

San Luis Obispo Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN LUIS OBISPO

ELISA ALVAREZ, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

SLO ARCHES, INC., a California Corporation;
IVERNIA, INCORPORATED, a California
Corporation; GOLDEN SENECA, INC., a
California Corporation; and DOES 1 through 50,
Inclusive;

Defendants.

Case No. 21CV-0533

**FIRST AMENDED 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;
6. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203;
9. VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT AT LABOR CODE SECTIONS 2698, *ET SEQ.*

DEMAND FOR JURY TRIAL

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

THE PARTIES

1. Defendant SLO ARCHES, INC. (“Defendant SLO”) is a California Corporation that at all relevant times owns and operates McDonald’s restaurants throughout the County of San Luis Obispo, California.

2. Defendant IVERNIA, INCORPORATED (“Defendant Ivernia”) is a California Corporation that at all relevant times owns and operates McDonald’s restaurants in California.

3. Defendant GOLDEN SENECA, INC. (“Defendant Golden”) is a California Corporation that at all relevant times owns and operates McDonald’s restaurants in California.

4. Defendant SLO, Defendant Ivernia, and Defendant Golden were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein. PLAINTIFF further alleges there has existed a unity of interest and ownership between SLO Arches,

1 Inc. and/or Ivernia, Incorporated and/or Golden Seneca, Inc. such that any individuality and
2 separateness between the entities has ceased and all Defendants are collectively referred to herein as
3 “DEFENDANT” and/or “DEFENDANTS.”

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

13 6. PLAINTIFF alleges DOES 1-50 are the partners, agents, owners, or managers of
14 DEFENDANTS at all relevant times. PLAINTIFF alleges there has existed a unity of interest and
15 ownership between DEFENDANTS such that any individuality and separateness between the entities
16 has ceased. SLO Arches, Inc. and/or Ivernia, Incorporated and/or Golden Seneca, Inc. and DOES 1-50
17 are therefore alter egos of each other. Adherence to the fiction of the separate existence of
18 DEFENDANTS would permit an abuse of the corporate privilege, and would promote injustice by
19 protecting DEFENDANTS from liability for the wrongful acts committed by them.

20 7. PLAINTIFF alleges that Defendants SLO Arches, Inc. and/or Ivernia, Incorporated and/or
21 Golden Seneca, Inc. are the alter egos of each other for the following reasons:

- 22 a. On the California Secretary of State’s website (<https://businesssearch.sos.ca.gov/>)
23 SLO Arches, Inc. and/or Ivernia, Incorporated and/or Golden Seneca, Inc. have the
24 same entity address and/or mailing address and/or Agent for Service of Process; and,
25 b. On information and belief, SLO Arches, Inc. and/or Ivernia, Incorporated and/or
26 Golden Seneca, Inc. utilize the same standardized employment forms and issue the
27 same employment policies.
28

1 8. The agents, servants and/or employees of the DEFENDANTS and each of them acting on
2 behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent,
3 servant and/or employee of the DEFENDANTS, and personally participated in the conduct alleged
4 herein on behalf of the DEFENDANTS with respect to the conduct alleged herein. Consequently, the
5 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
6 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
7 proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

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

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

18 11. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee from March
19 of 2017 to March of 2019 and received her last paycheck from DEFENDANTS on or around March of
20 2021, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
21 of minimum wages, reporting time pay, and overtime wages due for all time worked.

22 12. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all individuals
23 who are or previously were employed by Defendant SLO and/or Defendant Ivernia and/or Defendant
24 Golden in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any
25 time during the period beginning four years from the date of the filing of this Complaint and ending on
26 a date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate
27 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00). PLAINTIFF
28

1 reserves the right to amend the following class definitions before the Court determines whether class
2 certification is appropriate, or thereafter upon leave of Court.

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

15 14. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair, and
16 deceptive business practices whereby DEFENDANTS retained and continues to retain wages due
17 PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

22 **JURISDICTION AND VENUE**

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

27 17. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
28 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, and DEFENDANTS

(i) currently maintain and at all relevant times, maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

THE CONDUCT

18. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, , and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, the accurate total hours worked during each pay period and all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

A. Meal Period Violations

19. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-

1 duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked
2 out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where
3 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA
4 CLASS Members forfeited minimum wage and overtime wages by regularly working without their
5 time being accurately recorded and without compensation at the applicable minimum wage and
6 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
7 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
8 records.

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

23 **B. Rest Period Violations**

24 21. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
25 CLASS members were also required from time to time to work in excess of four (4) hours without
26 being provided ten (10) minute rest periods as a result of their rigorous work schedule, being required
27 to take orders, receive payments, expedite services, provide janitorial services, and DEFENDANTS'
28 inadequate staffing. Further, for the same reasons these employees were denied their first rest periods

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

11 **D. Unreimbursed Business Expenses**

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

22 20. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
23 CLASS Members were required by DEFENDANTS to use their own personal vehicles as a result of
24 and in furtherance of their job duties as employees for DEFENDANTS. But for the use of their own
25 personal vehicles, PLAINTIFF and the members of the CALIFORNIA CLASS could not complete
26 their essential job duties. Notwithstanding, DEFENDANTS did not reimburse or indemnify
27 PLAINTIFF or other CALIFORNIA CLASS Members for the cost associated with the use of their own
28 personal vehicles for DEFENDANTS' benefit. Specifically, PLAINTIFF and other CALIFORNIA

1 CLASS Members were required by DEFENDANT to use their personal vehicles for work related issues
2 including traveling to other McDonald's restaurants in order to restock food items and making bank
3 deposits. As a result, in the course of their employment with DEFENDANTS, PLAINTIFF and the
4 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
5 were not limited to, costs related to the use of their personal vehicles, all on behalf of and for the benefit
6 of DEFENDANTS.

7 **E. Wage Statement Violations**

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

16 22. From time to time during the CLASS PERIOD, when PLAINTIFF and other
17 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal
18 and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide
19 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements
20 which failed to show, among other things, the total hours worked and all applicable hourly rates in
21 effect during the pay period and the corresponding amount of time worked at each hourly rate, correct
22 rates of pay for penalty payments or missed meal and rest periods.

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

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

2 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to
3 fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all hours
4 worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other members
5 of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding, from time-to-time
6 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS necessary
7 wages for attending for performing work at DEFENDANTS' direction, request, and benefit, while off-
8 the clock.

9 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
10 and other members of the CALIFORNIA CLASS to perform pre-shift work, including but not limited
11 to, picking up food supplies from nearby McDonald's locations and making bank deposits. This resulted
12 in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

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

15 27. DEFENDANTS controlled the work schedules, duties, protocols, applications,
16 assignments and employment conditions of PLAINTIFF and the other members of the CALIFORNIA
17 CLASS.

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

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

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

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

3 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited
4 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent
5 picking up food supplies and making bank deposits while off-the-clock. DEFENDANTS' uniform policy
6 and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours
7 worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

8 **G. CLASS ACTION ALLEGATIONS**

9 33. PLAINTIFF brings the First through Eighth Causes of Action as a class action pursuant
10 to California Code of Civil Procedure § 382 on behalf of all individuals who are or previously were
11 employed by Defendant SLO and/or Defendant Ivernia and/or Defendant Golden in California and
12 classified as non-exempt employees ("CALIFORNIA CLASS") during the period beginning four years
13 prior to the filing of the Complaint and ending on a date determined by the Court ("CLASS PERIOD").

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

21 35. The members of the class are so numerous that joinder of all class members is impractical.

22 36. Common questions of law and fact regarding DEFENDANTS' conduct, including but not
23 limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate
24 the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of
25 compensation for missed meal and rest period premiums, failing to provide legally compliant meal and
26 rest periods, failed to reimburse for business expenses, failure to provide accurate itemized wage
27 statements accurate, and failure to ensure they are paid at least minimum wage and overtime, exist as to
28 all members of the class and predominate over any questions affecting solely any individual members

of the class. Among the questions of law and fact common to the class are:

- a. Whether DEFENDANTS maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANTS maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- 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 Members at least minimum wage for all hours worked;
- f. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANTS issued legally compliant wage statements;
- h. 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;
- i. 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;
- j. 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.

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

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

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

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

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

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

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

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

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

27 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
28 which would as a practical matter be dispositive of the interests of the other members not

1 party to the adjudication or substantially impair or impeded their ability to protect their
2 interests.

3 45. Class treatment provides manageable judicial treatment calculated to bring an efficient
4 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of
5 DEFENDANTS.

6 **FIRST CAUSE OF ACTION**

7 **For Unlawful Business Practices**

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

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

10 46. 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 47. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
13 17021.

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

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

25 Cal. Bus. & Prof. Code § 17203.

26 49. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
27 CLASS Members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
28 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
“UCL”), by engaging and continuing to engage in business practices which violates California law,
including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194,

1 1197, 1197.1, 1198, & 2802 for which this Court should issue declaratory and other equitable relief
2 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
3 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

5 56. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
6 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
7 calculated overtime and missed meal and rest periods premiums.

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

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

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

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

28 61. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy

1 and/or adequate remedy at law that will end the unlawful and unfair business practices of
2 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result
3 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
4 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
5 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair
6 business practices.

7 **SECOND CAUSE OF ACTION**

8 **For Failure to Pay Overtime Compensation**

9 **[Cal. Lab. Code §§ 510, *et seq.*]**

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

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

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

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

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

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

28 67. 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.

68. 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 CALIFORNIA CLASS Members and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked, including, the overtime 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.

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

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

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

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

1 73. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
2 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum
3 hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF
4 and the other members of the CALIFORNIA CLASS were required to work, and did in fact work,
5 overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime
6 rate as evidenced by DEFENDANTS' business records and witnessed by employees.

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

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

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

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

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)

78. 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.

79. 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 and reporting time wages to PLAINTIFF and CALIFORNIA CLASS Members during the CLASS PERIOD.

80. 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.

81. 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.

82. 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.

83. 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

1 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
2 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
3 of the CALIFORNIA CLASS.

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

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

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

16 87. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA
17 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned
18 wages.

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

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

1 members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

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

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

19 **FOURTH CAUSE OF ACTION**

20 **For Failure to Provide Required Meal Periods**

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

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

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

25 93. During the CLASS PERIOD, from time to time, DEFENDANTS failed to provide all the
26 legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
27 required by the applicable Wage Order and Labor Code. The nature of the work performed by
28 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being relieved

1 of all their duties for the legally required off-duty meal periods. As a result of their rigorous work
2 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time not fully
3 relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to
4 provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior
5 to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records from time to time.
6 Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
7 second off-duty meal period in some workdays in which these employees were required by
8 DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of the
9 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
10 accordance with DEFENDANTS' strict corporate policy and practice.

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

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

19 **FIFTH CAUSE OF ACTION**

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

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

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

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

25 97. During the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members
26 were from time to time required to work in excess of four (4) hours without being provided ten (10)
27 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
28 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at

1 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
2 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
3 time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
4 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
5 CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANTS
6 and DEFENDANTS' managers.

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

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

15 **SIXTH CAUSE OF ACTION**

16 **For Failure to Reimburse Employees for Required Expenses**

17 **[Cal. Lab. Code § 2802]**

18 **(By PLAINTIFF Against All Defendants)**

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

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

22 An employer shall indemnify his or her employee for all necessary
23 expenditures or losses incurred by the employee in direct consequence of
24 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.

25 102. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code
26 § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA
27 CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit.
28 DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for

1 expenses which included, but were not limited to, costs related to using their personal vehicles all on
2 behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the
3 CALIFORNIA CLASS were required by DEFENDANTS to use their personal vehicles to execute their
4 essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and
5 procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for
6 expenses resulting from using their personal vehicles for DEFENDANTS within the course and scope
7 of their employment for DEFENDANTS. These expenses were necessary to complete their principal
8 job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
9 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
10 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
11 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is
12 required to do under the laws and regulations of California.

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

17 **SEVENTH CAUSE OF ACTION**

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

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

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

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

23 105. Cal. Labor Code § 226 provides that an employer must furnish employees with an
24 "accurate itemized" statement in writing showing:

- 25 1. Gross wages earned;
- 26 2. Total hours worked by the employee, except for any employee
27 whose compensation is solely based on a salary and who is exempt from
28 payment of overtime under subdivision (a) of Section 515 or any applicable

order of the Industrial Welfare Commission;

3. The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

4. All deductions, provided that all deductions made on written orders 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.

106. 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).

107. Further, DEFENDANTS violated California Labor Code Section 226(a)(2) by failig to provide the accurate total hours worked on wage statements issued to PLAINTIFF and members of the CALIFORNIA CLASS. Specifically, DEFENDANTS included meal period premiums into the computation of total hours worked, notwithstanding that meal period premiums are not considered total hours worked for purposes of Cal. Lab. Code § 226(a)(2). 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.

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

EIGHTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN DUE

(Cal Lab. Code §§201, 202, 203)

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

109. 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.

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

As used in this article: (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" 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.

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

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

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in

1 which case the employee is entitled to his or her wages at the time
2 of quitting. Notwithstanding any other provision of law, an
3 employee who quits without providing a 72-hour notice shall be
4 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.

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

7 114. Cal. Lab. Code § 203 provides:

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

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

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

20 **NINTH CAUSE OF ACTION**

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

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

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

24 117. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein,
25 the prior paragraphs of this Complaint.

26 118. PAGA is a mechanism by which the State of California itself can enforce state labor laws
27 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
28 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law

1 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
2 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
3 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified
4 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general
5 to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
6 claims cannot be subject to arbitration.

7 119. PLAINTIFF brings this Representative Action on behalf of the State of California with
8 respect to herself and all other current and former non-exempt employees employed by DEFENDANTS
9 in California (the "AGGRIEVED EMPLOYEES") during the time period of September 16, 2020 to
10 October 17, 2022 (the "PAGA PERIOD").

11 120. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the
12 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the meaning of
13 Labor Code Section 2699(c).

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

17 122. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
18 Section 2699.3. By certified letter, return receipt requested, dated December 16, 2022, PLAINTIFF
19 gave written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANT
20 of the specific provisions of the Labor Code alleged to have been violated, including the facts and
21 theories to support the alleged violations.

22 123. As of the date of this complaint, more than sixty-five (65) days after serving the LWDA
23 with notice of DEFENDANT'S violations, the LWDA has not provided any notice by certified mail of
24 its intent to investigate the DEFENDANT'S alleged violations as mandated by Labor Code Section
25 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may
26 commence and is authorized to pursue this cause of action.

27 124. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
28 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,

201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802 and 2804 in the following amounts:

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

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

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

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

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

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

1 [penalty per Labor Code Section 1174.5].

2 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and
3 1199, a civil penalty in the amount of one hundred dollars (\$100) per
4 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
5 hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period
6 for each subsequent violation [penalty per Labor Code Section].

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

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

20 **PRAYER FOR RELIEF**

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

22 1. On behalf of the CALIFORNIA CLASS:

- 23 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a
24 class action pursuant to Cal. Code of Civ. Proc. § 382;
- 25 B) An order temporarily, preliminarily and permanently enjoining and restraining
26 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 27 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld from
28 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
3 the other members of the CALIFORNIA CLASS.

4 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of
5 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, and unreimbursed
9 business expenses due PLAINTIFF and the other members of the CALIFORNIA CLASS,
10 during the applicable CALIFORNIA CLASS PERIOD plus interest thereon at the statutory
11 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 behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

25 a. Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act
26 of 2004.

27 3. On all claims:

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

1 B) Such other and further relief as the Court deems just and equitable; and,
2 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
3 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.
4

5 Dated: June 20, 2023

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

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

10
11 **DEMAND FOR JURY TRIAL**

12 PLAINTIFF demands a jury trial on all issues triable to a jury.
13

14 Dated: June 20, 2023

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

16 By: 
17 Jean-Claude Lapuyade
18 Attorneys for PLAINTIFF
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