

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

THE LAGUNITAS BREWING COMPANY, a California corporation;
and DOES 1-50, Inclusive,

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
3/6/2023 3:16 PM

By: Alex Fleckenstein, Deputy Clerk

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

PASHA KRAFT, an individual, on behalf of the State of California, as a
private attorney general,

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

Sonoma Superior Court - Hall of Justice
600 Administration Drive
Santa Rosa, CA 95403

CASE NUMBER: SCV-272762
(Número del Caso):

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

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

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 3/6/2023 3:16 PM
(Fecha)

Robert Oliver Clerk, by Alex Fleckenstein, Deputy
(Secretario) (Adjunto)

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

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

Alex Fleckenstein

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

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Attorneys for Plaintiff PASHA KRAFT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SONOMA

SCV-272762

PASHA KRAFT, an individual, on behalf of the
State of California, as a private attorney general,

Plaintiff,

v.

THE LAGUNITAS BREWING COMPANY, a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 Plaintiff PASHA KRAFT (“PLAINTIFF”) an individual, in her representative capacity on behalf
2 of herself, the State of California, and fellow current and former AGGRIEVED EMPLOYEES, defined
3 *supra*, against Defendant THE LAGUNITAS BREWING COMPANY (“DEFENDANT” and/or
4 “DEFENDANTS”), alleges on information and belief, except for her own acts and knowledge which
5 are based on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys General
8 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former
9 aggrieved employees of DEFENDANT for engaging in a pattern and practice of wage and hour
10 violations under the California Labor Code and seeking only to recover PAGA civil penalties for
11 herself, and on behalf of all current and former aggrieved employees who worked for DEFENDANT.
12 PLAINTIFF does **not seek to recover anything other than penalties as permitted by California**
13 **Labor Code § 2699**. To the extent that statutory violations are mentioned for wage violations,
14 PLAINTIFF does not seek underlying general and/or special damages for those violations, but simply
15 the civil penalties permitted by California Labor Code § 2699.

16 2. California has enacted the PAGA to permit an individual to bring an action on behalf of
17 herself and on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this
18 action.

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

23 4. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT decreased
24 their employment-related costs by systematically violating California wage and hour laws.

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

27 a. Failure to provide compliant meal and rest periods;
28

- b. Failure to allow employees to take duty-free meal and rest periods;
- c. Failure to pay all minimum, sick pay, regular and overtime wages;
- d. Failure to correctly calculate the regular rate of pay;
- e. Failure to pay within seven (7) days of the close of payroll;
- f. Failure to failed to pay for all hours worked;
- g. Failure to maintain true and accurate records;
- h. Failure to reimburse for required business expenses;
- i. Failure to provide accurate itemized wage statements; and
- j. Failure to timely pay wages due during, and upon termination of employment.

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

7. PLAINTIFF reserves the right to name additional representatives throughout the State of California

THE PARTIES

8. Defendant THE LAGUNITAS BREWING COMPANY is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

9. DEFENDANT operates, owns and/or manages one of the most successful craft breweries in the state of California, including in Sonoma County, where PLAINTIFF worked.

10. PLAINTIFF was employed by DEFENDANT in California from June of 2019 to November of 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

11. PLAINTIFF brings this action in her representative capacity on behalf of the State of California and on behalf of all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (hereinafter “AGGRIEVED EMPLOYEES”) during the time period of December 28, 2021 until a date as determined by the Court (“PAGA

1 PERIOD”).

2 12. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code §
3 2699(c) because she was employed by DEFENDANT and suffered one or more of the alleged Labor
4 Code violations committed by DEFENDANT.

5 13. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were,
6 employees of DEFENDANT, within the meanings set forth in the California Labor Code and the
7 applicable Industrial Welfare Commission Wage Order.

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

14 15. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively
15 “DEFENDANTS”), were PLAINTIFF’S employers or persons acting on behalf of PLAINTIFF’S
16 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated,
17 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days
18 of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties
19 for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

25 **JOINT EMPLOYER**

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

28 18. Section 558 of the California Labor Code provides that “any employer *or other person*

1 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
2 provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall
3 be subject to a civil penalty...” (*Lab. Code* § 558(a).).

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

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

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

18 22. At all relevant times, each Defendant, whether named or fictitious, was the agent,
19 employee or other person acting on behalf of each other Defendant, and, in participating in the acts
20 alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts
21 of the other.

22 23. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF’S
23 wages, working hours, and/or working conditions.

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

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1 **JURISDICTION AND VENUE**

2 25. This Court has jurisdiction over this Action pursuant to California Code of Civil
3 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Court
4 has jurisdiction over PLAINTIFF'S claims for civil penalties under the Private Attorney General
5 Act of 2004, California Labor Code §2698, *et seq.*

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

11 **THE CONDUCT**

12 27. In violation of the applicable sections of the California Labor Code and the requirements
13 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
14 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
15 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and AGGRIEVED
16 EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and AGGRIEVED
17 EMPLOYEES for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to
18 compensate PLAINTIFF and AGGRIEVED EMPLOYEES meal rest premiums at the regular rate.
19 DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and
20 full payment for all time worked as required by California law which allows DEFENDANTS to
21 illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent
22 equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS,
23 the PAGA PERIOD should be adjusted accordingly.

24 **A. Meal Period Violations**

25 28. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
26 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
27 time during which an employee is subject to the control of an employer, including all the time the
28 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,

1 DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying
2 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
3 PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing, DEFENDANTS
4 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-
5 duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked
6 out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days
7 where PLAINTIFF did not even receive a partial lunch. More specifically, from time to time,
8 PLAINTIFF and other AGGRIEVED EMPLOYEES were required by DEFENDANTS to work
9 through their meal breaks in order to meet DEFENDANTS' prescribed labor hours to perform all the
10 tasks required of them by DEFENDANTS. PLAINTIFF and other AGGRIEVED EMPLOYEES were
11 required to perform tasks such as, including but not limited to, helping DEFENDANTS' customers
12 and responding to supervisors on work-related tasks. Additionally, PLAINTIFF and other
13 AGGRIEVED EMPLOYEES were required to perform as much work as possible and as quickly as
14 possible in order to meet DEFENDANTS' strict performance and production requirements. As a
15 result, the PLAINTIFF and AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
16 wages by regularly working without their time being accurately recorded and without compensation
17 at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice
18 not to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all time worked is evidenced by
19 DEFENDANTS' business records.

20 29. From time-to-time during the PAGA PERIOD, as a result of their rigorous work
21 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
22 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off-duty meal
23 breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
24 AGGRIEVED EMPLOYEES were required from time to time to perform work as ordered by
25 DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break.
26 Further, DEFENDANTS from time to time failed to provide PLAINTIFF and AGGRIEVED
27 EMPLOYEES with a second off-duty meal period for some workdays in which these employees were
28 required by DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work

1 performed by PLAINTIFF and AGGRIEVED EMPLOYEES does not qualify for limited and
2 narrowly construed “on-duty” meal period exception. When they were provided with meal periods,
3 PLAINTIFF and AGGRIEVED EMPLOYEES were, from time to time, required to remain on duty
4 and on call. PLAINTIFF and AGGRIEVED EMPLOYEES therefore forfeited meal breaks without
5 additional compensation and in accordance with DEFENDANTS’ strict corporate policy and practice.

6 **B. Rest Period Violations**

7 30. From time-to-time during the PAGA PERIOD, PLAINTIFF and AGGRIEVED
8 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
9 provided ten (10) minute rest periods as a result of their rigorous work requirements and
10 DEFENDANTS’ inadequate staffing. More specifically, from time to time, PLAINTIFF and
11 AGGRIEVED EMPLOYEES were required by DEFENDANTS to work through their rest breaks in
12 order to meet DEFENDANTS’ prescribed labor hours to perform all the tasks required of them by
13 DEFENDANTS. PLAINTIFF and other AGGRIEVED EMPLOYEES were required to perform tasks
14 such as, helping DEFENDANTS’ customers and responding to supervisors on work-related tasks.
15 Additionally, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to perform as much
16 work as possible and as quickly as possible in order to meet DEFENDANTS’ strict performance and
17 production requirements.

18 31. Further, for the same reasons 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 time, a
20 first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
21 eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes
22 for some shifts worked of ten (10) hours or more from time to time. When they were provided with
23 rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time, required to
24 remain on duty and/or on call. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not
25 provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and
26 DEFENDANTS’ inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from
27 time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS’ managers.

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1 **C. Unlawful Rounding Violations**

2 32. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable
3 timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED EMPLOYEES for
4 the actual time these employees worked each day, including overtime hours. Specifically,
5 DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFF
6 and AGGRIEVED EMPLOYEES being undercompensated for all of their time worked. As a result,
7 DEFENDANTS were able to and did in fact unlawfully, and unilaterally round the time recorded in
8 DEFENDANTS' timekeeping system for PLAINTIFF and the AGGRIEVED EMPLOYEES in order
9 to avoid paying these employees for all their time worked, including the applicable overtime
10 compensation for overtime worked. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from
11 time to time, forfeited compensation for their time worked by working without their time being
12 accurately recorded and without compensation at the applicable overtime rates.

13 33. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding
14 policy and practice resulted in PLAINTIFF'S and AGGRIEVED EMPLOYEES' time being
15 inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and
16 practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as ordered by
17 DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.
18 Additionally, DEFENDANTS' unlawful rounding policy and practice caused PLAINTIFF and
19 AGGRIEVED EMPLOYEES to perform work as ordered by DEFENDANTS for more than ten (10)
20 hours during a shift without receiving a second off-duty meal break.

21 **D. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
22 **Sick Pay**

23 34. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to
24 fail to accurately calculate and pay PLAINTIFF and the AGGRIEVED EMPLOYEES for their
25 overtime and double time hours worked, meal and rest period premiums, and sick pay. As a result,
26 PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited wages due them for working overtime
27 without compensation at the correct overtime and double time rates, meal and rest period premiums,
28 and sick pay rates. DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED

1 EMPLOYEES the correct rate for all overtime and double time worked, meal and rest period
2 premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS' business
3 records.

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

7 36. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES'
8 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
9 other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS.
10 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus
11 compensation when the employees met the various performance goals set by DEFENDANTS.

12 37. However, from-time-to-time, when calculating the regular rate of pay, in those pay
13 periods where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time,
14 paid meal and rest period premium payments, and/or paid sick pay, and earned non-discretionary
15 bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part
16 of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-
17 overtime hours worked. Management and supervisors described the incentive/bonus program to
18 potential and new employees as part of the compensation package. As a matter of law, the incentive
19 compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in
20 the "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime
21 and double time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
22 AGGRIEVED EMPLOYEES by DEFENDANTS. Specifically, California Labor Code Section 246
23 mandates that paid sick time for non-employees shall be calculated in the same manner as the regular
24 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not
25 the employee actually works overtime in that workweek. DEFENDANTS' conduct, as articulated
26 herein, by failing to include the incentive compensation as part of the "regular rate of pay" for purposes
27 of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
28 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

11 **E. Minimum Wage and Overtime Violations**

12 39. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
13 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning
14 the time during which an employee is subject to the control of an employer, including all the time the
15 employee is suffered or permitted to work. From time to time, DEFENDANTS required PLAINTIFF
16 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
17 DEFENDANTS' control. More specifically, from time to time, PLAINTIFF and AGGRIEVED
18 EMPLOYEES were required by DEFENDANTS to perform work before and after the beginning of
19 their shifts in order to meet DEFENDANTS' prescribed labor hours to perform all the tasks required of
20 them by DEFENDANTS. Additionally, since DEFENDANTS required PLAINTIFF and AGGRIEVED
21 EMPLOYEES to perform as much work as possible and as quickly as possible in order to meet
22 DEFENDANTS' strict performance and production requirements, PLAINTIFF and AGGRIEVED
23 EMPLOYEES were, from time to time, required to work off-the-clock before and after their shifts in
24 order to meet DEFENDANTS' strict requirements.

25 40. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum
26 wage and overtime compensation by regularly working without their time being accurately recorded and
27 without compensation at the applicable minimum wage and overtime rates. DEFENDANTS failed to
28 pay PLAINTIFF and AGGRIEVED EMPLOYEES necessary wages for attending for performing work

1 at DEFENDANTS' direction, request and benefit, while off-the clock. DEFENDANTS' uniform policy
2 and practice not to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all time worked is evidenced
3 by DEFENDANTS' business records.

4 41. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
5 work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES, including but not limited
6 to, requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to undergo pre-shift Covid-19 health
7 screenings while off-the-clock.

8 42. DEFENDANTS controlled the work schedules, duties, protocols, applications,
9 assignments, and employment conditions of PLAINTIFF and the AGGRIEVED EMPLOYEES.

10 43. DEFENDANTS were able to track the amount of time PLAINTIFF and the
11 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or
12 pay PLAINTIFF and the AGGRIEVED EMPLOYEES all wages earned and owed for all the work
13 they performed, including pre-shift, post shift and during meal period off-the-clock work.

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

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

21 46. DEFENDANTS knew or should have known that PLAINTIFF and the AGGRIEVED
22 EMPLOYEES worked off-the-clock work was compensable under the law.

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

28 ///

1 **F. Wage Statement Violations**

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

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

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

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

24 **G. Violations Resulting from Unlawful Tipping Practices**

25 52. During the PAGA PERIOD, pursuant to DEFENDANTS' company policies and practices,
26 DEFENDANTS from time to time used all or part of PLAINTIFF'S and other AGGRIEVED
27 EMPLOYEES' tips to offset their minimum wage and applicable overtime compensation. Specifically,
28 from time to time, if PLAINTIFF and AGGRIEVED EMPLOYEES earned more in tips in any given

1 day than their total hourly compensation, DEFENDANT would only pay PLAINTIFF and
2 AGGRIEVED EMPLOYEES their tips as compensation. As a result, PLAINTIFF and other
3 AGGRIEVED EMPLOYEES forfeited minimum and overtime wages due them for all hours worked
4 due to DEFENDANTS' uniform policy and practice of only paying PLAINTIFF and AGGRIEVED
5 EMPLOYEES in tips if said tips were more than the employees' daily total hourly compensation.

6 53. Further, from time to time during the PAGA PERIOD, if PLAINTIFF and AGGRIEVED
7 EMPLOYEES earned less tips than their daily hourly compensation, DEFENDANT would deduct the
8 amount of tips from employees' hourly compensation and only pay PLAINTIFF and AGGRIEVED
9 EMPLOYEES the difference. DEFENDANTS routinely received gratuity tips from its food and
10 beverage bills. These gratuities and/or tips reasonably appear to be gratuities/tips for the service staff. It
11 is typical and customary in the hospitality industry that establishments receive gratuities/tips on the food
12 and beverage bill. Thus, when customers paid these gratuities/tips, it is reasonable for them to have
13 believed they were gratuities/tips to be paid to the service staff. Indeed, because many of these
14 gratuities/tips are depicted to customers, and the custom in the food and beverage industry that
15 gratuities/tips are paid for food and beverage service, customers paid these gratuities/tips reasonably
16 believing they were remitted to the service staff. However, DEFENDANTS have not remitted the total
17 proceeds of these gratuities/tips to the non-managerial employees who serve the food and beverages.
18 Instead, DEFENDANTS have a policy and practice of using a portion of these gratuities to offset the
19 minimum wage and overtime compensation owed to PLAINTIFF and AGGRIEVED EMPLOYEES.
20 As a result, PLAINTIFF and AGGRIEVED EMPLOYEES have not received the total proceeds of the
21 gratuities/tips and minimum wage and overtime compensation, to which they are entitled to under
22 California law

23 54. DEFENDANTS are generally in the business of owning and operating a restaurant and
24 brewery business. During the PAGA PERIOD, PLAINTIFF and AGGRIEVED EMPLOYEES were
25 in the "chain of service" and earned gratuities based on their service for their customers. However,
26 PLAINTIFF and AGGRIEVED EMPLOYEES were forced to forfeit portions of their gratuities,
27 which said gratuities were kept by DEFENDANTS' employees who were not in the chain of service
28 from which the gratuity/tip resulted, or were used to offset their minimum and overtime compensation.

1 PLAINTIFF and AGGRIEVED EMPLOYEES contend that any gratuities/tips kept by
2 DEFENDANTS were illegal and in violation of California law because PLAINTIFF and
3 AGGRIEVED EMPLOYEES provided the service for to whom the gratuity should have been paid.

4 55. California Labor Code § 351 establishes the requirements for an employer regarding the
5 payment of gratuities. Specifically, gratuities are the sole property of the employees. California Labor
6 Code § 351 expressly prohibits employers and their agents from collecting, taking, or receiving any
7 portion of a gratuity. California Labor Code § 350(e) defines the term “gratuity” as including any
8 money that has been paid or given or left for an employee by a patron of a business over and above
9 the actual amount due the business for services rendered or for goods, food, drink or articles sold or
10 served to such patron. Labor Code § 353 requires employers to keep accurate records of all gratuities
11 they receive, directly or indirectly.

12 56. Although tip pooling is not expressly prohibited by the Labor Code, employees who
13 mandate tip pooling must only distribute pooled tips to employees in the “chain of service.” By
14 distributing tips to employees who were not in the “chain of service,” or using tips to offset minimum
15 wage and overtime compensation, DEFENDANTS have violated and continue to violate the legal
16 requirements for handling pooled tips and the legal requirements for paying minimum wage and
17 overtime compensation.

18 **H. Unreimbursed Business Expenses**

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

1 58. In the course of their employment, DEFENDANT required PLAINTIFF and
2 AGGRIEVED EMPLOYEES to use their personal cell phones as a result of and in furtherance of their
3 job duties. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to use
4 their personal cell phones in order to perform work related tasks. However, DEFENDANT unlawfully
5 failed to reimburse PLAINTIFF and AGGRIEVED EMPLOYEES for the use of their personal cell
6 phones. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF and
7 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses that included, but were not
8 limited to, costs related to the use of their personal cell phones, all on behalf of and for the benefit of
9 DEFENDANT.

10 **I. Unlawful Deductions**

11 59. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF'S and
12 AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do so or notice
13 to PLAINTIFF and the AGGRIEVED EMPLOYEES. Such unlawful deductions include, but are not
14 limited to, 401(k) contributions, despite failing to ensure those deductions were properly allocated to
15 said 401(k) policies. As a result, DEFENDANT violated Labor Code § 221.

16 **J. Failure to Provide Personnel Files**

17 60. Beginning on or around November of 2022, PLAINTIFF made three separate requests
18 for her personnel and employment records from DEFENDANT, including but not limited to: (1)
19 payroll records; (2) employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF'S complete
20 employment file.

21 61. DEFENDANTS failed to provide and/or make available to PLAINTIFF her personnel
22 records, payroll records, employment contract, and entire employment file within thirty (30) days of
23 her requests stated above. In fact, as of the date of filing of this complaint, DEFENDANTS have still
24 failed to pay PLAINTIFF the statutory penalty in the amount of \$750. DEFENDANTS violated Cal.
25 Lab. Code Section 1198.5 by failing to respond and provide PLAINTIFF with her employment file.
26 Section 1198.5 states that employees (and former employees) have the right to inspect personnel
27 records maintained by the employer "related to the employee's performance or to any grievance
28 concerning the employee." Employers must allow inspection or copying within thirty (30) days of the

1 request. PLAINTIFF is now entitled to and requests injunctive relief to obtain compliance with Cal.
2 Lab. Code Section 1198.5, a statutory penalty, and an award of attorneys' fees and costs for bringing
3 this action.

4 62. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off
5 duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods. PLAINTIFF
6 was required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift
7 without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with
8 a second off-duty meal period each workday in which she was required by DEFENDANT to work ten
9 (10) hours of work. When DEFENDANT provided PLAINTIFF with a rest break, they required
10 PLAINTIFF to remain on-duty and on-call for the rest break. DEFENDANT policy caused
11 PLAINTIFF to remain on-call and on-duty during what was supposed to be her off-duty meal periods.
12 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in
13 accordance with DEFENDANT'S strict corporate policy and practice. Moreover, DEFENDANT also
14 provided PLAINTIFF with paystubs that failed to comply with Cal. Lab. Code § 226. Further,
15 DEFENDANT also failed to reimburse PLAINTIFF for required business expenses related to the use
16 of her personal cell phone, on behalf of and in furtherance of her employment with DEFENDANT.
17 Moreover, DEFENDANT also subjected PLAINTIFF to its unlawful tipping practices pursuant to Cal.
18 Lab. Code § 351. Additionally, DEFENDANT unlawfully deducted wages from PLAINTIFF'S pay
19 pursuant to Cal. Lab. Code § 221. Further, DEFENDANT failed to provide and/or make available to
20 PLAINTIFF her personnel records, payroll records, employment contracts, and entire employment
21 file within (30) days of all her requests beginning on or around November 21, 2022. To date,
22 DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time compensation
23 still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in
24 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

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1 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

25 68. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
26 Section 2699.3. By certified letter, return receipt requested, dated December 28, 2022, PLAINTIFF
27 gave written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANT
28 of the specific provisions of the Labor Code alleged to have been violated, including the facts and

1 theories to support the alleged violations. (See Exhibit #1.)

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

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

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

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

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

25 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil
26 penalty in the amount of fifty dollars (\$50) for each underpaid
27 AGGRIEVED EMPLOYEE for the initial violation and hundred dollars
28 (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent

violation [penalty per Labor Code Section 558];

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

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

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

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

72. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer."], Emphasis added, reh'g denied (June 13, 2018).)

///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

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

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

7 For such other relief as the Court deems just and proper.
8

9 Dated: March 6, 2023

Respectfully Submitted,
ZAKAY LAW GROUP

11 By: 
12 Shani O. Zakay
13 Attorneys for PLAINTIFF
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EXHIBIT 1



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client #52401

December 28, 2022

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

THE LAGUNITAS BREWING COMPANY
c/o Patrick J. McNeil, A Professional Corporation
55 Professional Center Parkway, Suite A
San Rafael, CA 94903

Via Certified U.S. Mail with Return Receipt No. 7022 2410 0000 2184 0348

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, 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 Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff PASHA KRAFT (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant THE LAGUNITAS BREWING COMPANY (“Defendant”). Plaintiff was employed by Defendant in California from June of 2019 to November of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation 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, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, 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 Defendant, 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, Defendant is on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant 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 Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,

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

Shani O. Zakay
Attorney for Plaintiff

JCL LAW FIRM, APC

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Attorneys for Plaintiff PASHA KRAFT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SONOMA

PASHA KRAFT, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

v.

THE LAGUNITAS BREWING COMPANY., a
California 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;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
 - 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
 - 8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
 - 9) FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351;
 - 10) UNLAWFUL DEDUCTIONS IN VIOLATION OF CAL. LAB. CODE § 221;
 - 11) RETALIATION IN VIOLATION OF CAL. LAB. CODE §§ 98.6, 1102.5 & 6310;
 - 12) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
 - 13) VIOLATION OF GOV'T CODE § 12940 – SEX DISCRIMINATION.

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant THE LAGUNITAS BREWING COMPANY (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. DEFENDANT operates, owns, and/or manages one of the most successful craft breweries in the state of California, including in Sonoma County, where PLAINTIFF worked.

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

1 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
2 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter
3 collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one
4 or more of the events and happenings that proximately caused the injuries and damages
5 hereinafter alleged.

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

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

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

25 7. PLAINTIFF was employed by DEFENDANTS in California from June of 2019 to
26 November of 2022 and was at all times classified by DEFENDANT as a non-exempt employee,
27 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
28 minimum and overtime wages due for all time worked.

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

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

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

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

26 **JURISDICTION AND VENUE**

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

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

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

8 **THE CONDUCT**

9 14. In violation of the applicable sections of the California Labor Code and the
10 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
11 matter of company policy, practice and procedure, intentionally, knowingly and systematically
12 failed to provide legally compliant meal and rest periods, failed to accurately compensate
13 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
14 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
15 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate
16 PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular
17 rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the
18 accurate and full payment for all time worked as required by California law which allows
19 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply
20 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
21 against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

22 **A. Meal Period Violations**

23 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
24 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
27 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work
28 without paying them for all the time they were under DEFENDANTS' control. Specifically, as a

1 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
2 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
3 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
4 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
5 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. More
6 specifically, from time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
7 required by DEFENDANTS to work through their meal breaks in order to meet DEFENDANTS'
8 prescribed labor hours to perform all the tasks required of them by DEFENDANTS. PLAINTIFF
9 and other CALIFORNIA CLASS Members were required to perform tasks such as, including but
10 not limited to, helping DEFENDANTS' customers and responding to supervisors on work-related
11 tasks. Additionally, PLAINTIFF and other CALIFORNIA CLASS Members were required to
12 perform as much work as possible and as quickly as possible in order to meet DEFENDANTS'
13 strict performance and production requirements. As a result, the PLAINTIFF and other
14 CALIFORNIA CLASS Members forfeited minimum wage and overtime wages by regularly
15 working without their time being accurately recorded and without compensation at the applicable
16 minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay
17 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
18 DEFENDANTS' business records.

19 16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
20 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
21 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
22 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
23 other CALIFORNIA CLASS Members were required from time to time to perform work as
24 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
25 meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
26 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
27 these employees were required by DEFENDANTS to work ten (10) hours of work from time to
28 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS

Members does not qualify for limited and narrowly construed “on-duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call. PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS’ strict corporate policy and practice.

B. Rest Period Violations

17. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS members were also required from time to time to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and DEFENDANTS’ inadequate staffing. More specifically, from time to time, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to work through their rest breaks in order to meet DEFENDANTS’ prescribed labor hours to perform all the tasks required of them by DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS Members were required to perform tasks such as, helping DEFENDANTS’ customers and responding to supervisors on work-related tasks. Additionally, PLAINTIFF and other CALIFORNIA CLASS Members were required to perform as much work as possible and as quickly as possible in order to meet DEFENDANTS’ strict performance and production requirements.

18. Further, for the same reasons these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS’ inadequate staffing, PLAINTIFF

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

3 **C. Unlawful Rounding Violations**

4 19. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
5 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
6 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
7 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and
8 practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
9 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
10 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
11 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
12 these employees for all their time worked, including the applicable overtime compensation for
13 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from time
14 to time, forfeited compensation for their time worked by working without their time being
15 accurately recorded and without compensation at the applicable overtime rates.

16 20. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
17 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
18 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
19 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
20 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
21 off-duty meal break. Additionally, DEFENDANTS' unlawful rounding policy and practice
22 caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by
23 DEFENDANTS for more than ten (10) hours during a shift without receiving a second off-duty
24 meal break.

25 **D. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
26 **Sick Pay**

27 21. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and
28 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS

1 members for their overtime and double time hours worked, meal and rest period premiums, and
2 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
3 due them for working overtime without compensation at the correct overtime and double time
4 rates, meal and rest period premiums, and sick pay rates. DEFENDANTS' uniform policy and
5 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
6 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
7 law is evidenced by DEFENDANTS' business records.

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

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

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

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

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

19 **E. Minimum Wage and Overtime Violations**

20 26. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
21 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
22 meaning the time during which an employee is subject to the control of an employer, including all
23 the time the employee is suffered or permitted to work. From time to time, DEFENDANTS required
24 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
25 they were under DEFENDANTS' control. More specifically, from time to time, PLAINTIFF and
26 other CALIFORNIA CLASS Members were required by DEFENDANTS to perform work before
27 and after the beginning of their shifts in order to meet DEFENDANTS' prescribed labor hours to
28 perform all the tasks required of them by DEFENDANTS. Additionally, since DEFENDANTS

1 required PLAINTIFF and other CALIFORNIA CLASS Members to perform as much work as
2 possible and as quickly as possible in order to meet DEFENDANTS' strict performance and
3 production requirements, PLAINTIFF and other CALIFORNIA CLASS Members were, from time
4 to time, required to work off-the-clock before and after their shifts in order to meet DEFENDANTS'
5 strict requirements.

6 27. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
7 minimum wage and overtime compensation by regularly working without their time being
8 accurately recorded and without compensation at the applicable minimum wage and overtime rates.
9 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS
10 necessary wages for attending for performing work at DEFENDANTS' direction, request and
11 benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF
12 and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS'
13 business records.

14 28. DEFENDANTS directed and directly benefited from the uncompensated off-the-
15 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS,
16 including but not limited to, requiring PLAINTIFF and the other members of the CALIFORNIA
17 CLASS to undergo pre-shift Covid-19 health screenings while off-the-clock.

18 29. DEFENDANTS controlled the work schedules, duties, protocols, applications,
19 assignments, and employment conditions of PLAINTIFF and the other members of the
20 CALIFORNIA CLASS.

21 30. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
22 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
23 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
24 wages earned and owed for all the work they performed, including pre-shift, post shift and during
25 meal period off-the-clock work.

26 31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
27 exempt employees, subject to the requirements of the California Labor Code.
28

1 32. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
2 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
3 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
4 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
5 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

6 33. DEFENDANTS knew or should have known that PLAINTIFF and the other
7 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

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

13 **F. Wage Statement Violations**

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

22 36. From time to time during the CLASS PERIOD, when PLAINTIFF and other
23 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
24 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
25 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
26 accurate wage statements which failed to show, among other things, all deductions, the total hours
27 worked and all applicable hourly rates in effect during the pay period, and the corresponding
28

1 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
2 meal and rest periods.

3 37. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
4 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
5 Cal. Lab. Code § 226.

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

10 **G. Violations Resulting from Unlawful Tipping Practices**

11 39. During the CALIFORNIA CLASS period, pursuant to DEFENDANTS' company
12 policies and practices, DEFENDANTS from time to time used all or part of PLAINTIFF'S and
13 other CALIFORNIA CLASS Members' tips to offset their minimum wage and applicable overtime
14 compensation. Specifically, from time to time, if PLAINTIFF and other CALIFORNIA CLASS
15 Members earned more in tips in any given day than their total hourly compensation, DEFENDANT
16 would only pay PLAINTIFF and other CALIFORNIA CLASS Members their tips as compensation.
17 As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum and
18 overtime wages due them for all hours worked due to DEFENDANTS' uniform policy and practice
19 of only paying PLAINTIFF and other CALIFORNIA CLASS Members in tips if said tips were
20 more than the employees' daily total hourly compensation.

21 40. Further, from time to time during the CALIFORNIA CLASS period, if PLAINTIFF
22 and other CALIFORNIA CLASS Members earned less tips than their daily hourly compensation,
23 DEFENDANT would deduct the amount of tips from employees' hourly compensation and only
24 pay PLAINTIFF and other CALIFORNIA CLASS Members the difference. DEFENDANTS
25 routinely received gratuity tips from its food and beverage bills. These gratuities and/or tips
26 reasonably appear to be gratuities/tips for the service staff. It is typical and customary in the
27 hospitality industry that establishments receive gratuities/tips on the food and beverage bill. Thus,
28 when customers paid these gratuities/tips, it is reasonable for them to have believed they were
gratuities/tips to be paid to the service staff. Indeed, because many of these gratuities/tips are

1 depicted to customers, and the custom in the food and beverage industry that gratuities/tips are paid
2 for food and beverage service, customers paid these gratuities/tips reasonably believing they were
3 remitted to the service staff. However, DEFENDANTS have not remitted the total proceeds of these
4 gratuities/tips to the non-managerial employees who serve the food and beverages. Instead,
5 DEFENDANTS have a policy and practice of using a portion of these gratuities to offset the
6 minimum wage and overtime compensation owed to PLAINTIFF and other CALIFORNIA CLASS
7 Members. As a result, PLAINTIFF and CALIFORNIA CLASS Members have not received the
8 total proceeds of the gratuities/tips and minimum wage and overtime compensation, to which they
9 are entitled to under California law

10 41. DEFENDANTS are generally in the business of owning and operating a restaurant
11 and brewery business. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
12 CALIFORNIA CLASS Members were in the “chain of service” and earned gratuities based on
13 their service for their customers. However, PLAINTIFF and CALIFORNIA CLASS Members
14 were forced to forfeit portions of their gratuities, which said gratuities were kept by
15 DEFENDANTS’ employees who were not in the chain of service from which the gratuity/tip
16 resulted, or were used to offset their minimum and overtime compensation. PLAINTIFF and other
17 CALIFORNIA CLASS Members contend that any gratuities/tips kept by DEFENDANTS were
18 illegal and in violation of California law because PLAINTIFF and other CALIFORNIA CLASS
19 Members provided the service for to whom the gratuity should have been paid.

20 42. California Labor Code § 351 establishes the requirements for an employer
21 regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees.
22 California Labor Code § 351 expressly prohibits employers and their agents from collecting,
23 taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the term
24 “gratuity” as including any money that has been paid or given or left for an employee by a patron
25 of a business over and above the actual amount due the business for services rendered or for
26 goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires employers
27 to keep accurate records of all gratuities they receive, directly or indirectly.
28

1 43. Although tip pooling is not expressly prohibited by the Labor Code, employees
2 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
3 By distributing tips to employees who were not in the “chain of service,” or using tips to offset
4 minimum wage and overtime compensation, DEFENDANTS have violated and continue to
5 violate the legal requirements for handling pooled tips and the legal requirements for paying
6 minimum wage and overtime compensation.

7 **H. Unreimbursed Business Expenses**

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

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

28 ///

1 **I. Unlawful Deductions**

2 46. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
3 and CALIFORNIA LABOR CLASS Members' pay without explanations and without
4 authorization to do so or notice to PLAINTIFF and the CALIFORNIA LABOR CLASS Members.
5 Such unlawful deductions include, but are not limited to, 401(k) contributions, despite failing to
6 ensure those deductions were properly allocated to said 401(k) policies. As a result,
7 DEFENDANT violated Labor Code § 221.

8 **J. Failure to Provide Personnel Files**

9 47. Beginning on or around November of 2022, PLAINTIFF made three separate
10 requests for her personnel and employment records from DEFENDANT, including but not limited
11 to: (1) payroll records; (2) employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF'S
12 complete employment file.

13 48. DEFENDANTS failed to provide and/or make available to PLAINTIFF her
14 personnel records, payroll records, employment contract, and entire employment file within thirty
15 (30) days of her requests stated above. In fact, as of the date of filing of this complaint,
16 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
17 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
18 PLAINTIFF with her employment file. Section 1198.5 states that employees (and former
19 employees) have the right to inspect personnel records maintained by the employer "related to the
20 employee's performance or to any grievance concerning the employee." Employers must allow
21 inspection or copying within thirty (30) days of the request. PLAINTIFF is now entitled to and
22 requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a statutory
23 penalty, and an award of attorneys' fees and costs for bringing this action.

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

1 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
2 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
3 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was
4 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
5 without additional compensation and in accordance with DEFENDANT'S strict corporate policy
6 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
7 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF
8 for required business expenses related to the use of her personal cell phone, on behalf of and in
9 furtherance of her employment with DEFENDANT. Moreover, DEFENDANT also subjected
10 PLAINTIFF to its unlawful tipping practices pursuant to Cal. Lab. Code § 351. Additionally,
11 DEFENDANT unlawfully deducted wages from PLAINTIFF'S pay pursuant to Cal. Lab. Code
12 § 221. Further, DEFENDANT failed to provide and/or make available to PLAINTIFF her
13 personnel records, payroll records, employment contracts, and entire employment file within (30)
14 days of all her requests beginning on or around November 21, 2022. To date, DEFENDANT has
15 not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to
16 her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy for
17 PLAINTIFF individually does not exceed the sum or value of \$75,000.

18 **K. Plaintiff's Individual Claims**

19 50. PLAINTIFF was employed by DEFENDANTS in California since from June of
20 2019 to November of 2022. PLAINTIFF is a female.

21 51. Throughout her employment with DEFENDANTS, PLAINTIFF was treated
22 differently and unfairly by DEFENDANTS and its agents, all in retaliation against PLAINTIFF
23 for various protected activities.

24 52. During her employment, PLAINTIFF complained to DEFENDANT about
25 DEFENDANT'S unlawful practices. Throughout her employment, PLAINTIFF regularly
26 reported workplace safety violations to DEFENDANT, including but not limited to,
27 DEFENDANT'S employees failing to wear personal protective equipment ("PPE") while
28 performing work-related tasks, or failing to abide by safety protocols regarding the same. On

1 several occasions during PLAINTIFF'S employment and specifically on or around November 14,
2 2022, PLAINTIFF made reports to DEFENDANT about safety issues at DEFENDANT'S
3 workplace, including but not limited to, drug use by other employees. Further, on or around
4 November 14, 2022, PLAINTIFF also complained to DEFENDANT that she did not receive her
5 supplemental pay when she was out on leave for Covid-19. PLAINTIFF reported the foregoing
6 unlawful conduct to DEFENDANT, but PLAINTIFF'S report fell on deaf ears. Rather, after
7 PLAINTIFF reported to management that she witnessed drug use at DEFENDANT'S workplace
8 and did not receive supplemental pay for Covid-19 leave, DEFENDANT terminated
9 PLAINTIFF'S employment on or around November 17, 2022.

10 53. PLAINTIFF is informed and believes, and upon such information and belief
11 alleges that, during PLAINTIFF'S employment with DEFENDANT, DEFENDANT wrongfully
12 terminated her because of her reports and complaints of DEFENDANT'S policies and practices.

13 54. PLAINTIFF is informed and believes, and upon such information and belief
14 alleges that, during PLAINTIFF'S employment with DEFENDANT and at the time of her
15 termination, DEFENDANT maintained a hostile work environment directed at PLAINTIFF
16 because of her reports and complaints regarding unsafe workplace conditions and drug use at the
17 workplace and for DEFENDANT'S unlawful compensation policies.

18 55. PLAINTIFF is informed and believes, and upon such information and belief
19 alleges that, DEFENDANT'S conduct in wrongfully terminating PLAINTIFF'S employment was
20 part of a pattern of behavior by DEFENDANT aimed at retaliation against PLAINTIFF.

21 56. PLAINTIFF is informed and believes, and upon such information and belief
22 alleges that, DEFENDANT wrongfully terminated her for reasons that violate public policy.

23 57. PLAINTIFF is informed and believes, and upon such information and belief
24 alleges that she was harmed as a result of the wrongful termination and that the unlawful and
25 retaliatory practices of DEFENDANT were substantial factors in causing PLAINTIFF'S harm.

26 58. PLAINTIFF is informed and believes, and upon such information and belief
27 alleges that, DEFENDANTS intentionally created or knowingly permitted these working
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conditions, including but not limited to, retaliatory employment practices against employees who reported illegalities at the workplace and Labor Code violations.

59. Further, PLAINTIFF is informed and believes, and upon such information and belief alleges, that, during PLAINTIFF's employment with DEFENDANTS and at the time of her termination, PLAINTIFF was treated differently, unfairly, and retaliated against by DEFENDANTS and its agents, all in discrimination against PLAINTIFF because of her gender. PLAINTIFF is female. PLAINTIFF never felt that she was accepted by DEFENDANTS because of her gender.

60. Specifically, on or around August 2, 2022, one of DEFENDANT'S employees made a derogatory comment to PLAINTIFF. Thereafter, PLAINTIFF reported the incident to DEFENDANT, but DEFENDANT failed to do anything to prevent any further gender discrimination. Further, as discussed herein regarding PLAINTIFF'S reports of workplace safety violations, PLAINTIFF'S reports regularly fell on deaf ears while the reports from male employees did not.

61. PLAINTIFF is informed and believes, and upon such information and belief alleges, that, during PLAINTIFF'S employment with DEFENDANTS and at the time of her termination, DEFENDANT hired and treated its employees who were male far better than DEFENDANT treated PLAINTIFF, and solely on the basis that PLAINTIFF is female.

62. PLAINTIFF is informed and believes, and upon such information and belief alleges, that, DEFENDANT's conduct in terminating PLAINTIFF was part of a pattern of behavior by DEFENDANT aimed at removing employees who were female like PLAINTIFF from DEFENDANT's workforce.

63. PLAINTIFF filed a complaint with the California Department of Fair Employment and Housing and received a "right to sue" letter on _____, thereby exhausting her administrative remedies. (See Exhibit #1.)

L. CLASS ACTION ALLEGATIONS

64. PLAINTIFF brings the First through Tenth Causes of Action as a class action pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or

1 previously were employed by DEFENDANTS in California and classified as non-exempt
2 employees (“CALIFORNIA CLASS”) during the period beginning four years prior to the filing
3 of the Complaint and ending on a date determined by the Court (“CLASS PERIOD”). The amount
4 in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five
5 million dollars (\$5,000,000.00).

6 65. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
7 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
8 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
9 and illegal meal and rest period policies. Defendant further failed to compensate for off-the-clock
10 work and failed to maintain required records, and interest, statutory and civil penalties, attorney’s
11 fees, costs, and expenses.

12 66. The members of the class are so numerous that joinder of all class members is
13 impractical.

14 67. Common questions of law and fact regarding DEFENDANTS’ conduct, including
15 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to
16 provide legally compliant meal and rest periods, failure to provide accurate itemized wage
17 statements, and failure to ensure they are paid at least minimum wage and overtime, exist as to all
18 members of the class and predominate over any questions affecting solely any individual members
19 of the class. Among the questions of law and fact common to the class are:

- 20 a. Whether DEFENDANTS maintained legally compliant meal period policies and
21 practices;
- 22 b. Whether DEFENDANTS maintained legally compliant rest period policies and
23 practices;
- 24 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
25 CLASS Members accurate premium payments for missed meal and rest periods;
- 26 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
27 CLASS Members accurate overtime wages;

- 1 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
2 CLASS Members at least minimum wage for all hours worked;
- 3 f. Whether DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA
4 CLASS Members for all required business expenses;
- 5 g. Whether DEFENDANT issued legally compliant wage statements;
- 6 h. Whether DEFENDANTS committed an act of unfair competition by
7 systematically failing to record and pay PLAINTIFF and the other members of the
8 CALIFORNIA CLASS for all time worked;
- 9 i. Whether DEFENDANTS committed an act of unfair competition by
10 systematically failing to record all meal and rest breaks missed by PLAINTIFF
11 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
12 the benefit of this work, required employees to perform this work and permits or
13 suffers to permit this work;
- 14 j. Whether DEFENDANTS committed an act of unfair competition in violation of
15 the UCL, by failing to provide the PLAINTIFF and the other members of the
16 CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

21 70. PLAINTIFF will fairly and adequately represent and protect the interests of the
22 CALIFORNIA CLASS Members.

23 71. PLAINTIFF retained able class counsel with extensive experience in class action
24 litigation.

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

27 73. There is a strong community of interest among PLAINTIFF and the members of
28 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are

1 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
2 sustained.

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

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

- 14 a. Inconsistent or varying adjudications with respect to individual members of the
15 CALIFORNIA CLASS which would establish incompatible standards of conduct
16 for the parties opposing the CALIFORNIA CLASS; and/or,
17 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
18 which would as a practical matter be dispositive of the interests of the other
19 members not party to the adjudication or substantially impair or impeded their
20 ability to protect their interests.

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

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 77. 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 78. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 80. By the conduct alleged herein, DEFENDANT has engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 351, 510, 512, 558, 1194, 1197,
25 1197.1, 1198, 2802 for which this Court should issue declaratory and other equitable relief
26 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the
27 conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

28 81. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
or substantially injurious to employees, and were without valid justification or utility for which

1 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
2 Business & Professions Code, including restitution of wages wrongfully withheld.

3 82. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
5 mandated meal and rest periods and the required amount of compensation for missed meal and
6 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
7 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
8 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
9 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

10 83. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
11 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
12 other members of the CALIFORNIA CLASS to be underpaid during their employment with
13 DEFENDANT.

14 84. By the conduct alleged herein, DEFENDANT's practices were also unfair and
15 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
16 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
17 as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

26 87. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and

1 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
2 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
3 to unfairly compete against competitors who comply with the law.

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

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

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

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

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

7 100. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
9 minimum wage compensation for their time worked for DEFENDANT.

10 101. During the CLASS PERIOD, PLAINTIFF and the other members of the
11 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
12 failure to pay all earned wages.

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

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

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

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

5 105. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
6 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
7 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
8 California Labor Code and/or other applicable statutes. To the extent minimum wage
9 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
10 terminated their employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or
11 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
12 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
13 Members. DEFENDANT'S conduct as alleged herein was willful, intentional and not in good
14 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
15 recover statutory costs.

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

19 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

23 107. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
24 for DEFENDANT's willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
26 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
27 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.
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1 108. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
2 public policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

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

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

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

12 116. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
14 constituting a failure to pay all earned wages.

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

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

26 119. DEFENDANTS knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
28 DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
2 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

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

4 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

7 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

28 129. As a proximate result of the aforementioned violations, PLAINTIFF and

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

3 **SIXTH CAUSE OF ACTION**

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

5 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

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

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

SEVENTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code §§ 203)

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

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

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

As used in this article:

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

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

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

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

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

139. Cal. Lab. Code § 203 provides:

1 If an employer willfully fails to pay, without abatement or reduction, in accordance with
2 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
3 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.

4 140. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
5 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
6 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
7 required by law.

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

13 **EIGHTH CAUSE OF ACTION**

14 **Failure To Provide Accurate Itemized Statements**

15 **(Cal. Lab. Code § 226)**

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

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

20 143. Cal. Labor Code § 226 provides that an employer must furnish employees with an
21 “accurate itemized” statement in writing showing:

- 22 a. Gross wages earned,
- 23 b. (2) total hours worked by the employee, except for any employee whose
24 compensation is solely based on a salary and who is exempt from payment of
25 overtime under subdivision (a) of Section 515 or any applicable order of the
26 Industrial Welfare Commission,
- 27 c. the number of piece-rate units earned and any applicable piece rate if the
28 employee is paid on a piece-rate basis,

- d. all deductions, provided that all deductions made on written orders of the employee 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.

144. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, 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, and correct rates of pay for penalty payments or missed meal and rest periods.

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

146. DEFENDANT 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 meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate.

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

7 **NINTH CAUSE OF ACTION**

8 **FAILURE TO PAY STATUTORY GRATUITIES**

9 **(Cal. Lab. Code § 351 et seq.)**

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

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

15 148. DEFENDANT's conduct, as set forth above, in failing to remit to non-
16 managerial employees the total proceeds of gratuities/tips paid by customers on customers'
17 bills constitutes a violation of California Labor Code Section 351. This violation is enforceable
18 pursuant to the California Unfair Competition Law, Cal. Bus. And Prof. Code 17200 et seq.
19 DEFENDANT's conduct constitutes unlawful, unfair, and/or fraudulent business acts or
20 practices, in that DEFENDANT has violated California Labor Code Section 351 in not remitting
21 to the non-managerial service employees the total gratuities/tips that were paid by customers.

22 149. As a proximate result of the aforementioned violations, PLAINTIFFS and
23 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
24 including the loss of gratuities to which they were entitled. and seek all wages earned and due,
25 interest, penalties, expenses and costs of suit.

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(Alleged by PLAINTIFF and against all DEFENDANTS)

158. At all relevant times, California Labor Code section 98.6 was in effect and was binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any employee, including PLAINTIFF, for raising complaints of illegality and/or belief that the employee may disclose illegality regarding Labor Code violations.

160. At all relevant times, Government Code section 12900 was in effect and was binding on DEFENDANT. This statute prohibits DEFENDANT from committing unlawful employment practices, including retaliating against PLAINTIFF for seeking to exercise rights guaranteed under FEHA, participating in protected activities, and/or opposing DEFENDANT's failure to provide such rights.

162. As a proximate result of DEFENDANT's willful, knowing, and intentional violation(s) of Labor Code sections 98.6, 1102.5 and Government Code section 12900, PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to her damage in a sum according to proof.

40

CLASS ACTION COMPLAINT

1 164. DEFENDANT's misconduct was committed intentionally, in a malicious,
2 oppressive manner, and fraudulent manner, entitling PLAINTIFF to punitive damages against
3 DEFENDANT.

4 **TWELFTH CAUSE OF ACTION**

5 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

6 **(Alleged By PLAINTIFF and against all Defendants)**

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

9 166. PLAINTIFF's wrongful termination on or about November 17, 2022 was for a
10 pretextual reason(s) to disguise DEFENDANTS' unlawful employment practices directed at
11 PLAINTIFF.

12 167. Within the State of California there exists a substantial and fundamental public
13 policy, set forth in the California Labor Code § 98.6 et seq., which forbids retaliation and wrongful
14 termination. This public policy of the state is one that benefits the public at large and guarantees
15 the rights of an employee to perform their work free from retaliation.

16 168. Within the State of California there exists a substantial and fundamental public
17 policy, set forth in the California Labor Code § 1102.5 et seq., which forbids retaliation and
18 wrongful termination. This public policy of the state is one that benefits the public at large and
19 guarantees the rights of an employee to perform their work free from retaliation.

20 169. Within the State of California there exists a substantial and fundamental public
21 policy, set forth in the California Government Code §12900 et seq., which forbids disability
22 harassment/discrimination, retaliation, and wrongful termination. Unlawful harassment includes
23 the right to be free from unwanted, offensive harassment, and the right to protest such conduct
24 without fear of retaliation or further harm. This public policy of the state is one that benefits the
25 public at large and guarantees the rights of an employee to perform their work free from disability
26 harassment/discrimination/retaliation.

27 170. The motivating reason(s) for PLAINTIFF's termination was PLAINTIFF'S
28 complaints to DEFENDANT regarding workplace drug use, DEFENDANT'S Labor Code

1 violations and sex harassment/discrimination and PLAINTIFF's protests and/or resistance
2 thereof. PLAINTIFF's discharge from her position of employment was in violation of the public
3 policies of the State of California.

4 171. As a result of DEFENDANTS' actions, PLAINTIFF has suffered substantial
5 losses in earnings and employment benefits and emotional distress in an amount to be determined
6 according to proof at trial.

7 172. In doing the acts herein alleged, DEFENDANTS acted with malice and
8 oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled
9 to exemplary and punitive damages from DEFENDANT in an amount to be determined to punish
10 DEFENDANT and to deter such wrongful conduct in the future.

11 173. PLAINTIFF was harmed by DEFENDANT'S wrongful and illegal termination of
12 her employment.

13 174. The wrongful termination of the employment of PLAINTIFF was and is a
14 substantial factor causing harm to PLAINTIFF.

15 175. On _____, PLAINTIFF filed a complaint with the Department of Fair
16 Employment & Housing ("DFEH"), and received an immediate Right to Sue the same day. (See
17 Exhibit #1.)

18 **THIRTEENTH CAUSE OF ACTION**

19 **VIOLATION OF GOVERNMENT CODE §12940 et seq. – SEX DISCRIMINATION**

20 **(Alleged By PLAINTIFF and against all Defendants)**

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

23 177. PLAINTIFF was employed by DEFENDANT.

24 178. DEFENDANT is employer covered by Government Code §12940 et seq.

25 179. PLAINTIFF was terminated from her employment and/or suffered other adverse
26 employment actions.

27 180. PLAINTIFF's sex was a substantial motivating reason(s) for her termination and
28 other adverse employment actions.

181. As a result of DEFENDANT's conduct, PLAINTIFF has suffered substantial losses in earnings and employment benefits and emotional distress in an amount to be determined according to proof at trial.

182. In doing the acts herein alleged, DEFENDANT acted with malice and oppression, and with a conscious disregard of PLAINTIFF'S rights, and PLAINTIFF is entitled to exemplary and punitive damages from DEFENDANT in an amount to be punish DEFENDANTS and to deter such wrongful conduct in the future.

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 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

c. An order requiring DEFENDANT 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 DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's 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, Eighth, Ninth, and Tenth 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 minimum wage and overtime compensation, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS

1 PERIOD plus interest thereon at the statutory rate;

2 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
3 the applicable IWC Wage Order;

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

7 3. On Plaintiff's Individual Claims:

8 a. For all special damages which were sustained as a result of DEFENDANTS'
9 conduct, including but not limited to, back pay, front pay, lost compensation and
10 job benefits that PLAINTIFF would have received but for the practices of
11 DEFENDANTS;

12 b. For all exemplary damages, according to proof, which were sustained as a result of
13 DEFENDANTS' conduct;

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

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

16 e. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

17 4. On all claims:

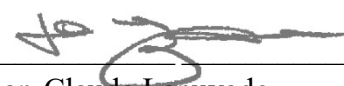
18 a. An award of interest, including prejudgment interest at the legal rate;

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

20 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

21
22 DATED: December 28, 2022

JCL LAW FIRM, APC

23
24 By: 

25 Jean-Claude Lapuyade
26 Attorney for PLAINTIFF
27
28

DEMAND FOR A JURY TRIAL

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

DATED: December 28, 2022

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for PLAINTIFF

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

1. Article Addressed to:

The Lagunitas Brewing Company
c/o Patrick J. McNeil, APC
55 Professional Center Pkwy Ste A
San Rafael, CA 94903



9590 9402 7738 2152 1893 77

2. Article Number (Transfer from service label)

7022 2410 0000 2184 0348

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Signature] ☒ Agent
☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

01/03/20

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

12/28/22 Kraft 002-379

3. Service Type

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| ☐ Certified Mail Restricted Delivery | ☐ Delivery |
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