

SUMMONS

(CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

THE NEIMAN MARCUS GROUP LLC, a Delaware Limited Liability Company; and DOES 1 through 50, Inclusive;

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

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

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

E-FILED
12/15/2021 11:33 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV391973
Reviewed By: R. Walker
Envelope: 7870114

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):

Santa Clara Superior Court
191 North First Street
San Jose, CA 95113

CASE NUMBER:
(Número del Caso): 21CV391973

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291

JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 12/15/2021 11:33 AM Clerk of Court Clerk, by R. Walker, Deputy
(Fecha) (Secretario) (Adjunto)

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

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



NOTICE TO THE PERSON SERVED: You are served

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

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

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Attorneys for Plaintiff PARASTOO MABOUDI

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

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

Plaintiffs,

vs.

THE NEIMAN MARCUS GROUP LLC, a
Delaware Limited Liability Company; and DOES
1 through 50, Inclusive;

Defendants.

Case No. 21CV391973

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 Plaintiff PARASTOO MABOUDI (“PLAINTIFF”) an individual, in her representative capacity
2 on behalf of the State of California and fellow current and former AGGRIEVED EMPLOYEES,
3 defined *supra*, alleges on information and belief, except for her own acts and knowledge, which are
4 based on personal knowledge, the following:

5 **INTRODUCTION**

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

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

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

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

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

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

THE PARTIES

6. Defendant THE NEIMAN MARCUS GROUP LLC (“DEFENDANT” and/or “DEFENDANTS”) is a Delaware limited liability company that at all relevant times owns and operates luxury department stores in the County of Santa Clara, California.

7. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee from September 2004 to July of 2021, paid in part on an hourly and commission basis, and entitled to the legally required meal and rest periods and payment of minimum wages, reimbursement for business expenses, and overtime wages due for all time worked.

8. PLAINTIFFF brings this action in her representative capacity on behalf of the State of California and on behalf of all of DEFENDANTS’ current and former non-exempt and/or sales persons and/or commission-based California employees (hereinafter “AGGRIEVED EMPLOYEES”) between October 8, 2020 and the present (“PAGA PERIOD”).

9. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code § 2699(c) because she was employed by DEFENDANTS during the PAGA PERIOD, and suffered one or more of the alleged Labor Code violations committed by DEFENDANTS.

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

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

12. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s

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

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

10 **JOINT EMPLOYER**

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

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

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

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

27 18. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT, and each
28 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees

1 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and
2 damages alleged herein.

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

7 20. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's
8 wages, working hours, and/or working conditions.

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

12 **JURISDICTION AND VENUE**

13 22. This Court has jurisdiction over this Action pursuant to California Code of Civil
14 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Court
15 has jurisdiction over PLAINTIFF's claims for civil penalties under the Private Attorney General Act
16 of 2004, California Labor Code §2698, *et seq.*

17 23. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
18 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides in this County,
19 and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in
20 this County and/or conducts substantial business in this County, and (ii) committed the wrongful
21 conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED EMPLOYEES.

22 **THE CONDUCT**

23 24. In violation of the applicable sections of the California Labor Code and the requirements
24 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
25 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
26 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the AGGRIEVED
27 EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the AGGRIEVED
28 EMPLOYEES for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to

1 pay PLAINTIFF and the AGGRIEVED EMPLOYEES overtime at the regular rate, failed to
2 compensate PLAINTIFF and AGGRIEVED EMPLOYEES meal and rest premiums at the regular
3 rate, failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES sick pay at the regular rate, and
4 failed to issue to PLAINTIFF and the AGGRIEVED EMPLOYEES with accurate itemized wage
5 statements showing, among other things, all applicable hourly rates in effect during the pay periods
6 and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies
7 and practices are intended to purposefully avoid the accurate and full payment for all time worked as
8 required by California law which allows DEFENDANTS to illegally profit and gain an unfair
9 advantage over competitors who comply with the law. To the extent equitable tolling operates to toll
10 claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be
11 adjusted accordingly.

12 **A. Meal Period Violations**

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

26. From time-to-time during the PAGA PERIOD, as a result of their rigorous work schedules, being required to assist and advise customers, and DEFENDANTS' inadequate staffing practices, PLAINTIFF and AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off-duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and AGGRIEVED EMPLOYEES were required from time to time to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work performed by PLAINTIFF and AGGRIEVED EMPLOYEES does not qualify for limited and narrowly construed "on-duty" meal period exception. When they were provided with meal periods, PLAINTIFF and AGGRIEVED EMPLOYEES were, from time to time, required to remain on duty, on call, and required to maintain cordless communication devices on them during meal periods. Further, PLAINTIFF and AGGRIEVED EMPLOYEES were required to respond to communications received on said cordless communication devices during what was supposed to be their duty-free meal periods. PLAINTIFF and AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

B. Rest Period Violations

27. From time-to-time during the PAGA PERIOD, PLAINTIFF and AGGRIEVED EMPLOYEES 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 schedule, being required to assist and advise customers, and DEFENDANTS' inadequate staffing. Further, for the same reasons these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time, required to remain on duty, on call, and

1 required to maintain cordless communication devices on them during rest periods. Further,
2 PLAINTIFF and AGGRIEVED EMPLOYEES were required to respond to communications received
3 on said cordless communication devices during what was supposed to be their duty-free rest periods.
4 PLAINTIFF and AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu*
5 thereof. As a result of their rigorous work schedules, being required to assist and advise customers,
6 and DEFENDANTS' inadequate staffing, PLAINTIFF and AGGRIEVED EMPLOYEES were from
7 time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

8 28. In addition, for those AGGRIEVED EMPLOYEES, including PLAINTIFF, who were
9 paid on a commission-based compensation plan, DEFENDANTS failed to compensate PLAINTIFF
10 and AGGRIEVED EMPLOYEES for their rest periods as required by the applicable Wage Order and
11 Labor Code. DEFENDANTS did not have a policy or practice which paid for off-duty rest periods to
12 PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS' failure to provide
13 PLAINTIFF and the AGGRIEVED EMPLOYEES with all the legally required paid rest periods is
14 evidenced by DEFENDANT's business records.

15 **D. Unreimbursed Business Expenses**

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

26 30. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
27 EMPLOYEES were required by DEFENDANTS to use their own personal vehicles and personal cell
28 phones as a result of and in furtherance of their job duties as employees for DEFENDANTS. But for

1 the use of their own personal vehicles and personal cell phones, PLAINTIFF and the AGGRIEVED
2 EMPLOYEES could not complete their essential job duties. Notwithstanding, DEFENDANTS did
3 not reimburse or indemnify PLAINTIFF or AGGRIEVED EMPLOYEES for the cost associated with
4 the use of their own personal vehicles and personal cell phones for DEFENDANTS' benefit.
5 Specifically, PLAINTIFF and AGGRIEVED EMPLOYEES were required by DEFENDANTS to use
6 their personal vehicles and personal cell phones for work related issues, including but not limited to,
7 communications for work-related issues and traveling to perform work-related tasks such as
8 transporting merchandise. As a result, in the course of their employment with DEFENDANTS,
9 PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which
10 included, but were not limited to, costs related to the use of their personal vehicles and personal cell
11 phones, all on behalf of and for the benefit of DEFENDANTS.

12 **E. Wage Statement Violations**

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

21 32. From time to time during the PAGA PERIOD, when PLAINTIFF and other
22 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal and
23 rest period premiums, or were paid non-discretionary incentive and/or bonus compensation, or were
24 not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other
25 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
26 among other things, the total hours worked and all applicable hourly rates in effect during the pay
27 period and the corresponding amount of time worked at each hourly rate, correct rates of pay for
28 penalty payments or missed meal and rest periods.

1 33. In addition to the violations described above, DEFENDANTS, from time to time, failed
2 to provide PLAINTIFF and AGGRIEVED EMPLOYEES with wage statements that comply with Cal.
3 Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED
4 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
5 violations are knowing and intentional, were not isolated or due to an unintentional payroll error due
6 to clerical or inadvertent mistake.

7 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

8 24. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and continue to
9 fail to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.
10 Specifically, DEFENDANT from time-to-time required PLAINTIFF and the AGGRIEVED
11 EMPLOYEES to perform off-the-clock work. Notwithstanding, from time-to-time DEFENDANTS
12 failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES necessary wages for performing
13 work at DEFENDANTS' direction, request, and benefit, while off-the clock.

14 25. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
15 and AGGRIEVED EMPLOYEES to perform off-the-clock work, including but not limited to,
16 responding to communications from DEFENDANTS' customers. Further, during the PAGA PERIOD,
17 DEFENDANTS engaged in the practice of requiring PLAINTIFF and other AGGRIEVED
18 EMPLOYEES to perform work off the clock after clocking out in that DEFENDANTS, as a condition
19 of employment, required these employees from time to time to wait and submit to loss prevention
20 inspections after clocking out at the end of each scheduled shift, and if they left the store during off
21 duty meal periods, for which DEFENDANTS did not provide compensation for the time spent waiting
22 for and submitting to DEFENDANTS' loss prevention inspections off the clock. This resulted in
23 PLAINTIFF and other AGGRIEVED EMPLOYEES to have to work while off-the-clock.

24 26. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
25 work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

26 27. DEFENDANTS controlled the work schedules, duties, protocols, applications,
27 assignments and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.
28

1 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
2 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or
3 pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all the
4 work they performed, including off-the-clock work.

5 29. PLAINTIFF and the other AGGRIEVED EMPLOYEES were subject to the
6 requirements of the California Labor Code.

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

12 31. DEFENDANTS knew or should have known that PLAINTIFF and the AGGRIEVED
13 EMPLOYEES off-the-clock work was compensable under the law.

14 32. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due
15 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent assisting
16 customers from home. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the
17 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
18 evidenced by DEFENDANTS' business records.

19 **G. Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period Premiums**

20 33. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail
21 to accurately calculate and pay PLAINTIFF and the AGGRIEVED EMPLOYEES for their overtime
22 hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and the other
23 AGGRIEVED EMPLOYEES forfeited wages due to them for working overtime without compensation
24 at the correct overtime, meal and rest period premiums, and sick pay rates. DEFENDANTS' uniform
25 policy and practice not to pay the PLAINTIFF and the AGGRIEVED EMPLOYEES the correct
26 overtime rate for all overtime worked, meal and rest period premiums, and sick pay in accordance with
27 applicable law is evidenced by DEFENDANTS' business records.

1 34. State law provides that employees must be paid overtime at one-and-one half times their
2 “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an
3 hourly rate commission.

4 35. The second component of PLAINTIFF’s and other AGGRIEVED EMPLOYEES
5 compensation was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFF and
6 other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS.
7 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus, and/or
8 incentive compensation when the employees met the various performance goals set by DEFENDANTS.
9 Further, DEFENDANTS paid shift differentials to PLAINTIFF and AGGRIEVED EMPLOYEES.

10 36. However, from time-to-time, when calculating the regular rate of pay, in those pay periods
11 where PLAINTIFF and the AGGRIEVED EMPLOYEES worked overtime, or were paid meal and/or
12 rest period premiums, and earned this non-discretionary bonus, incentive, or shift differential
13 DEFENDANTS failed to accurately include the non-discretionary bonus compensation and/or incentive
14 and/or shift differential paid as part of the employees’ “regular rate of pay” and/or calculated all hours
15 worked rather than just all non-overtime hours worked. Further, when calculating the regular rate of
16 pay in order to pay sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES, DEFENDANTS
17 failed to include the incentive compensation and/or shift differential as part of the employees’ “regular
18 rate of pay” for purposes of calculating sick pay. Management and supervisors described the
19 incentive/bonus program to potential and new employees as part of the compensation package. As a
20 matter of law, the incentive compensation and shift differentials received by PLAINTIFF and other
21 AGGRIEVED EMPLOYEES must be included in the “regular rate of pay.” The failure to do so has
22 resulted in a systematic underpayment of overtime, meal and rests period premiums, and sick pay to
23 PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANTS.

24 37. As a matter of law, the incentive, commission, and shift differential compensation
25 received by PLAINTIFFS and other AGGRIEVED EMPLOYEES must be included and correctly
26 calculated into the “regular rate of pay” for purposes of overtime compensation, meal and rest period
27 premiums, and sick pay. DEFENDANTS’ failure to do so has resulted in DEFENDANTS’ systematic
28 underpayment of overtime compensation, meal and rest period premiums, and sick pay to PLAINTIFF

1 and AGGRIEVED EMPLOYEES. Specifically, California Labor Code Section 246 mandates that paid
2 sick time 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 actually
4 works overtime in that workweek. DEFENDANT’S conduct, as articulated herein, by failing to include
5 the incentive compensation and shift differentials as part of the “regular rate of pay” for purposes of sick
6 pay compensation was in violation of Cal. Lab. Code § 246.

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

17 **FIRST CAUSE OF ACTION**

18 **For Civil Penalties Pursuant to Private Attorneys General Act (“PAGA”)**

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

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

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

23 40. PAGA is a mechanism by which the State of California itself can enforce state labor laws
24 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
25 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
26 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
27 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
28 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified

1 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to
2 recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
3 claims cannot be subject to arbitration.

4 41. PLAINTIFF brings this Representative Action on behalf of the State of California with
5 respect to herself and all other current and former AGGRIEVED EMPLOYEES as defined hereinabove.

6 42. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the
7 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the meaning of Labor
8 Code Section 2699(c).

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

12 44. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
13 Section 2699.3. By certified letter, return receipt requested, dated October 8, 2021, PLAINTIFF gave
14 written notice to the Labor and Workforce Development Agency ("LWDA") and to DEFENDANTS of
15 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
16 to support the alleged violations. See Exhibit #1, attached hereto and incorporated by this reference
17 herein.

18 45. As of the date of this complaint, more than sixty-five (65) days after serving the LWDA
19 with notice of DEFENDANT'S violations, the LWDA has not provided any notice by certified mail of
20 its intent to investigate the DEFENDANT'S alleged violations as mandated by Labor Code Section
21 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may
22 commence and is authorized to pursue this cause of action.

23 46. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
24 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,
25 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5,
26 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 in the following amounts:

- 27 a. For violation of Labor Code Sections 201, 202, 203, and 204, civil penalties
28 per Labor Code Section 2699(f)(2);

- b. For violations of Labor Code Section 226(a), civil penalties per Labor Code Section 226.3;
- c. For violations of Labor Code Sections 204, civil penalties per Labor Code Section 210;
- d. For violations of Labor Code Sections 226.7, 510 and 512, civil penalties per Labor Code Section 558;
- e. For violations of Labor Code Section 2269(a), civil penalties per Labor Code Section 226.3;
- f. For violations of Labor Code Sections 1194, 1197, 1198 and 1199, civil penalties per the California Labor Code.
- g. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendant the recoverable civil penalties.

47. 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).

48. 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).).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

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

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

3 (c) For such other relief as the Court deems just and proper.
4

5 Dated: December 15, 2021

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

7 By: 
8 Jean-Claude Lapuyade
9 Attorneys for PLAINTIFF
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EXHIBIT 1



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October 8, 2021

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

THE NEIMAN MARCUS GROUP LLC

c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Via Certified Mail with Return Receipt No. 7021 0350 0000 8465 3127

c/o CT Corporation System
818 W. 7th Street
Los Angeles, CA 90017

Via Certified Mail with Return Receipt No. 7021 0350 0000 8465 3431

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

Dear Sir/Madam:

This office represents PARASTOO MABOUDI (“Plaintiff”) and other aggrieved employees in a proposed class and representative action against THE NEIMAN MARCUS GROUP LLC (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from September 2004 to July 2021. Plaintiff was paid on an hourly and commission basis and entitled to legally required meal and rest periods. At all times during her employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendant failed to fully compensate her and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Plaintiff further contends that Defendant failed to advise Plaintiff and aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission and/or commission draw basis and failed to separately compensate Plaintiff and other aggrieved

employees for the non-productive time associated with their rest periods. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 110 (2017). Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt, exempt, sales persons and commission-based employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

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 his 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.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

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

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

Enclosure (1)

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

PARASTOO MABOUDI, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

THE NEIMAN MARCUS GROUP LLC, a
Delaware Limited Liability Company; and
DOES 1 through 50, Inclusive;

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

- 1 6. FAILURE TO REIMBURSE PLAINTIFF
2 FOR REQUIRED EXPENSES IN
3 VIOLATION OF CAL. LAB. CODE §
4 2802;
5 7. FAILURE TO PROVIDE ACCURATE
6 ITEMIZED STATEMENTS IN
7 VIOLATION OF CAL. LAB. CODE §
8 226;
9 8. FAILURE TO PAY WAGES WHEN
10 DUE IN VIOLATION OF CAL. LABOR
11 CODE §§ 201, 202 AND 203;
12 9. UNPAID SICK PAY IN VIOLATION OF
13 CAL. LABOR CODE § 246.

14 **DEMAND FOR JURY TRIAL**

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

18 **THE PARTIES**

19 1. Defendant THE NEIMAN MARCUS GROUP LLC (“DEFENDANT” and/or
20 “DEFENDANTS”) is a Delaware limited liability company that at all relevant times owns and operates
21 luxury department stores in the County of Santa Clara, California.

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

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

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

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

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

15 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee from
16 September 2004 to July of 2021, paid in part on an hourly and commission basis, and entitled to the
17 legally required meal and rest periods and payment of minimum wages, reimbursement for business
18 expenses, and overtime wages due for all time worked.

19 7. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
20 DEFENDANTS' current and former non-exempt and/or sales persons and/or commission-based
21 California employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4)
22 years from the date of the filing of this Complaint and ending on a date determined by the Court (the
23 "CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
24 Members is under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend the
25 following class definitions before the Court determines whether class certification is appropriate, or
26 thereafter upon leave of Court:

27 8. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
28 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses

1 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which
2 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
3 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of
4 California Labor Code Sections 226.7(c) and the applicable Industrial Welfare Commission Wage
5 Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in violation
6 of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, (3) failed to reimburse
7 PLAINTIFF and the CALIFORNIA CLASS for required expenses in violation of California Labor
8 Code Section 2802, (4) failed to provide accurate itemized wage statements in violation of California
9 Labor Code Sections 226 and 226.3, and (5) failed to pay sick pay at the regular rate of pay in violation
10 of California Labor Code Section 246.

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

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

18 **JURISDICTION AND VENUE**

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

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

28 **THE CONDUCT**

1 13. 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, knowingly and systematically failed to provide legally
4 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members
5 of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
6 members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-
7 the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS
8 overtime at the regular rate, failed to compensate PLAINTIFF and other members of the CALIFORNIA
9 CLASS meal and rest premiums at the regular rate, failed to pay PLAINTIFF and other members of
10 the CALIFORNIA CLASS sick pay at the regular rate, and failed to issue to PLAINTIFF and the
11 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other
12 things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time
13 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
14 purposefully avoid the accurate and full payment for all time worked as required by California law
15 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
16 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
17 CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

18 **A. Meal Period Violations**

19 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
20 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning
21 the time during which an employee is subject to the control of an employer, including all the time the
22 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
23 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying
24 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
25 PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing, DEFENDANTS
26 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-
27 duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked
28 out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where

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

7 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
8 schedules, being required to assist and advise customers, and DEFENDANTS' inadequate staffing
9 practices, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time unable to
10 take thirty (30) minute off-duty meal breaks and were not fully relieved of duty for their meal periods.
11 PLAINTIFF and other CALIFORNIA CLASS Members were required from time to time to perform
12 work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving
13 a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
14 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these
15 employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The
16 nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not
17 qualify for limited and narrowly construed "on-duty" meal period exception. When they were provided
18 with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
19 required to remain on duty, on call, and required to maintain cordless communication devices on them
20 during meal periods. Further, PLAINTIFF and other CALIFORNIA CLASS Members were required
21 to respond to communications received on said cordless communication devices during what was
22 supposed to be their duty-free meal periods. PLAINTIFF and other CALIFORNIA CLASS Members
23 therefore forfeited meal breaks without additional compensation and in accordance with
24 DEFENDANTS' strict corporate policy and practice.

25 **B. Rest Period Violations**

26 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
27 CLASS members were also required from time to time to work in excess of four (4) hours without
28 being provided ten (10) minute rest periods as a result of their rigorous work schedule, being required

1 to assist and advise customers, and DEFENDANTS' inadequate staffing. Further, for the same reasons
2 these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
3 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10)
4 minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
5 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
6 more from time to time. When they were provided with rest breaks, PLAINTIFF and other
7 CALIFORNIA CLASS Members were, from time to time, required to remain on duty, on call, and
8 required to maintain cordless communication devices on them during rest periods. Further, PLAINTIFF
9 and other CALIFORNIA CLASS Members were required to respond to communications received on
10 said cordless communication devices during what was supposed to be their duty-free rest periods.
11 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages
12 *in lieu* thereof. As a result of their rigorous work schedules, being required to assist and advise
13 customers, and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS
14 Members were from time to time denied their proper rest periods by DEFENDANTS and
15 DEFENDANTS' managers.

16 17. In addition, for those CALIFORNIA CLASS MEMBERS, including PLAINTIFF, who
17 were paid on a commission-based compensation plan, DEFENDANTS failed to compensate
18 PLAINTIFF and CALIFORNIA CLASS MEMBERS for their rest periods as required by the applicable
19 Wage Order and Labor Code. DEFENDANTS did not have a policy or practice which paid for off-
20 duty rest periods to PLAINTIFF and the CALIFORNIA CLASS MEMBERS. As a result,
21 DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS MEMBERS with all
22 the legally required paid rest periods is evidenced by DEFENDANT's business records

23 **D. Unreimbursed Business Expenses**

24 18. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally,
25 knowingly, and systematically failed to reimburse and indemnify PLAINTIFF and other
26 CALIFORNIA CLASS Members or required business expenses they incurred in direct consequence of
27 discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802,
28 employers are required to indemnify employees for all expenses incurred in the course and scope of

1 their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
3 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
4 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
5 unlawful."

6 19. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
7 CLASS Members were required by DEFENDANTS to use their own personal vehicles and personal
8 cell phones as a result of and in furtherance of their job duties as employees for DEFENDANTS. But
9 for the use of their own personal vehicles and personal cell phones, PLAINTIFF and the members of
10 the CALIFORNIA CLASS could not complete their essential job duties. Notwithstanding,
11 DEFENDANTS did not reimburse or indemnify PLAINTIFF or other CALIFORNIA CLASS
12 Members for the cost associated with the use of their own personal vehicles and personal cell phones
13 for DEFENDANTS' benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members
14 were required by DEFENDANTS to use their personal vehicles and personal cell phones for work
15 related issues, including but not limited to, communications for work-related issues and traveling to
16 perform work-related tasks such as transporting merchandise. As a result, in the course of their
17 employment with DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS
18 incurred unreimbursed business expenses which included, but were not limited to, costs related to the
19 use of their personal vehicles and personal cell phones, all on behalf of and for the benefit of
20 DEFENDANTS.

21 **E. Wage Statement Violations**

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

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

3 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other
4 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal
5 and rest period premiums, or were paid non-discretionary incentive and/or bonus compensation, or
6 were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other
7 CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show,
8 among other things, the total hours worked and all applicable hourly rates in effect during the pay
9 period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty
10 payments or missed meal and rest periods.

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

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

18 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to
19 fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all hours
20 worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other members
21 of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding, from time-to-time
22 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS necessary
23 wages for performing work at DEFENDANTS' direction, request, and benefit, while off-the clock.

24 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
25 and other members of the CALIFORNIA CLASS to perform off-the-clock work, including but not
26 limited to, responding to communications from DEFENDANTS' customers. Further, during the CLASS
27 PERIOD, DEFENDANTS engaged in the practice of requiring PLAINTIFF and other CALIFORNIA
28 CLASS members to perform work off the clock after clocking out in that DEFENDANTS, as a condition

1 of employment, required these employees from time to time to wait and submit to loss prevention
2 inspections after clocking out at the end of each scheduled shift, and if they left the store during off duty
3 meal periods, for which DEFENDANTS did not provide compensation for the time spent waiting for
4 and submitting to DEFENDANTS' loss prevention inspections off the clock. This resulted in
5 PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

6 26. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
7 work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

8 27. DEFENDANTS controlled the work schedules, duties, protocols, applications,
9 assignments and employment conditions of PLAINTIFF and the other members of the CALIFORNIA
10 CLASS.

11 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other members
12 of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or
13 pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for
14 all the work they performed, including off-the-clock work.

15 29. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt
16 employees, subject to the requirements of the California Labor Code.

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

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

24 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited
25 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent
26 assisting customers from home. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF
27 and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable
28 law is evidenced by DEFENDANTS' business records.

1 **G. Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period Premiums**

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

10 34. State law provides that employees must be paid overtime at one-and-one half times their
11 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were compensated at an
12 hourly rate commission.

13 35. The second component of PLAINTIFF's and other CALIFORNIA CLASS Member's
14 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
15 other CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANTS.
16 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus, and/or
17 incentive compensation when the employees met the various performance goals set by DEFENDANTS.
18 Further, DEFENDANTS paid shift differentials to PLAINTIFF and CALIFORNIA CLASS Members.

19 36. However, from time-to-time, when calculating the regular rate of pay, in those pay periods
20 where PLAINTIFF and the CALIFORNIA CLASS Members worked overtime, or were paid meal and/or
21 rest period premiums, and earned this non-discretionary bonus, incentive, or shift differential
22 DEFENDANTS failed to accurately include the non-discretionary bonus compensation and/or incentive
23 and/or shift differential paid as part of the employees' "regular rate of pay" and/or calculated all hours
24 worked rather than just all non-overtime hours worked. Further, when calculating the regular rate of pay
25 in order to pay sick pay to PLAINTIFF and the CALIFORNIA CLASS, DEFENDANTS failed to include
26 the incentive compensation and/or shift differential as part of the employees' "regular rate of pay" for
27 purposes of calculating sick pay. Management and supervisors described the incentive/bonus program to
28 potential and new employees as part of the compensation package. As a matter of law, the incentive

1 compensation and shift differentials received by PLAINTIFF and other CALIFORNIA CLASS Members
2 must be included in the “regular rate of pay.” The failure to do so has resulted in a systematic
3 underpayment of overtime, meal and rests period premiums, and sick pay to PLAINTIFF and other
4 CALIFORNIA CLASS Members by DEFENDANTS.

5 37. As a matter of law, the incentive, commission, and shift differential compensation received
6 by PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly calculated
7 into the “regular rate of pay” for purposes of overtime compensation, meal and rest period premiums,
8 and sick pay. DEFENDANTS’ failure to do so has resulted in DEFENDANTS’ systematic underpayment
9 of overtime compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
10 CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates that paid
11 sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the
12 workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually
13 works overtime in that workweek. DEFENDANT’S conduct, as articulated herein, by failing to include
14 the incentive compensation and shift differentials as part of the “regular rate of pay” for purposes of sick
15 pay compensation was in violation of Cal. Lab. Code § 246.

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

26 **H. CLASS ACTION ALLEGATIONS**

27 39. PLAINTIFF brings the First through Ninth Causes of Action as a class action pursuant to
28 California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS’ current and former non-

1 exempt and/or sales persons and/or commission-based California employees (“CALIFORNIA CLASS”)
2 during the period beginning four years prior to the filing of the Complaint and ending on a date
3 determined by the Court (“CLASS PERIOD”).

4 40. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
5 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid
6 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal
7 and rest period policies, failure to separately compensate rest periods, failed to accurately calculate the
8 regular rate of compensation for missed meal and rest period premiums, failed to reimburse for business
9 expenses, failed compensate for off-the-clock work, failure to provide accurate itemized wage
10 statements, failure to maintain required records, and interest, statutory and civil penalties, attorney’s
11 fees, costs, and expenses.

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

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

21 a. Whether DEFENDANTS maintained legally compliant meal period
22 policies and practices;

23 b. Whether DEFENDANTS maintained legally compliant rest period
24 policies and practices;

25 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
26 CALIFORNIA CLASS Members accurate premium payments for missed
27 meal and rest periods;

28 d. Whether DEFENDANTS failed to pay PLAINTIFF and the

CALIFORNIA CLASS Members accurate overtime wages;

e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Member accurate sick pay;

f. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;

g. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;

h. Whether DEFENDANTS issued legally compliant wage statements;

i. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;

j. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;

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

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

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

45. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

46. PLAINTIFF retained able class counsel with extensive experience in class action

1 litigation.

2 47. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests
3 of the other CALIFORNIA CLASS Members.

4 48. There is a strong community of interest among PLAINTIFF and the members of the
5 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient
6 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained.

7 49. The questions of law and fact common to the CALIFORNIA CLASS Members
8 predominate over any questions affecting only individual members, including legal and factual issues
9 relating to liability and damages.

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

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

20 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
21 which would as a practical matter be dispositive of the interests of the other members not
22 party to the adjudication or substantially impair or impeded their ability to protect their
23 interests.

24 51. Class treatment provides manageable judicial treatment calculated to bring an efficient
25 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of
26 DEFENDANTS.

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

5 52. 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 Complaint.

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

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

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

17 Cal. Bus. & Prof. Code § 17203.

18 55. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
19 CLASS Members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
20 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
21 “UCL”), by engaging and continuing to engage in business practices which violates California law,
22 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
23 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512,
24 1194, 1197, 1197.1, 1198, & 2802 for which this Court should issue declaratory and other equitable
25 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
26 held to constitute unfair competition, including restitution of wages wrongfully withheld.

27 56. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that
28 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or

1 substantially injurious to employees, and were without valid justification or utility for which this Court
2 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
3 Professions Code, including restitution of wages wrongfully withheld.

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

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

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

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

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

28 62. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the

1 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
2 calculated overtime and missed meal and rest periods premiums.

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

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

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

19 66. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
20 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
21 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and
22 unfair business practices in the future.

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

business practices.

SECOND CAUSE OF ACTION

For Failure to Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

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

68. 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.

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

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

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

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

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

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

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

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

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

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

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

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

1 rate as evidenced by DEFENDANTS' business records and witnessed by employees.

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

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

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

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

Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure to Pay Minimum Wages

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

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

84. 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.

85. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members during the CLASS PERIOD.

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

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

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

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

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

1 of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

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

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

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

despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

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

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

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

98. 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.

99. During the CLASS PERIOD, from time to time, DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being relieved of all their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records from time to time. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a

1 second off-duty meal period in some workdays in which these employees were required by
2 DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of the
3 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
4 accordance with DEFENDANTS' strict corporate policy and practice.

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

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

13 **FIFTH CAUSE OF ACTION**

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

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

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

17 102. 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 Complaint.

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

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

98. 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.

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

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

100. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their personal vehicles and personal cell phones all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal vehicles and personal cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using their personal vehicles and

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

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

12 **SEVENTH CAUSE OF ACTION**

13 **For Failure to Provide Accurate Itemized Statements**

14 **[Cal. Lab. Code §§ 226 and 226.2]**

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

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

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

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

5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid,
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
8. The name and address of the legal entity that is the employer, and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

104. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross wages earned; (4) the correct name and address of the legal entity that is the employer; and (5) the last four (4) digits of employee's social security number or an employee identification number all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of California Labor Code Section 226(a).

105. Further, DEFENDANTS violated California Labor Code Section 226(a)(6) by failing to provide the inclusive dates of the period for which PLAINTIFF and CALIFORNIA CLASS Members were paid; and DEFENDANTS violated California Labor Code Section 226(a)(8) by failing to provide the name and address of the legal entity that is the employer. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

106. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)

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

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO PAY WAGES WHEN DUE**

8 **(Cal Lab. Code §§201, 202, 203)**

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

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

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

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

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

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

21 If an employee not having a written contract for a definite period
22 quits his or her employment, his or her wages shall become due and
23 payable not later than 72 hours thereafter, unless the employee has
24 given 72 hours previous notice of his or her intention to quit, in
25 which case the employee is entitled to his or her wages at the time
26 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.

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

1 112. Cal. Lab. Code § 203 provides:

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

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

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

16 **NINTH CAUSE OF ACTION**

17 **UNPAID SICK PAY**

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

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

20 115. 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 Complaint.

22 116. Cal. Labor Code Sections 246(l)(1) mandates that “[p]aid sick time for nonexempt
23 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
24 the employee uses paid sick time, whether or not the employee actually works overtime in that
25 workweek.”

26 117. From time-to-time, during the PLAINTIFF and other members of the CALIFORNIA
27 CLASS were compensated at an hourly rate plus bonuses. As a matter of law, the bonus compensation
28 received by PLAINTIFF and other members of the CALIFORNIA CLASS must be included in the
“regular rate of pay.”

118. From time-to-time during the CLASS PERIOD, in those pay periods where PLAINTIFF and other members of the CALIFORNIA CLASS earned hourly compensation and non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to properly calculate the regular rate of pay for purposes of compensating paid sick time by omitting non-discretionary incentive pay from the regular rate of pay.

119. DEFENDANT's uniform policy and practice of omitting non-discretionary bonuses from the regular rate of pay for purposes of paying paid sick pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the CALIFORNIA CLASS. PLAINTIFF and other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including sick pay wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent sick pay is determined to be owed to other members of the CALIFORNIA CLASS who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of other members of the CALIFORNIA CLASS. DEFENDANT'S conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are entitled to seek and recover statutory costs.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

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

7 1. Compensatory damages, according to proof at trial, including compensatory
8 damages for minimum wage compensation, overtime compensation, sick pay,
9 unreimbursed business expenses due PLAINTIFF and the other members of the
10 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus
11 interest thereon at the statutory rate;

12 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
13 which a violation occurs and one hundred dollars (\$100) per each member of the
14 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an
15 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of
16 Cal. Lab. Code § 226;

17 3. Meal and rest period compensation pursuant to California Labor Code Section
18 226.7, 512 and the applicable IWC Wage Order;

19 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
20 1197; and

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

24 2. On all claims:

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

26 B) Such other and further relief as the Court deems just and equitable; and,

27 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
28 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

1 Dated: September [REDACTED], 2021

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

3 By: 
4 Jean-Claude Lapuyade
5 Attorneys for PLAINTIFF

6 **DEMAND FOR JURY TRIAL**

7 PLAINTIFF demands a jury trial on all issues triable to a jury.
8

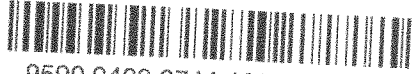
9 Dated: September [REDACTED], 2021

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

11 By: 
12 Jean-Claude Lapuyade
13 Attorneys for PLAINTIFF
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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Neiman Marcus group, LLC
 40 CT Corp. System
 818 W. 7th St.
 Los Angeles, CA 90017



9590 9402 6744 1060 3011 10

2. Article Number (Transfer from service label)

7021 0350 0000 8465 3431

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

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

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3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail

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

Mail Restricted Delivery
 20)

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Neiman Marcus group, LLC
40 corp. trust company
1209 orange st.
Wilmington, DE 19801



9590 9402 6744 1060 3011 27

2. Article Number (Transfer from service label)

7021 0350 0000 8465 3127

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

OCT 14 2021

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PROBATION 8.21 Page 9

3. Service Type

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

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

Domestic Return Receipt