

SUMMONS

(CITACION JUDICIAL)

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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
8/9/2024 6:24:04 PM

Clerk of the Superior Court
By L. McAlister , Deputy Clerk

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

UTAH LAKE HOLDINGS, LLC dba JACOB HEALTHCARE CENTER, a California limited liability company; JACOB HEALTHCARE CENTER, LP, a limited partnership; and DOES 1-50, Inclusive,

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

SHAKISHA HENRY, in her representative capacity on behalf of the State of California and fellow Aggrieved Employees,

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

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Court of California - San Diego

Hall of Justice - 330 W Broadway San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

24CU000131C

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. T: 619-599-8292 Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: **9/10/2024**
(Fecha)

Clerk, by L. McAlister, Deputy
(Secretario) (Adjunto)

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

L. McAlister

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

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

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

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
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County of San Diego

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Clerk of the Superior Court
By B. Montijo ,Deputy Clerk

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Attorneys for Plaintiff SHAKISHA HENRY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

SHAKISHA HENRY, in her representative
capacity on behalf of the State of California and
fellow Aggrieved Employees,

Plaintiff,

vs.

UTAH LAKE HOLDINGS, LLC dba JACOB
HEALTHCARE CENTER, a California limited
liability company; JACOB HEALTHCARE
CENTER, LP, a limited partnership; and DOES
1-50, Inclusive,

Defendants.

Case No. 24CU000131C

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 Plaintiff SHAKISHA HENRY (“PLAINTIFF”) an individual, in her representative capacity on
2 behalf of the State of California and fellow current and former AGGRIEVED EMPLOYEES, defined
3 *supra*, against Defendants UTAH LAKE HOLDINGS, LLC dba JACOB HEALTHCARE CENTER
4 and JACOB HEALTHCARE CENTER, LP, alleges on information and belief, except for her own acts
5 and knowledge which are based on personal knowledge, the following:

6 **INTRODUCTION**

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

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

13 3. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order violations
14 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 15 a. Failure to provide compliant meal and rest periods;
- 16 b. Failure to allow employees to take duty-free meal and rest periods;
- 17 c. Failure to pay all minimum, regular and overtime wages;
- 18 d. Failure to correctly calculate the regular rate of pay;
- 19 e. Failure to maintain true and accurate records;
- 20 f. Failure to reimburse employees for required expenses;
- 21 g. Failure to provide accurate itemized wage statements; and
- 22 h. Failure to timely pay wages due during, and upon termination of employment.

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

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

1 **THE PARTIES**

2 6. Defendant UTAH LAKE HOLDINGS, LLC (“Defendant Lake”)dba JACOB
3 HEALTHCARE CENTER, is a California limited liability company that at all relevant times mentioned
4 herein conducted and continues to conduct substantial and regular business throughout California.

5 7. Defendant JACOB HEALTHCARE CENTER, LP (“Defendant Jacob”), is a California
6 limited partnership that at all relevant times mentioned herein conducted and continues to conduct
7 substantial and regular business throughout California.

8 8. Defendant Lake and Defendant Jacob were the joint employers of PLAINTIFF as
9 evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work
10 for respectively and are therefore jointly responsible as employers for the conduct alleged herein as
11 “DEFENDANTS” and/or “DEFENDANT.”

12 9. DEFENDANTS operate healthcare/nursing facilities throughout the state of California,
13 including in the county of San Diego, where PLAINTIFF worked.

14 10. PLAINTIFF was employed by DEFENDANTS in California from May of 2021 to April
15 of 2024 as a non-exempt employee, paid on an hourly basis and entitled to the legally required meal
16 and rest periods and payment of minimum and overtime wages due for all time worked.

17 11. PLAINTIFF, and such persons that may be added from time to time who satisfy the
18 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
19 this Representative Action on behalf of the State of California with respect all individuals who are or
20 previously were employed by Defendant Lake and/or Defendant Jacob in California and classified as
21 non-exempt employees (the “AGGRIEVED EMPLOYEES”) during the time period of April 22, 2023
22 until the present (the “PAGA PERIOD”).

23 12. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code §
24 2699(c) because she was employed by DEFENDANTS and suffered one or more of the alleged Labor
25 Code violations committed by DEFENDANTS.

26 13. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times
27 were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code and
the applicable Industrial Welfare Commission Wage Order.

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

15. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively “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.

16. DEFENDANTS were PLAINTIFF's employer 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.

JOINT EMPLOYER

17. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

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

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

1 20. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
2 a corporate employer's owners, officers and directors, are subject to civil penalties for the employer's
3 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does
4 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*
5 *Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009
6 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

7 21. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each
8 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees
9 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and
10 damages alleged herein.

11 22. At all relevant times, each DEFENDANT, whether named or fictitious, was the agent,
12 employee or other person acting on behalf of each other DEFENDANT, and, in participating in the acts
13 alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts
14 of the other.

15 23. Each DEFENDANT, whether named or fictitious, exercised control over PLAINTIFF's
16 wages, working hours, and/or working conditions.

17 24. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to this
18 action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy,
19 and the acts of each Defendant are legally attributable to the other DEFENDANT.

20 **JURISDICTION AND VENUE**

21 25. This Court has jurisdiction over PLAINTIFF's claims for civil penalties under the
22 Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

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

///

1 **THE CONDUCT**

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

17 **A. Meal Period Violations**

18 28. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
19 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
20 time during which an employee is subject to the control of an employer, including all the time the
21 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
22 DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them
23 for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's
24 demanding work requirements and DEFENDANT'S understaffing, DEFENDANTS required
25 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal
26 break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
27 should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where
PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other AGGRIEVED

1 EMPLOYEES forfeited minimum wage and overtime wages by regularly working without their time
2 being accurately recorded and without compensation at the applicable minimum wage and overtime
3 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED
4 EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

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

19 **B. Rest Period Violations**

20 30. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
21 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
22 provided ten (10) minute rest periods as a result of their rigorous work schedule, being required to take
23 orders, receive payments, expedite services, provide janitorial services, and DEFENDANTS'
24 inadequate staffing. Further, for the same reasons these employees were denied their first rest periods
25 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
26 time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six
27 (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10)
minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided

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

7 **C. Unreimbursed Business Expenses**

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

18 32. In the course of their employment, DEFENDANTS required PLAINTIFF and other
19 AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell phones and
20 purchase of company required uniforms as a result of and in furtherance of their job duties.
21 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to use their personal
22 cell phones and purchase company required uniforms in order to perform work related tasks. However,
23 DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES
24 for the use of their personal cell phones and purchase of company required uniforms. As a result, in the
25 course of their employment with DEFENDANTS, the PLAINTIFF and other AGGRIEVED
26 EMPLOYEES incurred unreimbursed business expenses that included, but were not limited to, costs
27 related to the use of their personal cell phones and purchase of company required uniforms, all on behalf
of and for the benefit of DEFENDANT.

1 **D. Wage Statement Violations**

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

10 34. From time-to-time during the PAGA PERIOD, when PLAINTIFF and other
11 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate overtime, missed
12 meal and rest period premiums and sick pay, or were not paid for all hours worked, DEFENDANTS
13 also failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate
14 wage statements which failed to show, among other things, the total hours worked and all applicable
15 hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly
16 rate, correct rates of pay for penalty payments or missed meal and rest periods.

17 35. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
18 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal. Lab.
19 Code § 226.

20 36. As a result, DEFENDANTS issued PLAINTIFF and other AGGRIEVED EMPLOYEES
21 wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing
22 and intentional, were not isolated due to an unintentional payroll error due to clerical or inadvertent
23 mistake.

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

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

27 38. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and
other AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work, including but not limited

1 to, security related tasks and engaging in substantive work related discussions via phone calls, texts and
2 the whatsapp application, while PLAINTIFF and other AGGRIEVED EMPLOYEES were not clocked
3 in. This resulted in PLAINTIFF and other AGGRIEVED EMPLOYEES to have to work while off-
4 the-clock.

5 39. DEFENDANTS directed and directly benefited from the undercompensated off-the-clock
6 work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

7 40. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
8 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.

9 41. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
10 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or
11 pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all the
12 work they performed.

13 42. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt employees,
14 subject to the requirements of the California Labor Code.

15 43. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
16 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for the
17 off-the-clock work activities. Because PLAINTIFF and the AGGRIEVED EMPLOYEES typically
18 worked over forty (40) hours in a workweek, and more than eight (8) hours per day, DEFENDANTS'
19 policies and practices also deprived them of overtime pay.

20 44. DEFENDANTS knew or should have known that PLAINTIFF and the other
21 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

22 45. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due
23 to them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent
24 working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and
25 the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
26 evidenced by DEFENDANTS' business records.

27 ///

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

3 46. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail
4 to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
5 overtime hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and the
6 other AGGRIEVED EMPLOYEES forfeited wages due to them for working overtime without
7 compensation at the correct overtime, meal and rest period premium, and sick pay rates.
8 DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct
9 overtime rate for all overtime worked, meal and rest period premiums, and sick pay in accordance with
10 applicable law is evidenced by DEFENDANTS' business records.

11 47. State law provides that employees must be paid overtime at one-and-one-half times their
12 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an
13 hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

14 48. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES'
15 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
16 other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS.
17 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus
18 compensation when the employees met the various performance goals set by DEFENDANTS.

19 49. However, from time to time, when calculating the regular rate of pay in those pay periods
20 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid meal
21 and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary bonuses,
22 DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the
23 employee's "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime
24 hours worked. Management and supervisors described the incentive/bonus program to potential and
25 new employees as part of the compensation package. As a matter of law, the incentive compensation
26 received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the "regular rate
27 of pay." The failure to do so has resulted in a systematic underpayment of overtime and double time
compensation, meal and rest period premium payments, and redeemed sick pay to PLAINTIFF and

1 other AGGRIEVED EMPLOYEES by DEFENDANTS. Specifically, California Labor Code Section
2 246 mandates that paid sick time for non-exempt employees shall be calculated in the same manner as
3 the regular rate of pay for the workweek in which the non-exempt employee uses paid sick time,
4 whether or not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as
5 articulated herein, by failing to include the incentive compensation as part of the "regular rate of pay"
6 for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of
7 which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

8 50. In violation of the applicable sections of the California Labor Code and the requirements
9 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
10 policy, practice, and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
11 other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime and double time worked,
12 meal and rest period premiums, and redeemed sick pay as required by California law which allowed
13 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with
14 the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES
15 against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

16 **G. Unlawful Deductions**

17 51. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF and
18 AGGRIEVED EMPLOYEE' pay without explanations and without authorization to do so or notice to
19 PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS violated Labor Code
20 § 221.

21 **H. Timekeeping Manipulation**

22 52. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
23 immutable timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED
24 EMPLOYEES for the actual time PLAINTIFF and other AGGRIEVED EMPLOYEES worked each
25 day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANT
26 was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANTS'
27 timekeeping system for PLAINTIFF and other AGGRIEVED EMPLOYEES in order to avoid paying

1 these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed
2 meal breaks and missed rest breaks.

3 53. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES, from time-to-time,
4 forfeited time worked by working without their time being accurately recorded and without
5 compensation at the applicable pay rates.

6 54. The mutability of the timekeeping system also allowed DEFENDANTS to alter employee
7 time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS' timekeeping
8 system so as to create the appearance that PLAINTIFF and other AGGRIEVED EMPLOYEES clocked
9 out for thirty (30) minute meal break when in fact the employees were not at all times provided an off-
10 duty meal break. This practice is a direct result of DEFENDANTS' uniform policy and practice of
11 denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise
12 compensate them for missed meal breaks.

13 55. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due
14 them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
15 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
16 PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
17 applicable law is evidenced by DEFENDANTS' business records.

18 **I. Unlawful Rounding Practices**

19 56. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable
20 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED EMPLOYEES
21 for the actual time these employees worked each day, including overtime hours. Specifically,
22 DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFF
23 and AGGRIEVED EMPLOYEES being undercompensated for all of their time worked. As a result,
24 DEFENDANTS were able to and did in fact unlawfully, and unilaterally round the time recorded in
25 DEFENDANTS' timekeeping system for PLAINTIFF and the AGGRIEVED EMPLOYEES in order
26 to avoid paying these employees for all their time worked, including the applicable overtime
27 compensation for overtime worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES,

1 from time to time, forfeited compensation for their time worked by working without their time being
2 accurately recorded and without compensation at the applicable overtime rates.

3 57. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding
4 policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time being inaccurately
5 recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and practice caused
6 PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as ordered by DEFENDANTS for
7 more than five (5) hours during a shift without receiving an off-duty meal break.

8 **J. Violations for Untimely Payment of Wages**

9 58. Pursuant to California Labor Code section 204, PLAINTIFF and the AGGRIEVED
10 EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFF and
11 the AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages, including,
12 but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period
13 premium wages within permissible time period.

14 59. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the wages
15 earned and unpaid at the time of discharge are due and payable immediately." Pursuant to Cal. Lab.
16 Code § 202, if an employee quits his or her employment, "his or her wages shall become due and
17 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
18 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
19 quitting." PLAINTIFF and the AGGRIEVED EMPLOYEES were, from time to time, not timely
20 provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in
21 violation of Cal. Lab. Code §§ 201 and 202.

22 60. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying
23 all wages due at time of termination for all AGGRIEVED EMPLOYEES whose employment ended
24 during the PAGA PERIOD.

25 **K. Sick Pay Violations**

26 61. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after July 1,
27 2015, works in California for the same employer for 30 or more days within a year from the
commencement of employment is entitled to paid sick days as specified in this section." Further, Cal.

1 Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to time,
2 DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF and other
3 AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

4 62. California Labor Code Section 246(i) requires an employer to furnish its employees with
5 written wage statements setting forth the amount of paid sick leave available. From time to time,
6 DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF and other
7 AGGRIEVED EMPLOYEES with wage statements setting forth the amount of paid sick leave
8 available.

9 63. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty
10 meal and rest breaks and was not fully relieved of duty for her rest and meal periods. PLAINTIFF was
11 required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift
12 without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with
13 a second off-duty meal period each workday in which she was required by DEFENDANT to work ten
14 (10) hours of work. When DEFENDANT provided PLAINTIFF with a rest break, they required
15 PLAINTIFF to remain on premises, on-duty and on-call for the rest break. DEFENDANT policy caused
16 PLAINTIFF to remain on premises, on-call and on-duty during what was supposed to be her off-duty
17 meal periods. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation
18 and in accordance with DEFENDANT'S strict corporate policy and practice. Moreover, DEFENDANT
19 also provided PLAINTIFF with paystubs that failed to comply with Cal. Lab. Code § 226. Further,
20 DEFENDANT failed to reimburse PLAINTIFF for required business expenses related to the use of her
21 personal cell phone and purchase of company required uniforms, in violation of Cal. Lab. Code § 2802.
22 To date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
23 compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203. The
24 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

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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 on behalf of the AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

5 64. 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 65. PAGA is a mechanism by which the State of California itself can enforce state labor laws
8 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
9 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
10 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
11 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
12 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified
13 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general
14 to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
15 claims cannot be subject to arbitration.

16 66. PLAINTIFF brings this Representative Action on behalf of the State of California with
17 respect to all current and former AGGRIEVED EMPLOYEES employed by Defendant Lake and/or
18 Defendant Jacob during the PAGA PERIOD.

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

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

25 69. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
26 Section 2699.3. By certified letter, return receipt requested, dated April 22, 2024, PLAINTIFF gave
27 written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANTS of

1 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
2 to support the alleged violations. See Exhibit #1.

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

8 71. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
9 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,
10 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558,
11 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14 1198, 1198.5, 1199, 2802, and 2804 in the following
12 amounts:

- 13 a. For violation of Labor Code Sections 201, 202, 203, and 204, one
14 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per
15 pay period for the initial violation and two hundred dollars (\$200)
16 for AGGRIEVED EMPLOYEE per pay period for each subsequent
17 violation [penalty per Labor Code Section 2699(f)(2)];
- 18 b. For violations of Labor Code Section 226(a), a civil penalty in the
19 amount of two hundred fifty dollars (\$250) for each AGGRIEVED
20 EMPLOYEE for any initial violation and one thousand dollars for
21 each subsequent violation [penalty per Labor Code Section 226.3];
- 22 c. For violations of Labor Code Sections 204, a civil penalty in the
23 amount of one hundred dollars (\$100) for each AGGRIEVED
24 EMPLOYEE for any initial violation and two hundred dollars
25 (\$200) for AGGRIEVED EMPLOYEE for each subsequent
26 violation [penalty per Labor Code Section 210];
- 27 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

1 AGGRIEVED EMPLOYEE for the initial violation and hundred
2 dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for
3 each subsequent violation [penalty per Labor Code Section 558];

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

9 f. For violations of Labor Code Section 1174(d), a civil penalty in the
10 amount of five hundred (\$500) dollars for per AGGRIEVED
11 EMPLOYEE [penalty per Labor Code Section 1174.5].

12 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and
13 1199, a civil penalty in the amount of one hundred dollars (\$100)
14 per AGGRIEVED EMPLOYEE per pay period for the initial
15 violation and two hundred dollars fifty (\$250) per AGGRIEVED
16 EMPLOYEE per pay period for each subsequent violation [penalty
17 per Labor Code Section].

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

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

1 employer—to pursue penalties for all the Labor Code violations committed by that employer.”],
2 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, including
6 pursuant to Labor Code § 2699, *et seq.*;

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

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

10 Dated: July 8, 2024

Respectfully Submitted,

ZAKAY LAW GROUP, A.P.L.C.

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12 By: 
13 Shani Zakay
14 Attorneys for PLAINTIFF
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EXHIBIT 1



April 22, 2024

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

UTAH LAKE HOLDINGS, LLC

c/o Toby Tilford

16544 Franzen Farm Rd.

San Diego, CA 92127

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 0298 7739 66

JACOB HEALTH CARE CENTER

c/o 1505 Corporation - C T Corporation System

330 N Brand Blvd.

Glendale, CA 91203

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 0298 7788 24

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff SHAKISHA HENRY (“Plaintiff”) and other aggrieved employees in a proposed lawsuit against Defendants UTAH LAKE HOLDINGS, LLC and JACOB HEALTH CARE CENTER, LP., (“Defendants”). Plaintiff was employed by Defendants in California from May of 2021 to April of 2024, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

A true and correct copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants is on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Plaintiff

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shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

SHAKISHA HENRY, an individual, on behalf
of herself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

UTAH LAKE HOLDINGS, LLC dba JACOB
HEALTHCARE CENTER, a California limited
liability company; JACOB HEALTHCARE
CENTER, LP, a limited partnership; and DOES
1-50, Inclusive,

Defendant.

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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant UTAH LAKE HOLDINGS, LLC, is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant JACOB HEALTHCARE CENTER, LP., is a California limited partnership that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. At all relevant times, Defendant UTAH LAKE HOLDINGS, LLC and DEFENDANT JACOB HEALTHCARE CENTER, LP., were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

4. DEFENDANTS operate healthcare centers in the state of California, including the county of San Diego, where PLAINTIFF worked.

5. PLAINTIFF was employed by DEFENDANTS in California from May of 2021 to April of 2024 as a non-exempt employee, paid an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

6. PLAINTIFF brings this Class Action on behalf of herself and a California class,

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

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

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

26 9. The agents, servants and/or employees of the Defendants and each of them acting
27 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
28 agent, servant and/or employee of the Defendants, and personally participated in the conduct

1 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
2 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
3 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
4 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
5 Defendants' agents, servants and/or employees.

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

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

17 12. DEFENDANT's uniform policies and practices alleged herein were unlawful,
18 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
19 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

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

25 **JURISDICTION AND VENUE**

26 14. This Court has jurisdiction over this Action pursuant to California Code of Civil
27 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
28

1 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
2 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

7 **THE CONDUCT**

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

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1 **A. Meal Period Violations**

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

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

maintain cordless communication devices on them during meal periods in order to receive and respond to work-related communications. DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by DEFENDANT's business records. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

B. Rest Period Violations

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

C. Unreimbursed Business Expenses

20. DEFENDANT as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred by the

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

9 21. In the course of their employment, DEFENDANT required PLAINTIFF and other
10 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell
11 phones and purchase of company required uniforms as a result of and in furtherance of their job
12 duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required to
13 wear their company’s uniform and use their personal cell phones in order to perform work related
14 tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other
15 CALIFORNIA CLASS Members for the use of their personal cell phones. As a result, in the
16 course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA
17 CLASS Members incurred unreimbursed business expenses that included, but were not limited
18 to, costs related to the use of their personal cell phones on behalf of and for the benefit of
19 DEFENDANT.

20 **D. Wage Statement Violations**

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

1 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
2 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
3 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
4 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
5 accurate wage statements which failed to show the complete requirements under California Labor
6 Code sections 226(a)(1)-(9), including but not limited to, all deductions, the total hours worked
7 and all applicable hourly rates in effect during the pay period and the corresponding amount of
8 time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
9 periods.

10 24. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
11 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
12 Cal. Lab. Code § 226(a)(1)-(9).

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

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

18 26. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
19 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
20 for all hours worked.

21 27. During the CLASS PERIOD, from time-to-time DEFENDANT required
22 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
23 work, including but not limited to, security bag checks. PLAINTIFF and other members of the
24 CALIFORNIA CLASS were required submit to security bag checks outside the jobsite for one to
25 ten minutes before each shift. Further, it would take PLAINTIFF and other members of the
26 CALIFORNIA CLASS about three minutes to walk from the security bag check area to the
27 location where PLAINTIFF and other members of the CALIFORNIA CLASS were told to begin
28

1 tracking their time. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS
2 having to work while off-the-clock.

3 28. DEFENDANT directed and directly benefited from the undercompensated off-the-
4 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

5 29. DEFENDANT controlled the work schedules, duties, protocols, applications,
6 assignments, and employment conditions of PLAINTIFF and the other members of the
7 CALIFORNIA CLASS.

8 30. DEFENDANT was able to track the amount of time PLAINTIFF and the other
9 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
10 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
11 wages earned and owed for all the work they performed.

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

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

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

22 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
23 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
24 benefit for the time spent working while off-the-clock, including but not limited to, security bag
25 checks. DEFENDANT's uniform policy and practice to not pay PLAINTIFF and the members
26 of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is
27 evidenced by DEFENDANT's business records.

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

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

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

17 37. The second component of PLAINTIFF's and other CALIFORNIA CLASS
18 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
19 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
20 DEFENDANT. The non-discretionary bonus program provided all employees paid on an hourly
21 basis with bonus compensation when the employees met the various performance goals set by
22 DEFENDANT.

23 38. However, from-time-to-time, when calculating the regular rate of pay, in those pay
24 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
25 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
26 discretionary bonus, DEFENDANT failed to accurately include the non-discretionary bonus
27 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
28 rather than just all non-overtime hours worked. Management and supervisors described the

1 incentive/bonus program to potential and new employees as part of the compensation package.
2 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
3 CLASS members must be included in the “regular rate of pay.” The failure to do so has resulted
4 in a systematic underpayment of overtime and double time compensation, meal and rest period
5 premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by
6 DEFENDANT. Specifically, California Labor Code Section 246 mandates that paid sick time for
7 non-employees shall be calculated in the same manner as the regular rate of pay for the workweek
8 in which the non-exempt employee uses paid sick time, whether or not the employee actually
9 works overtime in that workweek. DEFENDANT’s conduct, as articulated herein, by failing to
10 include the incentive compensation as part of the “regular rate of pay” for purposes of sick pay
11 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
12 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

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

25 40. Pursuant to California Labor Code section 204, PLAINTIFF and the
26 CALIFORNIA CLASS members were entitled to timely payment of wages during their
27 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
28

1 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
2 meal period premium wages, and rest period premium wages within permissible time period.

3 41. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
4 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant
5 to Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall
6 become due and payable not later than 72 hours thereafter, unless the employee has given 72
7 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
8 or her wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members
9 were, from time to time, not timely provided the wages earned and unpaid at the time of their
10 discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

11 42. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
12 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose
13 employment ended during the CLASS PERIOD.

14 **H. Unlawful Deductions**

15 43. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
16 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
17 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT
18 violated Labor Code § 221.

19 **I. Timekeeping Manipulation**

20 44. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an
21 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
22 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
23 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
24 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
25 unilaterally alter the time recorded in DEFENDANT’S timekeeping system for PLAINTIFF and
26 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
27 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
28 missed rest breaks.

1 45. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
2 time-to-time, forfeited time worked by working without their time being accurately recorded and
3 without compensation at the applicable pay rates.

4 46. The mutability of the timekeeping system also allowed DEFENDANT to alter
5 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT's
6 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
7 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
8 were not at all times provided an off-duty meal break. This practice is a direct result of
9 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)
10 minute off-duty meal breaks each day or otherwise compensating them for missed meal breaks.

11 47. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
12 forfeited wages due to them for all hours worked at DEFENDANT'S direction, control and
13 benefit for the time the timekeeping system was inoperable. DEFENDANT'S uniform policy
14 and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for
15 all hours worked in accordance with applicable law is evidenced by DEFENDANT'S business
16 records.

17 **J. Unlawful Rounding Practices**

18 48. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
19 an immutable timekeeping system to accurately record and pay PLAINTIFF and other
20 CALIFORNIA CLASS Members for the actual time these employees worked each day,
21 including overtime hours. Specifically, DEFENDANT had in place an unlawful rounding policy
22 and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
23 undercompensated for all of their time worked. As a result, DEFENDANT was able to and did
24 in fact unlawfully, and unilaterally round the time recorded in DEFENDANT's timekeeping
25 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
26 these employees for all their time worked, including the applicable overtime compensation for
27 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
28

1 time to time, forfeited compensation for their time worked by working without their time being
2 accurately recorded and without compensation at the applicable overtime rates.

3 49. Further, the mutability of DEFENDANT's timekeeping system and unlawful
4 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
5 being inaccurately recorded. As a result, from time to time, DEFENDANT's unlawful rounding
6 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
7 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
8 duty meal break.

9 **K. Sick Pay Violations**

10 50. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after
11 July 1, 2015, works in California for the same employer for 30 or more days within a year from the
12 commencement of employment is entitled to paid sick days as specified in this section." Further,
13 Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to
14 time, DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF and other
15 members of the CALIFORNIA CLASS with sick days and/or paid sick leave.

16 51. California Labor Code Section 246(i) requires an employer to furnish its employees
17 with written wage statements setting forth the amount of paid sick leave available. From time to
18 time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF and other
19 members of the CALIFORNIA CLASS with wage statements setting forth the amount of paid sick
20 leave available.

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

1 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
2 without additional compensation and in accordance with DEFENDANT's strict corporate policy
3 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
4 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF
5 for required business expenses related to the personal expenses incurred for the use of their personal
6 cell phone on behalf of and in furtherance of her employment with DEFENDANT. To date,
7 DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
8 compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203. The
9 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

10 **CLASS ACTION ALLEGATIONS**

11 53. PLAINTIFF bring this Class Action on behalf of herself, and a California class
12 defined as all persons who are or previously were employed by DEFENDANT in California and
13 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
14 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
15 by the Court (the "CLASS PERIOD").

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

22 55. The members of the class are so numerous that joinder of all class members is
23 impractical.

24 56. Common questions of law and fact regarding DEFENDANT's conduct, including
25 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
26 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
27 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
28 compliant meal and rest periods, failed to reimburse for business expenses, failure to provide

1 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum
2 wage and overtime, exist as to all members of the class and predominate over any questions
3 affecting solely any individual members of the class. Among the questions of law and fact
4 common to the class are:

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

1 57. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
2 a result of DEFENDANT's conduct and actions alleged herein.

3 58. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
4 PLAINTIFF has the same interests as the other members of the class.

5 59. PLAINTIFF will fairly and adequately represent and protect the interests of the
6 CALIFORNIA CLASS Members.

7 60. PLAINTIFF retained able class counsel with extensive experience in class action
8 litigation.

9 61. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
10 interest of the other CALIFORNIA CLASS Members.

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

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

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

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

1 1198, and 2802, for which this Court should issue declaratory and other equitable relief pursuant
2 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
3 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

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

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

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

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

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

26 80. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANT is restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **Failure To Pay Minimum Wages**

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

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

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

12 82. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
13 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
14 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
15 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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

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

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

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

14 90. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
16 failure to pay all earned wages.

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

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

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

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

THIRD CAUSE OF ACTION

Failure To Pay Overtime Compensation

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

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

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

96. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial

1 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all
2 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
3 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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

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

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

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

12 105. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS were paid less for overtime worked than they were entitled to, constituting
14 a failure to pay all earned wages.

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

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

27 108. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

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

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Reimburse Employees for Required Expenses**

8 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

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

1 by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses
2 were necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,
3 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
4 members for these expenses as an employer is required to do under the laws and regulations of
5 California.

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

10 **SEVENTH CAUSE OF ACTION**

11 **Failure To Provide Accurate Itemized Statements**

12 **(Cal. Lab. Code § 226)**

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

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

17 124. Cal. Labor Code § 226 provides that an employer must furnish employees with an
18 "accurate itemized" statement in writing showing:

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

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

125. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show the complete requirements under California Labor Code sections 226(a)(1)-(9), including but not limited to, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

126. Specifically, DEFENDANT from time to time failed to issue wage statements to PLAINTIFF and other CALIFORNIA CLASS Members that included hours, including but not limited to, holiday pay, sick pay, paid time off, and bereavement into the calculation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2). However, hours for holiday pay, sick pay, paid time off, and bereavement are not considered hours worked for purposes of Cal. Lab. Code § 226(a)(2). Therefore, DEFENDANT from time to time issued wage statements to PLAINTIFF and other CALIFORNIA CLASS Members that violated Cal. Lab. Code § 226(a)(2).

In addition to the foregoing, DEFENDANT failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226(a)(1)-(9).

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

12 **EIGHTH CAUSE OF ACTION**

13 **Failure To Pay Wages When Due**

14 **(Cal. Lab. Code § 203)**

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

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

19 129. Cal. Lab. Code § 200 provides that:

20 As used in this article:

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

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

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

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

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

12 133. Cal. Lab. Code § 203 provides:

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

18 134. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
19 terminated, and DEFENDANT has not tendered payment of wages to these employees who
20 missed meal and rest breaks, as required by law.

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

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANT, jointly and
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

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

15 2. On behalf of the CALIFORNIA CLASS:

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
17 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
18 to Cal. Code of Civ. Proc. § 382;
19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation due to PLAINTIFF and the other members of
21 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
22 thereon at the statutory rate;
23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
25 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per each member of the
27 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
28 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

violation of Cal. Lab. Code § 226;

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

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

3. On all claims:

g. An award of interest, including prejudgment interest at the legal rate;

h. Such other and further relief as the Court deems just and equitable; and

i. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: April 22, 2024

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: April 22, 2024

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF