

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CM SCHOOL SUPPLY, INC., a California corporation; and DOES 1 through 50, Inclusive;

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

PERLA GONZALES, an individual, on behalf of herself, and on behalf of all persons similarly situated,

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

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 12 2022

JACQUELINE HARNESS

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

San Bernardino Superior Court - Civil Division
247 West Third Street
San Bernardino, CA 92415

CASE NUMBER
(Número del Caso)

CIV SB 2133207

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

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

Jean-Claude Lapuyade, Esq. SBN: 248676 Tel: (619) 599-8292 Fax: (619) 599-8291

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

DATE:

(Fecha)

JAN 12 2022

Clerk, by

(Secretario)

JACQUELINE HARNESS

, Deputy

(Adjunto)

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

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

[SEAL]

Copy

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

- ☐ by personal delivery on (date):

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Attorneys for Plaintiff PERLA GONZALES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

CIV SB 2133207

PERLA GONZALES, an individual, on behalf
of herself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

CM SCHOOL SUPPLY, INC., a California
corporation; and DOES 1 through 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 OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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;

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 01 2021

BY JACQUELINE HAINES, DEPUTY

VIA FAX

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

DEMAND FOR JURY TRIAL

Plaintiff PERLA GONZALES (“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 CM SCHOOL SUPPLY, INC. (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Bernardino.

2. DEFENDANT and sells school supplies, and owns and operates four (4) retail locations in California.

3. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this 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 allege, that the Defendants 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.

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

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

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

18 7. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an
19 hourly basis and entitled to overtime pay and legally compliant meal and rest periods from June 2020
20 to August 2021.

21 8. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
22 DEFENDANTS' current and former non-exempt California employees (the "CALIFORNIA CLASS")
23 at any time during the period beginning four years from the date of the filing of this Complaint and
24 ending on a date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
25 aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).
26 PLAINTIFF reserves the right to amend the following class definitions before the Court determines
27 whether class certification is appropriate, or thereafter upon leave of Court:
28

1 9. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
2 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
3 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which
4 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
5 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of
6 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
7 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in
8 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, (3) failed to
9 reimburse PLAINTIFF and the CALIFORNIA CLASS for required expenses in violation of California
10 Labor Code Section 2802, and (4) failed to provide accurate itemized wage statements in violation of
11 California Labor Code Sections 226 and 226.3.

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

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

19 **JURISDICTION AND VENUE**

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

24 13. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
25 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and DEFENDANTS
26 (i) currently maintain and at all relevant times, maintained offices and facilities in this County and/or
27 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged
28 in this County against members of the CALIFORNIA CLASS.

THE CONDUCT

14. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked including pre and post shift and for time for what was supposed to be their off duty meal break, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all requirements pursuant to Cal. Lab. Code § 226, *et seq.* DEFENDANTS' 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 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

A. Meal Period Violations

15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's demanding work requirements and DEFENDANTS' understaffing, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break, specifically by failing to provide enough labor hours too accomplish all the job tasks that DEFENDANT expected PLAINTIFF and CALIFORNIA CLASS Members to complete on a daily and/or weekly basis. Further, PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were

1 days where PLAINTIFF and other CALIFORNIA CLASS Members would even receive a partial
2 lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum
3 wage and overtime wages by regularly working without their time being accurately recorded and
4 without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform
5 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
6 worked is evidenced by DEFENDANTS' business records.

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

22 **B. Rest Period Violations**

23 17. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
24 CLASS Members were also required from time to time to work in excess of four (4) hours without
25 being provided ten (10) minute rest periods as a result of their rigorous work schedules and
26 DEFENDANTS' inadequate staffing. Further, for the same reasons these employees were denied their
27 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
28 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of

1 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
2 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were
3 provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to
4 time, required to remain on the premises, on duty and/or on call and subject to DEFENDANT'S control
5 in accordance with DEFENDANT'S written policy. PLAINTIFF and other CALIFORNIA CLASS
6 Members were also not provided with one-hour wages in lieu thereof. As a result of their rigorous
7 work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time
8 denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

9 **C. Regular Rate Violation – Overtime, Meal and Rest Period Premiums, and Sick Pay**

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

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

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

27 21. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
28 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, paid meal and rest

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

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

26 **D. Unreimbursed Business Expenses**

27 23. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally,
28 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the members of the

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

9 24. From time-to-time during the CLASS PERIOD, PLAINTIFF and the members of the
10 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular phones as
11 a result of and in furtherance of their job duties as employees for DEFENDANTS. But for the use of
12 their personal cell phones, PLAINTIFF and the members of the CALIFORNIA CLASS could not
13 complete their essential job duties. Notwithstanding, DEFENDANTS did not reimburse or indemnify
14 PLAINTIFF or the members of the CALIFORNIA CLASS for the cost associated with the use of their
15 personal cellular phones for DEFENDANTS' benefit. As a result, in the course of their employment
16 with DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred
17 unreimbursed business expenses which included, but were not limited to, costs related to the use of
18 their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.

19 **E. Wage Statement Violations**

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

1 35. From time to time during the CLASS PERIOD, when PLAINTIFF and other
2 CALIFORNIA CLASS members missed meal and rest breaks, or were paid inaccurate missed meal
3 and rest period premiums, or were not paid for all the time they spent working under DEFENDANT's
4 control, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
5 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other
6 things, all hours worked, and the penalty payments for missed meal and rest periods. More specifically,
7 the wage statements failed to identify the accurate total hours worked each pay period. When the hours
8 shown on the wage statements were added up, they did not equal the actual total hours worked ring the
9 pay period in violation of Cal. Lab. Code 226 (a)(2). In addition to the foregoing violations,
10 DEFENDANTS from time to time also issued PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with wage statements that failed to comply with all the requirements of Cal.
12 Lab. Code § 226.

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

17 **F. Failure to Timely Pay Earned Wages**

18 40. California Labor Code Section 204 requires an employer, who has in place a pay period
19 schedule different than that provide in Cal. Lab. Code § 204(a), to pay wages within seven calendar days
20 from the close of the payroll period. DEFENDANT as a matter of corporate policy, practice and
21 procedure, failed to pay PLAINTIFFS and the other CALIFORNIA CLASS Members within seven
22 calendar days from the close of DEFENDANT'S payroll period from time to time. DEFENDANT'S
23 failure to pay PLAINTIFFS and other CALIFORNIA CLASS members within seven days from the
24 close of the payroll period is evidenced by the itemized wage statements issued to PLAINTIFFS and
25 other CALIFORNIA CLASS members.

26 **G. Unlawful Deductions from Paychecks**

27 40. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to collect
28 or receive from an employee any part of wages theretofore paid by said employer to said employee."

DEFENDANT failed to pay all compensation due to PLAINTIFF and other CALIFORNIA CLASS Members, made unlawful deductions from compensation payable to PLAINTIFF AND CALIFORNIA CLASS Members, failed to disclose all aspects of the deductions from compensation payable to PLAINTIFF and CALIFORNIA CLASS Members, and thereby failed to pay these employees all wages due at each applicable pay period and upon termination. PLAINTIFF and members of the CALIFORNIA CLASS seek recovery of all illegal deductions from wages according to proof, related penalties, interest, attorney fees and costs.

H. CLASS ACTION ALLEGATIONS

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

38. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid meal and rest period premiums, illegal meal and rest period policies, failure to separately compensate rest periods, failure to reimburse business expenses, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

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

40. Common questions of law and fact regarding DEFENDANTS' conduct, including but not limited to, unpaid minimum wages, unpaid meal and rest period premiums, illegal meal and rest period policies, failure to separately compensate rest periods, failure to reimburse business expenses, failure to provide accurate itemized wage statements accurately, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

- a. Whether DEFENDANTS maintained legally compliant meal period policies and practices;

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

rest periods.

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

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

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

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

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

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

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

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

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

b. Adjudication with respect to individual members of the CALIFORNIA CLASS

which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

49. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

51. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code § 17021.

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

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

Cal. Bus. & Prof. Code § 17203.

53. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA CLASS Members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in

1 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
2 “UCL”), by engaging and continuing to engage in business practices which violates California law,
3 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
4 and the California Labor Code including Sections 201, 202, 203, 204, 210, 221, 226, 226.7, 246, 510,
5 512, 551, 552, 1194, 1197, 1197.1, 1198, & 2802, for which this Court should issue declaratory and
6 other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and
7 remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully
8 withheld.

9 54. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that
10 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
11 substantially injurious to employees, and were without valid justification or utility for which this Court
12 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
13 Professions Code, including restitution of wages wrongfully withheld.

14 55. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent
15 in that DEFENDANTS’ uniform policy and practice failed to, *inter alia*, provide the legally mandated
16 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
17 overtime, sick pay, and minimum wages owed, provide accurate itemized wage statements, due to a
18 systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
19 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for
20 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §
21 17203, including restitution of wages wrongfully withheld.

22 56. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
23 deceptive in that DEFENDANTS’ employment practices caused PLAINTIFF and the other members of
24 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

25 57. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
26 deceptive in that DEFENDANTS’ uniform policies, practices and procedures failed to, *inter alia*,
27 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
28 missed meal and rest periods, overtime and minimum wages owed, sick pay, provide accurate itemized

1 wage statements, reimburse employees for required business expenses, to PLAINTIFF and the other
2 members of the CALIFORNIA CLASS as required by Cal. Labor Code.

3 58. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
4 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal period
5 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in
6 which a second off-duty meal period was not timely provided for each ten (10) hours of work.

7 59. PLAINTIFF further demands on behalf of herself and on behalf of each CALIFORNIA
8 CLASS Member, one (1) hour of pay for each workday in which an off duty paid rest period was not
9 timely provided as required by law.

10 60. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
11 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
12 calculated overtime and double time and missed meal and rest periods premiums.

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

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

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

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

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

SECOND CAUSE OF ACTION

For Failure to Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

67. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period beginning four years prior to the filing of the Complaint and the present (“CLASS PERIOD”) bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

5 71. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were
6 required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked
7 or were not accurately compensated for all overtime hours worked.

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

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

21 74. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
22 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
23 all overtime worked.

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

1 behalf of herself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-
2 negotiable, non-waivable rights provided by the State of California.

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

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

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

17 79. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
18 the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS
19 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
20 employees for their labor as a matter of uniform company policy, practice and procedure, and
21 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
22 members of the CALIFORNIA CLASS for overtime worked.

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

in order to increase company profits at the expense of these employees.

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

THIRD CAUSE OF ACTION

For Failure to Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

83. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members during the CLASS PERIOD.

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

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

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

1 87. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
2 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
3 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
4 work without a ten (10) minute rest break after 4 hours of working. Further, as set forth herein,
5 DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny timely payment
6 of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

7 88. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
8 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
9 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
10 of the CALIFORNIA CLASS in regard to minimum wage pay.

11 89. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
12 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
13 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid
14 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
15 Industrial Welfare Commission requirements and other applicable laws and regulations.

16 90. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
17 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum
18 wage compensation for their time worked for DEFENDANTS.

19 91. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA
20 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned
21 wages.

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

27 93. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
28 the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS

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

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

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

22 **FOURTH CAUSE OF ACTION**

23 **For Failure to Provide Required Meal Periods**

24 **[Cal. Lab. Code §§ 226.7 & 512]**

25 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

28 97. During the CLASS PERIOD, from time to time, DEFENDANTS failed to provide all the

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

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

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

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

103. During the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members

1 were from time to time required to work in excess of four (4) hours without being provided ten (10)
2 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
3 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
4 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
5 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
6 time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
7 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
8 CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANTS
9 and DEFENDANTS' managers.

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

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

18 **SIXTH CAUSE OF ACTION**

19 **For Failure to Provide Accurate Itemized Statements**

20 **[Cal. Lab. Code §§ 226 and 226.2]**

21 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

- 26 1. Gross wages earned;
- 27 2. Total hours worked by the employee, except for any employee
28 whose compensation is solely based on a salary and who is exempt from

payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

3. The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;

5. Net wages earned;

6. The inclusive dates of the period for which the employee is paid,

7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;

8. The name and address of the legal entity that is the employer; and

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

108. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross wages earned and (4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of California Labor Code Section 226..

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

1 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and
2 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
3 of trial, but in no event more than four thousand dollars (\$4,000.00), for PLAINTIFF and each respective
4 member of the CALIFORNIA CLASS herein.

5 **SEVENTH CAUSE OF ACTION**

6 **For Failure to Reimburse Employees for Required Expenses**

7 **[Cal. Lab. Code § 2802]**

8 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

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

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

1 their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
2 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
3 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is
4 required to do under the laws and regulations of California.

5 113. PLAINTIFF therefore demands reimbursement on behalf of the members of the
6 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on behalf
7 of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with interest at the statutory
8 rate and costs under Cal. Lab. Code § 2802.

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES WHEN DUE**

11 **(Cal Lab. Code §§201, 202, 203)**

12 **((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))**

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

15 115. Cal. Lab. Code § 200 provides that:

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

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

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

27 If an employee not having a written contract for a definite period
28 quits his or her employment, his or her wages shall become due and

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

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

119. 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.

120. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated and DEFENDANTS has not tendered payment of wages, to these employees who were underpaid minimum wage and/or overtime wage and/or sick pay wage, and/or missed meal and rest breaks, as required by law.

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

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§ 2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

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

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

122. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANT and classified as non-exempt employees in California during the time period of September 24, 2020 until the present (the "AGGRIEVED EMPLOYEES").

123. On September 24, 2021, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

124. The policies, acts and practices heretofore described were and are an unlawful business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 221, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS;

D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS;

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

1. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;
2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
3. Meal and rest period compensation pursuant to California Labor Code Sections 226.7 and 512 and the applicable IWC Wage Order;
4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and,

2. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

3. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

Dated: November 29, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

1 **DEMAND FOR JURY TRIAL**

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

3
4 Dated: November 29, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

5
6 By: 
7 Jean-Claude Lapuyade
8 Attorneys for PLAINTIFF
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EXHIBIT 1



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Jean-Claude Lapuyade, Esq.
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September 24, 2021

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

CM SCHOOL SUPPLY, INC.

c/o Jeffrey Rajcic
1025 E. Orangethorpe Ave.
Anaheim, CA 92801

Via Certified Mail with Return Receipt No. 7021 0350 0000 8465 2984

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 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:

This office represents PERLA GONZALES (“Plaintiff”) and other aggrieved employees in a proposed class and representative action against CM SCHOOL SUPPLY, INC. (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from June of 2020 to August of 2021. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during her employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

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

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

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

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.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

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 black ink, appearing to read 'Jean-Claude Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

JCL LAW FIRM, APC

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

Case No. _____

PERLA GONZALES, on behalf of herself
and on behalf of all persons similarly situated,

Plaintiff,

vs.

CM SCHOOL SUPPLY, INC., a California
Corporation; DOES 1 through 50, inclusive,

Defendants.

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant CM School Supply, Inc. (“DEFENDANT”) is a California corporation
7 that at all relevant times mentioned herein conducted and continues to conduct substantial
8 business in the state of California.

9 2. DEFENDANT sells school supplies and owns and operates four (4) retail
10 locations in California.

11 3. PLAINTIFF was employed by DEFENDANT from June of 2020 to August of
12 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
13 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
14 and overtime wages due for all time worked.

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

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

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

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

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

22 23 **THE CONDUCT**

24 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
28 and CALIFORNIA CLASS Members to work from time to time while they were clocked out

1 for what was supposed to be their off duty meal break. DEFENDANT required PLAINTIFF
2 and the CALIFORNIA CLASS Members to work off the clock without paying them for all the
3 time they performed duties while on their meal break, specifically by failing to provide enough
4 labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and
5 CALIFORNIA CLASS Members to complete on a daily and/or weekly basis. Further, during
6 the CALIFORNIA CLASS PERIOD, DEFENDANT required PLAINTIFF and other
7 CALIFORNIA CLASS Members to work off the clock in order to set the alarm after their work
8 shift had ended. Finally, PLAINTIFF and other members of the CALIFORNIA CLASS from
9 time to time were not paid wages for all time worked, including overtime wages, such that in
10 the aggregate employees were underpaid wages as a result of DEFENDANT's pattern and
11 practice of unevenly rounding time worked by its employees. As a result, PLAINTIFF and
12 other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation
13 by from time to time working without their time being accurately recorded and without
14 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform
15 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
16 time worked is evidenced by DEFENDANT's business records.

17 9. As a result of their rigorous work schedules, PLAINTIFF and other
18 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
19 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
20 CALIFORNIA CLASS Members were from time to time required to perform work as ordered
21 by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
22 break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
23 Members with a second off-duty meal period from time to time in which these employees were
24 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and
25 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
26 compensation and in accordance with DEFENDANT's corporate policy and practice.

27 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
28 CALIFORNIA CLASS Members were also required from time to time to work in excess of four

1 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
2 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
3 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
4 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
5 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
6 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
7 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
8 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
9 proper rest periods by DEFENDANT and DEFENDANT's managers. Additionally, the
10 applicable California Wage Order requires employers to provide employees with off-duty rest
11 periods, which the California Supreme Court defined as time during which an employee is
12 relieved from all work related duties and free from employer control. In so doing, the Court
13 held that the requirement under California law that employers authorize and permit all
14 employees to take rest period means that employers must relieve employees of all duties and
15 relinquish control over how employees spend their time which includes control over the
16 locations where employees may take their rest period. Employers cannot impose controls that
17 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
18 DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from
19 unconstrained walks and was unlawful based on Defendant's rule which stated PLAINTIFF and
20 other CALIFORNIA CLASS Members could not leave the work premises during their rest
21 period.

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

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

1 performance for DEFENDANT. The non-discretionary incentive program provided all
2 employees paid on an hourly basis with incentive compensation when the employees met the
3 various performance goals set by DEFENDANT. However, when calculating the regular rate
4 of pay in order to pay overtime and premiums for meal and rest break violations to PLAINTIFF
5 and other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
6 compensation as part of the employees' "regular rate of pay" for purposes of calculating
7 overtime pay and premium pay for meal and rest break violations. Management and supervisors
8 described the incentive program to potential and new employees as part of the compensation
9 package. As a matter of law, the incentive compensation received by PLAINTIFF and other
10 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure to
11 do so has resulted in an underpayment of overtime compensation and meal and rest break
12 premium pay to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

13 13. DEFENDANT also failed to provide PLAINTIFF and the other members of the
14 CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
15 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
16 every employer shall furnish each of his or her employees with an accurate itemized wage
17 statement in writing showing, among other things, gross wages earned and all applicable hourly
18 rates in effect during the pay period and the corresponding amount of time worked at each
19 hourly rate. PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were from time
20 to time paid on an hourly basis. As such, the wage statements should reflect all applicable
21 hourly rates during the pay period and the total hours worked, and the applicable pay period in
22 which the wages were earned pursuant to California Labor Code Section 226(a)(2). The wage
23 statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA CLASS Members
24 failed to identify such information. More specifically, the wage statements failed to identify the
25 accurate total hours worked each pay period. When the hours shown on the wage statements
26 were added up, they did not equal the actual total hours worked during the pay period in
27 violation of Cal. Lab. Code 226 (a)(2). Aside, from the violations listed above, DEFENDANT
28 failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under

1 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
2 PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which
3 violated Cal. Lab. Code § 226.

4 14. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
5 employment are due and payable twice during each calendar month, on days designated in
6 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
7 requires employers to pay employees all wages owed within seven (7) days of the close of the
8 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
9 CALIFORNIA CLASS Members all wages owed to them within seven (7) days of the close of
10 the payroll period,.

11 15. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
12 to collect or receive from an employee any part of wages theretofore paid by said employer to
13 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
14 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from compensation
15 payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose
16 all aspects of the deductions from compensation payable to PLAINTIFF and CALIFORNIA
17 LABOR SUB-CLASS Members, and thereby failed to pay these employees all wages due at
18 each applicable pay period and upon termination. PLAINTIFF and members of the
19 CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages
20 according to proof, related penalties, interest, attorney fees and costs.

21 16. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
22 CLASS Members by failing to pay such wages at the regular rate of pay. Specifically,
23 PLAINTIFF and other non-exempt employees earn non-discretionary remuneration. Rather
24 than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF
25 and other CALIFORNIA CLASS Members at their base rates of pay.

26 17. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
27 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
28 incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of

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

8 18. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
9 Members as a business expense, were required by DEFENDANT to use their own personal
10 cellular phones as a result of and in furtherance of their job duties as employees for
11 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
12 associated with the use of their personal cellular phones for DEFENDANT's benefit.
13 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
14 DEFENDANT to use their personal cellular phones to respond to managers while off the clock
15 (which also results in minimum wage and overtime violations). As a result, in the course of
16 their employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
17 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
18 related to the use of their personal cellular phones all on behalf of and for the benefit of
19 DEFENDANT.

20 19. In violation of the applicable sections of the California Labor Code and the
21 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
22 a matter of company policy, practice and procedure, intentionally and knowingly failed to
23 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal
24 and rest periods. This uniform policy and practice of DEFENDANT is intended to purposefully
25 avoid the payment for all time worked as required by California law which allows
26 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
27 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
28 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted

1 accordingly.

2 20. By reason of this uniform conduct applicable to PLAINTIFF and all
3 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
4 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
5 (the “UCL”), by engaging in a company-wide policy and procedure which fails to accurately
6 calculate and record all missed meal and rest periods and failed to pay all minimum and
7 overtime wages due to PLAINTIFF and other CALIFORNIA CLASS Members. The proper
8 recording of these employees’ missed meal and rest breaks is the DEFENDANT’s burden. As
9 a result of DEFENDANT’s intentional disregard of the obligation to meet this burden,
10 DEFENDANT fails to properly calculate and/or pay all required compensation for work
11 performed by the members of the CALIFORNIA CLASS and violated the California Labor
12 Code and regulations promulgated thereunder as herein alleged.

13 21. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
14 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order
15 and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to
16 PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty
17 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
18 PLAINTIFF’s missed meal and rest breaks. The nature of the work performed by the
19 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF’s duties for
20 the legally required off-duty meal periods. As a result, DEFENDANT’s failure to provide
21 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT’s business
22 records. DEFENDANT also required PLAINTIFF to work off the clock without paying
23 PLAINTIFF for all the time PLAINTIFF was working for DEFENDANT, specifically by failing
24 to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected
25 PLAINTIFF to complete on a daily and/or weekly basis. The amount in controversy for
26 PLAINTIFF individually does not exceed the sum or value of \$75,000. To date, DEFENDANT
27 has not fully paid PLAINTIFF for all PLAINTIFF’s wages still owed to PLAINTIFF or any
28 penalties owed to PLAINTIFF under California Labor Code § 203.

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1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 wilfully, engages in a practice whereby DEFENDANT fails to record all meal and rest breaks
3 missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT
4 enjoys the benefit of this work, requires employees to perform this work and permits or suffers
5 to permit this work.

6 27. DEFENDANT has the legal burden to establish that each and every
7 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
8 required by California laws. The DEFENDANT, however, as a matter of policy and procedure
9 failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in
10 place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid
11 as required by law. This common business practice is applicable to each and every
12 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair,
13 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as
14 causation, damages, and reliance are not elements of this claim.

15 28. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
16 CLASS Members is impracticable.

17 29. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
18 California law by:

- 19 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
20 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
21 deceptively having in place company policies, practices and procedures
22 that failed to record and pay PLAINTIFF and the other members of the
23 CALIFORNIA CLASS for all time worked minimum wages owed and
24 overtime wages owed for work performed by these employees;
- 25 (b) Committing an act of unfair competition in violation of the UCL, by
26 failing to provide the PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with the legally required meal and rest periods;
28 and,

- 1 (c) Committing an act of unfair competition in violation of the California
2 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
3 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
4 the CALIFORNIA CLASS members with necessary expenses incurred in
5 the discharge of their job duties.

6 30. This Class Action meets the statutory prerequisites for the maintenance of a Class
7 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 8 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
9 that the joinder of all such persons is impracticable and the disposition of
10 their claims as a class will benefit the parties and the Court;
- 11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
12 that are raised in this Complaint are common to the CALIFORNIA
13 CLASS will apply uniformly to every member of the CALIFORNIA
14 CLASS;
- 15 (c) The claims of the representative PLAINTIFF are typical of the claims of
16 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
17 other members of the CALIFORNIA CLASS, is classified as a non-
18 exempt employee paid on an hourly basis who has been subjected to the
19 DEFENDANT's deceptive practice and policy which failed to provide the
20 legally required meal and rest periods to the CALIFORNIA CLASS and
21 thereby underpaid compensation to PLAINTIFF and CALIFORNIA
22 CLASS. PLAINTIFF sustained economic injury as a result of
23 DEFENDANT's employment practices. PLAINTIFF and the members of
24 the CALIFORNIA CLASS were and are similarly or identically harmed
25 by the same unlawful, deceptive, unfair and pervasive pattern of
26 misconduct engaged in by DEFENDANT; and,
- 27 (d) The representative PLAINTIFF will fairly and adequately represent and
28 protect the interest of the CALIFORNIA CLASS, and has retained

1 counsel who are competent and experienced in Class Action litigation.
2 There are no material conflicts between the claims of the representative
3 PLAINTIFF and the members of the CALIFORNIA CLASS that would
4 make class certification inappropriate. Counsel for the CALIFORNIA
5 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
6 Members.

7 31. In addition to meeting the statutory prerequisites to a Class Action, this action is
8 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

9 (a) Without class certification and determination of declaratory, injunctive,
10 statutory and other legal questions within the class format, prosecution of
11 separate actions by individual members of the CALIFORNIA CLASS will
12 create the risk of:

13 1) Inconsistent or varying adjudications with respect to individual
14 members of the CALIFORNIA CLASS which would establish
15 incompatible standards of conduct for the parties opposing the
16 CALIFORNIA CLASS; and/or,

17 2) Adjudication with respect to individual members of the
18 CALIFORNIA CLASS which would as a practical matter be
19 dispositive of interests of the other members not party to the
20 adjudication or substantially impair or impede their ability to
21 protect their interests.

22 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
23 act on grounds generally applicable to the CALIFORNIA CLASS, making
24 appropriate class-wide relief with respect to the CALIFORNIA CLASS
25 as a whole in that DEFENDANT uniformly failed to pay all wages due to
26 members of the CALIFORNIA CLASS as required by law;

27 1) With respect to the First Cause of Action, the final relief on behalf
28 of the CALIFORNIA CLASS sought does not relate exclusively to

1 restitution because through this claim PLAINTIFF seeks
2 declaratory relief holding that the DEFENDANT's policy and
3 practices constitute unfair competition, along with declaratory
4 relief, injunctive relief, and incidental equitable relief as may be
5 necessary to prevent and remedy the conduct declared to constitute
6 unfair competition;

7 (c) Common questions of law and fact exist as to the members of the
8 CALIFORNIA CLASS, with respect to the practices and violations of
9 California law as listed above, and predominate over any question
10 affecting only individual CALIFORNIA CLASS Members, and a Class
11 Action is superior to other available methods for the fair and efficient
12 adjudication of the controversy, including consideration of:

13 1) The interests of the members of the CALIFORNIA CLASS in
14 individually controlling the prosecution or defense of separate
15 actions in that the substantial expense of individual actions will be
16 avoided to recover the relatively small amount of economic losses
17 sustained by the individual CALIFORNIA CLASS Members when
18 compared to the substantial expense and burden of individual
19 prosecution of this litigation;

20 2) Class certification will obviate the need for unduly duplicative
21 litigation that would create the risk of:

22 A. Inconsistent or varying adjudications with respect to
23 individual members of the CALIFORNIA CLASS, which
24 would establish incompatible standards of conduct for the
25 DEFENDANT; and/or,

26 B. Adjudications with respect to individual members of the
27 CALIFORNIA CLASS would as a practical matter be
28 dispositive of the interests of the other members not parties

1 to the adjudication or substantially impair or impede their
2 ability to protect their interests;

3 3) In the context of wage litigation because a substantial number of
4 individual CALIFORNIA CLASS Members will avoid asserting
5 their legal rights out of fear of retaliation by DEFENDANT, which
6 may adversely affect an individual's job with DEFENDANT or
7 with a subsequent employer, the Class Action is the only means to
8 assert their claims through a representative; and,

9 4) A class action is superior to other available methods for the fair
10 and efficient adjudication of this litigation because class treatment
11 will obviate the need for unduly and unnecessary duplicative
12 litigation that is likely to result in the absence of certification of
13 this action pursuant to Cal. Code of Civ. Proc. § 382.

14 32. This Court should permit this action to be maintained as a Class Action pursuant
15 to Cal. Code of Civ. Proc. § 382 because:

16 (a) The questions of law and fact common to the CALIFORNIA CLASS
17 predominate over any question affecting only individual CALIFORNIA
18 CLASS Members because the DEFENDANT's employment practices are
19 applied with respect to the CALIFORNIA CLASS;

20 (b) A Class Action is superior to any other available method for the fair and
21 efficient adjudication of the claims of the members of the CALIFORNIA
22 CLASS because in the context of employment litigation a substantial
23 number of individual CALIFORNIA CLASS Members will avoid
24 asserting their rights individually out of fear of retaliation or adverse
25 impact on their employment;

26 (c) The members of the CALIFORNIA CLASS are so numerous that it is
27 impractical to bring all members of the CALIFORNIA CLASS before the
28 Court;

- 1 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
2 able to obtain effective and economic legal redress unless the action is
3 maintained as a Class Action;
- 4 (e) There is a community of interest in obtaining appropriate legal and
5 equitable relief for the acts of unfair competition, statutory violations and
6 other improprieties, and in obtaining adequate compensation for the
7 damages and injuries which DEFENDANT's actions have inflicted upon
8 the CALIFORNIA CLASS;
- 9 (f) There is a community of interest in ensuring that the combined assets of
10 DEFENDANT are sufficient to adequately compensate the members of
11 the CALIFORNIA CLASS for the injuries sustained;
- 12 (g) DEFENDANT has acted or refused to act on grounds generally applicable
13 to the CALIFORNIA CLASS, thereby making final class-wide relief
14 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 15 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
16 the business records of DEFENDANT; and,
- 17 (i) Class treatment provides manageable judicial treatment calculated to bring
18 a efficient and rapid conclusion to all litigation of all wage and hour
19 related claims arising out of the conduct of DEFENDANT as to the
20 members of the CALIFORNIA CLASS.

21 33. DEFENDANT maintains records from which the Court can ascertain and identify
22 by job title each of DEFENDANT's employees who have been intentionally subjected to
23 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will
24 seek leave to amend the Complaint to include any additional job titles of similarly situated
25 employees when they have been identified.

26
27 **THE CALIFORNIA LABOR SUB-CLASS**

28 34. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and

1 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
2 CALIFORNIA CLASS who are or previously were employed DEFENDANT in California and
3 classified as non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time
4 during the period three (3) years prior to the filing of the complaint and ending on the date as
5 determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to
6 Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
7 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

8 35. DEFENDANT, as a matter of company policy, practice and procedure, and in
9 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
10 requirements, and the applicable provisions of California law, intentionally, knowingly, and
11 wilfully, engages in a practice whereby DEFENDANT fails to correctly calculate compensation
12 for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR
13 SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT
14 enjoys the benefit of this work, requires employees to perform this work and permits or suffers
15 to permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
16 CLASS Members wages to which these employees are entitled in order to unfairly cheat the
17 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
18 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR
19 SUB-CLASS PERIOD should be adjusted accordingly.

20 36. DEFENDANT maintains records from which the Court can ascertain and identify
21 by name and job title, each of DEFENDANT’s employees who have been intentionally
22 subjected to DEFENDANT’s company policy, practices and procedures as herein alleged.
23 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of
24 similarly situated employees when they have been identified.

25 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
26 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

27 38. Common questions of law and fact exist as to members of the CALIFORNIA
28 LABOR SUB-CLASS, including, but not limited, to the following:

- 1 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
2 compensation due to members of the CALIFORNIA LABOR SUB-
3 CLASS for missed meal and rest breaks in violation of the California
4 Labor Code and California regulations and the applicable California Wage
5 Order;
6 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS with accurate
8 itemized wage statements;
9 (c) Whether DEFENDANT has engaged in unfair competition by the
10 above-listed conduct;
11 (d) The proper measure of damages and penalties owed to the members of the
12 CALIFORNIA LABOR SUB-CLASS; and,
13 (e) Whether DEFENDANT's conduct was willful.

14 39. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
15 under California law by:

- 16 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
17 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
18 CLASS all wages due for overtime worked, for which DEFENDANT is
19 liable pursuant to Cal. Lab. Code § 1194;
20 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
21 accurately pay PLAINTIFF and the members of the CALIFORNIA
22 LABOR SUB-CLASS the correct minimum wage pay for which
23 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
24 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
25 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
26 itemized statement in writing showing the corresponding correct amount
27 of wages earned by the employee; and,
28 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
3 meal breaks and the legally required off-duty rest breaks;

- 4 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
5 the CALIFORNIA LABOR SUB-CLASS members with necessary
6 expenses incurred in the discharge of their job duties.

7 40. This Class Action meets the statutory prerequisites for the maintenance of a Class
8 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 9 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
10 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
11 Members is impracticable and the disposition of their claims as a class
12 will benefit the parties and the Court;

- 13 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
14 that are raised in this Complaint are common to the CALIFORNIA
15 LABOR SUB-CLASS and will apply uniformly to every member of the
16 CALIFORNIA LABOR SUB-CLASS;

- 17 (c) The claims of the representative PLAINTIFF are typical of the claims of
18 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
19 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
20 is a non-exempt employee paid on an hourly basis who has been subjected
21 to the DEFENDANT's practice and policy which fails to pay the correct
22 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
23 PLAINTIFF sustained economic injury as a result of DEFENDANT's
24 employment practices. PLAINTIFF and the members of the
25 CALIFORNIA LABOR SUB-CLASS were and are similarly or
26 identically harmed by the same unlawful, deceptive, unfair and pervasive
27 pattern of misconduct engaged in by DEFENDANT; and,

- 28 (d) The representative PLAINTIFF will fairly and adequately represent and

1 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
2 retained counsel who are competent and experienced in Class Action
3 litigation. There are no material conflicts between the claims of the
4 representative PLAINTIFF and the members of the CALIFORNIA
5 LABOR SUB-CLASS that would make class certification inappropriate.
6 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
7 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

8 41. In addition to meeting the statutory prerequisites to a Class Action, this action is
9 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

10 (a) Without class certification and determination of declaratory, injunctive,
11 statutory and other legal questions within the class format, prosecution of
12 separate actions by individual members of the CALIFORNIA LABOR
13 SUB-CLASS will create the risk of:

14 1) Inconsistent or varying adjudications with respect to individual
15 members of the CALIFORNIA LABOR SUB-CLASS which
16 would establish incompatible standards of conduct for the parties
17 opposing the CALIFORNIA LABOR SUB-CLASS; or,

18 2) Adjudication with respect to individual members of the
19 CALIFORNIA LABOR SUB-CLASS which would as a practical
20 matter be dispositive of interests of the other members not party to
21 the adjudication or substantially impair or impede their ability to
22 protect their interests.

23 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
24 or refused to act on grounds generally applicable to the CALIFORNIA
25 LABOR SUB-CLASS, making appropriate class-wide relief with respect
26 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
27 DEFENDANT uniformly fails to pay all wages due. Including the correct
28 wages for all time worked by the members of the CALIFORNIA LABOR

1 SUB-CLASS as required by law;

2 (c) Common questions of law and fact predominate as to the members of the
3 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
4 violations of California Law as listed above, and predominate over any
5 question affecting only individual CALIFORNIA LABOR SUB-CLASS
6 Members, and a Class Action is superior to other available methods for
7 the fair and efficient adjudication of the controversy, including
8 consideration of:

9 1) The interests of the members of the CALIFORNIA LABOR SUB-
10 CLASS in individually controlling the prosecution or defense of
11 separate actions in that the substantial expense of individual
12 actions will be avoided to recover the relatively small amount of
13 economic losses sustained by the individual CALIFORNIA
14 LABOR SUB-CLASS Members when compared to the substantial
15 expense and burden of individual prosecution of this litigation;

16 2) Class certification will obviate the need for unduly duplicative
17 litigation that would create the risk of:

18 A. Inconsistent or varying adjudications with respect to
19 individual members of the CALIFORNIA LABOR SUB-
20 CLASS, which would establish incompatible standards of
21 conduct for the DEFENDANT; and/or,

22 B. Adjudications with respect to individual members of the
23 CALIFORNIA LABOR SUB-CLASS would as a practical
24 matter be dispositive of the interests of the other members
25 not parties to the adjudication or substantially impair or
26 impede their ability to protect their interests;

27 3) In the context of wage litigation because a substantial number of
28 individual CALIFORNIA LABOR SUB-CLASS Members will

1 avoid asserting their legal rights out of fear of retaliation by
2 DEFENDANT, which may adversely affect an individual's job
3 with DEFENDANT or with a subsequent employer, the Class
4 Action is the only means to assert their claims through a
5 representative; and,

- 6 4) A class action is superior to other available methods for the fair
7 and efficient adjudication of this litigation because class treatment
8 will obviate the need for unduly and unnecessary duplicative
9 litigation that is likely to result in the absence of certification of
10 this action pursuant to Cal. Code of Civ. Proc. § 382.

11 42. This Court should permit this action to be maintained as a Class Action pursuant
12 to Cal. Code of Civ. Proc. § 382 because:

- 13 (a) The questions of law and fact common to the CALIFORNIA LABOR
14 SUB-CLASS predominate over any question affecting only individual
15 CALIFORNIA LABOR SUB-CLASS Members;
- 16 (b) A Class Action is superior to any other available method for the fair and
17 efficient adjudication of the claims of the members of the CALIFORNIA
18 LABOR SUB-CLASS because in the context of employment litigation a
19 substantial number of individual CALIFORNIA LABOR SUB-CLASS
20 Members will avoid asserting their rights individually out of fear of
21 retaliation or adverse impact on their employment;
- 22 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
23 numerous that it is impractical to bring all members of the CALIFORNIA
24 LABOR SUB-CLASS before the Court;
- 25 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
26 Members, will not be able to obtain effective and economic legal redress
27 unless the action is maintained as a Class Action;
- 28 (e) There is a community of interest in obtaining appropriate legal and

1 equitable relief for the acts of unfair competition, statutory violations and
2 other improprieties, and in obtaining adequate compensation for the
3 damages and injuries which DEFENDANT's actions have inflicted upon
4 the CALIFORNIA LABOR SUB-CLASS;

5 (f) There is a community of interest in ensuring that the combined assets of
6 DEFENDANT are sufficient to adequately compensate the members of
7 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

8 (g) DEFENDANT has acted or refused to act on grounds generally applicable
9 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
10 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
11 CLASS as a whole;

12 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
13 ascertainable from the business records of DEFENDANT. The
14 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
15 CLASS Members who worked for DEFENDANT in California at any
16 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

17 (i) Class treatment provides manageable judicial treatment calculated to bring
18 a efficient and rapid conclusion to all litigation of all wage and hour
19 related claims arising out of the conduct of DEFENDANT as to the
20 members of the CALIFORNIA LABOR SUB-CLASS.

21
22 **FIRST CAUSE OF ACTION**

23 **For Unlawful Business Practices**

24 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

25 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

1 44. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
2 Code § 17021.

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

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

11 Cal. Bus. & Prof. Code § 17203.

12 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Industrial Wage Order(s), the California Code of Regulations and the California
15 Labor Code including Sections 204, 210, 221, 226.7, 246, 248.5, 510, 512, 1194, 1197, 1197.1,
16 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder,
17 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
18 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
19 unfair competition, including restitution of wages wrongfully withheld.

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

25 48. By the conduct alleged herein, DEFENDANT’s practices are deceptive and
26 fraudulent in that DEFENDANT’s uniform policy and practice fails to provide the legally
27 mandated meal and rest periods, and the required amount of compensation for missed meal and
28 rest periods, reporting time pay, and overtime and minimum wages owed, and Fair Labor

1 Standards Act overtime wages due for overtime worked as a result of failing to include non-
2 discretionary incentive compensation into their regular rate for purposes of computing the
3 proper overtime pay, due to a business practice that cannot be justified, pursuant to the
4 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
5 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
6 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
7 withheld.

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

12 50. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
13 and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to provide
14 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
15 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

21 52. PLAINTIFF further demands on behalf of herself and each member of the
22 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
23 duty paid rest period was not timely provided as required by law.

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

1 to unfairly compete against competitors who comply with the law.

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

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

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

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

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1 result of implementing a uniform policy and practice that denies accurate compensation to
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
3 minimum wage pay.

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

10 66. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
11 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive
12 the correct reporting time pay and minimum wage compensation for their time worked for
13 DEFENDANT.

14 67. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
15 other members of the CALIFORNIA LABOR SUB-CLASS are paid less for time worked that
16 they are entitled to, constituting a failure to pay all earned wages. DEFENDANT fails to
17 accurately pay the PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS the
18 wages for the time they work in accordance with 1197 & 1197.1, even though the PLAINTIFF
19 and the other members of the CALIFORNIA LABOR SUB-CLASS are regularly required,
20 permitted or suffered to work, and do in fact work, off the clock time as to which
21 DEFENDANT fails to accurately record and pay as evidenced by DEFENDANT's business
22 records and witnessed by employees.

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

28 69. DEFENDANT knew or should have known that PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time
2 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
3 to not pay employees for their labor as a matter of uniform company policy, practice and
4 procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the
5 other members of the CALIFORNIA LABOR SUB-CLASS the correct reporting time pay and
6 minimum wages for their time worked.

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

15 71. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
16 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
17 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
18 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as
19 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
20 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

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1 overtime work.

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

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

16 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
17 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
18 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked
19 including overtime work.

20 85. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
21 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not
22 receiving full compensation for overtime worked.

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

1 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
2 non-waiveable rights provided by the State of California.

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

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

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

19 90. DEFENDANT knew or should have known that PLAINTIFF and the other
20 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for all overtime
21 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
22 to not pay employees for their labor as a matter of uniform company policy, practice and
23 procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the
24 other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

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

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

5 92. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
6 therefore request recovery of all overtime wages, according to proof, interest, statutory costs,
7 as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
8 by the California Labor Code and/or other applicable statutes. DEFENDANT's conduct as
9 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
10 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

11
12 **FOURTH CAUSE OF ACTION**

13 **For Failure to Provide Required Meal Periods**

14 **[Cal. Lab. Code §§ 226.7 & 512]**

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

16 93. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
17 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
18 of this Complaint.

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

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

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

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

17 **FIFTH CAUSE OF ACTION**

18 **For Failure to Provide Required Rest Periods**

19 **[Cal. Lab. Code §§ 226.7 & 512]**

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
21 **Defendants)**

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

25 98. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are
26 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
27 Further, these employees were denied their first rest periods of at least ten (10) minutes for
28 some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least

1 ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
2 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
3 or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are also not
4 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
5 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are periodically denied
6 their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

16 **SIXTH CAUSE OF ACTION**

17 **For Failure to Provide Accurate Itemized Statements**

18 **[Cal. Lab. Code § 226]**

19 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
20 **Defendants)**

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

24 102. Cal. Labor Code § 226 provides that an employer must furnish employees with
25 an "accurate itemized" statement in writing showing:

26 (1) gross wages earned,

27 (2) total hours worked by the employee, except for any employee whose compensation
28

1 is solely based on a salary and who is exempt from payment of overtime under
2 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
3 Commission,

4 (3) the number of piecerate units earned and any applicable piece rate if the employee
5 is paid on a piece-rate basis,

6 (4) all deductions, provided that all deductions made on written orders of the employee
7 may be aggregated and shown as one item,

8 (5) net wages earned,

9 (6) the inclusive dates of the period for which the employee is paid,

10 (7) the name of the employee and his or her social security number, except that by
11 January 1, 2008, only the last four digits of his or her social security number or an
12 employee identification number other than a social security number may be shown on
13 the itemized statement,

14 (8) the name and address of the legal entity that is the employer, and

15 (9) all applicable hourly rates in effect during the pay period and the corresponding
16 number of hours worked at each hourly rate by the employee.

17 103. DEFENDANT also fails to provide PLAINTIFF and the other members of the
18 CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed
19 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
20 provides that every employer shall furnish each of his or her employees with an accurate
21 itemized wage statement in writing showing, among other things, gross wages earned and all
22 applicable hourly rates in effect during the pay period and the corresponding amount of time
23 worked at each hourly rate. Aside, from the violations listed above, DEFENDANT failed to
24 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
25 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and
26 the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which
27 violated Cal. Lab. Code § 226.

28 104. DEFENDANT knowingly and intentionally fails to comply with Cal. Lab. Code

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

SEVENTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

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

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

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

107. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT fails to reimburse PLAINTIFF and the

1 CALIFORNIA LABOR SUB-CLASS members for expenses which include, but are not
2 limited to, costs related to using their personal cellular phones all on behalf of and for the
3 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR
4 SUB-CLASS Members are required by DEFENDANT to use their personal cell phones to
5 respond to work related issues. DEFENDANT's policy, practice and procedure is to not
6 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
7 expenses resulting from using their personal cellular phones for DEFENDANT within the
8 course and scope of their employment for DEFENDANT. These expenses are necessary to
9 complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct
10 to assert any waiver of this expectation. Although these expenses are necessary expenses
11 incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
12 DEFENDANT fails to indemnify and reimburse PLAINTIFF and the CALIFORNIA
13 LABOR SUB-CLASS members for these expenses as an employer is required to do under
14 the laws and regulations of California.

15 108. PLAINTIFF therefore demands reimbursement for expenditures or losses
16 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
17 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
18 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

19 **EIGHTH CAUSE OF ACTION**

20 **For Failure to Pay Wages When Due**

21 **[Cal. Lab. Code §§ 201, 202, 203]**

22 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
23 **and Against All Defendants)**

24 109. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
25 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
26 paragraphs of this Complaint.

27 110. Cal. Lab. Code § 200 provides, in relevant part, that:
28

As used in this article:

(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

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

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

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

113. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

114. Cal. Lab. Code § 203 provides, in relevant part, that:

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.

115. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

116. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of termination for all employees who

1 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
2 demands an accounting and payment of all wages due, plus interest and statutory costs as
3 allowed by law.

4 **PRAYER FOR RELIEF**

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

7 1. On behalf of the CALIFORNIA CLASS:

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

18 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 19 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
20 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
21 action pursuant to Cal. Code of Civ. Proc. § 382;
22 B) Compensatory damages, according to proof at trial, including compensatory
23 damages for minimum and overtime compensation due PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
25 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
26 statutory rate;
27 C) Meal and rest period compensation pursuant to California Labor Code Section
28 226.7 and the applicable IWC Wage Order;

- 1 D) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 2 E) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 3 in which a violation occurs and one hundred dollars (\$100) per each member of
- 4 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 5 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 6 an award of costs for violation of Cal. Lab. Code § 226;
- 7 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
- 8 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
- 9 costs of suit; and,
- 10 G) The wages of all terminated employees in the CALIFORNIA LABOR
- 11 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
- 12 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

13 3. On all claims:

- 14 A) An award of interest, including prejudgment interest at the legal rate;
- 15 B) Such other and further relief as the Court deems just and equitable; and,
- 16 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
- 17 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
- 18 §2802.

19 Dated: September 1, 2021 JCL LAW FIRM, APC

20

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22 By: _____


Jean-Claude Lapuyade, Esq.
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: September 1, 2021 JCL LAW FIRM, APC.

By: 
Jean-Claude Lapuyade, Esq.
Attorneys 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.

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GM SCHOOL SUPPLY, INC.
 410 Jeffrey Rajic
 1025 E. Orangethorpe Ave.
 Anaheim, CA 92801



9590 9402 6744 1060 3012 02

2. Article Number (Transfer from service label)

7021 0350 0000 8465 2984

PS Form 3811, July 2020 PSN 7530-02-000-9053

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- ☒ Agent
☐ Addressee

B. Received by (Printed Name)

R110 S19

C. Date of Delivery

10.02.21

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

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