

**AMENDED SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

SUNMERRY CALIFORNIA INC., a California corporation;
(See attached)

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

SARINA YUAN JONG LAI, an individual, on behalf of herself and on behalf of all persons similarly situated,

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):

Los Angeles Superior Court, Stanley Mosk Courthouse
312 North Spring Street
Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso):

22STCV12086

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

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

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

DATE:

(Fecha) 06/30/2022

Clerk, by Sherri R. Carter Executive Officer / Clerk of Court

(Secretario)

K. Martinez

, Deputy
(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 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

[SEAL]



SHORT TITLE:

Sarina Yuan Jong Lai v. Sunmerry California Inc., et al.

CASE NUMBER:

22STCV12086

INSTRUCTIONS FOR USE

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

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

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

SUNMERRY GARDENA LLC, a California limited liability company; SUNMERRY MONTEREY PARK LLC, a California limited liability company; SUNMERRY SANTA ANITA LLC, a California limited liability company; and DOES 1-50, Inclusive,

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
 Jackland K. Hom (State Bar #327243)
 Julieann Alvarado (State Bar #334727)
 5440 Morehouse Drive, Suite 3600
 San Diego, CA 92121
 Telephone: (619) 255-9047
 Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
 Eduardo Garcia (State Bar #290572)
 Sydney Castillo Johnson (State Bar #343881)
 5440 Morehouse Drive, Suite 3600
 San Diego, CA 92121
 Telephone: (619) 599-8292
 Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com
scastillo@jcl-lawfirm.com

Attorneys for Plaintiff SARINA YUAN JONG LAI

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

SARINA YUAN JONG LAI, an individual, on
 behalf of herself and on behalf of all persons
 similarly situated,

Plaintiff,

v.

SUNMERRY CALIFORNIA INC., a
 California corporation; SUNMERRY
 GARDENA LLC, a California limited liability
 company; SUNMERRY MONTEREY PARK
 LLC, a California limited liability company;
 SUNMERRY SANTA ANITA LLC, a
 California limited liability company; and DOES
 1-50, Inclusive,

Defendants.

Case No: 22STCV12086

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN

FILED
 Superior Court of California
 County of Los Angeles

06/30/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: K. Martinez Deputy

DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CALIFORNIA LABOR
CODE §2802;
9) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.]

DEMAND FOR A JURY TRIAL

Plaintiff SARINA YUAN JONG LAI (“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 SUNMERRY CALIFORNIA, INC. is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. Defendant SUNMERRY GARDENA, LLC is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

3. Defendant SUNMERRY MONTEREY PARK, LLC is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

4. Defendant SUNMERRY SANTA ANITA, LLC is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

5. PLAINTIFF alleges there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased and all Defendants are referred to herein as “DEFENDANT.”

6. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest and ownership between SUNMERRY CALIFORNIA INC., SUNMERRY GARDENA LLC,

1 SUNMERRY MONTEREY PARK LLC, and SUNMERRY SANTA ANITA LLC such that any
2 individuality and separateness between the entities has ceased. SUNMERRY CALIFORNIA
3 INC., SUNMERRY GARDENA LLC, SUNMERRY MONTEREY PARK LLC, and
4 SUNMERRY SANTA ANITA LLC, and are alter egos of each other. Adherence to the fiction of
5 separate existence of DEFENDANT would permit an abuse of the corporate privilege, and would
6 promote injustice by protecting DEFENDANT from liability for the wrongful acts committed by
7 them.

8 7. PLAINTIFF further alleges that DEFENDANT are the alter egos of each other for
9 the following reasons:

10 a. On the California Secretary of State's website (<https://businesssearch.sos.gov/>)
11 SUNMERRY CALIFORNIA INC., SUNMERRY GARDENA LLC,
12 SUNMERRY MONTEREY PARK LLC, and SUNMERRY SANTA ANITA
13 LLC, have the same entity address and/or mailing address and/or Agent for Service
14 of Process.

15 8. PLAINTIFF alleges that DEFENDANT's various separate corporate entities are
16 used by an individual or individuals, or by another corporation, to accomplish inequitable
17 purposes, including to limit liability for the unlawful acts of DEFENDANT.

18 9. PLAINTIFF alleges that there is such a unity of interest and ownership between
19 DEFENDANT's various corporate entities that own DEFENDANT's bakeries and the individual
20 or individuals, or organization controlling those corporate entities that their separate personalities
21 no longer exist.

22 10. PLAINTIFF further alleges that the failure to disregard the various corporate
23 entities would promote injustice.

24 11. DEFENDANT is a Southern California bakery and/or café.

25 12. The true names and capacities, whether individual, corporate, subsidiary,
26 partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are
27 presently unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious
28 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
ascertained. PLAINTIFF is informed and believes, and based upon that information and belief

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

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

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

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

24 16. PLAINTIFF was employed by DEFENDANT in California from January 26, 2021
25 to April 12, 2021 and at all times was classified by DEFENDANT as a non-exempt employee,
26 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
27 minimum and overtime wages due for all time worked.

28 17. PLAINTIFF brings this Class Action on behalf of herself and a California class,
defined as all persons who are or previously were employed by Defendant SUNMERRY
CALIFORNIA INC., and/or Defendant SUNMERRY GARDENA LLC, and/or Defendant

1 SUNMERRY MONTEREY PARK LLC, and/or Defendant SUNMERRY SANTA ANITA LLC,
2 in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
3 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
4 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
5 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
6 (\$5,000,000.00).

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

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

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

26
27 ///

28 **JURISDICTION AND VENUE**

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

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

THE CONDUCT

23. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT 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, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANT's 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 DEFENDANT 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 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

1 **A. Meal Period Violations**

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

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

1 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
2 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

3 **B. Rest Period Violations**

4 26. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
5 CALIFORNIA CLASS members were also required from time to time to work in excess of four
6 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
7 requirements and DEFENDANT's inadequate staffing. Further, for the same reasons these
8 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
9 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
10 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
11 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
12 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
13 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or
14 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
15 hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's
16 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
17 time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

18 **C. Unreimbursed Business Expenses**

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

1 unlawful, unless the employee, at the time of obeying the directions, believed them to be
2 unlawful."

3 28. In the course of their employment, DEFENDANT required PLAINTIFF and other
4 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance
5 of their job duties as employees for DEFENDANT. But for the use of their own personal cell
6 phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential
7 job duties. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other
8 CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in the
9 course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA
10 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
11 to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

12 **D. Wage Statement Violations**

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

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

1 31. DEFENDANT, from time to time, failed to provide PLAINTIFF and the
2 CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.
3 Specifically, DEFENDANT failed to issue wage statements that provided the accurate name and
4 address of the legal entity that is the employer of PLAINTIFF and other CALIFORNIA CLASS
5 Members.

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

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

11 33. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
12 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
13 CLASS for all hours worked.

14 34. During the CLASS PERIOD, from time-to-time DEFENDANT required
15 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
16 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to
17 work while off-the-clock.

18 35. DEFENDANT directed and directly benefited from the uncompensated off-the-
19 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

20 36. DEFENDANT controlled the work schedules, duties, protocols, applications,
21 assignments, and employment conditions of PLAINTIFF and the other members of the
22 CALIFORNIA CLASS.

23 37. DEFENDANT was able to track the amount of time PLAINTIFF and the other
24 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
25 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
26 wages earned and owed for all the work they performed.

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

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

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

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

13 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
14 **Sick Pay**

15 42. From time-to-time during the CLASS PERIOD, DEFENDANT failed and
16 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
17 members for their overtime and double time hours worked, meal and rest period premiums, and
18 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
19 due them for working overtime without compensation at the correct overtime and double time
20 rates, meal and rest period premiums, and sick pay rates. DEFENDANT's uniform policy and
21 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
22 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
23 law is evidenced by DEFENDANT's business records.

24 43. State law provides that employees must be paid overtime at one-and-one-half times
25 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were
26 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
27 employee's performance.
28

1 44. The second component of PLAINTIFF's and other CALIFORNIA CLASS
2 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
3 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
4 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
5 basis with bonus compensation when the employees met the various performance goals set by
6 DEFENDANTS.

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

25 46. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
27 matter of company policy, practice and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate

1 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
2 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
3 of the correct overtime and double time compensation, meal and rest period premiums, and sick
4 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
5 unfair advantage over competitors who complied with the law. To the extent equitable tolling
6 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
7 CLASS PERIOD should be adjusted accordingly.

8 **G. Unlawful Deductions**

9 47. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
10 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
11 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
12 DEFENDANTS violated Labor Code § 221.

13 **H. Violations for Untimely Payment of Wages**

14 48. Pursuant to California Labor Code section 204, PLAINTIFF and the
15 CALIFORNIA CLASS members were entitled to timely payment of wages during their
16 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
17 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
18 meal period premium wages, and rest period premium wages within permissible time period.

19 **I. Unlawful Rounding Violations**

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

1 worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from time to time,
2 forfeited compensation for their time worked by working without their time being accurately
3 recorded and without compensation at the applicable overtime rates.

4 50. Further, the mutability of DEFENDANT'S timekeeping system and unlawful
5 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
6 being inaccurately recorded. As a result, from time to time, DEFENDANT'S unlawful rounding
7 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
8 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
9 duty meal break. Additionally, DEFENDANT'S unlawful rounding policy and practice caused
10 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
11 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

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

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1 **J. CLASS ACTION ALLEGATIONS**

2 58. PLAINTIFF brings this Class Action on behalf of herself and a California class,
3 defined as all persons who are or previously were employed by Defendant SUNMERRY
4 CALIFORNIA INC., and/or Defendant SUNMERRY GARDENA LLC, and/or Defendant
5 SUNMERRY MONTEREY PARK LLC, and/or Defendant SUNMERRY SANTA ANITA LLC,
6 in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
7 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
8 date as determined by the Court (the “CLASS PERIOD”).

9 59. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
10 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
11 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
12 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
13 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
14 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

15 60. The members of the class are so numerous that joinder of all class members is
16 impractical.

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

- 26 a. Whether DEFENDANT maintained legally compliant meal period policies and
27 practices;
28

- b. Whether DEFENDANT maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANT issued legally compliant wage statements;
- h. Whether DEFENDANT 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 DEFENDANT 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 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- j. Whether DEFENDANT 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.

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

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

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

1 65. PLAINTIFF retained able class counsel with extensive experience in class action
2 litigation.

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

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

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

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

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

1 Class treatment provides manageable judicial treatment calculated to bring an efficient
2 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct
3 of DEFENDANT.

4 **FIRST CAUSE OF ACTION**

5 **Unlawful Business Practices**

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

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

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

11 71. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
12 Code § 17021.

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

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

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

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

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

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

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

21 78. 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
23 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
24 each workday in which a second off-duty meal period was not timely provided for each ten (10)
25 hours of work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

119. 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.

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

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

10 123. 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.

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

- 14 a. Gross wages earned,
- 15 b. (2) total hours worked by the employee, except for any employee whose
16 compensation is solely based on a salary and who is exempt from payment
17 of overtime under subdivision (a) of Section 515 or any applicable order of
18 the Industrial Welfare Commission,
- 19 c. the number of piece-rate units earned and any applicable piece rate if the employee
20 is paid on a piece-rate basis,
- 21 d. all deductions, provided that all deductions made on written orders of the employee
22 may be aggregated and shown as one item,
- 23 e. net wages earned,
- 24 f. the inclusive dates of the period for which the employee is paid,
- 25 g. the name of the employee and his or her social security number, except that by
26 January 1, 2008, only the last four digits of his or her social security number of an
27 employee identification number other than social security number may be shown
28 on the itemized statement,

- 1 h. the name and address of the legal entity that is the employer, and
2 i. all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.

4 125. When DEFENDANT did not accurately record PLAINTIFF's and other
5 CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, and separately
6 compensated meal and rest periods, DEFENDANT violated Cal. Lab. Code § 226 in that
7 DEFENDANT failed to provide an accurate wage statement in writing that properly and
8 accurately itemizes all wages, and missed meal and rest periods and reporting time wages owed
9 to PLAINTIFF and the other members of the CALIFORNIA CLASS and thereby also failed to
10 set forth the correct wages earned by the employees.

11 126. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
12 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
13 CLASS. These damages include, but are not limited to, costs expended calculating the correct
14 wages for all missed meal and rest breaks and the amount of employment taxes which were not
15 properly paid to state and federal tax authorities. These damages are difficult to estimate.
16 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
17 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
18 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
19 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
20 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
21 of the CALIFORNIA CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

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

8 128. Cal. Lab. Code § 200 provides that:

9 As used in this article:

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

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

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

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

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

132. Cal. Lab. Code § 203 provides:

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

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

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

10 **EIGHTH CAUSE OF ACTION**

11 **Failure To Reimburse Employees For Required Expenses**

12 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

22 137. From time-to-time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
23 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
24 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
25 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the members of the
26 CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
27 using their personal cellular phone all on behalf of and for the benefit of DEFENDANT.
28 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
DEFENDANT to use their personal cell phones to execute their essential job duties on behalf of
DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse

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

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

13 **NINTH CAUSE OF ACTION**

14 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

15 **(Cal. Lab. Code §§2698 et seq.)**

16 **(Alleged by PLAINTIFF against all Defendants)**

17 139. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
18 herein, the prior paragraphs of this Complaint.

19 140. PAGA is a mechanism by which the State of California itself can enforce state
20 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
21 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
22 fundamentally a law enforcement action designed to protect the public and not to benefit private
23 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
24 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
25 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
26 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
27 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.
28

1 141. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, bring this Representative Action on behalf of the State of California with respect to
4 themselves and all non-exempt and exempt employees who worked for Defendant SUNMERRY
5 CALIFORNIA, INC., and/or Defendant SUNMERRY GARDENA, LLC and/or Defendant
6 SUNMERRY MONTEREY PARK, LLC and/or Defendant SUNMERRY SANTA ANITA, LLC
7 in California during the time period of April 8, 2021 until the present (the "AGGRIEVED
8 EMPLOYEES").

9 142. On April 8, 2022, PLAINTIFF gave written notice by certified mail to the Labor
10 and Workforce Development Agency (the "Agency") and the employer of the specific
11 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
12 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
13 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
14 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
15 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
16 EMPLOYEES as herein defined.

17 143. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because DEFENDANTS (a) failed to properly record and pay
19 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
20 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
21 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, (d) failed to pay
22 meal and rest break premiums at the correct rate, and (e) failed to timely pay wages, all in violation
23 of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to
24 Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510,
25 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, Cal. Bus. &
26 Prof. Code §§17200 and 17203, and the applicable Industrial Wage Order(s), and thereby gives
27 rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
28 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the

1 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
2 the other AGGRIEVED EMPLOYEES.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
5 severally, as follows:

6 1. On behalf of the CALIFORNIA CLASS:

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

17 2. On behalf of the CALIFORNIA CLASS:

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
19 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
20 to Cal. Code of Civ. Proc. § 382;
21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for overtime compensation and separately owed rest periods, due to
23 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
24 applicable CLASS PERIOD plus interest thereon at the statutory rate;
25 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
26 the applicable IWC Wage Order;
27 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
28 which a violation occurs and one hundred dollars (\$100) per each member of the

CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226

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

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004:

4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: June 30, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: June 30, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



Client # 47801

April 8, 2022

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

**SUNMERRY CALIFORNIA INC.
SUNMERRY GARDEN GROVE LLC
SUNMERRY GARDENA LLC
SUNMERRY KEARNY MESA LLC
SUNMERRY MIRA MESA LLC
SUNMERRY MONTEREY PARK LLC
SUNMERRY SANTA ANITA LLC
SUNMERRY SAWTELLE LLC
SUNMERRY OPERATING CO LLC**

c/o Pei-Hsuan Kao

1800 Floradale Avenue

South El Monte, CA 91733

Sent via Certified Mail and Return Receipt No. 7021 1970 0001 4068 3759

SUNMERRY ESSENTIAL, INC.

c/o Peter Kao

1800 Floradale Avenue

South El Monte, CA 91733

Sent via Certified Mail and Return Receipt No. 7021 1970 0001 4068 3735

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

Dear Sir/Madam:

Our offices represent Plaintiff SARINA YUAN JONG LAI ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant SUNMERRY CALIFORNIA INC., Defendant SUNMERRY ESSENTIAL INC., Defendant SUNMERRY GARDEN GROVE LLC, Defendant SUNMERRY GARDENA LLC, Defendant SUNMERRY KEARNY MESA LLC, Defendant SUNMERRY MIRA MESA LLC, Defendant SUNMERRY MONTEREY PARK LLC, Defendant SUNMERRY SANTA ANITA LLC, Defendant SUNMERRY SAWTELLE

LLC, and Defendant SUNMERRY OPERATING CO LLC (hereinafter collectively “Defendants”). Plaintiff was employed by Defendants in California from January of 2021 to April of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

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

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant SUNMERRY CALIFORNIA INC. and/or Defendant SUNMERRY ESSENTIAL INC. and/or Defendant SUNMERRY GARDEN GROVE LLC and/or Defendant SUNMERRY GARDENA LLC and/or Defendant SUNMERRY KEARNY MESA LLC and/or Defendant SUNMERRY MIRA MESA LLC and/or Defendant SUNMERRY MONTEREY PARK LLC and/or Defendant SUNMERRY SANTA ANITA LLC and/or Defendant SUNMERRY SAWTELLE LLC and/or Defendant SUNMERRY OPERATING CO LLC in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

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

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

Sincerely,

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

Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

Attorneys for Plaintiff SARINA YUAN JONG LAI

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

SARINA YUAN JONG LAI, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

v.

SUNMERRY CALIFORNIA INC., a
California corporation; SUNMERRY
ESSENTIAL INC., a California corporation;
SUNMERRY GARDEN GROVE LLC, a
California limited liability company;
SUNMERRY GARDENA LLC, a California
limited liability company; SUNMERRY
KEARNY MESA LLC, a California limited
liability company; SUNMERRY MIRA MESA
LLC, a California limited liability company;
SUNMERRY MONTEREY PARK LLC, a
California limited liability company;
SUNMERRY SANTA ANITA LLC, a
California limited liability company;

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN

SUNMERRY SAWTELLE LLC, a California limited liability company; SUNMERRY OPERATING CO LLC, a California limited liability company; and DOES 1-50, Inclusive,

Defendants.

DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802.

DEMAND FOR A JURY TRIAL

Plaintiff SARINA YUAN JONG LAI (“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 SUNMERRY CALIFORNIA INC. is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. Defendant SUNMERRY ESSENTIAL INC. is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

3. Defendant SUNMERRY GARDEN GROVE LLC is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

4. Defendant SUNMERRY GARDENA LLC is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

5. Defendant SUNMERRY KEARNY MESA LLC. is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

6. Defendant SUNMERRY MIRA MESA LLC is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

1 7. Defendant SUNMERRY MONTEREY PARK LLC is a California limited liability
2 company that at all relevant times mentioned herein conducted and continues to conduct
3 substantial and regular business in the state of California.

4 8. Defendant SUNMERRY SANTA ANITA LLC is a California limited liability
5 company that at all relevant times mentioned herein conducted and continues to conduct
6 substantial and regular business in the state of California.

7 9. Defendant SUNMERRY SAWTELLE LLC is a California limited liability
8 company that at all relevant times mentioned herein conducted and continues to conduct
9 substantial and regular business in the state of California.

10 10. Defendant SUNMERRY OPERATING CO LLC is a California limited liability
11 company that at all relevant times mentioned herein conducted and continues to conduct
12 substantial and regular business in the state of California.

13 11. PLAINTIFF alleges there has existed a unity of interest and ownership between
14 Defendants such that any individuality and separateness between the entities has ceased and all
15 Defendants are referred to herein as “DEFENDANT.”

16 12. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
17 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest
18 and ownership between SUNMERRY CALIFORNIA INC., SUNMERRY ESSENTIAL INC.,
19 SUNMERRY GARDEN GROVE LLC, SUNMERRY GARDENA LLC, SUNMERRY
20 KEARNY MESA LLC, SUNMERRY MIRA MESA LLC, SUNMERRY MONTEREY PARK
21 LLC, SUNMERRY SANTA ANITA LLC, SUNMERRY SAWTELLE LLC, and SUNMERRY
22 OPERATING CO LLC such that any individuality and separateness between the entities has
23 ceased. SUNMERRY CALIFORNIA INC., SUNMERRY ESSENTIAL INC., SUNMERRY
24 GARDEN GROVE LLC, SUNMERRY GARDENA LLC, SUNMERRY KEARNY MESA LLC,
25 SUNMERRY MIRA MESA LLC, SUNMERRY MONTEREY PARK LLC, SUNMERRY
26 SANTA ANITA LLC, SUNMERRY SAWTELLE LLC, and SUNMERRY OPERATING CO
27 LLC are alter egos of each other. Adherence to the fiction of separate existence of DEFENDANT
28 would permit an abuse of the corporate privilege, and would promote injustice by protecting
DEFENDANT from liability for the wrongful acts committed by them.

1 13. PLAINTIFF further alleges that DEFENDANT are the alter egos of each other for
2 the following reasons:

3 a. On the California Secretary of State's website (<https://businesssearch.sos.gov/>)
4 SUNMERRY CALIFORNIA INC., SUNMERRY ESSENTIAL INC.,
5 SUNMERRY GARDEN GROVE LLC, SUNMERRY GARDENA LLC,
6 SUNMERRY KEARNY MESA LLC, SUNMERRY MIRA MESA LLC,
7 SUNMERRY MONTEREY PARK LLC, SUNMERRY SANTA ANITA LLC,
8 SUNMERRY SAWTELLE LLC, and SUNMERRY OPERATING CO LLC have
9 the same entity address and/or mailing address and/or Agent for Service of
10 Process.

11 14. PLAINTIFF alleges that DEFENDANT's various separate corporate entities are
12 used by an individual or individuals, or by another corporation, to accomplish inequitable
13 purposes, including to limit liability for the unlawful acts of DEFENDANT.

14 15. PLAINTIFF alleges that there is such a unity of interest and ownership between
15 DEFENDANT's various corporate entities that own DEFENDANT's bakeries and the individual
16 or individuals, or organization controlling those corporate entities that their separate personalities
17 no longer exist.

18 16. PLAINTIFF further alleges that the failure to disregard the various corporate
19 entities would promote injustice.

20 17. DEFENDANT is a Southern California bakery and/or café.

21 18. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are
23 presently unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious
24 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
25 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
26 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
27 alleges, that the DEFENDANT named in this Complaint, including DOES 1 through 50,
28 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.

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

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

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

20 22. PLAINTIFF was employed by DEFENDANT in California from January 26, 2021
21 to April 12, 2021 and at all times was classified by DEFENDANT as a non-exempt employee,
22 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
23 minimum and overtime wages due for all time worked.

24 23. PLAINTIFF brings this Class Action on behalf of herself and a California class,
25 defined as all persons who are or previously were employed by Defendant SUNMERRY
26 CALIFORNIA INC., and/or Defendant SUNMERRY ESSENTIAL INC., and/or Defendant
27 SUNMERRY GARDEN GROVE LLC, and/or Defendant SUNMERRY GARDENA LLC,
28 and/or Defendant SUNMERRY KEARNY MESA LLC, and/or Defendant SUNMERRY MIRA
MESA LLC, and/or Defendant SUNMERRY MONTEREY PARK LLC, and/or Defendant
SUNMERRY SANTA ANITA LLC, and/or Defendant SUNMERRY SAWTELLE LLC, and/or

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

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

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

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

25 **JURISDICTION AND VENUE**

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

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

THE CONDUCT

29. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT 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, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANT's 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 DEFENDANT 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 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

A. Meal Period Violations

30. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was 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

1 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
2 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
3 without paying them for all the time they were under DEFENDANT's control. Specifically, as a
4 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
5 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-
6 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial
7 lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
8 minimum wage and overtime wages by regularly working without their time being accurately
9 recorded and without compensation at the applicable minimum wage and overtime rates.
10 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
11 CLASS Members for all time worked is evidenced by DEFENDANT's business records.

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

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1 **B. Rest Period Violations**

2 32. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
3 CALIFORNIA CLASS members were also required from time to time to work in excess of four
4 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
5 requirements and DEFENDANT's inadequate staffing. Further, for the same reasons these
6 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
7 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
8 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
9 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
10 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
11 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or
12 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
13 hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's
14 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
15 time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

16 **C. Unreimbursed Business Expenses**

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

1 34. In the course of their employment, DEFENDANT required PLAINTIFF and other
2 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance
3 of their job duties as employees for DEFENDANT. But for the use of their own personal cell
4 phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential
5 job duties. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other
6 CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in the
7 course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA
8 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
9 to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

10 **D. Wage Statement Violations**

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

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

27 37. DEFENDANT, from time to time, failed to provide PLAINTIFF and the
28 CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.

Specifically, DEFENDANT failed to issue wage statements that provided the accurate name and address of the legal entity that is the employer of PLAINTIFF and other CALIFORNIA CLASS Members.

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

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

39. During the CLASS PERIOD, from time-to-time DEFENDANT failed and continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all hours worked.

40. During the CLASS PERIOD, from time-to-time DEFENDANT required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

41. DEFENDANT directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

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

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

45. DEFENDANT's policies and practices deprived PLAINTIFF and the other members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages

1 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
2 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
3 hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

4 46. DEFENDANT knew or should have known that PLAINTIFF and the other
5 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

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

11 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
12 **Sick Pay**

13 48. From time-to-time during the CLASS PERIOD, DEFENDANT failed and
14 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
15 members for their overtime and double time hours worked, meal and rest period premiums, and
16 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
17 due them for working overtime without compensation at the correct overtime and double time
18 rates, meal and rest period premiums, and sick pay rates. DEFENDANT's uniform policy and
19 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
20 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
21 law is evidenced by DEFENDANT's business records.

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

26 50. The second component of PLAINTIFF's and other CALIFORNIA CLASS
27 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
28 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for

1 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
2 basis with bonus compensation when the employees met the various performance goals set by
3 DEFENDANTS.

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

22 52. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
24 matter of company policy, practice and procedure, intentionally and knowingly failed to
25 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
26 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
27 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
28 of the correct overtime and double time compensation, meal and rest period premiums, and sick

1 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
2 unfair advantage over competitors who complied with the law. To the extent equitable tolling
3 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
4 CLASS PERIOD should be adjusted accordingly.

5 **G. Unlawful Deductions**

6 53. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
7 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
8 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
9 DEFENDANTS violated Labor Code § 221.

10 **H. Violations for Untimely Payment of Wages**

11 54. Pursuant to California Labor Code section 204, PLAINTIFF and the
12 CALIFORNIA CLASS members were entitled to timely payment of wages during their
13 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
14 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
15 meal period premium wages, and rest period premium wages within permissible time period.

16 **I. Unlawful Rounding Violations**

17 55. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
18 an immutable timekeeping system to accurately record and pay PLAINTIFF and other
19 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
20 overtime hours. Specifically, DEFENDANT had in place an unlawful rounding policy and
21 practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
22 undercompensated for all of their time worked. As a result, DEFENDANT was able to and did in
23 fact unlawfully, and unilaterally round the time recorded in DEFENDANT'S timekeeping system
24 for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these
25 employees for all their time worked, including the applicable overtime compensation for overtime
26 worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from time to time,
27 forfeited compensation for their time worked by working without their time being accurately
28 recorded and without compensation at the applicable overtime rates.

1 56. Further, the mutability of DEFENDANT’S timekeeping system and unlawful
2 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members’ time
3 being inaccurately recorded. As a result, from time to time, DEFENDANT’S unlawful rounding
4 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
5 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
6 duty meal break. Additionally, DEFENDANT’S unlawful rounding policy and practice caused
7 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
8 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

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

26 **J. CLASS ACTION ALLEGATIONS**

27 58. PLAINTIFF brings this Class Action on behalf of herself and a California class,
28 defined as all persons who are or previously were employed by Defendant SUNMERRY
CALIFORNIA INC., and/or Defendant SUNMERRY ESSENTIAL INC., and/or Defendant

1 SUNMERRY GARDEN GROVE LLC, and/or Defendant SUNMERRY GARDENA LLC,
2 and/or Defendant SUNMERRY KEARNY MESA LLC, and/or Defendant SUNMERRY MIRA
3 MESA LLC, and/or Defendant SUNMERRY MONTEREY PARK LLC, and/or Defendant
4 SUNMERRY SANTA ANITA LLC, and/or Defendant SUNMERRY SAWTELLE LLC, and/or
5 Defendant SUNMERRY OPERATING CO LLC in California and classified as non-exempt
6 employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years
7 prior to the filing of this Complaint and ending on the date as determined by the Court (the
8 “CLASS PERIOD”).

9 59. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
10 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
11 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
12 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
13 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
14 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

15 60. The members of the class are so numerous that joinder of all class members is
16 impractical.

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

- 26 a. Whether DEFENDANT maintained legally compliant meal period policies and
27 practices;
28

- b. Whether DEFENDANT maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANT issued legally compliant wage statements;
- h. Whether DEFENDANT 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 DEFENDANT 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 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- j. Whether DEFENDANT 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.

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

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

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

1 65. PLAINTIFF retained able class counsel with extensive experience in class action
2 litigation.

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

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

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

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

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

1 Class treatment provides manageable judicial treatment calculated to bring an efficient
2 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct
3 of DEFENDANT.

4 **FIRST CAUSE OF ACTION**

5 **Unlawful Business Practices**

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

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

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

11 71. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
12 Code § 17021.

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

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

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

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

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

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

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

21 78. 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
23 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
24 each workday in which a second off-duty meal period was not timely provided for each ten (10)
25 hours of work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

119. 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.

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

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

10 123. 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.

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

- 14 a. Gross wages earned,
- 15 b. (2) total hours worked by the employee, except for any employee whose
16 compensation is solely based on a salary and who is exempt from payment
17 of overtime under subdivision (a) of Section 515 or any applicable order of
18 the Industrial Welfare Commission,
- 19 c. the number of piece-rate units earned and any applicable piece rate if the employee
20 is paid on a piece-rate basis,
- 21 d. all deductions, provided that all deductions made on written orders of the employee
22 may be aggregated and shown as one item,
- 23 e. net wages earned,
- 24 f. the inclusive dates of the period for which the employee is paid,
- 25 g. the name of the employee and his or her social security number, except that by
26 January 1, 2008, only the last four digits of his or her social security number of an
27 employee identification number other than social security number may be shown
28 on the itemized statement,

- 1 h. the name and address of the legal entity that is the employer, and
2 i. all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.

4 125. When DEFENDANT did not accurately record PLAINTIFF's and other
5 CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, and separately
6 compensated meal and rest periods, DEFENDANT violated Cal. Lab. Code § 226 in that
7 DEFENDANT failed to provide an accurate wage statement in writing that properly and
8 accurately itemizes all wages, and missed meal and rest periods and reporting time wages owed
9 to PLAINTIFF and the other members of the CALIFORNIA CLASS and thereby also failed to
10 set forth the correct wages earned by the employees.

11 126. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
12 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
13 CLASS. These damages include, but are not limited to, costs expended calculating the correct
14 wages for all missed meal and rest breaks and the amount of employment taxes which were not
15 properly paid to state and federal tax authorities. These damages are difficult to estimate.
16 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
17 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
18 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
19 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
20 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
21 of the CALIFORNIA CLASS herein).

22 **SEVENTH CAUSE OF ACTION**

23 **Failure To Pay Wages When Due**

24 **(Cal. Lab. Code §§ 203)**

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

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

1 128. Cal. Lab. Code § 200 provides that:

2 As used in this article:

3 (d) "Wages" includes all amounts for labor performed by employees of every
4 description, whether the amount is fixed or ascertained by the standard of time,
task, piece, Commission basis, or other method of calculation.

5 (e) "Labor" includes labor, work, or service whether rendered or performed under
6 contract, subcontract, partnership, station plan, or other agreement if the to be
paid for is performed personally by the person demanding payment.

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

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

11 If an employee not having a written contract for a definite period quits his or her
12 employment, his or her wages shall become due and payable not later than 72 hours
13 thereafter, unless the employee has given 72 hours previous notice of his or her intention
14 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
15 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.

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

18 132. Cal. Lab. Code § 203 provides:

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

21 133. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
22 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
23 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
24 required by law.

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

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees For Required Expenses

(Cal. Lab. Code §§ 2802)

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

135. 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.

136. 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

137. From time-to-time during the CLASS PERIOD, DEFENDANT 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 DEFENDANT's benefit. DEFENDANT 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 cellular phone all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANT to use their personal cell phones to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANT failed to indemnify and reimburse PLAINTIFF and

1 the members of the CALIFORNIA CLASS for these expenses as an employer is required to do
2 under the laws and regulations of California.

3 138. PLAINTIFF therefore demands reimbursement on behalf of the members of the
4 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
5 on behalf of DEFENDANT, or his/her obedience to the directions of DEFENDANT, with interest
6 at the statutory rate and costs under Cal. Lab. Code § 2802.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
9 severally, as follows:

10 1. On behalf of the CALIFORNIA CLASS:

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

21 2. On behalf of the CALIFORNIA CLASS:

- 22 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
23 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
24 to Cal. Code of Civ. Proc. § 382;
25 b. Compensatory damages, according to proof at trial, including compensatory
26 damages for overtime compensation and separately owed rest periods, due to
27 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
28 applicable CLASS PERIOD plus interest thereon at the statutory rate;

- 1 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
2 the applicable IWC Wage Order;
- 3 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
4 which a violation occurs and one hundred dollars (\$100) per each member of the
5 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
6 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
7 violation of Cal. Lab. Code § 226
- 8 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
9 penalty from the due date thereof at the same rate until paid or until an action
10 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 11 3. On all claims:
- 12 a. An award of interest, including prejudgment interest at the legal rate;
- 13 b. Such other and further relief as the Court deems just and equitable; and
- 14 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 15

16 DATED: April 8, 2022

17 **ZAKAY LAW GROUP, APLC**

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19 By: 
20 Shani O. Zakay
21 Attorney for PLAINTIFF
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DEMAND FOR A JURY TRIAL

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

DATED: April 8, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

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:

Sunmerry Essential, Inc.
 c/o Peter Kao
 1800 Fioradale Ave.
 South El Monte, CA 91733



9590 9402 6815 1074 9830 02

e Number (Transfer from service label)

7021 1970 0001 4068 3735

811, July 2020 PSN 7530-02-000-9053

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

001-213 Paga

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

Restricted Delivery

Domestic Return

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:

Sunmerry CA, Inc., et al
c/o Poi-Hsuan Kao
1800 Floradale Ave.
South El Monte, CA 91733



9590 9402 6815 1074 9829 99

2. Article Number (Transfer from service label)

7021 1970 0001 4068 3759

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

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

002-313 Paga

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

id Mail
id Mail Restricted Delivery
(over \$500)

Domestic Return Receipt