

SUMMONS

(CITACION JUDICIAL)

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

8/5/2024 3:19:27 PM

Clerk of the Superior Court
By G. Lopez, Deputy Clerk

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

LIBERTY MILITARY HOUSING HOLDINGS, LLC., a Delaware Limited Liability Company;
Additional Parties Attachment form is attachment.

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

DELTHIA WENDY FOSTER, an individual, in her representative capacity on behalf of the State of California, as a private attorney general,

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): San Diego Superior Court
Hall of Justice - 330 W Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

24CU004420C

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):
Monnett De La Torre, Esq. JCL Law Firm, APC - 5440 Morehouse Dr, Suite 3600, San Diego, CA 92121

DATE: August 6, 2024
(Fecha)

Clerk, by _____, Deputy
(Secretario) *G. Lopez* (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

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

SHORT TITLE:

Delthia Wendy Foster v. Liberty Military Housing, LLC, et al.

CASE NUMBER:

24CU004420C

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐

Plaintiff

☒

Defendant

☐

Cross-Complainant

☐

Cross-Defendant

LMH SERVICE, INC., a Delaware Corporation; LMH SERVICE COMPANY, LLC., a Delaware Corporation; and DOES 1-50, Inclusive,

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
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Clerk of the Superior Court
By G. Lopez ,Deputy Clerk

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DELTHIA WENDY FOSTER, an individual, in
her representative capacity on behalf of the
State of California, as a private attorney general,

Case No: 24CU004420C

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

Plaintiff,

1) VIOLATIONS OF THE PRIVATE
ATTORNEYS GENERAL ACT
[LABOR CODE §§ 2698 ET SEQ]

vs.

LIBERTY MILITARY HOUSING
HOLDINGS, LLC., a Delaware Limited
Liability Company; LMH SERVICE, INC., a
Delaware Corporation; LMH SERVICE
COMPANY, LLC., a Delaware Corporation;
and DOES 1-50, Inclusive,

Defendants.

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

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against LIBERTY MILITARY HOUSING
8 HOLDINGS, LLC., (“DEFENDANT Liberty Military Housing”), DEFENDANT LMH
9 SERVICE, INC., (“DEFENDANT LMH Service”), and LMH SERVICE COMPANY, LLC.,
10 (“DEFENDANT LMH Service Company”) (collectively as “DEFENDANTS”) seeking only to
11 recover PAGA civil penalties on behalf of all current and former aggrieved employees that
12 worked for DEFENDANT Liberty Military Housing and/or DEFENDANT LMH Service and/or
13 LMH Service Company. PLAINTIFF does **not seek to recover anything other than penalties**
14 **as permitted by California Labor Code § 2699.** To the extent that statutory violations are
15 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
16 damages for those violations, but simply the civil penalties permitted by California Labor Code §
17 2699.

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

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

25 4. PLAINTIFF is not suing in her individual capacity; she is proceeding herein solely
26 under the PAGA, on behalf of the State of California for all aggrieved employees, including
27 herself and other aggrieved employees. Nothing in this complaint should be construed as
28 PLAINTIFF suing in her individual capacity.

THE PARTIES

1
2 1. DEFENDANT LIBERTY MILITARY HOUSING HOLDINGS, LLC.,
3 (“DEFENDANT Liberty Military Housing”) is a Delaware Limited Liability Company that at all
4 relevant times mentioned herein conducted and continues to conduct substantial and regular
5 business throughout California.

6 2. DEFENDANT LMH SERVICE, INC., (“DEFENDANT LMH Service”) is a
7 Delaware Corporation that at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout California.

9 3. DEFENDANT LMH SERVICE COMPANY, LLC., (“DEFENDANT LMH
10 Service Company”) is a Delaware Limited Liability Company that at all relevant times mentioned
11 herein conducted and continues to conduct substantial and regular business throughout California.

12 4. DEFENDANTS provide housing for military members throughout the state of
13 California, including the county of San Diego, where PLAINTIFF worked.

14 5. DEFENDANT Liberty Military Housing, and/or DEFENDANT LMH Service
15 and/or DEFENDANT LMH Service Company are the joint employers of PLAINTIFF as
16 evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed
17 work for respectively and are therefore jointly responsible as employers for the conduct alleged
18 herein as “DEFENDANTS.”

19 6. PLAINTIFF was employed by DEFENDANT Liberty Military Housing, and/or
20 DEFENDANT LMH Service and/or DEFENDANT LMH Service Company in California from
21 May 2022 to March 2024 as a non-exempt employee, paid an hourly basis, and entitled to the
22 legally required meal and rest periods and payment of minimum and overtime wages due for all
23 time worked.

24 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
25 the requirements and exhaust the administrative procedures under the Private Attorney General
26 Act, brings this Representative Action on behalf of the State of California with respect to herself
27 and all individuals who are or previously were employed by DEFENDANT Liberty Military
28 Housing and/or DEFENDANT LMH Service and/or DEFENDANT LMH Service Company in

1 California, including any employees staffed with DEFENDANTS by a third party, and classified
2 as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of May 30,
3 2023, until a date as determined by the Court (the "PAGA PERIOD").

4 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
5 or formerly employed by DEFENDANTS during the PAGA PERIOD, brings this representative
6 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANTS'
7 violation of California Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226,
8 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14,
9 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission
10 Wage Order(s) and California Regulations, and Pursuant to California Labor Code Section
11 2699.5. Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are
12 aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

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

22 10. The agents, servants and/or employees of the DEFENDANTS and each of them
23 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its
24 authority as the agent, servant and/or employee of the DEFENDANTS, and personally
25 participated in the conduct alleged herein on behalf of the DEFENDANTS with respect to the
26 conduct alleged herein. Consequently, the acts of each DEFENDANTS are legally attributable to
27 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and all the
28

1 AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the
2 DEFENDANTS' agents, servants and/or employees.

3 **JURISDICTION AND VENUE**

4 11. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10.

6 12. Venue is proper in this Court pursuant to California Code of Civil Procedure,
7 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
8 DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities
9 in this County and/or conducts substantial business in this County, and (ii) committed the
10 wrongful conduct herein alleged in this County against PLAINTIFF and other AGGRIEVED
11 EMPLOYEES.

12 **THE CONDUCT**

13 13. State law provides that employees must be paid overtime and meal and rest break
14 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and the
15 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to
16 specific elements of an employee's performance.

17 14. The second component of PLAINTIFF'S and the AGGRIEVED EMPLOYEES'
18 compensation is DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
19 the AGGRIEVED EMPLOYEES incentive wages based on their performance for
20 DEFENDANTS. The non-discretionary incentive program provided all employees paid on an
21 hourly basis with incentive compensation when the employees met the various performance goals
22 set by DEFENDANTS. However, when calculating the regular rate of pay in order to pay
23 overtime and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
24 EMPLOYEES, DEFENDANTS failed to include the incentive compensation as part of the
25 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest break
26 premium pay. Management and supervisors described the incentive program to potential and new
27 employees as part of the compensation package. As a matter of law, the incentive compensation
28 received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be included in the "regular

1 rate of pay.” The failure to do so has resulted in an underpayment of overtime compensation and
2 meal and rest break premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by
3 DEFENDANTS.

4 15. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED
5 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and
6 were not fully relieved of their duties for their meal periods. PLAINTIFF and the AGGRIEVED
7 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANTS
8 for more than five (5) hours during some shifts without receiving a meal break. Further,
9 DEFENDANTS from time to time failed to provide PLAINTIFF and AGGRIEVED
10 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
11 were required by DEFENDANTS to work ten (10) hours of work. DEFENDANTS also engaged
12 in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and
13 the AGGRIEVED EMPLOYEES. PLAINTIFF and the AGGRIEVED EMPLOYEES therefore
14 forfeit meal breaks without additional compensation and in accordance with DEFENDANTS’
15 corporate policy and practice.

16 16. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES
17 were also required from time to time to work in excess of four (4) hours without being provided
18 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
19 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
20 time, a first and second rest period of at least ten (10) minutes for some shifts worked between
21 six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
22 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF
23 and the AGGRIEVED EMPLOYEES were also not provided with one-hour wages in lieu thereof.
24 Additionally, the applicable California Wage Order requires employers to provide employees
25 with off-duty rest periods, which the California Supreme Court defined as time during which an
26 employee is relieved from all work-related duties and free from employer control. In so doing,
27 the Court held that the requirement under California law that employers authorize and permit all
28 employees to take rest periods means that employers must relieve employees of all duties and

1 relinquish control over how employees spend their time, which includes control over the locations
2 where employees may take their rest period. DEFENDANTS required PLAINTIFF and the
3 AGGRIEVED EMPLOYEES to remain on-call and on-duty during what was supposed to be their
4 off-duty rest periods. As a result of their rigorous work schedules, PLAINTIFF and AGGRIEVED
5 EMPLOYEES were periodically denied their proper rest periods by DEFENDANTS and
6 DEFENDANTS' managers.

7 17. During the PAGA PERIOD, DEFENDANTS failed to accurately record and pay
8 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these employees
9 worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
10 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, meaning
11 the time during which an employee was subject to the control of an employer, including all the
12 time the employee was permitted or suffered to permit this work. DEFENDANTS required these
13 employees to work off the clock without paying them for all the time they were under
14 DEFENDANTS' control. As such, DEFENDANTS knew or should have known that
15 PLAINTIFF and the AGGRIEVED EMPLOYEES were under compensated for all time worked.
16 As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited time worked by working
17 without their time being accurately recorded and without compensation at the applicable
18 minimum wage and overtime wage rates. To the extent that the time worked off the clock does
19 not qualify for overtime premium payment, DEFENDANTS failed to pay minimum wages for
20 the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

21 18. From time to time, DEFENDANTS also failed to provide PLAINTIFF and the
22 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
23 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
24 every employer shall furnish each of his or her employees with an accurate itemized wage
25 statement in writing showing, among other things, gross wages earned and all applicable hourly
26 rates in effect during the pay period and the corresponding amount of time worked at each hourly
27 rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such,
28 the wage statements should reflect all applicable hourly rates during the pay period and the total

1 hours worked, and the applicable pay period in which the wages were earned pursuant to
2 California Labor Code Section 226(a). The wage statements DEFENDANTS provided to
3 PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More
4 specifically, the wage statements failed to identify the accurate total hours worked each pay
5 period. When the hours shown on the wage statements were added up, they did not equal the
6 actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside
7 from the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF
8 an itemized wage statement that lists all the requirements under California Labor Code 226 et seq.
9 As a result, DEFENDANTS from time to time provided PLAINTIFF and the AGGRIEVED
10 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

11 19. Cal. Lab. Code § 204 (d) provides, the requirements of this section shall be deemed
12 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
13 paid not more than seven (7) calendar days following the close of payroll period. Cal. Lab. Code
14 § 210 provides:

15 [I]n addition to, and entirely independent and apart from, any other penalty provided
16 in this article, every person who fails to pay the wages of each employee as provided
17 in Sections....204.....shall be subject to a civil penalty as follows: (1) For any initial
18 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
19 each subsequent violation, or any willful or intentional violation, two hundred
20 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
21 unlawfully withheld.

22 20. DEFENDANTS from time to time failed to pay PLAINTIFF and the
23 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
24 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Hourly” regular wage
25 payments.

26 21. DEFENDANTS underpaid sick pay wages to PLAINTIFF and the AGGRIEVED
27 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
28 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-

1 discretionary remuneration, including, but not limited to, incentives, shift differential pay, and
2 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANTS underpaid sick pay
3 to PLAINTIFF and the AGGRIEVED EMPLOYEES at their base rates of pay.

4 22. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
5 employee's be calculated by dividing the employee's total wages, not including overtime
6 premium pay, by the employee's total hours worked in the full pay periods prior to the 90 days of
7 employment.

8 23. DEFENDANTS violated Cal. Lab. Code Section 246 by failing to pay sick pay at
9 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
10 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
11 was paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED EMPLOYEES,
12 as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section
13 246.

14 24. As a pattern and practice, DEFENDANTS regularly failed to pay PLAINTIFF and
15 the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time penalties
16 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based
17 thereon alleges that such failure to pay sick pay at regular rate was willful, such that the
18 AGGRIEVED EMPLOYEES whose employment has separated are entitled to waiting time
19 penalties pursuant to Cal. Lab. Code Sections 201-203.

20 25. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to
21 collect or receive from an employee any part of wages theretofore paid by said employer to said
22 employee." DEFENDANTS failed to pay all compensation due to PLAINTIFF and the
23 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
24 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the deductions
25 from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES, and thereby
26 failed to pay these employees all wages due at each applicable pay period and upon termination.

27 26. DEFENDANTS intentionally and knowingly failed to reimburse and indemnify
28 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by the

1 PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging their
2 duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are
3 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
5 her employee for all necessary expenditures or losses incurred by the employee in direct
6 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
7 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
8 believed them to be unlawful."

9 27. In the course of their employment, PLAINTIFF and the AGGRIEVED
10 EMPLOYEES, as a business expense, were required by DEFENDANTS to use their own personal
11 vehicle and personal cellular phones and incur personal expenses as a result of and in furtherance
12 of their job duties as employees for DEFENDANTS and were not reimbursed or indemnified by
13 DEFENDANTS for the cost associated with the use of their personal vehicle and personal cellular
14 phones for DEFENDANTS' benefit. As a result, in the course of their employment with
15 DEFENDANTS, PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed
16 business expenses which included, but were not limited to, costs related to the use of their personal
17 vehicle and personal cellular phones all on behalf of and for the benefit of DEFENDANTS.

18 28. The employment of PLAINTIFF and some AGGRIEVED EMPLOYEES has
19 terminated, and DEFENDANTS have not tendered payment of all wages owed as required by
20 law. Additionally, at all times during the term of PLAINTIFF's employment with
21 DEFENDANTS, PLAINTIFF and other AGGRIEVED EMPLOYEES earned and accrued vested
22 vacation and holiday time on the date of their termination pursuant to DEFENDANTS' uniform
23 vacation policies and applicable California law. The amount of vacation pay PLAINTIFF and the
24 other AGGRIEVED EMPLOYEES earned and accumulated is evidenced by DEFENDANTS'
25 business records. Additionally, DEFENDANTS also underpaid accrued vested vacation wages to
26 PLAINTIFF and other AGGRIEVED EMPLOYEES by failing to pay such wages at the regular
27 rate of pay and more specifically the final rate of pay that included all non-discretionary incentive
28 compensation. Rather than pay vacation wages at the regular rate of pay, DEFENDANTS

1 underpaid vacation wages to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base
2 rates of pay, instead of including all of PLAINTIFF and other AGGRIEVED EMPLOYEES' non-
3 discretionary incentive compensation into the vacation wage payment calculations.
4 DEFENDANTS failed to specify in DEFENDANTS' written vacation policy the rate at which
5 PLAINTIFF and other AGGRIEVED EMPLOYEES would be paid vacation upon leaving
6 employment with DEFENDANTS. As a result of DEFENDANTS' unlawful practice, policy and
7 procedure to deny paying the PLAINTIFF and other AGGRIEVED EMPLOYEES all of their
8 vested vacation and holiday time, DEFENDANTS failed to pay the PLAINTIFF and other
9 AGGRIEVED EMPLOYEES all vested vacation time as wages due upon employment
10 termination, in violation of the California Labor Code, Sections 201, 202, 203 and 227.3.
11 Similarly, DEFENDANTS underpaid waiting time penalties to PLAINTIFF and other
12 AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of PLAINTIFFS'
13 and other AGGRIEVED EMPLOYEES' non-discretionary compensation into the waiting time
14 penalty calculations. This failure by DEFENDANTS is believed to be the result of
15 DEFENDANTS' unlawful, unfair and deceptive refusal to provide compensation for earned,
16 accrued and vested vacation and holiday time, as well as the corresponding waiting time penalties
17 that were paid. DEFENDANTS perpetrated this unlawful, unfair and deceptive practice to the
18 detriment of PLAINTIFF and other AGGRIEVED EMPLOYEES. DEFENDANTS' uniform
19 practice and policy of failing to pay the AGGRIEVED EMPLOYEES for all vested vacation and
20 holiday time accumulated at employment termination violated and continues to violate Section
21 227.3 of the California Labor Code.

22 29. All of the conduct and violations alleged herein occurred during the PAGA
23 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
24 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
25 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
26 AJDAR 12157 (Certified for Publication 12/19/18).

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1 **FIRST CAUSE OF ACTION**

2 **For Violation of the Private Attorneys General Act**

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

4 **(By PLAINTIFF and Against All Defendants)**

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

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

16 32. PLAINTIFF, and such persons that may be added from time to time who satisfy
17 the requirements and exhaust the administrative procedures under the Private Attorney General
18 Act, brings this Representative Action on behalf of the State of California with respect to herself
19 and all individuals who are or previously were employed by DEFENDANTS in California,
20 including any employees staffed with DEFENDANTS by a third party, and classified as non-
21 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of May 30, 2023
22 until a date as determined by the Court (the "PAGA PERIOD").

23 33. On May 30, 2024, PLAINTIFF gave written notice by certified mail, return receipt
24 requested, to the Labor and Workforce Development Agency (the "Agency") and by certified mail
25 to DEFENDANTS of the specific provisions of this code alleged to have been violated as required
26 by Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
27 herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has
28 expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a

1 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
2 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

3 34. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANTS (a) failed to provide PLAINTIFF and the
5 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
6 and provide legally required meal and rest periods,(c) failed to pay minimum wages, (d) failed to
7 pay overtime wages and sick pay wages, (e) failed to reimburse employees for required expenses,
8 and (f) failed to provide wages when due, all in violation of the applicable Labor Code sections
9 listed in Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3,
10 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5.
11 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s)
12 and California Regulations, and Pursuant to California Labor Code Section 2699.5 and thereby
13 gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of
14 only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
15 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
16 the AGGRIEVED EMPLOYEES.

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¹ Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, as follows:

4 (1) On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:

6 A. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
7 General Act of 2004;

8 B. An award of attorneys' fees and cost of suit, as allowable under the law,
9 including, but not limited to, pursuant to Labor Code §2699; and

10 C. For such other relief as the Court deems just and proper.
11

12 Dated: August 5, 2024

13 **JCL LAW FIRM, APC**

14 By: 
15 Jean-Claude Lapuyade, Esq.
16 Attorney for PLAINTIFF
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EXHIBIT 1

May 30, 2024

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

LIBERTY MILITARY HOUSING HOLDINGS, LLC

c/o C T Corporation System
330 N. Brand Blvd. Suite 700
Glendale, CA 91203

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0298 7761 72

LMH SERVICE COMPANY, LLC

c/o C T Corporation System
330 N. Brand Blvd. Suite 700
Glendale, CA 91203

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0298 7761 89

LMH SERVICE, INC.

c/o C T Corporation System
330 N. Brand Blvd. Suite 700
Glendale, CA 91203

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0298 7761 96

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

Dear Sir/Madam:

Our offices represent Plaintiff Delthia Wendy Foster ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendants Liberty Military Housing Holdings, LLC., LMH Service Company, LLC., LMH Service, Inc., ("Defendants"). Plaintiff was employed by Defendant Liberty Military Housing and/or Defendant LMH Service and/or Defendant LMH Service Company in California from May 2022 to March 2024 as a non-exempt employee, paid on an hourly basis and entitled to payment of all wages and the legally required breaks, among other things. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, failed to pay employees at the correct regular rate of pay, when applicable, failed to reimburse employees for necessary business expenditures and for all of their meal and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages and failed to provide Plaintiff and other aggrieved employees with compliant meal and rest breaks.

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 California Regulations, 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 DEFENDANT Liberty Military Housing and/or DEFENDANT LMH Service and/or DEFENDANT LMH Service Company in California during the relevant claim period.

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

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

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

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San Diego, CA 92121

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Facsimile: (858) 404-9203

shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DELTHIA WENDY FOSTER, an individual,
on behalf of herself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

LIBERTY MILITARY HOUSING
HOLDINGS, LLC., a Delaware Limited
Liability Company; LMH SERVICE, INC., a
Delaware Corporation; LMH SERVICE
COMPANY, LLC., a Delaware Corporation;
and DOES 1-50, Inclusive,

DEFENDANTS.

Case No:

CLASS ACTION COMPLAINT FOR:

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

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

DEMAND FOR A JURY TRIAL

10 PLAINTIFF DELTHIA WENDY FOSTER (“PLAINTIFF”), an individual, on behalf of
11 herself and all other similarly situated current and former employees, alleges on information and
12 belief, except for her own acts and knowledge which are based on personal knowledge, the
13 following:

PRELIMINARY ALLEGATIONS

14 1. DEFENDANT LIBERTY MILITARY HOUSING HOLDINGS, LLC.,
15 (“DEFENDANT Liberty Military Housing”) is a Delaware Limited Liability Company that at all
16 relevant times mentioned herein conducted and continues to conduct substantial and regular
17 business throughout California.

18 2. DEFENDANT LMH SERVICE, INC., (“DEFENDANT LMH Service”) is a
19 Delaware Corporation that at all relevant times mentioned herein conducted and continues to
20 conduct substantial and regular business throughout California.

21 3. DEFENDANT LMH SERVICE COMPANY, LLC., (“DEFENDANT LMH
22 Service Company”) is a Delaware Corporation that at all relevant times mentioned herein
23 conducted and continues to conduct substantial and regular business throughout California.

24 4. DEFENDANT Liberty Military Housing, and/or DEFENDANT LMH Service
25 and/or DEFENDANT LMH Service Company are the joint employers of PLAINTIFF as
26 evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed
27 work for respectively and are therefore jointly responsible as employers for the conduct alleged
28 herein as “DEFENDANT” and/or “DEFENDANTS.”

5. DEFENDANTS provide housing for military members throughout the state of

1 California, including the county of San Diego, where PLAINTIFF worked.

2 6. PLAINTIFF was employed by DEFENDANT Liberty Military Housing, and/or
3 DEFENDANT LMH Service and/or DEFENDANT LMH Service Company in California from
4 May 2022 to March 2024 as a non-exempt employee, paid an hourly basis, and entitled to the
5 legally required meal and rest periods and payment of minimum and overtime wages due for all
6 time worked.

7 7. PLAINTIFF brings this Class Action on behalf of herself and a California class,
8 defined as all persons who are or previously were employed by DEFENDANT Liberty Military
9 Housing and/or DEFENDANT LMH Service and/or DEFENDANT LMH Service Company in
10 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
11 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
12 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
13 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
14 (\$5,000,000.00).

15 8. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
16 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
17 the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which failed to
18 lawfully compensate these employees. DEFENDANTS' uniform policy and practice alleged
19 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS retained
20 and continue to retain wages due to PLAINTIFF and the other members of the CALIFORNIA
21 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
22 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and
23 the other members of the CALIFORNIA CLASS who have been economically injured by
24 DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable
25 relief.

26 9. The true names and capacities, whether individual, corporate, subsidiary,
27 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
28 presently unknown to PLAINTIFF who therefore sue DEFENDANTS by such fictitious names

1 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to
2 allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
3 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the
4 DEFENDANTS named in this Complaint, including DOES 1 through 50, inclusive, are
5 responsible in some manner for one or more of the events and happenings that proximately caused
6 the injuries and damages hereinafter alleged.

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

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

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

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

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

JURISDICTION AND VENUE

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

16. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employs the CALIFORNIA CLASS across California, including in this County, and committed the wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

THE CONDUCT

17. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal and rest premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during

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

7 **A. Meal Period Violations**

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

22 19. From time to time during the CLASS PERIOD, as a result of their rigorous work
23 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
24 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minutes off duty
25 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
26 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for
27 more than five (5) hours during some shifts without receiving a meal break. Further,
28 DEFENDANTS fail to provide PLAINTIFF and CALIFORNIA CLASS Members with a second

1 off-duty meal period for some workdays in which these employees are required by
2 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
3 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and
4 narrowly construed “on-duty” meal period exception. When they were provided with meal
5 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
6 required to remain on duty and on call. Further, DEFENDANTS required PLAINTIFF and the
7 CALIFORNIA CLASS Members to maintain cordless communication devices on them during
8 meal periods in order to receive and respond to work-related communications. DEFENDANTS’
9 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
10 meal breaks is evidenced by DEFENDANTS’ business records. PLAINTIFF and other members
11 of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and
12 in accordance with DEFENDANTS’ strict corporate policy and practice.

13 **B. Rest Period Violations**

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

1 CLASS Members were from time to time denied their proper rest periods by DEFENDANTS and
2 DEFENDANTS' managers.

3 **C. Unreimbursed Business Expenses**

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

15 22. In the course of their employment, DEFENDANTS required PLAINTIFF and
16 other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal
17 cell phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
18 CALIFORNIA CLASS Members were required to use their personal cell phones in order to
19 perform work related tasks. However, DEFENDANTS unlawfully failed to reimburse
20 PLAINTIFF and other CALIFORNIA CLASS Members for the use of their personal cell phones.
21 As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other
22 CALIFORNIA CLASS Members incurred unreimbursed business expenses that included, but
23 were not limited to, costs related to the use of their personal cell phones on behalf of and for the
24 benefit of DEFENDANTS.

25 **D. Wage Statement Violations**

26 23. California Labor Code Section 226 required an employer to furnish its employees
27 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
28 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,

1 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
2 name of the employee and only the last four digits of the employee's social security number or an
3 employee identification number other than a social security number, (8) the name and address of
4 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate by the employee.

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

15 25. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
16 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
17 Cal. Lab. Code § 226(a)(1)-(9).

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

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

23 27. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
24 continue to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
25 for all hours worked.

26 28. During the CLASS PERIOD, from time-to-time DEFENDANTS required
27 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
28

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

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

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

8 31. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
9 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS 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 32. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
13 exempt employees, subject to the requirements of the California Labor Code.

14 33. DEFENDANTS' 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, DEFENDANTS' policies and practices also deprived them of overtime
19 pay.

20 34. DEFENDANTS 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 35. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
23 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and
24 benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and
25 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
26 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
27 records.

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

3 36. From time to time during the CLASS PERIOD, DEFENDANTS failed and
4 continue 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 DEFENDANTS' 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 DEFENDANTS' business
12 records.

13 37. 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 38. The second component of PLAINTIFF's and other CALIFORNIA CLASS
18 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
19 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
20 DEFENDANTS. 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 DEFENDANTS.

23 39. 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, DEFENDANTS 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 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
7 for non-employees shall be calculated in the same manner as the regular rate of pay for the
8 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
9 actually works overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by
10 failing to include the incentive compensation as part of the “regular rate of pay” for purposes of
11 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
12 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

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

25 41. 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 42. 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 43. 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 44. DEFENDANTS, 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,
18 DEFENDANTS violated Labor Code § 221.

19 **I. Timekeeping Manipulation**

20 45. During the CLASS PERIOD, DEFENDANTS, 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, DEFENDANTS were able to and did in fact, unlawfully, and
25 unilaterally alter the time recorded in DEFENDANTS’ 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 46. 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 47. The mutability of the timekeeping system also allowed DEFENDANTS to alter
5 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
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 DEFENDANTS' 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 48. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
12 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control and
13 benefit for the time the timekeeping system was inoperable. DEFENDANTS' 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 DEFENDANTS' business
16 records.

17 **J. Unlawful Rounding Practices**

18 49. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
19 place 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, DEFENDANTS had in place an unlawful rounding
22 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
23 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
24 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' 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
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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 50. Further, the mutability of DEFENDANTS 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, DEFENDANTS' unlawful rounding
6 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
7 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
8 off-duty meal break.

9 **K. Sick Pay Violations**

10 51. 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, DEFENDANTS failed to have a policy or practice in place that provided PLAINTIFF and
15 other members of the CALIFORNIA CLASS with sick days and/or paid sick leave.

16 52. 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, DEFENDANTS 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 53. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
22 off duty meals 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 DEFENDANTS for more than five (5)
24 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
25 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
26 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
27 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
28 DEFENDANTS' 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 DEFENDANTS' strict corporate policy
3 and practice. Moreover, DEFENDANTS also provided PLAINTIFF with paystubs that failed to
4 comply with Cal. Lab. Code § 226. Further, DEFENDANTS 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 DEFENDANTS. To date,
7 DEFENDANTS have 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 54. PLAINTIFF brings this Class Action on behalf of herself, and a California class
12 defined as all persons who are or previously were employed by DEFENDANTS 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 55. 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 to
20 compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure
21 to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and
22 expenses.

23 56. The members of the class are so numerous that joinder of all class members is
24 impractical.

25 57. Common questions of law and fact regarding DEFENDANTS' conduct, including
26 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
27 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
28 regular rate of compensation for missed meal and rest period premiums, failing to provide legally

1 compliant meal and rest periods, failed to reimburse for business expenses, failure to provide
2 accurate itemized wage statements, and failure to ensure they are paid at least minimum wage and
3 overtime, exist as to all members of the class and predominate over any questions affecting solely
4 any individual members of the class. Among the questions of law and fact common to the class
5 are:

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

1 j. Whether DEFENDANTS committed an act of unfair competition in violation of
2 the UCL, by failing to provide the PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with the legally required meal and rest periods.

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

6 59. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
7 PLAINTIFF has the same interests as the other members of the class.

8 60. PLAINTIFF will fairly and adequately represent and protect the interests of the
9 CALIFORNIA CLASS Members.

10 61. PLAINTIFF retained able class counsel with extensive experience in class action
11 litigation.

12 62. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
13 interest of the other CALIFORNIA CLASS Members.

14 63. There is a strong community of interest among PLAINTIFF and the members of
15 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
16 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
17 sustained.

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

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

- 1 a. Inconsistent or varying adjudications with respect to individual members of the
2 CALIFORNIA CLASS which would establish incompatible standards of conduct
3 for the parties opposing the CALIFORNIA CLASS; and/or,
4 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
5 which would as a practical matter be dispositive of the interests of the other
6 members not party to the adjudication or substantially impair or impeded their
7 ability to protect their interests.

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

11 **FIRST CAUSE OF ACTION**

12 **Unlawful Business Practices**

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

14 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

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

18 68. DEFENDANTS are a “person” as that term is defined under Cal. Bus. And Prof.
19 Code § 17021.

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

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

1 70. By the conduct alleged herein, DEFENDANTS engaged and continue to engage
2 in a business practice which violates California law, including but not limited to, the applicable
3 Wage Order(s), the California Code of Regulations and the California Labor Code including
4 Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
5 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
6 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
7 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

27 74. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
28 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide

1 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
2 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

27 80. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
2 engaging in any unlawful and unfair business practices in the future.

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

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

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

13 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL DEFENDANTS)**

14 82. 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 83. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
18 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
19 Welfare Commission requirements for DEFENDANTS' failure to accurately calculate and pay
20 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

26 86. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including minimum wage compensation and interest thereon, together with the costs of suit.
28

1 87. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
2 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
3 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
4 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
5 CALIFORNIA CLASS.

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

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

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

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

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

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

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

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL DEFENDANTS)**

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

8 97. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
9 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
10 Welfare Commission requirements for DEFENDANTS' failure to pay these employees for all
11 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
12 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

22 101. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
23 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
24 they worked, including overtime work.

25 102. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
27 implementing a uniform policy and practice that failed to accurately record overtime worked by
28 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to

1 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
2 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
3 (12) hours in a workday, and/or forty (40) hours in any workweek.

4 103. In committing these violations of the California Labor Code, DEFENDANTS
5 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
6 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
7 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
8 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
9 regulations.

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

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

21 106. During the CLASS PERIOD, PLAINTIFF and the other members of the
22 CALIFORNIA CLASS were paid less for overtime worked than they were entitled to, constituting
23 a failure to pay all earned wages.

24 107. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
25 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
26 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
27 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
28

1 to work, and did in fact work overtime, as to which DEFENDANTS failed to accurately record
2 and pay as evidenced by DEFENDANTS' business records and witnessed by employees.

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

8 109. DEFENDANTS knew or should have known that PLAINTIFF and the other
9 members of the CALIFORNIA CLASS were undercompensated for their time worked.
10 DEFENDANTS systematically elected, either through intentional malfeasance or gross
11 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
12 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
13 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
14 their overtime worked.

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

23 111. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
25 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
26 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
27 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
28 employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore

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

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

9 112. 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.

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

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

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

3 115. 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 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

10 116. 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.

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

27 118. DEFENDANTS further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS

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

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

7 **SIXTH CAUSE OF ACTION**

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

9 **(Cal. Lab. Code §§ 2802)**

10 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

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

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

15 An employer shall indemnify his or her employee for all necessary expenditures or
16 losses incurred by the employee in direct consequence of the discharge of his or her
17 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.

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

1 These expenses were necessary to complete their principal job duties. DEFENDANTS are
2 estopped by DEFENDANTS' conduct to assert any waiver of this expectation. Although these
3 expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS
4 members, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the
5 CALIFORNIA CLASS members for these expenses as an employer is required to do under the
6 laws and regulations of California.

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

11 **SEVENTH CAUSE OF ACTION**

12 **Failure To Provide Accurate Itemized Statements**

13 **(Cal. Lab. Code § 226)**

14 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

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

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

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

- 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.

126. When DEFENDANTS 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, DEFENDANTS 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.

127. In addition to the foregoing, DEFENDANTS 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).

128. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meals and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation

1 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
2 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
3 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
4 of the CALIFORNIA CLASS herein).

5 **EIGHTH CAUSE OF ACTION**

6 **Failure To Pay Wages When Due**

7 **(Cal. Lab. Code § 203)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

9 129. 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.

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

13 As used in this article:

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

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

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

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

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

134. Cal. Lab. Code § 203 provides:

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

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

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth

Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

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

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

DATED: May 30, 2024

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

DATED: May 30, 2024

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for PLAINTIFF

EXHIBIT