to California Code of Civil Procedure,
19 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
20 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
21 in this County and/or conducts substantial business in this County, and (ii) committed the
22 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

23 **THE CONDUCT**

24 13. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
26 matter of company policy, practice and procedure, intentionally, knowingly and systematically
27 failed to provide legally compliant meal and rest periods, failed to accurately compensate
28 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest

1 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
2 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
3 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
4 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
5 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
6 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
7 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
8 applicable hourly rates in effect during the pay periods and the corresponding amount of time
9 worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to
10 purposefully avoid the accurate and full payment for all time worked as required by California
11 law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
12 who comply with the law. To the extent equitable tolling operates to toll claims by the
13 CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
14 accordingly.

15 **A. Meal Period Violations**

16 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
17 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
18 meaning the time during which an employee is subject to the control of an employer, including
19 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
20 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
21 without paying them for all the time they were under DEFENDANT's control. Specifically, as a
22 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
23 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-
24 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial
25 lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
26 minimum wage and overtime wages by regularly working without their time being accurately
27 recorded and without compensation at the applicable minimum wage and overtime rates.
28

1 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
2 CLASS Members for all time worked is evidenced by DEFENDANT's business records.

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

19 **B. Rest Period Violations**

20 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
21 CALIFORNIA CLASS members were also required from time to time to work in excess of four
22 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
23 requirements and DEFENDANT's inadequate staffing. Further, for the same reasons these
24 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
25 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
26 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
27 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
28 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and

1 other CALIFORNIA CLASS Members were, from time to time, required to remain on premises,
2 on duty and/or on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not
3 provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and
4 DEFENDANT's inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members
5 were from time to time denied their proper rest periods by DEFENDANT and DEFENDANT's
6 managers.

7 **C. Unreimbursed Business Expenses**

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

19 18. In the course of their employment, DEFENDANT required PLAINTIFF and other
20 CALIFORNIA CLASS Members to purchase their own uniforms and materials as a result of and
21 in furtherance of their job duties as employees for DEFENDANT. But for the use of their personal
22 expenses for the purchase of uniforms and materials, PLAINTIFF and the CALIFORNIA CLASS
23 Members could not complete their essential job duties. However, DEFENDANT unlawfully
24 failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members the purchase of their
25 uniforms and materials. As a result, in the course of their employment with DEFENDANT, the
26 PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business
27 expenses, but were not limited to, costs related to the purchase of their uniforms and materials, all
28 on behalf of and for the benefit of DEFENDANT.

1 **D. Wage Statement Violations**

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

10 20. From time to time during the CLASS PERIOD, when PLAINTIFF and other
11 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
12 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
13 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
14 wage statements which failed to show, among other things, the total hours worked and all
15 applicable hourly rates in effect during the pay period and the corresponding amount of time
16 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
17 periods. Further, DEFENDANT from time to time provided wage statements to PLAINTIFF and
18 other CALIFORNIA CLASS Members that failed to list the accurate name and address of the
19 legal entity was PLAINTIFF'S and other CALIFORNIA CLASS Members' employer. Moreover,
20 from time to time, DEFENDANTS included rest period premiums into the computation of total
21 hours worked for purposes of Cal. Lab. Code § 226(a)(2), notwithstanding the fact that rest period
22 premiums are not considered hours worked. DEFENDANTS' inclusion of rest period premiums
23 into the total hours worked in itemized wage statements issued to PLAINTIFF and other
24 CALIFORNIA CLASS Members violates Cal. Lab. Code § 226(a)(2).

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

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

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

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

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

7 24. During the CLASS PERIOD, from time-to-time DEFENDANT required
8 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work,
9 including but not limited to, preparing for clients by organizing and setting up products in
10 treatment rooms, and undergoing COVID-19 health screenings, which included temperature
11 checks and health questionnaires before the beginning of their shifts, and spending time under
12 DEFENDANT's control for which they were not compensated. This resulted in PLAINTIFF and
13 other members of the CALIFORNIA CLASS to have to work while off-the-clock. Additionally,
14 DEFENDANT required PLAINTIFF and other members of the CALIFORNIA CLASS to
15 perform post-shift work, including but not limited to, undergoing loss prevention inspections,
16 finishing up tasks from the day, setting up products, cleaning, and organizing treatment rooms.

17 25. DEFENDANT directed and directly benefited from the uncompensated off-the-
18 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

22 27. DEFENDANT was able to track the amount of time PLAINTIFF and the other
23 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
24 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
25 wages earned and owed for all the work they performed, including submitting to pre-shift COVID-
26 19 health screenings, and performing other pre-shift and post-shift tasks.

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

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

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

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

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

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

24 33. State law provides that employees must be paid overtime at one-and-one-half times
25 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were
26 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
27 employee's performance.
28

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

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

26 36. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
28 matter of company policy, practice and procedure, intentionally and knowingly failed to

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

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

10 37. DEFENDANTS, from time-to-time, failed to timely pay PLAINTIFF and other
11 CLASS MEMBERS for wages earned and unpaid at the time of discharge. However, despite
12 DEFENDANT'S failure to pay wages earned and unpaid immediately at the time of discharge,
13 DEFENDANTS from time-to-time failed to pay waiting time penalties as required by Cal. Lab.
14 Code §203. Pursuant to California Labor Code section 204, PLAINTIFF and the CALIFORNIA
15 CLASS members were entitled to timely payment of wages during their employment.
16 PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not receive payment
17 of all wages, including, but not limited to, overtime wages, minimum wages, meal period
18 premium wages, and rest period premium wages within permissible time period. As a result,
19 DEFENDANTS violated Labor Code Sections 201, 202, 203 and/or 204.

20 **H. Unlawful Deductions**

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

25 **I. Unlawful Rounding Violations**

26 39. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
27 an immutable timekeeping system to accurately record and pay PLAINTIFF and other
28 CALIFORNIA CLASS Members for the actual time these employees worked each day, including

1 overtime hours. Specifically, DEFENDANT had in place an unlawful rounding policy and
2 practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
3 undercompensated for all of their time worked. As a result, DEFENDANT was able to and did in
4 fact unlawfully, and unilaterally round the time recorded in DEFENDANT'S timekeeping system
5 for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these
6 employees for all their time worked, including the applicable overtime compensation for overtime
7 worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from time to time,
8 forfeited compensation for their time worked by working without their time being accurately
9 recorded and without compensation at the applicable overtime rates.

10 40. Further, the mutability of DEFENDANT'S timekeeping system and unlawful
11 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
12 being inaccurately recorded. As a result, from time to time, DEFENDANT'S unlawful rounding
13 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
14 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
15 duty meal break. Additionally, DEFENDANT'S unlawful rounding policy and practice caused
16 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
17 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

18 41. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
19 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
20 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
21 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
22 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
23 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
24 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for
25 the rest break. DEFENDANT'S policy caused PLAINTIFF to remain on-call and on-duty during
26 what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest
27 breaks without additional compensation and in accordance with DEFENDANT'S strict corporate
28 policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with a paystub that
failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse

1 PLAINTIFF for required business expenses related to the use of her personal expenses for the
2 purchase of uniforms and materials, on behalf of and in furtherance of her employment with
3 DEFENDANT. To date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime
4 and double time compensation still owed to her or any penalty wages owed to her under Cal. Lab.
5 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or
6 value of \$75,000.

7 **J. CLASS ACTION ALLEGATIONS**

8 42. PLAINTIFF brings the First through Eighth Causes of Action as a class action
9 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANT's current
10 and former non-exempt California employees ("CALIFORNIA CLASS") during the period
11 beginning four years prior to the filing of the Complaint and ending on a date determined by the
12 Court ("CLASS PERIOD").

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

19 44. The members of the class are so numerous that joinder of all class members is
20 impractical.

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

1 questions affecting solely any individual members of the class. Among the questions of law and
2 fact common to the class are:

- 3 a. Whether DEFENDANT maintained legally compliant meal period policies and
4 practices;
- 5 b. Whether DEFENDANT maintained legally compliant rest period policies and
6 practices;
- 7 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
8 Members accurate premium payments for missed meal and rest periods;
- 9 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
10 Members accurate overtime wages;
- 11 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
12 Members at least minimum wage for all hours worked;
- 13 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
14 CLASS Members for required business expenses;
- 15 g. Whether DEFENDANT issued legally compliant wage statements;
- 16 h. Whether DEFENDANT committed an act of unfair competition by systematically
17 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
18 CLASS for all time worked;
- 19 i. Whether DEFENDANT committed an act of unfair competition by systematically
20 failing to record all meal and rest breaks missed by PLAINTIFF and other
21 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
22 of this work, required employees to perform this work and permits or suffers to
23 permit this work;
- 24 j. Whether DEFENDANT committed an act of unfair competition in violation of the
25 UCL, by failing to provide the PLAINTIFF and the other members of the
26 CALIFORNIA CLASS with the legally required meal and rest periods.

27 46. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
28 a result of DEFENDANT's conduct and actions alleged herein.

1 47. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
2 the same interests as the other members of the class.

3 48. PLAINTIFF will fairly and adequately represent and protect the interests of the
4 CALIFORNIA CLASS Members.

5 49. PLAINTIFF retained able class counsel with extensive experience in class action
6 litigation.

7 50. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
8 interests of the other CALIFORNIA CLASS Members.

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

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

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

24 a. Inconsistent or varying adjudications with respect to individual members of the
25 CALIFORNIA CLASS which would establish incompatible standards of conduct
26 for the parties opposing the CALIFORNIA CLASS; and/or,

27 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
28 which would as a practical matter be dispositive of the interests of the other

1 members not party to the adjudication or substantially impair or impeded their
2 ability to protect their interests.

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

6 **FIRST CAUSE OF ACTION**

7 **Unlawful Business Practices**

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

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

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

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

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

19 Any person who engages, has engaged, or proposes to engage in unfair competition
20 may be enjoined in any court of competent jurisdiction. The court may make such
21 orders or judgments, including the appointment of a receiver, as may be necessary
22 to prevent the use or employment by any person of any practice which constitutes
23 unfair competition, as defined in this chapter, or as may be necessary to restore to
24 any person in interest any money or property, real or personal, which may have
25 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
26 17203).

27 58. By the conduct alleged herein, DEFENDANT has engaged and continues to
28 engage in a business practice which violates California law, including but not limited to, the
applicable Wage Order(s), the California Code of Regulations and the California Labor Code
including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.

1 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
2 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

20 PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and
21 do, seek a declaration that the described business practices are unlawful, unfair, and deceptive,
22 and that injunctive relief should be issued restraining DEFENDANT from engaging in any
23 unlawful and unfair business practices in the future. PLAINTIFF and the other members of the
24 CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the
25 unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged
26 presently continue to occur unabated. As a result of the unlawful and unfair business practices
27 described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have
28 suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT

1 is restrained from continuing to engage in these unlawful and unfair business practices.

2 **SECOND CAUSE OF ACTION**

3 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

25 74. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
27 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
28 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

1 75. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately calculated the amount of 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 76. 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 77. During the CLASS PERIOD, PLAINTIFF and the other members of the
11 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
12 failure to pay all earned wages.

13 78. 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 79. DEFENDANT knew or should have known that PLAINTIFF and the other
19 members of the CALIFORNIA CLASS are 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 corporate 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 80. 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 81. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
6 request 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 §§ 510, 1194 and 1198)**

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

20 82. 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 83. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
24 for DEFENDANT's willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
26 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
27 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.
28

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

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

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

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

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

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

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

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

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

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

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

26 95. DEFENDANT knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
28 DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
2 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

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

4 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

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

8 102. 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.

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

25 104. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
26 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
27 who were not provided a rest period, in accordance with the applicable Wage Order, one
28

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

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

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

12 107. Cal. Labor Code § 226 provides that an employer must furnish employees with an
13 "accurate itemized" statement in writing showing:

- 14 a. Gross wages earned,
- 15 b. (2) total hours worked by the employee, except for any employee whose
16 compensation is solely based on a salary and who is exempt from payment
17 of overtime under subdivision (a) of Section 515 or any applicable order of
18 the Industrial Welfare Commission,
- 19 c. the number of piece-rate units earned and any applicable piece rate if the employee
20 is paid on a piece-rate basis,
- 21 d. all deductions, provided that all deductions made on written orders of the employee
22 may be aggregated and shown as one item,
- 23 e. net wages earned,
- 24 f. the inclusive dates of the period for which the employee is paid,
- 25 g. the name of the employee and his or her social security number, except that by
26 January 1, 2008, only the last four digits of his or her social security number of an
27 employee identification number other than social security number may be shown
28 on the itemized statement,

- 1 h. the name and address of the legal entity that is the employer, and
2 i. all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.

4 108. When DEFENDANT did not accurately record PLAINTIFF's and other
5 CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, and separately
6 compensated meal and rest periods, DEFENDANT violated Cal. Lab. Code § 226 in that
7 DEFENDANT failed to provide an accurate wage statement in writing that properly and
8 accurately itemizes all wages, and missed meal and rest periods owed to PLAINTIFF and the
9 other members of the CALIFORNIA CLASS and thereby also failed to set forth the correct wages
10 earned by the employees. Further, DEFENDANT from time to time provided wage statements to
11 PLAINTIFF and other CALIFORNIA CLASS Members that failed to list the accurate name and
12 address of the legal entity was PLAINTIFF'S and other CALIFORNIA CLASS Members'
13 employer. Moreover, from time to time, DEFENDANTS included rest period premiums into the
14 computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2), notwithstanding
15 the fact that rest period premiums are not considered hours worked. DEFENDANTS' inclusion
16 of rest period premiums into the total hours worked in itemized wage statements issued to
17 PLAINTIFF and other CALIFORNIA CLASS Members violates Cal. Lab. Code § 226(a)(2).

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

1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

5 110. 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.

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

9 As used in this article:

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

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

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

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

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

115. 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.

1 116. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
2 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
3 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
4 required by law.

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

10 **EIGHTH CAUSE OF ACTION**

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

12 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

22 120. From time-to-time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
23 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
24 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
25 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the members of the
26 CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
27 using their personal expenses for the purchase of uniforms and materials all on behalf of and for
28 the benefit of DEFENDANT. Specifically, PLAINTIFF and the members of the CALIFORNIA
CLASS were required by DEFENDANT to use their personal expenses for the purchase of
uniforms and materials to execute their essential job duties on behalf of DEFENDANT.

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

10 121. PLAINTIFF therefore demands reimbursement on behalf of the members of the
11 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
12 on behalf of DEFENDANT, or his/her obedience to the directions of DEFENDANT, with interest
13 at the statutory rate and costs under Cal. Lab. Code § 2802.

14 **PRAYER FOR RELIEF**

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

17 1. On behalf of the CALIFORNIA CLASS:

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

28 2. On behalf of the CALIFORNIA CLASS:

- 1 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
2 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
3 to Cal. Code of Civ. Proc. § 382;
- 4 b. Compensatory damages, according to proof at trial, including compensatory
5 damages for minimum wage and overtime compensation, including unreimbursed
6 business expenses, due to PLAINTIFF and the other members of the CALIFORNIA
7 CLASS, during the applicable CLASS PERIOD plus interest thereon at the
8 statutory rate;
- 9 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
10 the applicable IWC Wage Order;
- 11 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
12 which a violation occurs and one hundred dollars (\$100) per each member of the
13 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
14 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
15 violation of Cal. Lab. Code § 226
- 16 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
17 penalty from the due date thereof at the same rate until paid or until an action
18 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 19 3. On all claims:
- 20 a. An award of interest, including prejudgment interest at the legal rate;
- 21 b. Such other and further relief as the Court deems just and equitable; and
- 22 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 23

24 DATED: April 26, 2022

ZAKAY LAW GROUP, APLC

26 By: 

27 Shani O. Zakay
28 Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: April 26, 2022

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay

Attorney for PLAINTIFF

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- 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.

1. Article Addressed to:

Seal Beach Envy dba Massage Envy
c/o Tresp, Day, & Associate, Inc.
341 South Cedros Avenue, Ste C
Solano Beach, CA 92075



9590 9402 6758 1074 2010 58

2. Article Number (Transfer from service label)

7021 2720 0000 9972 6808

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Day

☐ Agent☐ Addressee

B. Received by (Printed Name)

J & K C-19

C. Date of Delivery

4/29/22

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

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3. Service Type

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