

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

7CUTS LLC, a California Limited Liability Company; and DOES 1-50

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

JANELLE HARRIS, an individual, in her representative capacity on behalf of the State of California and fellow Aggrieved Employees

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

FILED
JUL - 9 2021

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By T. Schrader, Deputy Clerk

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):

Contra Costa Superior Court
725 Court Street
Martinez, CA 94553

CASE NUMBER:

(Número del caso):

C21-01375

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

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

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 3990 Old Town Avenue, Ste C204 San Diego, CA 92110

DATE:

(Fecha)

JUL - 9 2021

Clerk, by T. Schrader

(Secretario)

Deputy

(Adjunto)

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

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

[SEAL]

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 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

VIA FAX

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

JANELLE HARRIS, an individual, in her
representative capacity on behalf of the State
of California and fellow Aggrieved
Employees,

Plaintiffs,

v.

7CUTS LLC, a California Limited Liability
Company; and DOES 1-50, Inclusive,

Defendants.

Case No:

C21 - 01375

COMPLAINT FOR:

1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SETIONS 2698 *ET SEQ.*

DEMAND FOR A JURY TRIAL

FILED
JUL - 9 2021

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By: T. Schrader, Deputy Clerk

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT 39, FOR ALL
PURPOSES

SUMMONS ISSUED

VIA FAX

1 Plaintiff Janelle Harris an individual, ("PLAINTIFF"), an individual, in her representative
2 capacity on behalf the State of California, and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *supra*, against 7CUTS LLC. ("DEFENDANT"), alleges on information and
4 belief, except for her own acts and knowledge which are based on personal knowledge, the
5 following::

6 **PRELIMINARY ALLEGATIONS**

7 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys
8 General Act of 2004, California Labor Code § 2698, et seq. ("PAGA") on behalf of the State of
9 California and other current and former aggrieved employees of DEFENDANT for engaging in a
10 pattern and practice of wage and hour violations under the California Labor Code.

11 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
12 decreased its employment-related costs by systematically violating California wage and hour
13 laws.

14 3. DEFENDANT's systematic pattern of wage and hour and IWC Wage Order
15 violations toward PLAINTIFF and other aggrieved employees in California include, inter alia:

- 16 a. Failure to provide compliant meal and rest periods;
17 b. Failure to pay all minimum, regular and overtime wages, including overtime wages
18 at the correct rate;
19 c. Failure to maintain true and accurate records;
20 d. Failure to provide accurate itemized wage statements;
21 e. Failure to pay employees wages for time spent working before and after their shifts;
22 f. Failure to reimburse employees for business-related expenses; and
23 g. Failure to timely pay wages due during, and upon termination of employment.

24 4. PLAINTIFF brings this representative action against DEFENDANT on behalf of
25 other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid
26 wages permitted pursuant to California Labor Code § 2699, et seq.

27 5. PLAINTIFF reserves the right to name additional representatives throughout the
28 State of California.

1
2 THE PARTIES

3 6. Defendant 7CUTS LLC ("DEFENDANT and/or DEFENDANTS") is a California
4 Limited Liability Company and at all relevant times mentioned herein conducted and continues
5 to conduct substantial and regular business throughout California.

6 7. DEFENDANT operates hair salons throughout the State of California, including
7 the Contra Costa County, California location where PLAINTIFF worked.

8 8. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
9 employee entitled to minimum wages, overtime pay and meal and rest periods from November
10 of 2019 to October of 2020.

11 9. PLAINTIFF brings this action in her representative capacity on behalf of the
12 State of California and on behalf of all of DEFENDANT's current and former non-exempt
13 employees employed in California who suffered one or more Labor Code violations enumerated
14 in Labor Code §§ 2698 *et seq.* (hereinafter "AGGRIEVED EMPLOYEES") and who worked for
15 DEFENDANT between April 27, 2020 and the present ("PAGA PERIOD").

16 10. PLAINTIFF is an "AGGRIEVED EMPLOYEE" within the meaning of Labor
17 Code § 2699(c) because she was employed by DEFENDANT and suffered one or more of the
18 alleged Labor Code violations committed by DEFENDANT.

19 11. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times
20 were, employees of DEFENDANT, within the meanings set forth in the California Labor Code
21 and the applicable Industrial Welfare Commission Wage Order.

22 12. Each of the fictitiously named defendants participated in the acts alleged in this
23 Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50,
24 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint,
25 setting forth the true names and capacities of these fictitiously named defendants when their true
26 names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each
27 of the fictitious defendants have participated in the acts alleged in this Complaint.
28

13. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively “DEFENDANT” or “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.

14. DEFENDANT was 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

THE CONDUCT

15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time, DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANTS' control. Specifically, PLAINTIFF performed work before and after the beginning of her shift, spending time under DEFENDANTS' control for which she was not compensated, including time spent preparing the shop for opening. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

16. State law provides that employees must be paid overtime at one-and-one-half times their “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES were

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

3 17. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
4 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
5 and other CALIFORNIA CLASS Members incentive wages based on their performance for
6 DEFENDANTS. The non-discretionary incentive program provided all employees paid on an
7 hourly basis with incentive compensation when the employees met the various performance goals
8 set by DEFENDANTS, including payments for "Retail Commission" and "Service Bonus."
9 However, when calculating the regular rate of pay in order to pay overtime to PLAINTIFF and
10 other AGGRIEVED EMPLOYEES, DEFENDANTS failed to include the incentive
11 compensation as part of the employees' "regular rate of pay" for purposes of calculating overtime
12 pay. Management and supervisors described the incentive program to potential and new
13 employees as part of the compensation package. However, DEFENDANTS failed to include
14 incentive compensation into the "regular rate of pay" for purposes of calculating overtime pay.
15 As a matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
16 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted in
17 a systematic underpayment of overtime compensation to PLAINTIFF and other AGGRIEVED
18 EMPLOYEES by DEFENDANTS.

19 18. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
20 EMPLOYEES were also from time to time unable to take off duty meal breaks and were not fully
21 relieved of duty for meal periods. Specifically, PLAINTIFF and AGGRIEVED EMPLOYEES
22 were from time to time interrupted during their off-duty meal breaks to complete tasks for
23 DEFENDANTS. PLAINTIFF and other AGGRIEVED EMPLOYEES were required to perform
24 work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving
25 an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and
26 AGGRIEVED EMPLOYEES with a second off-duty meal period each workday in which these
27 employees were required by DEFENDANTS to work ten (10) hours of work. DEFENDANTS'
28 policy caused PLAINTIFF and other AGGRIEVED EMPLOYEES to remain on-call and on-duty

1 during what was supposed to be their off-duty meal periods. PLAINTIFF and the other
2 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
3 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

4 19. During the PAGA PERIOD, from time to time, PLAINTIFF and other
5 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being
6 provided ten (10) minute rest periods. Further, these employees were denied their first rest periods
7 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
8 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight
9 (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts
10 worked of ten (10) hours or more. When they did have an opportunity to take their rest breaks,
11 PLAINTIFF and the AGGRIEVED EMPLOYEES were often interrupted and required by
12 DEFENDANTS to work during their rest breaks. When they did have an opportunity to take their
13 rest breaks, PLAINTIFF and the AGGRIEVED EMPLOYEES were required to on-duty and on-
14 call and subject to DEFENDANTS' control in accordance with DEFENDANTS' policy.
15 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour wages
16 in lieu thereof. DEFENDANTS' policy caused PLAINTIFF and other AGGRIEVED
17 EMPLOYEES to remain on-call and on-duty during what was supposed to be their off-duty rest
18 periods. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
19 EMPLOYEES were periodically denied their proper rest periods by DEFENDANTS and
20 DEFENDANTS' managers.

21 20. Under California law, every employer shall pay to each employee, on the
22 established payday for the period involved, not less than the applicable minimum wage for all
23 hours worked in the payroll period, whether the remuneration is measured by time, piece,
24 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
25 during which an employee is subject to the control of an employer and includes all the time the
26 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFF and
27 other AGGRIEVED EMPLOYEES were from time to time required to perform work for
28 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal

1 breaks. DEFENDANTS failed to compensate PLAINTIFF and other AGGRIEVED
2 EMPLOYEES for any of the time spent under DEFENDANTS' control while working off-the-
3 clock. As such, DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED
4 EMPLOYEES the applicable minimum wage for all hours worked in a payroll period.

5 21. In violation of the applicable sections of the California Labor Code and the
6 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
7 matter of company policy, practice and procedure, intentionally and knowingly failed to
8 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked. This
9 uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of
10 the correct compensation as required by California law which allowed DEFENDANTS to illegally
11 profit and gain an unfair advantage over competitors who complied with the law. To the extent
12 equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
13 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

14 22. From time to time, when PLAINTIFF and other AGGRIEVED EMPLOYEES
15 worked during what was supposed to be their meal breaks or otherwise off the clock, and/or when
16 DEFENDANT miscalculated PLAINTIFF's and other AGGRIEVED EMPLOYEES' regular rate
17 of pay, DEFENDANTS also failed to provide PLAINTIFF and the other AGGRIEVED
18 EMPLOYEES with complete and accurate wage statements which failed to show, among other
19 things, the correct time worked, including, work performed in excess of eight (8) hours in a
20 workday and/or forty (40) hours in any workweek, and the gross wages paid for those periods
21 during the pay period, and the correct penalty payments or missed meal and rest periods in
22 violation of California Labor Code Sections 226 and 226.2.

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

1 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the employee.

3 24. Aside from the violations listed herein, DEFENDANTS failed to issue to
4 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
5 Code 226 *et seq.* From time to time DEFENDANTS violated California Labor Code Section
6 226(a)(2) by failing to provide an accurate amount of total hours worked by PLAINTIFF and
7 other AGGRIEVED EMPLOYEES. Specifically, DEFENDANTS included items, including but
8 not limited to "Vacation" to the total hours worked. However, the foregoing item is not considered
9 total hours worked for purposes of California Labor Code Section 226(a)(2). Moreover,
10 DEFENDANT included overtime hours twice on the wage statements, thereby causing the total
11 hours worked to be inaccurate on the wage statements. Additionally, DEFENDANTS violated
12 California Labor Code Section 226(a)(8) by failing to list the correct name and address of the
13 legal employing entity of PLAINTIFF and other members of the CALIFORNIA CLASS. Further,
14 DEFENDANTS from time to time failed to issue an itemized wage statement to PLAINTIFF and
15 other AGGRIEVED EMPLOYEES that included the total hours worked and/or the applicable
16 hourly rates in effect during the pay period and the corresponding number of hours worked at
17 each hourly rate by PLAINTIFF and other AGGRIEVED EMPLOYEES. As a result, from time
18 to time DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA
19 CLASS with wage statements which violated Cal. Lab. Code § 226.

20 25. DEFENDANTS as a matter of corporate policy, practice and procedure,
21 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
22 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
23 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
24 duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are
25 required to indemnify employees for all expenses incurred in the course and scope of their
26 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
27 employee for all necessary expenditures or losses incurred by the employee in direct consequence
28 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,

1 even though unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful."

3 26. In the course of their employment, PLAINTIFF and other AGGRIEVED
4 EMPLOYEES as a business expense, were required by DEFENDANTS to use their own personal
5 cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost
7 associated with the use of their personal cellular phones for DEFENDANTS' benefit. Specifically,
8 PLAINTIFFS and other AGGRIEVED EMPLOYEES were required by DEFENDANTS to use
9 their personal cell phones for work related issues. As a result, in the course of their employment
10 with DEFENDANTS the PLAINTIFFS and other AGGRIEVED EMPLOYEES incurred
11 unreimbursed business expenses which included, but were not limited to, costs related to the use
12 of their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.

13 27. By reason of this uniform conduct applicable to PLAINTIFF and all AGGRIEVED
14 EMPLOYEES, DEFENDANTS committed acts of unfair competition in violation of the
15 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by
16 engaging in a company-wide policy and procedure which failed to accurately calculate and record
17 the correct overtime rate for the overtime worked by PLAINTIFF and other AGGRIEVED
18 EMPLOYEES. The proper calculation of these employees' overtime hour rates is the
19 DEFENDANTS' burden. As a result of DEFENDANTS' intentional disregard of the obligation
20 to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required overtime
21 compensation for work performed by the AGGRIEVED EMPLOYEES and violated the
22 California Labor Code and regulations promulgated thereunder as herein alleged.

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

1 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
2 DEFENDANTS' policy caused PLAINTIFF to remain on-call and on-duty during what was
3 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
4 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
5 and practice. Moreover, DEFENDANTS also provided PLAINTIFF with a paystub that failed to
6 accurately display PLAINTIFF's correct time worked and wages, as well as payments for missed
7 meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a). To date,
8 DEFENDANTS have not fully paid PLAINTIFF the overtime compensation still owed to him or
9 any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for
10 PLAINTIFF individually does not exceed the sum or value of \$75,000.

11 JOINT EMPLOYER

12 29. The Private Attorney General Act ("PAGA"), permits an aggrieved employee to
13 enforce any provision of the California Labor Code that provides for a civil penalty. (Lab. Code
14 § 2699(a).)

15 30. Section 558 of the California Labor Code provides that "any employer or other
16 person acting on behalf of an employer who violates, or causes to be violated, a section of this
17 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
18 Commissions shall be subject to a civil penalty..." (Lab. Code § 558(a).)

19 31. Section 1197.1 of the Labor Code provides that "[a]ny employer or other person
20 acting either individually or as an officer, agent, or employee of another person, who pays or
21 causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
22 local law, or by an order of the commission shall be subject to a civil penalty..." (Lab. Code §
23 1197.1(a).)

24 32. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have
25 held that a corporate employer's owners, officers and directors, are subject to civil penalties for
26 the employer's failure to pay appropriate wages to its employees, and, since liability under either
27 558 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings
28 are necessary. Atempa v. Pedrazzani, (2018) 27 Cal.App.5th 809; see generally Ochoa-Hernandez

1 v. Cjaders Food, Inc. (2009 WL 1404694); Thurman v. Bayshore Management, Inc. (2017) 203
2 Cal.App.4th 1112, 1145-1146.

3 33. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS,
4 and each of them, are subject to civil penalties for their failure to pay PLAINTIFF and the
5 aggrieved employees the appropriate wages as complained of herein and proximately caused the
6 complaints, injuries, and damages alleged herein.

7 34. At all relevant times, each DEFENDANTS, whether named or fictitious, was the
8 agent, employee or other person acting on behalf of each other DEFENDANTS, and, in
9 participating in the acts alleged in this Complaint, acted within the scope of such agency or
10 employment and ratified the acts of the other.

11 35. Each DEFENDANTS, whether named or fictitious, exercised control over
12 PLAINTIFF's wages, working hours, and/or working conditions.

13 36. Each DEFENDANTS, whether named or fictitious, acted in all respects pertinent
14 to this action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan
15 or policy, and the acts of each DEFENDANTS are legally attributable to the other
16 DEFENDANTS.

17 JURISDICTION AND VENUE

18 37. This Court has jurisdiction over this Action pursuant to California Code of Civil
19 Procedure, Section 410.10. This Court has jurisdiction over PLAINTIFF's claims for civil
20 penalties under the Private Attorney General Act of 2004, California Labor Code §2698, et seq.

21 38. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides
23 in this County, and DEFENDANTS (i) currently maintains and at all relevant times maintained
24 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
25 committed the wrongful conduct herein alleged in this County against the AGGRIEVED
26 EMPLOYEES.

1 FIRST CAUSE OF ACTION

2 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

3 **[Cal. Lab. Code §§ 2698, et seq.]**

4 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

5 39. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
6 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

17 41. PLAINTIFF brings this Representative Action on behalf of the State of California
18 with respect to herself and all other current and former AGGRIEVED EMPLOYEES employed
19 by DEFENDANTS during the PAGA PERIOD.

20 42. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
21 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
22 meaning of Labor Code Section 2699(c).

23 43. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
24 PLAINTIFF, on behalf of herself and other current or former employees, to bring a civil action
25 to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

26 44. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
27 Section 2699.3. By certified letter, return receipt requested, dated April 27, 2021, PLAINTIFF
28 gave written notice to the Labor and Workforce Development Agency ("LWDA") and to

1 DEENDANT of the specific provisions of the Labor Code alleged to have been violated,
2 including the facts and theories to support the alleged violations. See Exhibit #1, attached hereto
3 and incorporated by this reference herein.

4 45. As of July 3, 2021, more than sixty-five (65) days after serving the LWDA with
5 notice of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail
6 of its intent to investigate the DEFENDANTS' alleged violations as mandated by Labor Code
7 Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A,
8 PLAINTIFF may commence and is authorized to pursue this cause of action.

9 46. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
10 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of
11 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246,
12 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, in
13 the following amounts:

14 a. For violation of Labor Code Sections 201, 202, 203, and 204,
15 one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per
16 pay period for the initial violation and two hundred dollars (\$200) for
17 AGGRIEVED EMPLOYEE per pay period for each subsequent
18 violation [penalty per Labor Code Section 2699(f)(2)];

19 b. For violations of Labor Code Section 226(a), a civil penalty
20 in the amount of two hundred fifty dollars (\$250) for each
21 AGGRIEVED EMPLOYEE for any initial violation and one
22 thousand dollars for each subsequent violation [penalty per Labor
23 Code Section 226.3];

24 c. For violations of Labor Code Sections 204, a civil penalty in
25 the amount of one hundred dollars (\$100) for each AGGRIEVED
26 EMPLOYEE for any initial violation and two hundred dollars (\$200)
27 for AGGRIEVED EMPLOYEE for each subsequent violation [penalty
28 per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

1. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon DEFENDANTS a penalty of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

2. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one

1 Labor Code violation committed by an employer—to pursue penalties for all the Labor Code
2 violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

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

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

9 (c) For such other relief as the Court deems just and proper.

10
11
12 DATED: July 6, 2021

13
14 **ZAKAY LAW GROUP, APLC**

15
16 By: 

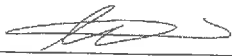
17 Shani O. Zakay
18 Attorney for Plaintiff

19 **DEMAND FOR A JURY TRIAL**

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

21
22 DATED: July 6, 2021

23 **ZAKAY LAW GROUP, APLC**

24 By: 

25
26 Shani O. Zakay
27 Attorney for Plaintiff
28

EXHIBIT 1



3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Tel: 619-599-8292
Fax: 619-599-8291
Toll Free: 1-888-498-6999
www.jcl-lawfirm.com
Jean-Claude Lapuyade, Esq.
jlapuyade@jcl-lawfirm.com

April 27, 2021

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

7CUTS LLC c/o KAMRAN CHAUDHARY 5948 STERLING OAKS DR SAN JOSE CA 95120 <i>Via Certified Mail with Return Receipt</i> <i>No. 7021 0350 0001 8165 1705</i>	
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Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

This office represents JANELLE HARRIS ("Plaintiff") and other aggrieved employees in a proposed class and representative action against 7CUTS LLC ("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's in California from November of 2019 to October of 2020. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendants 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 Defendants failed to fully compensate him, 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 Defendants' 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, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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 Defendants. 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)

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)255-9047
Facsimile: (858) 404-9203

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)599-8292
Facsimile: (619) 599-8291

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA**

JANELLE HARRIS, on behalf of herself and
on behalf of all persons similarly situated,

Plaintiffs,

v.

7CUTS LLC, a California Limited Liability
Company; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Plaintiff Janelle Harris an individual, ("PLAINTIFF"), on behalf of herself and all other
2 similarly situated current and former employees, allege on information and belief, except for
3 their own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant 7CUTS LLC ("DEFENDANT and/or DEFENDANTS") is a California
6 Limited Liability Company and at all relevant times mentioned herein conducted and continues
7 to conduct substantial and regular business throughout California.

8 2. DEFENDANT operates hair salons throughout the State of California, including
9 the Contra Costa County, California location where PLAINTIFF worked.

10 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
11 employee entitled to minimum wages, overtime pay and meal and rest periods from November of
12 2019 to October of 2020.

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

20 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
21 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
22 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
23 which failed to lawfully compensate these employees for all their time worked. DEFENDANTS'
24 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice
25 whereby DEFENDANTS retained and continues to retain wages due to PLAINTIFF and the other
26 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
27 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the
28 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS

1 who have been economically injured by DEFENDANTS' past and current unlawful conduct, and
2 all other appropriate legal and equitable relief.

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

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

20 THE CONDUCT

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
22 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
23 worked, meaning the time during which an employee is subject to the control of an employer,
24 including all the time the employee is suffered or permitted to work. From time to time,
25 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without
26 paying them for all the time they were under DEFENDANTS' control. Specifically, PLAINTIFF
27 performed work before and after the beginning of her shift, spending time under DEFENDANTS'
28 control for which she was not compensated, including time spent preparing the shop for opening.

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

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

10 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
11 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
12 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
13 performance for DEFENDANTS. The non-discretionary incentive program provided all
14 employees paid on an hourly basis with incentive compensation when the employees met the
15 various performance goals set by DEFENDANTS, including payments for "Retail Commission"
16 and "Service Bonus." However, when calculating the regular rate of pay in order to pay overtime
17 to PLAINTIFF and other CALIFORNIA CLASS Members, DEFENDANTS failed to include the
18 incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating
19 overtime pay. Management and supervisors described the incentive program to potential and new
20 employees as part of the compensation package. However, DEFENDANTS failed to include
21 incentive compensation into the "regular rate of pay" for purposes of calculating overtime pay.
22 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
23 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
24 in a systematic underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA
25 CLASS Members by DEFENDANTS.

26 11. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
27 CLASS Members were also from time to time unable to take off duty meal breaks and were not
28 fully relieved of duty for meal periods. Specifically, PLAINTIFF and CALIFORNIA CLASS

1 Members were from time to time interrupted during their off-duty meal breaks to complete tasks
2 for DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS Members were required to
3 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
4 receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and
5 CALIFORNIA CLASS Members with a second off-duty meal period each workday in which
6 these employees were required by DEFENDANTS to work ten (10) hours of work.
7 DEFENDANTS' policy caused PLAINTIFF and other CALIFORNIA CLASS Members to
8 remain on-call and on-duty during what was supposed to be their off-duty meal periods.
9 PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks
10 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
11 and practice.

12 12. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
13 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
14 without being provided ten (10) minute rest periods. Further, these employees were denied their
15 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
16 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
17 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
18 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
19 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and
20 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity
21 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
22 on-duty and on-call and subject to DEFENDANTS' control in accordance with DEFENDANTS'
23 policy. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one
24 hour wages in lieu thereof. DEFENDANTS' policy caused PLAINTIFF and other CALIFORNIA
25 CLASS Members to remain on-call and on-duty during what was supposed to be their off-duty
26 rest periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
27 CLASS Members were periodically denied their proper rest periods by DEFENDANTS and
28 DEFENDANTS' managers.

1 13. Under California law, every employer shall pay to each employee, on the
2 established payday for the period involved, not less than the applicable minimum wage for all
3 hours worked in the payroll period, whether the remuneration is measured by time, piece,
4 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
5 during which an employee is subject to the control of an employer and includes all the time the
6 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFF and
7 other CALIFORNIA CLASS Members were from time to time required to perform work for
8 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal
9 breaks. DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS
10 Members for any of the time spent under DEFENDANTS' control while working off-the-clock.
11 As such, DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA CLASS Members
12 the applicable minimum wage for all hours worked in a payroll period.

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

22 15. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members
23 worked during what was supposed to be their meal breaks or otherwise off the clock, and/or when
24 DEFENDANT miscalculated PLAINTIFF's and other CALIFORNIA CLASS Members' regular
25 rate of pay, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
26 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among
27 other things, the correct time worked, including, work performed in excess of eight (8) hours in a
28 workday and/or forty (40) hours in any workweek, and the gross wages paid for those periods

1 during the pay period, and the correct penalty payments or missed meal and rest periods in
2 violation of California Labor Code Sections 226 and 226.2.

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

11 17. Aside from the violations listed herein, DEFENDANTS failed to issue to
12 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
13 Code 226 *et seq.* From time to time DEFENDANTS violated California Labor Code Section
14 226(a)(2) by failing to provide an accurate amount of total hours worked by PLAINTIFF and
15 other members of the CALIFORNIA CLASS. Specifically, DEFENDANTS included items,
16 including but not limited to "Vacation" to the total hours worked. However, the foregoing item is
17 not considered total hours worked for purposes of California Labor Code Section 226(a)(2).
18 Moreover, DEFENDANT included overtime hours twice on the wage statements, thereby causing
19 the total hours worked to be inaccurate on the wage statements. Additionally, DEFENDANTS
20 violated California Labor Code Section 226(a)(8) by failing to list the correct name and address
21 of the legal employing entity of PLAINTIFF and other members of the CALIFORNIA CLASS.
22 Further, DEFENDANTS from time to time failed to issue an itemized wage statement to
23 PLAINTIFF and other members of the CALIFORNIA CLASS that included the total hours
24 worked and/or the applicable hourly rates in effect during the pay period and the corresponding
25 number of hours worked at each hourly rate by PLAINTIFF and other members of the
26 CALIFORNIA CLASS. As a result, from time to time DEFENDANTS provided PLAINTIFF and
27 the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
28 Code § 226.

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

12 19. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
13 Members as a business expense, were required by DEFENDANTS to use their own personal
14 cellular phones as a result of and in furtherance of their job duties as employees for
15 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost
16 associated with the use of their personal cellular phones for DEFENDANTS' benefit. Specifically,
17 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANTS to
18 use their personal cell phones for work related issues. As a result, in the course of their
19 employment with DEFENDANTS the PLAINTIFFS and other members of the CALIFORNIA
20 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs
21 related to the use of their personal cellular phones all on behalf of and for the benefit of
22 DEFENDANTS.

23 20. By reason of this uniform conduct applicable to PLAINTIFF and all
24 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
25 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
26 "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
27 calculate and record the correct overtime rate for the overtime worked by PLAINTIFF and other
28 CALIFORNIA CLASS Members. The proper calculation of these employees' overtime hour

1 rates is the DEFENDANTS' burden. As a result of DEFENDANTS' intentional disregard of the
2 obligation to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required
3 overtime compensation for work performed by the members of the CALIFORNIA CLASS and
4 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

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

21 JURISDICTION AND VENUE

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

26 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times
28 maintained offices and facilities in this County and/or conduct substantial business in this County,

1 and (ii) committed the wrongful conduct herein alleged in this County against members of the
2 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

3 THE CALIFORNIA CLASS

4 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
5 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
6 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
7 individuals who are or previously were employed by DEFENDANT in California and classified
8 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
9 four (4) years prior to the filing of the original complaint and ending on the date as determined by
10 the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate
11 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

12 25. To the extent equitable tolling operates to toll claims by the CALIFORNIA
13 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
14 accordingly.

15 26. DEFENDANTS, as a matter of company policy, practice and procedure, and in
16 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
17 requirements, and the applicable provisions of California law, intentionally, knowingly, and
18 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal
19 and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS,
20 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform
21 this work and permitted or suffered to permit this work.

22 27. DEFENDANTS have the legal burden to establish that each and every
23 CALIFORNIA CLASS Member was paid accurately and was provided all meal and rest breaks
24 missed as required by California laws. DEFENDANTS, however, as a matter of uniform and
25 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
26 PERIOD and still fails to have in place a policy or practice to ensure that each and every
27 CALIFORNIA CLASS Member is paid as required by law, so as to satisfy its burden. This
28 common business practice applicable to each and every CALIFORNIA CLASS Member can be

1 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
2 Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not
3 elements of this claim.

4 28. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
5 CLASS Members is impracticable.

6 29. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
7 California law by:

- 8 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
9 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
10 policies, practices and procedures that failed to pay all wages due the
11 CALIFORNIA CLASS for all time worked;
- 12 b. Committing an act of unfair competition in violation of the California Unfair
13 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
14 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
15 members;
- 16 c. Committing an act of unfair competition in violation of the California Unfair
17 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
18 Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA CLASS
19 members with necessary expenses incurred in the discharge of their job duties; and
- 20 d. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
21 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
22 company policies, practices and procedures that uniformly and systematically
23 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
24 CLASS for all time worked, including minimum wages owed and overtime wages
25 owed for work performed by these employees.

26 30. The Class Action meets the statutory prerequisites for the maintenance of a Class
27 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:
28

- 1 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
2 joinder of all such persons is impracticable and the disposition of their claims as a
3 class will benefit the parties and the Court;
- 4 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
5 raised in this Complaint are common to the CALIFORNIA CLASS will apply
6 uniformly to every member of the CALIFORNIA CLASS;
- 7 c. The claims of the representative PLAINTIFF are typical of the claims of each
8 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
9 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an
10 hourly basis who was subjected to the DEFENDANTS' deceptive practice and
11 policy which failed to provide the legally required meal and rest periods to the
12 CALIFORNIA CLASS and thereby systematically underpaid compensation to
13 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
14 as a result of DEFENDANTS' employment practices. PLAINTIFF, like all the
15 other members of the CALIFORNIA CLASS, were subjected to the uniform
16 employment practices of DEFENDANTS and was a non-exempt employee paid
17 on an hourly basis and paid additional non-discretionary incentive wages who was
18 subjected to the DEFENDANTS' practice and policy which failed to pay the
19 correct rate of overtime wages due to the CALIFORNIA CLASS for all overtime
20 worked by the CALIFORNIA CLASS and thereby systematically under pays
21 overtime compensation to the CALIFORNIA CLASS. PLAINTIFF and the
22 members of the CALIFORNIA CLASS were and are similarly or identically
23 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
24 misconduct engaged in by DEFENDANTS; and
- 25 d. The representative PLAINTIFF will fairly and adequately represent and protect
26 the interest of the CALIFORNIA CLASS, and has retained counsel who are
27 competent and experienced in Class Action litigation. There are no material
28 conflicts between the claims of the representative PLAINTIFF and the members

1 of the CALIFORNIA CLASS that would make class certification inappropriate.
2 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
3 CALIFORNIA CLASS Members.

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

6 a. Without class certification and determination of declaratory, injunctive, statutory
7 and other legal questions within the class format, prosecution of separate actions
8 by individual members of the CALIFORNIA CLASS will create the risk of:

9 i. Inconsistent or varying adjudications with respect to individual members
10 of the CALIFORNIA CLASS which would establish incompatible
11 standards of conduct for the parties opposing the CALIFORNIA CLASS;
12 and/or;

13 ii. Adjudication with respect to individual members of the CALIFORNIA
14 CLASS which would as a practical matter be dispositive of interests of the
15 other members not party to the adjudication or substantially impair or
16 impede their ability to protect their interests.

17 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
18 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
19 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
20 DEFENDANT uniformly failed to pay all wages due for all time worked by the
21 members of the CALIFORNIA CLASS as required by law;

22 i. With respect to the First Cause of Action, the final relief on behalf of the
23 CALIFORNIA CLASS sought does not relate exclusively to restitution
24 because through this claim PLAINTIFF seek declaratory relief holding that
25 the DEFENDANTS' policy and practices constitute unfair competition,
26 along with declaratory relief, injunctive relief, and incidental equitable
27 relief as may be necessary to prevent and remedy the conduct declared to
28 constitute unfair competition;

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

7 i. The interests of the members of the CALIFORNIA CLASS in individually
8 controlling the prosecution or defense of separate actions in that the
9 substantial expense of individual actions will be avoided to recover the
10 relatively small amount of economic losses sustained by the individual
11 CALIFORNIA CLASS Members when compared to the substantial
12 expense and burden of individual prosecution of this litigation;

13 ii. Class certification will obviate the need for unduly duplicative litigation
14 that would create the risk of:

15 1. Inconsistent or varying adjudications with respect to individual
16 members of the CALIFORNIA CLASS, which would establish
17 incompatible standards of conduct for the DEFENDANTS; and/or;

18 2. Adjudications with respect to individual members of the
19 CALIFORNIA CLASS would as a practical matter be dispositive
20 of the interests of the other members not parties to the adjudication
21 or substantially impair or impede their ability to protect their
22 interests;

23 iii. In the context of wage litigation, because a substantial number of
24 individual CALIFORNIA CLASS Members will avoid asserting their legal
25 rights out of fear of retaliation by DEFENDANTS, which may adversely
26 affect an individual's job with DEFENDANTS or with a subsequent
27 employer, the Class Action is the only means to assert their claims through
28 a representative; and

1 iv. A class action is superior to other available methods for the fair and
2 efficient adjudication of this litigation because class treatment will obviate
3 the need for unduly and unnecessary duplicative litigation that is likely to
4 result in the absence of certification of this action pursuant to Cal. Code of
5 Civ. Proc. § 382.

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

- 8 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
9 over any question affecting only individual CALIFORNIA CLASS Members
10 because the DEFENDANTS' employment practices are uniform and
11 systematically applied with respect to the CALIFORNIA CLASS.
- 12 b. A Class Action is superior to any other available method for the fair and efficient
13 adjudication of the claims of the members of the CALIFORNIA CLASS because
14 in the context of employment litigation a substantial number of individual
15 CALIFORNIA CLASS Members will avoid asserting their rights individually out
16 of fear of retaliation or adverse impact on their employment;
- 17 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical
18 to bring all members of the CALIFORNIA CLASS before the Court;
- 19 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
20 obtain effective and economic legal redress unless the action is maintained as a
21 Class Action;
- 22 e. There is a community of interest in obtaining appropriate legal and equitable relief
23 for the acts of unfair competition, statutory violations and other improprieties, and
24 in obtaining adequate compensation for the damages and injuries which
25 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- 26 f. There is a community of interest in ensuring that the combined assets of
27 DEFENDANTS are sufficient to adequately compensate the members of the
28 CALIFORNIA CLASS for the injuries sustained;

- 1 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
2 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
3 with respect to the CALIFORNIA CLASS as a whole;
- 4 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
5 business records of DEFENDANTS; and
- 6 i. Class treatment provides manageable judicial treatment calculated to bring an
7 efficient and rapid conclusion to all litigation of all wage and hour related claims
8 arising out of the conduct of DEFENDANTS as to the members of the
9 CALIFORNIA CLASS.

10 33. DEFENDANTS maintain records from which the Court can ascertain and identify
11 by job title each of DEFENDANTS' employees who as have been systematically, intentionally
12 and uniformly subjected to DEFENDANTS' company policy, practices and procedures as herein
13 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
14 of similarly situated employees when they have been identified.

15 **THE CALIFORNIA LABOR SUB-CLASS**

16 34. PLAINTIFF further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, and
17 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
18 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-
19 CLASS") at any time during the period three (3) years prior to the filing of the original complaint
20 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
21 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
22 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
23 (\$5,000,000.00).

24 35. DEFENDANTS, as a matter of company policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
26 requirements, and the applicable provisions of California law, intentionally, knowingly, and
27 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time
28 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and

1 other wages and premiums owed to these employees, even though DEFENDANTS enjoyed the
2 benefit of this work, required employees to perform this work and permitted or suffered to permit
3 this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-
4 CLASS Members wages to which these employees are entitled in order to unfairly cheat the
5 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
6 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-
7 CLASS PERIOD should be adjusted accordingly.

8 36. DEFENDANTS maintain records from which the Court can ascertain and identify
9 by name and job title, each of DEFENDANTS' employees who have been systematically,
10 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and
11 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any
12 additional job titles of similarly situated employees when they have been identified.

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

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

- 17 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
18 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
19 missed meal and rest breaks in violation of the California Labor Code and
20 California regulations and the applicable California Wage Order;
- 21 b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
22 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
23 thirty (30) minute meal breaks and rest periods;
- 24 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of
25 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
26 statements;
- 27 d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to
28 members of the CALIFORNIA LABOR SUB-CLASS in violation of the

1 California Labor Code and California regulations and the applicable California
2 Wage Order;

- 3 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
4 compensation for time worked, including overtime worked, under the overtime
5 pay requirements of California law;
- 6 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
7 conduct;
- 8 g. The proper measure of damages and penalties owed to the members of the
9 CALIFORNIA LABOR SUB-CLASS; and
- 10 h. Whether DEFENDANTS' conduct was willful.

11 39. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
12 under California law by:

- 13 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
14 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
15 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
16 § 1194;
- 17 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
18 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
19 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
20 Cal. Lab. Code §§ 1194 and 1197;
- 21 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
22 the other members of the CALIFORNIA CLASS with all legally required off-duty,
23 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 24 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
25 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
26 statement in writing showing all accurate rates in effect during the pay period and
27 the corresponding amount of time worked at each overtime rate by the employee;
- 28

1 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
2 CALIFORNIA CLASS members with necessary expenses incurred in the
3 discharge of their job duties;

4 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
5 employee is discharged or quits from employment, the employer must pay the
6 employee all wages due without abatement, by failing to tender full payment
7 and/or restitution of wages owed or in the manner required by California law to
8 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
9 their employment.

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

12 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
13 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
14 is impracticable and the disposition of their claims as a class will benefit the parties
15 and the Court;

16 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
17 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
18 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
19 CLASS;

20 c. The claims of the representative PLAINTIFF are typical of the claims of each
21 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
22 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
23 employee paid on an hourly basis and paid additional non-discretionary incentive
24 wages who was subjected to the DEFENDANTS' practice and policy which failed
25 to pay the correct rate of overtime wages and total amount of wages due to the
26 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
27 a result of DEFENDANTS' employment practices. PLAINTIFF and the members
28 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically

1 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
2 misconduct engaged in by DEFENDANTS; and

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

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

13 a. Without class certification and determination of declaratory, injunctive, statutory
14 and other legal questions within the class format, prosecution of separate actions
15 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
16 the risk of:

17 i. Inconsistent or varying adjudications with respect to individual members
18 of the CALIFORNIA LABOR SUB-CLASS which would establish
19 incompatible standards of conduct for the parties opposing the
20 CALIFORNIA LABOR SUB-CLASS; or

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

25 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
26 refused to act on grounds generally applicable to the CALIFORNIA LABOR
27 SUB-CLASS, making appropriate class-wide relief with respect to the
28 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly

1 failed to pay all wages due for all time worked by the members of the
2 CALIFORNIA LABOR SUB-CLASS as required by law;

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

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

15 ii. Class certification will obviate the need for unduly duplicative litigation
16 that would create the risk of:

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

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

26 iii. In the context of wage litigation because a substantial number of individual
27 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
28 legal rights out of fear of retaliation by DEFENDANTS, which may

adversely affect an individual's job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

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

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which

1 DEFENDANTS' actions have inflicted upon the CALIFORNIA LABOR SUB-
2 CLASS;

- 3 f. There is a community of interest in ensuring that the combined assets of
4 DEFENDANTS are sufficient to adequately compensate the members of the
5 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 6 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
7 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
8 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 9 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
10 ascertainable from the business records of DEFENDANTS. The CALIFORNIA
11 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
12 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
13 PERIOD; and
- 14 i. Class treatment provides manageable judicial treatment calculated to bring an
15 efficient and rapid conclusion to all litigation of all wage and hour related claims
16 arising out of the conduct of DEFENDANTS as to the members of the
17 CALIFORNIA LABOR SUB-CLASS.

18 **FIRST CAUSE OF ACTION**

19 **UNLAWFUL BUSINESS PRACTICES**

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

21 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

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

25 44. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof.
26 Code § 17021.

27 45. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
28 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203

1 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
2 as follows:

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

10 46. By the conduct alleged herein, DEFENDANTS have engaged and continues to
11 engage in a business practice which violates California law, including but not limited to, the
12 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
13 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1,
14 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
15 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
16 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

23 48. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
24 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
25 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
26 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,
27 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
28 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.

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

5 50. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
6 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
7 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

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

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

1 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
2 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
3 business practices, including earned but unpaid wages.

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

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

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**
17 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

18 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
19 **DEFENDANTS)**

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

23 59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code
25 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately
26 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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

11 64. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
12 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
13 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
14 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
15 pay.

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

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

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

28 68. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR

1 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
2 presently unknown to them and which will be ascertained according to proof at trial.

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

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

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

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THIRD CAUSE OF ACTION

**FAILURE TO PAY OVERTIME COMPENSATION
(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

**(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL
DEFENDANTS)**

72. 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.

73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANTS' failure to properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

74. 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.

75. 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 amount specified by law.

76. 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.

77. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of overtime worked and correct applicable overtime rate for the amount of overtime they worked. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the

1 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed
2 to pay these employees the correct applicable overtime wages for all overtime worked.

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

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

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

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

26 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
28 they were entitled to, constituting a failure to pay all earned wages.

83. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in

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

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

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

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

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

1 LABOR SUB-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
3 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein
4 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANTS' conduct as
5 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
6 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

9 (Cal. Lab. Code §§ 226.7 & 512)

10 (Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
11 DEFENDANTS)

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

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

28 90. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-

1 CLASS Members who were not provided a meal period, in accordance with the applicable Wage
2 Order, one additional hour of compensation at each employee's regular rate of pay for each
3 workday that a meal period was not provided.

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

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

9 (Cal. Lab. Code §§ 226.7 & 512)

10 (Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
11 DEFENDANTS)

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

15 93. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
16 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
17 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
18 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
19 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
20 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
21 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided
22 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
23 and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper
24 rest periods by DEFENDANTS and DEFENDANTS' managers. When DEFENDANTS provided
25 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with rest break, they
26 required PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members to stay on
27 DEFENDANTS' premises for those rest breaks.

28 94. DEFENDANTS further violated California Labor Code §§ 226.7 and the
applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
SUB-CLASS Members who were not provided a rest period, in accordance with the applicable

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

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

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

8 **(Cal. Lab. Code §§ 226 and 226.2)**

9 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
DEFENDANTS)**

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

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

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

employee identification number other than a social security number may be shown on the itemized statement;

- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

98. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate employees with an "accurate itemized" statement in writing showing:

- a. The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and
- b. The total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

99. When DEFENDANTS did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' wages, including overtime wages, owed, 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, the correct overtime rate, the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFF and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* From time to time DEFENDANTS violated California Labor Code Section 226(a)(2) by failing to provide an accurate amount of total hours worked by PLAINTIFF and other members of the CALIFORNIA CLASS. Specifically, DEFENDANTS included items, including but not limited to "Vacation" to the total hours worked. However, the foregoing item is not considered total hours

1 worked for purposes of California Labor Code Section 226(a)(2). Moreover, DEFENDANT
2 included overtime hours twice on the wage statements, thereby causing the total hours worked to
3 be inaccurate on the wage statements. Additionally, DEFENDANTS violated California Labor
4 Code Section 226(a)(8) by failing to list the correct name and address of the legal employing
5 entity of PLAINTIFF and other members of the CALIFORNIA CLASS. Further, DEFENDANTS
6 from time to time failed to issue an itemized wage statement to PLAINTIFF and other members
7 of the CALIFORNIA CLASS that included the total hours worked and/or the applicable hourly
8 rates in effect during the pay period and the corresponding number of hours worked at each hourly
9 rate by PLAINTIFF and other members of the CALIFORNIA CLASS. As a result, from time to
10 time DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA CLASS
11 with wage statements which violated Cal. Lab. Code § 226.

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

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1 SEVENTH CAUSE OF ACTION

2 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

3 (Cal. Lab. Code §§ 2802)

4 (Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
5 DEFENDANTS)

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

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

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

14 103. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
15 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
16 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
17 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
18 CLASS members for expenses which included, but were not limited to, costs related to using their
19 personal cellular phones all on behalf of and for the benefit of DEFENDANTS. Specifically,
20 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use
21 their personal cell phones for work related issues. DEFENDANTS' uniform policy, practice and
22 procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
23 members for expenses resulting from using their personal cellular phones for DEFENDANTS
24 within the course and scope of their employment for DEFENDANTS. These expenses were
25 necessary to complete their principal job duties. DEFENDANTS is estopped by DEFENDANTS'
26 conduct to assert any waiver of this expectation. Although these expenses were necessary
27 expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
28 DEFENDANTS failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA

1 LABOR SUB-CLASS members for these expenses as an employer is required to do under the
2 laws and regulations of California.

3 104. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
4 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
5 duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest
6 at the statutory rate and costs under Cal. Lab. Code § 2802.

7 **EIGHTH CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES WHEN DUE**

9 (Cal. Lab. Code §§201, 202, 203)

10 (Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all
11 DEFENDANTS)

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

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

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

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

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

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

1 mailing shall constitute the date of payment for purposes of the requirement to
2 provide payment within 72 hours of the notice of quitting.

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

5 110. Cal. Lab. Code § 203 provides:

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

11 111. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
12 Members terminated and DEFENDANTS have not tendered payment of wages, to these
13 employees who missed meal and rest breaks, as required by law.

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

20 PRAYER FOR RELIEF

21 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANTS, jointly
22 and severally, as follows:

23 1. On behalf of the CALIFORNIA CLASS:

- 24 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
25 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
26 b. An order temporarily, preliminarily and permanently enjoining and restraining
27 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
28 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 DEFENDANT'S' ill-gotten gains into a fluid fund

1 for restitution of the sums incidental to DEFENDANTS' violations due to
2 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

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

22 3. On all claims:

- 23 a. An award of interest, including prejudgment interest at the legal rate;
- 24 b. Such other and further relief as the Court deems just and equitable; and
- 25 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
26 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194, §1197
27 and/or §2802.
- 28

1 DATED: _____, 2021

2
3 **ZAKAY LAW GROUP, APLC**

4 By: _____
5 Shani O. Zakay
6 Attorney for Plaintiffs

7 **DEMAND FOR A JURY TRIAL**

8
9 PLAINTIFF demands a jury trial on issues triable to a jury.

10 DATED: _____, 2021

11 **ZAKAY LAW GROUP, APLC**

12
13 By: _____

14
15 Shani O. Zakay
16 Attorney for Plaintiffs

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:

7cuts LLC
c/o Kamran Chaudhary
5948 Sterling Oaks Dr.
San Jose, CA 95120



9590 9402 6589 1028 8492 77

2. Article Number (Transfer from service label)

7021 0350 0001 8165 1705

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X PR. 2029

☐ Agent☐ Addressee

B. Received by (Printed Name)

Covid 19

C. Date of Delivery

5/3/21

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

Harris

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- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt