

SUMMONS
(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

AVEN GROUP, INC., a California corporation; and DOES 1 through 50,
Inclusive;

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

NOEMY FLORES, an individual, on behalf of herself, and on behalf of
all persons similarly situated,

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es):

Los Angeles Superior Court, Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso): 21STCV36642

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

Sherri R. Carter Executive Officer / Clerk of Court

DATE:

(Fecha) 10/05/2021

Clerk, by R. Lozano, Deputy
(Secretario) (Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

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

[SEAL]



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Attorneys for Plaintiff NOEMY FLORES

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

NOEMY FLORES, an individual, on behalf of
 herself, and on behalf of all persons similarly
 situated,

Plaintiffs,

vs.

AVEN GROUP, INC., a California corporation;
 and DOES 1 through 50, Inclusive;

Defendants.

Case No. 21STCV36642

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;

6. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PROVIDE PAID SICK DAYS AND SICK LEAVE BALANCE IN VIOLATION OF CAL. LAB. CODE § 246, *et seq.*;
9. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *ET SEQ.*]

DEMAND FOR JURY TRIAL

Plaintiff NOEMY FLORES (“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 AVEN GROUP, 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 Los Angeles, and owns, operates and/or manages a healthcare staffing agency.

2. 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

1 Complaint, including DOES 1 through 50, inclusive (hereinafter collectively "DEFENDANTS"), are
2 responsible in some manner for one or more of the events and happenings that proximately caused the
3 injuries and damages hereinafter alleged.

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

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

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

21 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an
22 hourly basis and entitled to legally compliant meal and rest periods from 2015 to September of 2020.

23 7. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
24 DEFENDANTS current and former non-exempt California employees (the "CALIFORNIA CLASS")
25 at any time during the period beginning four years from the date of the filing of this Complaint and
26 ending on a date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
27 aggregate claim of CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00).
28

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

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

JURISDICTION AND VENUE

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

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

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THE CONDUCT

13. 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 complaint meal and rest period, 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, 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

14. 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, because of PLAINTIFF's demanding work requirements, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. 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 many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum wage and overtime wages by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy

1 and practice not to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked is
2 evidenced by DEFENDANTS' business records.

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

17 **B. Rest Period Violations**

18 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
19 CLASS members were also required from time to time to work more than four (4) hours without being
20 provided ten (10) minute rest periods as a result of their rigorous work schedule. Further, for the same
21 reasons these employees were denied their first rest periods of at least ten (10) minutes for some shifts
22 worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least
23 ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
24 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
25 or more from time to time. When they were provided with rest breaks, PLAINTIFF and other
26 CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or on call
27 because of their rigorous work schedule. PLAINTIFF and other CALIFORNIA CLASS members were
28 also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules,

1 PLAINTIFF and other CALIFORNIA CLASS members were from time to time denied their proper
2 rest periods by DEFENDANTS and DEFENDANTS' managers.

3 **C. Unreimbursed Business Expenses**

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

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

24 **D. Sick Pay Violations**

25 19. California Labor Code Section 246, *et seq.* states, "An employee who...works in
26 California for the same employer for 30 or more days within a year from the commencement of
27 employment is entitled to paid sick days" as specified in Cal. Lab. Code § 246. However,
28

1 DEFENDANTS from time to time failed to provide PLAINTIFF and other members of the
2 CALIFORNIA CLASS with sick days, in violation of Cal. Lab. Code § 246, *et seq.*

3 20. Further, California Labor Code Section 246, *et seq.* requires an employer to furnish its
4 employees with written wage statements setting forth the amount of paid sick leave available. From
5 time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF and other
6 members of the CALIFORNIA CLASS with wage statements setting forth the amount of paid sick
7 leave available.

8 **E. Wage Statement Violations**

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

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

24 23. In addition to the violations described above, DEFENDANTS, from time to time, failed
25 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
26 with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other members of
27 the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
28

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

F. CLASS ACTION ALLEGATIONS

24. PLAINTIFF brings the First through Ninth 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").

25. 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 overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failure to separately compensate rest periods, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

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

27. Common questions of law and fact regarding DEFENDANTS' conduct, including but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failure to provide accurate itemized wage statements accurate, and failure 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 wages.

e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members at least minimum wage for all hours worked.

f. Whether DEFENDANTS issued legally compliant wage statements;

g. Whether DEFENDANTS failed to provide PLAINTIFF and the CALIFORNIA CLASS with paid sick days and sick leave balance on wage statements;

h. Whether DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for required business expenses;

i. 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;

j. 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;

k. 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.

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

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

30. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS members.

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

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

33. 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;

34. 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.

35. 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.

36. 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

1 DEFENDANTS.

2 **FIRST CAUSE OF ACTION**

3 **For Unlawful Business Practices**

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

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

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

8 38. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
9 17021.

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

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

21 Cal. Bus. & Prof. Code § 17203.

22 40. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
23 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
24 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
25 “UCL”), by engaging and continuing to engage in business practices which violates California law,
26 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
27 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512,
28 1194, 1197, 1197.1, 1198 & 2802, for which this Court should issue declaratory and other equitable

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

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

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

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

44. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of compensation for missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal. Labor Code.

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

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

4 47. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
5 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
6 calculated overtime and missed meal and rest periods premiums.

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

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

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

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

27 52. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
28 and/or adequate remedy at law that will end the unlawful and unfair business practices of

1 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result
2 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
3 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
4 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair
5 business practices.

6 **SECOND CAUSE OF ACTION**

7 **For Failure to Pay Overtime Compensation**

8 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

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

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

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

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

27 58. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
28 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they

1 worked or were not accurately compensated for all overtime hours worked.

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

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

15 61. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
16 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
17 all overtime worked.

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

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

28 64. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the

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

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

11 66. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
12 the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS
13 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
14 employees for their labor as a matter of uniform company policy, practice and procedure, and
15 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
16 members of the CALIFORNIA CLASS for overtime worked.

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

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

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

6 **THIRD CAUSE OF ACTION**

7 **For Failure to Pay Minimum Wages**

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

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

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

12 70. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
13 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
14 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
15 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the
16 LABOR CLASS PERIOD.

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

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

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

24 74. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
25 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
26 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
27 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
28 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to

unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

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

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

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

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

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

81. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide them with the requisite compensation, DEFENDANTS acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the 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.

82. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid 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 minimum wage 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.

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

83. 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.

84. During the LABOR 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

1 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were from time to
2 time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally,
3 DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS members with legally
4 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business
5 records from time to time. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA
6 CLASS members with a second off-duty meal period in some workdays in which these employees were
7 required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members
8 of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
9 accordance with DEFENDANTS' strict corporate policy and practice.

10 85. DEFENDANTS further violates 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 meal 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 a meal period was
14 not provided.

15 86. 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 **FIFTH CAUSE OF ACTION**

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

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

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

22 87. 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 88. During the LABOR CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
25 members were from time to time required to work in excess of four (4) hours without being provided
26 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
27 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period
28 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,

second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

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

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

SIXTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

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

91. 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.

92. 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.

93. From time-to-time during the LABOR CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for

1 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the
2 CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their
3 personal cellular phone on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF
4 and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal
5 cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform
6 policy, practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA
7 CLASS for expenses resulting from using their personal cellular phones for DEFENDANTS within the
8 course and scope of their employment for DEFENDANTS. These expenses were necessary to complete
9 their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any
10 waiver of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF
11 and the members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
12 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is
13 required to do under the laws and regulations of California.

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

18 **SEVENTH 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 95. 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 96. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate
25 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.

97. During the LABOR 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; (7) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; and (8) the accurate name of the legal entity that is the employer in violation of California Labor Code Section 226. In addition to the foregoing violations, DEFENDANTS failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements that comply with Cal. Lab. Code § 226.

98. 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

1 tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members
2 of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
3 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation
4 in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and penalties
5 available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial
6 (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
7 member of the CALIFORNIA CLASS herein.

8 **EIGHTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE PAID SICK DAYS AND SICK LEAVE BALANCE**

10 **(Cal. Lab. Code § 246, *et seq.*)**

11 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
12 **DEFENDANT)**

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

16 100. California Labor Code Section 246, *et seq.* states, “An employee who...works in
17 California for the same employer for 30 or more days within a year from the commencement of
18 employment is entitled to paid sick days” as specified in Cal. Lab. Code § 246. However,
19 DEFENDANTS from time to time failed to provide PLAINTIFF and other members of the
20 CALIFORNIA CLASS with sick days, in violation of Cal. Lab. Code § 246, *et seq.*

21 101. Further, Cal. Lab. Code § 246(i) provides that:

22 An employer shall provide an employee with written notice that sets forth the amount of
23 paid sick leave available, or paid time off leave an employer provides in lieu of sick
24 leave, for use on either the employee’s itemized wage statement described in Section 226
25 or in a separate writing provided on the designated pay date with the employee’s payment
26 of wages. If an employer provides unlimited paid sick leave or unlimited paid time off
27 to an employee, the employer may satisfy this section by indicating on the notice or the
28 employee’s itemized wage statement “unlimited.”

1 102. From time to time, DEFENDANT failed to furnish PLAINTIFF and other members of the
2 CALIFORNIA LABOR SUB-CLASS with written wage statements setting forth the amount of paid
3 sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.*

4 103. As a result of the foregoing, PLAINTIFF and other members of the CALIFORNIA
5 LABOR-SUBCLASS are entitled to seek and recover statutory costs.

6 **NINTH CAUSE OF ACTION**

7 **FAILURE TO PAY WAGES WHEN DUE**

8 **(Cal Lab. Code §§201, 202, 203)**

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

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

12 105. Cal. Lab. Code § 200 provides that:

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

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

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

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

1 shall be entitled to receive payment by mail if he or she so requests and
2 designates a mailing address. The date of the mailing shall constitute the
3 date of payment for purposes of the requirement to provide payment within
4 72 hours of the notice of quitting.

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

7 109. Cal. Lab. Code § 203 provides:

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

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

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

22 **TENTH CAUSE OF ACTION**

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

24 **(Cal. Lab. Code §§2698 et seq.)**

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

26 106. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
27 herein, the prior paragraphs of this Complaint.
28

107. 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.

108. 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 July 30, 2020 until the present (the "AGGRIEVED EMPLOYEES").

109. On July 30, 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.

110. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANTS (a) failed to properly record and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized wage statements, (c) failed to provide mandatory meal breaks and rest breaks, 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

1 §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d),
2 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and the applicable Industrial Wage
3 Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby
4 seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
5 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
6 the other AGGRIEVED EMPLOYEES.

7 **PRAYER FOR RELIEF**

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

10 1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

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

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

27 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
28 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 Section 226.7, 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: 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: October 5, 2021

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

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: October 5, 2021

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

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

EXHIBIT 1



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July 30, 2021

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

AVEN GROUP, INC.

c/o Eby Agu
17634 Maple Drive
Carson, CA 90746

Via Certified Mail with Return Receipt No. 7021 0950 0001 6369 9453

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 NOEMY E. FLORES (“Plaintiff”) and other aggrieved employees in a proposed class and representative action against AVEN GROUP, 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 2015 to September of 2020. 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.

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



Jean-Claude Lapuyade, Esq.

Enclosure (1)

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ATTORNEYS FOR PLAINTIFF

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

NOEMY FLORES, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

AVEN GROUP, 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;
6. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PROVIDE PAID SICK DAYS AND SICK LEAVE BALANCE IN VIOLATION OF CAL. LAB. CODE § 246, *et seq.*;
9. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203

DEMAND FOR JURY TRIAL

Plaintiff NOEMY FLORES (“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 AVEN GROUP, 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 Los Angeles, and owns, operates and/or manages a healthcare staffing agency.

2. 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”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

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

jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

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

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

6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an hourly basis and entitled to legally compliant meal and rest periods from 2015 to September of 2020.

7. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of DEFENDANTS current and former non-exempt California employees (the "CALIFORNIA CLASS") at any time during the period beginning four years from the date of the filing of this Complaint and ending on a date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00).

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

1 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and
2 226.3.

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

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

10 **JURISDICTION AND VENUE**

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

15 12. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
16 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and DEFENDANTS
17 (i) currently maintains and at all relevant times, maintained offices and facilities in this County and/or
18 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged
19 in this County against members of the CALIFORNIA CLASS.

20 **THE CONDUCT**

21 13. In violation of the applicable sections of the California Labor Code and the requirements
22 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
23 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
24 complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other members of
25 the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
26 members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the
27 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other
28 things, all requirements pursuant to Cal. Lab. Code § 226, *et seq.* DEFENDANTS' uniform policies

1 and practices are intended to purposefully avoid the accurate and full payment for all time worked as
2 required by California law which allows DEFENDANTS to illegally profit and gain an unfair
3 advantage over competitors who comply with the law. To the extent equitable tolling operates to toll
4 claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted
5 accordingly.

6 **A. Meal Period Violations**

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

22 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
23 schedules, PLAINTIFF and other CALIFORNIA CLASS members were from time to time unable to
24 take thirty (30) minute duty free meal periods and were not fully relieved of duty for their meal periods.
25 PLAINTIFF and other CALIFORNIA CLASS members were required from time to time to perform
26 work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving
27 a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
28 CALIFORNIA CLASS members with a second off-duty meal period for some workdays in which these

employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed “on-duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or on call. 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.

B. Rest Period Violations

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

C. Unreimbursed Business Expenses

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

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

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

15 **D. Sick Pay Violations**

16 19. California Labor Code Section 246, *et seq.* states, "An employee who...works in
17 California for the same employer for 30 or more days within a year from the commencement of
18 employment is entitled to paid sick days" as specified in Cal. Lab. Code § 246. However,
19 DEFENDANTS from time to time failed to provide PLAINTIFF and other members of the
20 CALIFORNIA CLASS with sick days, in violation of Cal. Lab. Code § 246, *et seq.*

21 20. Further, California Labor Code Section 246, *et seq.* requires an employer to furnish its
22 employees with written wage statements setting forth the amount of paid sick leave available. From
23 time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF and other
24 members of the CALIFORNIA CLASS with wage statements setting forth the amount of paid sick
25 leave available.

26 **E. Wage Statement Violations**

27 21. California Labor Code Section 226 requires an employer to furnish its employees an
28 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the

number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (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.

22. From time to time during the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS members missed meal and rest breaks, were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

23. In addition to the violations described above, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

F. CLASS ACTION ALLEGATIONS

24. PLAINTIFF brings the First through Ninth 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").

25. 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 overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failure to separately compensate rest periods, failure to provide accurate

itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

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

27. Common questions of law and fact regarding DEFENDANTS' conduct, including but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failure to provide accurate itemized wage statements accurate, and failure 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 wages.

e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members at least minimum wage for all hours worked.

f. Whether DEFENDANTS issued legally compliant wage statements;

g. Whether DEFENDANTS failed to provide PLAINTIFF and the CALIFORNIA CLASS with paid sick days and sick leave balance on wage statemenys;

h. Whether DEFENDANTS failed to reimburse PLAINTIFF and the

CALIFORNIA CLASS members for required business expenses;

i. 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;

j. 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;

k. 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.

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

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

30. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS members.

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

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

33. 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;

34. 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.

35. 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.

36. 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)

37. 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.

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

39. 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.

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

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

42. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent in that DEFENDANTS’ uniform policy and practice failed to, *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of compensation for missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic

business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

44. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of compensation for missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal. Labor Code.

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

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

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

48. By and through the unlawful and unfair business practices described herein, DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly

1 compete against competitors who comply with the law.

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

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

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

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

23 **SECOND CAUSE OF ACTION**

24 **For Failure to Pay Overtime Compensation**

25 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

54. 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 (“LABOR 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.

55. 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.

56. 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.

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

58. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked or were not accurately compensated for all overtime hours worked.

59. DEFENDANTS’ uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other CALIFORNIA CLASS members and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked, including, the overtime 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.

60. In committing these violations of the California Labor Code, DEFENDANTS inaccurately calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS.

DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

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

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

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

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

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

66. DEFENDANTS knew or should have known that PLAINTIFF and the other members of

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

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

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

23 **THIRD CAUSE OF ACTION**

24 **For Failure to Pay Minimum Wages**

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

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

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

1 70. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
2 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
3 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
4 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the
5 LABOR CLASS PERIOD.

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

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

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

13 74. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
14 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
15 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
16 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
17 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
18 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
19 of the CALIFORNIA CLASS.

20 75. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
21 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
22 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
23 of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

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

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

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

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

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

7 **FOURTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

27 85. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC
28 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.

86. 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)

87. 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.

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

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

90. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA

CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

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

91. 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.

92. 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.

93. From time-to-time during the LABOR CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their personal cellular phone on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using their personal cellular phones for DEFENDANTS within the course and scope of their employment for DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and regulations of California.

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.

97. During the LABOR 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; (7) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; and (8) the accurate name of the legal entity that is the employer in violation of California Labor Code Section 226. In addition to the foregoing violations, DEFENDANTS failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements that comply with Cal. Lab. Code § 226.

98. 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 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor Code § 226.2(a)(6), all 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 CLASS herein.

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE PAID SICK DAYS AND SICK LEAVE BALANCE

(Cal. Lab. Code § 246, *et seq.*)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all DEFENDANT)

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

100. California Labor Code Section 246, *et seq.* states, “An employee who...works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days” as specified in Cal. Lab. Code § 246. However, DEFENDANTS from time to time failed to provide PLAINTIFF and other members of the CALIFORNIA CLASS with sick days, in violation of Cal. Lab. Code § 246, *et seq.*

101. Further, Cal. Lab. Code § 246(i) provides that:

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement "unlimited."

102. From time to time, DEFENDANT failed to furnish PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS with written wage statements setting forth the amount of paid sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.*

NINTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN DUE

(Cal Lab. Code §§201, 202, 203)

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

104. 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.

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

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,

1 or other agreement if the labor to be paid for is performed personally by the
2 person demanding payment.

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

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

6 If an employee not having a written contract for a definite period quits his
7 or her employment, his or her wages shall become due and payable not later
8 than 72 hours thereafter, unless the employee has given 72 hours previous
9 notice of his or her intention to quit, in which case the employee is entitled
10 to his or her wages at the time of quitting. Notwithstanding any other
11 provision of law, an employee who quits without providing a 72-hour notice
12 shall be entitled to receive payment by mail if he or she so requests and
13 designates a mailing address. The date of the mailing shall constitute the
14 date of payment for purposes of the requirement to provide payment within
15 72 hours of the notice of quitting.

16 108. There was no definite term in PLAINTIFF’s or any CALIFORNIA CLASS Members’
17 employment contract.

18 109. Cal. Lab. Code § 203 provides:

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

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

28 111. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members
of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands 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 LABOR CLASS PERIOD, and demands an accounting and payment of all
wages due, plus interest and statutory costs as allowed by law.

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; and,

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, and Ninth 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 Section 226.7, 512 and the applicable IWC Wage Order;

4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and,

2. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

- 1 B) Such other and further relief as the Court deems just and equitable; and,
2 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
3 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.
4

5 Dated: _____

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

7 By: 
8 Jean-Claude Lapuyade
9 Attorneys for PLAINTIFF

10 **DEMAND FOR JURY TRIAL**

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

13 Dated: _____

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

15 By: 
16 Jean-Claude Lapuyade
17 Attorneys for PLAINTIFF
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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

AVON Group, Inc.
c/o Eby Agu
17634 MAPLE DRIVE
CARSON, CA 90746



9590 9402 6744 1060 3007 55

2. Article Number (Transfer from service label)

7021 0950 0001 6369 9453

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

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3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☐ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Mail Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

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