

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

DANNY'S HOME HEALTH CARE INC., a California Corporation; and
DOES 1-50, Inclusive

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

JANENE J. CARACAUS, an individual, on behalf of herself and on
behalf of all persons similarly situated

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

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

05/31/2022 at 03:33:18 PM

Clerk of the Superior Court
By Erika Engel, Deputy Clerk

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):

San Diego Superior Courthouse
330 W Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso): 37-2022-00020531-CU-0E-CTL

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 (State Bar #277924) Tel: (619) 255-9047 Fax: (619) 599-8291

Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 06/01/2022

(Fecha)

Clerk, by E. Engel, Deputy
(Secretario) (Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

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

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

[SEAL]



ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Dr., Ste 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 JANENE J. CARACAUS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JANENE J. CARACAUS, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

v.

DANNY'S HOME HEALTH CARE INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No: 37-2022-00020531-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

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

- 1 6) FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN
3 VIOLATION OF CAL. LAB. CODE § 226;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO REIMBURSE
8 EMPLOYEES FOR REQUIRED
9 EXPENSES IN VIOLATION OF CAL.
10 LAB. CODE § 2802; and
11 9) VIOLATION OF THE PRIVATE
12 ATTORNEYS GENERAL ACT [LABOR
13 CODE §§ 2698 ET SEQ.]

14 **DEMAND FOR A JURY TRIAL**

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

18 **THE PARTIES**

19 1. Defendant DANNY’S HOME HEALTH CARE INC. (“DEFENDANT”) is a
20 California corporation that at all relevant times mentioned herein conducted and continues to
21 conduct substantial and regular business in the state of California. DEFENDANT offers a full
22 spectrum of home health care, hospice, and in-home health services.

23 2. PLAINTIFF has been employed by DEFENDANT in California since 2018 as a
24 registered nurse, and was at times classified by DEFENDANT as a non-exempt employee, paid
25 on a piece-rate basis, and entitled to the legally required meal and rest periods and payment of
26 minimum and overtime wages due for all time worked. When PLAINTIFF was paid piece-rate
27 by DEFENDANT, PLAINTIFF was paid by piece-rate only while she was performing visits for
28 DEFENDANT in accordance with DEFENDANT’s compensation package. Importantly,
PLAINTIFF was not provided with minimum wages for her non-production work time.
PLAINTIFF also did not receive paid rest breaks as required by California law. DEFENDANT
failed to pay PLAINTIFF the correct amount of compensation because DEFENDANT established
an illegal pay practice of paying PLAINTIFF on a piece rate basis when conducting visits with
patients assigned by DEFENDANT. DEFENDANT however failed to pay minimum wages for
compensable time worked, including time spent traveling between visits, time spent for filling out

1 charts before/after visits, and time spent being on-call. DEFENDANT also failed to pay
2 PLAINTIFF any overtime wages for all overtime worked, thereby uniformly resulting in
3 PLAINTIFF being underpaid for all time worked during her employment, including overtime
4 worked. To date, DEFENDANT has not fully and timely paid the PLAINTIFF for all his wages
5 still owed to her or any penalty wages owed to her under California Labor Code § 203.

6 3. PLAINTIFF brings this Class Action on behalf of herself and a California class,
7 defined as all persons who are or previously were employed by DEFENDANT in California who
8 were paid in whole or in part on a piece-rate basis (the “CALIFORNIA CLASS”) at any time
9 during the period beginning four years from the date of filing of this Complaint and ending on the
10 date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
11 controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million
12 dollars (\$5,000,000.00).

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

24 5. The true names and capacities, whether individual, corporate, subsidiary,
25 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
26 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
27 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the
28 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 alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged

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

THE CONDUCT

7. 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 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. Importantly, PLAINTIFF was not provided with minimum wages for all of her non-visit work time when DEFENDANT only paid PLAINTIFF and other CALIFORNIA CLASS Members a flat piece rate per visit, regardless of how many hours were worked, and regardless of how much time was spent working before or after the visit. PLAINTIFF also did not receive paid rest breaks as required by California law when being paid a piece rate by DEFENDANT. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates, or separate compensation for rest breaks. DEFENDANT's uniform policy and

1 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked
2 is evidenced by DEFENDANT's business records.

3 8. As a result of their rigorous work schedules and DEFENDANT's understaffing,
4 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time unable to take
5 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
6 other CALIFORNIA CLASS Members were required to perform work as ordered by
7 DEFENDANT for more than five (5) hours during some shifts without receiving an off-duty meal
8 break as evidenced by DEFENDANT's business records. PLAINTIFF and other members of the
9 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
10 accordance with DEFENDANT's strict corporate policy and practice.

11 9. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
12 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
13 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
14 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
15 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked
16 of between six (6) and eight (8) hours from time to time, and a first, second and third rest period
17 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
18 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
19 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
20 CALIFORNIA CLASS Members were from time to time denied their proper rest periods by
21 DEFENDANT and DEFENDANT's managers. In addition, because of DEFENDANT's pay plan
22 for PLAINTIFF and CALIFORNIA CLASS Members (being paid a flat rate per-visit only),
23 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA CLASS Members for their
24 rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not
25 have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other
26 CALIFORNIA CLASS Members when they were paid piece rate pay only. As a result,
27 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
28 all the legally required paid rest periods is evidenced by DEFENDANT's business records.

1 10. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
2 miss meal and rest breaks, and/or were not paid all minimum and overtime wages owed to them,
3 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
4 CLASS with complete and accurate wage statements which failed to show, among other things,
5 the correct wages paid, including the wages paid for missed meal and rest breaks. Cal. Lab. Code
6 § 226 provides that every employer shall furnish each of his or her employees with an accurate
7 itemized wage statement in writing showing, among other things, gross wages earned and all
8 applicable hourly rates in effect during the pay period and the corresponding amount of time
9 worked at each hourly rate. Aside from the violations listed above in this paragraph,
10 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
11 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
12 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
13 statements which violated Cal. Lab. Code § 226.

14 11. In violation of the applicable sections of the California Labor Code and the
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
16 matter of company policy, practice and procedure, intentionally, knowingly and systematically
17 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
18 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to
19 purposefully avoid the payment for all time worked as required by California law which allows
20 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
21 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
22 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

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

6 13. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
7 Members as a business expense, were required by DEFENDANT to use their own personal
8 cellular phones and personal expenses for gas as a result of and in furtherance of their job duties
9 as employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for
10 the cost associated with the use of their personal cellular phones and personal expenses for gas
11 for DEFENDANT'S benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS
12 Members were required by DEFENDANT to use their personal cell phones and personal expenses
13 for gas to conduct work related business. As a result, in the course of their employment with
14 DEFENDANT the PLAINTIFF and other members of the CALIFORNIA CLASS incurred
15 unreimbursed business expenses which included, but were not limited to, costs related to the use
16 of their personal cellular phones and personal expenses for gas all on behalf of and for the benefit
17 of DEFENDANT.

18 14. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
19 the CALIFORNIA CLASS were paid in part on a piece-rate basis. In those instances where
20 PLAINTIFF and the CALIFORNIA CLASS were paid in part on a piece-rate basis, PLAINTIFF
21 and the CALIFORNIA CLASS were entitled to be separately compensated for all non-productive
22 time at an hourly rate that is no less than the applicable minimum wage. Notwithstanding, in
23 those instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a piece-
24 rate basis, DEFENDANT failed to separately compensate PLAINTIFF and the CALIFORNIA
25 CLASS for all non-productive time, including but not limited to, paid rest periods, at an hourly
26 rate that is no less than the applicable minimum wage. As a result, PLAINTIFF and the
27 CALIFORNIA CLASS forfeited minimum wages and overtime wages by DEFENDANT'S
28

1 failure to separately compensate their non-productive time at an hourly rate that is no less than
2 the applicable minimum wage.

3 15. By reason of this uniform conduct applicable to PLAINTIFF and the other
4 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
5 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
6 "UCL"), by engaging in a uniform company-wide policy, practice and procedure which failed to
7 accurately calculate and record all missed meal and rest periods by PLAINTIFF and other
8 CALIFORNIA CLASS Members. The proper recording of these employees' missed meal and rest
9 breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
10 obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all required
11 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
12 California Labor Code and regulations promulgated thereunder as herein alleged.

13 16. Subsequent to PLAINTIFF'S termination, on January 20, 2022, PLAINTIFF
14 caused a written request via certified mail to be delivered to DEFENDANTS for PLAINTIFF'S
15 personnel and employment records, including but not limited to (1) payroll records; (2)
16 employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF'S complete employment file.

17 17. DEFENDANTS failed to provide and/or make available to PLAINTIFF her
18 personnel records, payroll records, employment contracts, and entire employment file within (30)
19 days of all her requests stated above. In fact, as of the date of filing of this complaint,
20 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
21 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
22 PLAINTIFF with her employment file. Section 1198.5 states that employees (and former
23 employees) have the right to inspect personnel records maintained by the employer "related to the
24 employee's performance or to any grievance concerning the employee." Employers must allow
25 inspection or copying within thirty (30) days of the request. PLAINTIFF requested her
26 employment file via certified mail and DEFENDANTS failed to respond. As a result, PLAINTIFF
27 is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab. Code Section
28 1198.5, a statutory penalty, and an award of attorneys' fees and costs for bringing this action.

18. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally required off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor Code and failed to pay her all minimum and overtime wages due to her. DEFENDANT did not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for her missed meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent her from being relieved of all of her duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business records. As a result of DEFENDANT not accurately recording all missed meal and rest periods and/or the correct overtime rate, and/or separately compensated rest breaks, the wage statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular, Labor Code Section 226(a). Further, failed to provide and/or make available to PLAINTIFF her personnel records, payroll records, employment contracts, and entire employment file within (30) days of all her requests on January 20, 2022. To date, DEFENDANT has yet to pay PLAINTIFF all of her overtime wages due to her and DEFENDANT has failed to pay any penalty wages owed to her under California Labor Code Section 203 and/or 204. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

JURISDICTION AND VENUE

19. 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 PLAINTIFFS and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

/ / /

THE CALIFORNIA CLASS

21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all persons who are or previously were employed by DEFENDANT in California who were paid in whole or in part on a piece rate basis (the "CALIFORNIA CLASS") at any time during the period beginning four years from the date of the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD") The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

22. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

23. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT systematically failed 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.

24. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. The DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class- wide basis as unlawful, unfair, and/or deceptive

1 under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages,
2 and reliance are not elements of this claim.

3 25. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
4 CLASS Members is impracticable.

5 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
6 California law by:

- 7 a. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
8 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
9 in place company policies, practices and procedures that uniformly and
10 systematically failed to record and pay PLAINTIFF and the other members of the
11 CALIFORNIA CLASS for all time worked, including minimum wages owed and
12 overtime wages owed for work performed by these employees;
- 13 b. Committing an act of unfair competition in violation of the UCL, by failing to
14 provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA
15 CLASS members; and
- 16 c. Committing an act of unfair competition in violation of the UCL, by failing to
17 separately compensate PLAINTIFF and the CALIFORNIA CLASS Members for
18 their rest breaks.

19 27. The Class Action meets the statutory prerequisites for the maintenance of a Class
20 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 21 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
22 joinder of all such persons is impracticable and the disposition of their claims as a
23 class will benefit the parties and the Court;
- 24 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
25 raised in this Complaint are common to the CALIFORNIA CLASS will apply
26 uniformly to every member of the CALIFORNIA CLASS;
- 27 c. The claims of the representative PLAINTIFF are typical of the claims of each
28 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of

1 the CALIFORNIA CLASS, was classified as a non-exempt employee paid on a
2 piece-rate basis who was subjected to the DEFENDANT's deceptive practice and
3 policy which failed to provide the legally required meal and rest periods to the
4 CALIFORNIA CLASS and thereby systematically underpaid compensation to
5 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
6 as a result of DEFENDANT's employment practices. PLAINTIFF and the
7 members of the CALIFORNIA CLASS were and are similarly or identically
8 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
9 misconduct engaged in by DEFENDANT; and

- 10 d. The representative PLAINTIFF will fairly and adequately represent and protect
11 the interest of the CALIFORNIA CLASS, and have retained counsel who are
12 competent and experienced in Class Action litigation. There are no material
13 conflicts between the claims of the representative PLAINTIFF and the members
14 of the CALIFORNIA CLASS that would make class certification inappropriate.
15 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
16 CALIFORNIA CLASS Members.

17 28. In addition to meeting the statutory prerequisites to a Class Action, this action is
18 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 19 a. Without class certification and determination of declaratory, injunctive, statutory
20 and other legal questions within the class format, prosecution of separate actions
21 by individual members of the CALIFORNIA CLASS will create the risk of:
- 22 i. Inconsistent or varying adjudications with respect to individual members
23 of the CALIFORNIA CLASS which would establish incompatible
24 standards of conduct for the parties opposing the CALIFORNIA CLASS;
25 and/or;
 - 26 ii. Adjudication with respect to individual members of the CALIFORNIA
27 CLASS which would as a practical matter be dispositive of interests of the
28

1 other members not party to the adjudication or substantially impair or
2 impede their ability to protect their interests.

3 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
4 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
5 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
6 DEFENDANT uniformly failed to pay all wages due to members of the
7 CALIFORNIA CLASS as required by law;

8 i. With respect to the First Cause of Action, the final relief on behalf of the
9 CALIFORNIA CLASS sought does not relate exclusively to restitution
10 because through this claim PLAINTIFF seeks declaratory relief holding
11 that the DEFENDANT's policy and practices constitute unfair
12 competition, along with declaratory relief, injunctive relief, and incidental
13 equitable relief as may be necessary to prevent and remedy the conduct
14 declared to constitute unfair competition;

15 c. Common questions of law and fact exist as to the members of the CALIFORNIA
16 CLASS, with respect to the practices and violations of California law as listed
17 above, and predominate over any question affecting only individual
18 CALIFORNIA CLASS Members, and a Class Action is superior to other available
19 methods for the fair and efficient adjudication of the controversy, including
20 consideration of:

21 i. The interests of the members of the CALIFORNIA CLASS in individually
22 controlling the prosecution or defense of separate actions in that the
23 substantial expense of individual actions will be avoided to recover the
24 relatively small amount of economic losses sustained by the individual
25 CALIFORNIA CLASS Members when compared to the substantial
26 expense and burden of individual prosecution of this litigation;

27 ii. Class certification will obviate the need for unduly duplicative litigation
28 that would create the risk of:

- 1 1. Inconsistent or varying adjudications with respect to individual
2 members of the CALIFORNIA CLASS, which would establish
3 incompatible standards of conduct for the DEFENDANT; and/or;
4 2. Adjudications with respect to individual members of the
5 CALIFORNIA CLASS would as a practical matter be dispositive
6 of the interests of the other members not parties to the adjudication
7 or substantially impair or impede their ability to protect their
8 interests;
- 9 iii. In the context of wage litigation, because a substantial number of
10 individual CALIFORNIA CLASS Members will avoid asserting their legal
11 rights out of fear of retaliation by DEFENDANT, which may adversely
12 affect an individual's job with DEFENDANT or with a subsequent
13 employer, the Class Action is the only means to assert their claims through
14 a representative; and
- 15 iv. A class action is superior to other available methods for the fair and
16 efficient adjudication of this litigation because class treatment will obviate
17 the need for unduly and unnecessary duplicative litigation that is likely to
18 result in the absence of certification of this action pursuant to Cal. Code of
19 Civ. Proc. § 382.
- 20 29. The Court should permit this action to be maintained as a Class Action pursuant
21 to Cal. Code of Civ. Proc. § 382 because:
- 22 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
23 over any question affecting only individual CALIFORNIA CLASS Members
24 because the DEFENDANT's employment practices were uniform and
25 systematically applied with respect to the CALIFORNIA CLASS.
- 26 b. A Class Action is superior to any other available method for the fair and efficient
27 adjudication of the claims of the members of the CALIFORNIA CLASS because
28 in the context of employment litigation a substantial number of individual

CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

30. DEFENDANT maintains records from which the Court can ascertain and identify by job title each of DEFENDANT's employees who as have been systematically, intentionally and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of similarly situated employees when they have been identified.

THE CALIFORNIA LABOR SUB-CLASS

31. PLAINTIFF further brings the Second, Third, Fourth Fifth, Sixth, Seventh, and Eighth causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who were employed by DEFENDANT in California (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period beginning three years from the date of the filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

32. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, willfully, and systematically willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and separately compensated rest breaks owed to these employees, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

33. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT’s employees who have been systematically, intentionally and uniformly subjected to DEFENDANT’s company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include these additional job titles when they have been identified.

1 34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
2 CALIFORNIA LABOR SUB-CLASS Members is impracticable

3 35. Common questions of law and fact exist as to members of the CALIFORNIA
4 LABOR SUB-CLASS, including, but not limited, to the following:

- 5 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
6 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
7 minimum wages, overtime wages, missed meal and rest breaks in violation of the
8 California Labor Code and California regulations and the applicable California
9 Wage Order;
- 10 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
11 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
12 statements;
- 13 c. Whether DEFENDANT has engaged in unfair competition by the above-listed
14 conduct;
- 15 d. The proper measure of damages and penalties owed to the members of the
16 CALIFORNIA LABOR SUB-CLASS; and
- 17 e. Whether DEFENDANT's conduct was willful.

18 36. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
19 under California law by:

- 20 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
21 PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS all
22 wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal.
23 Lab. Code § 1194;
- 24 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
25 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
26 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.
27 Lab. Code §§ 1194 and 1197;

- c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks, and to separately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for rest breaks;
- e. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

37. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt

1 employee paid on a piece-rate basis who was subjected to the DEFENDANT's
2 practice and policy which failed to pay the correct amount of wages due to the
3 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
4 a result of DEFENDANT's employment practices. PLAINTIFF and the members
5 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
6 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
7 misconduct engaged in by DEFENDANT; and

- 8 d. The representative PLAINTIFF will fairly and adequately represent and protect
9 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel
10 who are competent and experienced in Class Action litigation. There are no
11 material conflicts between the claims of the representative PLAINTIFF and the
12 members of the CALIFORNIA LABOR SUB-CLASS that would make class
13 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
14 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
15 Members.

16 38. In addition to meeting the statutory prerequisites to a Class Action, this action is
17 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 18 a. Without class certification and determination of declaratory, injunctive, statutory
19 and other legal questions within the class format, prosecution of separate actions
20 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
21 the risk of:
- 22 i. Inconsistent or varying adjudications with respect to individual members
23 of the CALIFORNIA LABOR SUB-CLASS which would establish
24 incompatible standards of conduct for the parties opposing the
25 CALIFORNIA LABOR SUB-CLASS; or
- 26 ii. Adjudication with respect to individual members of the CALIFORNIA
27 LABOR SUB-CLASS which would as a practical matter be dispositive of
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1 interests of the other members not party to the adjudication or substantially
2 impair or impede their ability to protect their interests.

- 3 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
4 refused to act on grounds generally applicable to the CALIFORNIA LABOR
5 SUB-CLASS, making appropriate class-wide relief with respect to the
6 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
7 fails to pay all wages due. Including the correct wages for all time worked by the
8 members of the CALIFORNIA LABOR SUB-CLASS as required by law;
- 9 c. Common questions of law and fact predominate as to the members of the
10 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
11 of California Law as listed above, and predominate over any question affecting
12 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
13 Action is superior to other available methods for the fair and efficient adjudication
14 of the controversy, including consideration of:

- 15 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
16 in individually controlling the prosecution or defense of separate actions in
17 that the substantial expense of individual actions will be avoided to recover
18 the relatively small amount of economic losses sustained by the individual
19 CALIFORNIA LABOR SUB-CLASS Members when compared to the
20 substantial expense and burden of individual prosecution of this litigation;
- 21 ii. Class certification will obviate the need for unduly duplicative litigation
22 that would create the risk of:

- 23 1. Inconsistent or varying adjudications with respect to individual
24 members of the CALIFORNIA LABOR SUB-CLASS, which
25 would establish incompatible standards of conduct for the
26 DEFENDANT; and/or,
- 27 2. Adjudications with respect to individual members of the
28 CALIFORNIA LABOR SUB-CLASS would as a practical matter

1 be dispositive of the interests of the other members not parties to
2 the adjudication or substantially impair or impede their ability to
3 protect their interests;

4 iii. In the context of wage litigation because a substantial number of individual
5 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
6 legal rights out of fear of retaliation by DEFENDANT, which may
7 adversely affect an individual's job with DEFENDANT or with a
8 subsequent employer, the Class Action is the only means to assert their
9 claims through a representative; and,

10 iv. A class action is superior to other available methods for the fair and
11 efficient adjudication of this litigation because class treatment will obviate
12 the need for unduly and unnecessary duplicative litigation that is likely to
13 result in the absence of certification of this action pursuant to Cal. Code of
14 Civ. Proc. § 382.

15 39. This Court should permit this action to be maintained as a Class Action pursuant
16 to Cal. Code of Civ. Proc. § 382 because:

17 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
18 CLASS predominate over any question affecting only individual CALIFORNIA
19 LABOR SUB-CLASS Members;

20 b. A Class Action is superior to any other available method for the fair and efficient
21 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
22 CLASS because in the context of employment litigation a substantial number of
23 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
24 their rights individually out of fear of retaliation or adverse impact on their
25 employment;

26 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
27 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
28 before the Court;

- 1 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
2 not be able to obtain effective and economic legal redress unless the action is
3 maintained as a Class Action;
- 4 e. There is a community of interest in obtaining appropriate legal and equitable relief
5 for the acts of unfair competition, statutory violations and other improprieties, and
6 in obtaining adequate compensation for the damages and injuries which
7 DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-
8 CLASS;
- 9 f. There is a community of interest in ensuring that the combined assets of
10 DEFENDANT are sufficient to adequately compensate the members of the
11 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 12 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
13 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
14 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 15 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
16 ascertainable from the business records of DEFENDANT. The CALIFORNIA
17 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
18 employed by DEFENDANT in California during the CALIFORNIA LABOR
19 SUB-CLASS PERIOD; and
- 20 i. Class treatment provides manageable judicial treatment calculated to bring an
21 efficient and rapid conclusion to all litigation of all wage and hour related claims
22 arising out of the conduct of DEFENDANT as to the members of the
23 CALIFORNIA LABOR SUB-CLASS.
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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

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

5 40. 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 41. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 43. By the conduct alleged herein, DEFENDANT has engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
25 and 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
26 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
27 constitute unfair competition, including restitution of wages wrongfully withheld.
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1 44. 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 45. 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 46. 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 47. 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 48. 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 49. PLAINTIFF further demands on behalf of themselves 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 50. 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 51. 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 52. 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 53. 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 54. 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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SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Cal. Lab. Code §§ 1194, 1197 and 1197.1)
(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all
Defendants)

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

56. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT’S willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

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

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

60. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked, and instead paying PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS on a piece-rate per-visit basis. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

61. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF

1 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
2 pay.

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

9 63. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
11 the minimum wage compensation for all their time worked for DEFENDANT.

12 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
14 they were entitled to, constituting a failure to pay all earned wages.

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

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

27 67. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for

1 all time worked and provide them with the requisite compensation, DEFENDANT acted and
2 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for
4 their legal rights, or the consequences to them, and with the despicable intent of depriving them
5 of their property and legal rights, and otherwise causing them injury in order to increase company
6 profits at the expense of these employees.

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

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME COMPENSATION**

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

21 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all**
22 **Defendants)**

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

26 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code
28 and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these

employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

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

76. In committing these violations of the California Labor Code, DEFENDANT inaccurately recorded overtime worked and consequently underpaid the overtime worked by PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the

1 California Labor Code, the Industrial Welfare Commission requirements and other applicable
2 laws and regulations.

3 77. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
4 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
5 receive full compensation for overtime worked.

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

14 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
15 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
16 worked that they are entitled to, constituting a failure to pay all earned wages.

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

24 81. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
25 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS for all overtime worked by these employees, PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
28

1 injury in amounts which are presently unknown to them and which will be ascertained according
2 to proof at trial.

3 82. DEFENDANT knew or should have known that PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime
5 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
6 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
7 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
8 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime
9 worked.

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

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

1 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and
2 recover statutory costs.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

5 **(Cal. Lab. Code §§ 226.7 & 512)**

6 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
7 **Defendants)**

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

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

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

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

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

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

9 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
10 **Defendants)**

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

14 90. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
15 Members were required to work in excess of four (4) hours without being provided ten (10) minute
16 rest periods. Further, these employees were denied their first rest periods of at least ten (10)
17 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period
18 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a
19 first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
20 hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also
21 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
22 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied
23 their proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, because
24 of DEFENDANT's pay plan for PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
25 Members (being paid a flat rate only), DEFENDANT failed to compensate PLAINTIFF and
26 CALIFORNIA LABOR SUB- CLASS Members for their rest periods as required by the
27 applicable Wage Order and Labor Code. DEFENDANT did not have a policy or practice which
28 paid for off-duty rest periods to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS

1 Members when they were paid piece rate pay only. As a result, DEFENDANT's failure to provide
2 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with all the legally required
3 paid rest periods is evidenced by DEFENDANT's business records.

4 91. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
5 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
6 CLASS Members who were not provided a rest period, in accordance with the applicable Wage
7 Order, one additional hour of compensation at each employee's regular rate of pay for each
8 workday that rest period was not provided.

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

12 **SIXTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

14 **(Cal. Lab. Code § 226)**

15 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
16 **Defendants)**

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

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

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

- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

95. When DEFENDANT did not accurately record PLAINTIFF's and other CALIFORNIA LABOR SUB-CLASS Members' wages, and missed meal and rest breaks, and separately compensated rest periods, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemizes all wages, and missed meal and rest periods and reporting time wages owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the correct wages earned by the employees. Further, from time to time, DEFENDANT included Vacation hours into the computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2), notwithstanding the fact that Vacation hours are not considered hours worked. DEFENDANT's inclusion of Vacation hours into the total hours worked in itemized wage statements issued to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members violates Cal. Lab. Code § 226(a)(2). Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

96. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating

1 the correct wages for all missed meal and rest breaks and the amount of employment taxes which
2 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
3 Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may
4 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
5 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
6 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
7 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
8 member of the CALIFORNIA LABOR SUB-CLASS herein).

9 **SEVENTH CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES WHEN DUE**

11 **(Cal. Lab. Code § 203)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
13 **Defendants)**

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

17 98. Cal. Lab. Code § 200 provides that:

18 As used in this article:

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

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

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

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

1 If an employee not having a written contract for a definite period quits his or her
2 employment, his or her wages shall become due and payable not later than 72 hours
3 thereafter, unless the employee has given 72 hours previous notice of his or her intention
4 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
5 Notwithstanding any other provision of law, an employee who quits without providing a
6 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
7 designates a mailing address. The date of the mailing shall constitute the date of payment
8 for purposes of the requirement to provide payment within 72 hours of the notice of
9 quitting.

10 101. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
11 CLASS Members' employment contract.

12 102. Cal. Lab. Code § 203 provides:

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

18 103. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
19 Members terminated and DEFENDANT has not tendered payment of wages to these employees
20 who were underpaid for minimum wage and/or overtime wage, and/or missed meal and rest
21 breaks, as required by law.

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

28 //

1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

3 **(Cal. Lab. Code §§ 2802)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
5 **Defendants)**

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

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

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

15 107. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
16 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
17 members for required expenses incurred in the discharge of their job duties for DEFENDANT'S
18 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
19 CLASS members for expenses which included, but were not limited to, costs related to using their
20 personal cellular phones and personal expenses for gas all on behalf of and for the benefit of
21 DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were
22 required by DEFENDANT to use their personal cell phones and personal expenses for gas for
23 work-related business. DEFENDANT'S uniform policy, practice and procedure was to not
24 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses
25 resulting from using their personal cellular phones and personal expenses for gas for
26 DEFENDANT within the course and scope of their employment for DEFENDANT. These
27 expenses were necessary to complete their principal job duties. DEFENDANT are estopped by
28 DEFENDANT'S conduct to assert any waiver of this expectation. Although these expenses were

1 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
2 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
3 LABOR SUB-CLASS members for these expenses as an employer is required to do under the
4 laws and regulations of California.

5 108. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
6 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
7 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at
8 the statutory rate and costs under Cal. Lab. Code § 2802.

9 **NINTH CAUSE OF ACTION**

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

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

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

13 109. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
14 herein, the prior paragraphs of this Complaint.

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

24 111. PLAINTIFF, and such persons that may be added from time to time who satisfy
25 the requirements and exhaust the administrative procedures under the Private Attorney General
26 Act, bring this Representative Action on behalf of the State of California with respect to himself
27 and all non-exempt, exempt and/or piece-rate employees who worked for Defendant in California
28 during the time period of March 25, 2021 until the present (the "AGGRIEVED EMPLOYEES").

112. On March 25, 2022, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

113. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANTS, (a) failed to properly record and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including minimum wage and overtime and overtime compensation, (b) failed to provide accurate itemized wage statements, (c) failed to provide meal breaks and rest breaks in accordance with California law, (d) failed to pay meal and rest break premiums at the correct rate, and (e) failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to 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, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
 - c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS; and
 - d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.
2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
 - a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages, overtime compensation, unreimbursed expenses, and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-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 LABOR SUB-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

1 EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private
2 Attorneys General Act of 2004;

3 4. On all claims:

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

7 DATED: May 31, 2022

8 **ZAKAY LAW GROUP, APLC**

9
10 By: 

11 Shani O. Zakay
12 Attorney for PLAINTIFF

13
14
15
16 **DEMAND FOR A JURY TRIAL**

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

18 DATED: May 31, 2022

19
20 **ZAKAY LAW GROUP, APLC**

21
22 By: 

23 Shani O. Zakay
24 Attorney for PLAINTIFF

EXHIBIT 1



Client #47401

March 25, 2022

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

DANNY'S HOME HEALTH CARE, INC.

c/o CAROLINE L. MORRISON, ESQ.

514 Via De La Valle, Suite 207

Solana Beach, CA 92075

Sent via Certified Mail and Return Receipt No. 7021 1970 0001 4068 3575

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 JANENE J. CARACAUS ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant DANNY'S HOME HEALTH CARE INC. ("Defendant"). Plaintiff was employed by Defendant in California from August of 2017 to December of 2021 as a non-exempt employee, paid on piece-rate basis. As a non-exempt employee paid on a piece-rate basis, Plaintiff was entitled to legally required meal and rest periods and separate compensation for non-productive time. At all times during her employment, Defendant failed to among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods and separate compensation for all non-productive time.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 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, exempt and/or piece-rate based employees who worked for Defendant in California during the relevant claim period.

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

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

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

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

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

Sincerely,

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

Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Dr., Ste 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 JANENE J. CARACAUS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JANENE J. CARACAUS, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

v.

DANNY'S HOME HEALTH CARE INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

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

DEMAND FOR A JURY TRIAL

Plaintiff JANENE J. CARACAUS (“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 DANNY’S HOME HEALTH CARE INC. (“DEFENDANT”) 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. DEFENDANT offers a full spectrum of home health care, hospice, and in-home health services.

2. PLAINTIFF was employed by DEFENDANT in California from August of 2017 to December of 2021 as a registered nurse, and was at times classified by DEFENDANT as a non-exempt employee, paid on a piece-rate basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. When PLAINTIFF was paid piece-rate by DEFENDANT, PLAINTIFF was paid by piece-rate only while she was performing visits for DEFENDANT in accordance with DEFENDANT’s compensation package. Importantly, PLAINTIFF was not provided with minimum wages for her non-production work time. PLAINTIFF also did not receive paid rest breaks as required by California law. DEFENDANT failed to pay PLAINTIFF the correct amount of compensation because DEFENDANT established an illegal pay practice of paying PLAINTIFF on a piece rate basis when conducting visits with patients assigned by DEFENDANT. DEFENDANT however failed to pay minimum wages for compensable time worked, including time spent traveling between visits, time spent for filling out charts before/after visits, and time spent being on-call. DEFENDANT also failed to pay PLAINTIFF any overtime wages for all overtime worked, thereby uniformly resulting in PLAINTIFF being underpaid for all time worked during her

1 employment, including overtime worked. To date, DEFENDANT has not fully and timely paid
2 the PLAINTIFF for all his wages still owed to her or any penalty wages owed to her under
3 California Labor Code § 203.

4 3. PLAINTIFF brings this Class Action on behalf of herself and a California class,
5 defined as all persons who are or previously were employed by DEFENDANT in California
6 who were paid in whole or in part on a piece-rate basis (the “CALIFORNIA CLASS”) at any
7 time during the period beginning four years from the date of filing of this Complaint and ending
8 on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
9 controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five
10 million dollars (\$5,000,000.00).

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

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

responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged

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

THE CONDUCT

7. 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 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. Importantly, PLAINTIFF was not provided with minimum wages for all of her non-visit work time when DEFENDANT only paid PLAINTIFF and other CALIFORNIA CLASS Members a flat piece rate per visit, regardless of how many hours were worked, and regardless of how much time was spent working before or after the visit. PLAINTIFF also did not receive paid rest breaks as required by California law when being paid a piece rate by DEFENDANT. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates, or separate compensation for rest breaks. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

1 8. As a result of their rigorous work schedules and DEFENDANT's understaffing,
2 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time unable to take
3 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
4 other CALIFORNIA CLASS Members were required to perform work as ordered by
5 DEFENDANT for more than five (5) hours during some shifts without receiving an off-duty
6 meal break as evidenced by DEFENDANT's business records. PLAINTIFF and other members
7 of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation
8 and in accordance with DEFENDANT's strict corporate policy and practice.

9 9. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
10 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
11 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
12 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
13 from time to time, a first and second rest period of at least ten (10) minutes for some shifts
14 worked of between six (6) and eight (8) hours from time to time, and a first, second and third
15 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
16 time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
17 with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
18 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
19 periods by DEFENDANT and DEFENDANT's managers. In addition, because of
20 DEFENDANT's pay plan for PLAINTIFF and CALIFORNIA CLASS Members (being paid a
21 flat rate per-visit only), DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA
22 CLASS Members for their rest periods as required by the applicable Wage Order and Labor
23 Code. DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
24 PLAINTIFF and the other CALIFORNIA CLASS Members when they were paid piece rate pay
25 only. As a result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
26 CLASS Members with all the legally required paid rest periods is evidenced by
27 DEFENDANT's business records.

1 10. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
2 miss meal and rest breaks, and/or were not paid all minimum and overtime wages owed to them,
3 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
4 CLASS with complete and accurate wage statements which failed to show, among other things,
5 the correct wages paid, including the wages paid for missed meal and rest breaks. Cal. Lab.
6 Code § 226 provides that every employer shall furnish each of his or her employees with an
7 accurate itemized wage statement in writing showing, among other things, gross wages earned
8 and all applicable hourly rates in effect during the pay period and the corresponding amount of
9 time worked at each hourly rate. Aside from the violations listed above in this paragraph,
10 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
11 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
12 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
13 statements which violated Cal. Lab. Code § 226.

14 11. In violation of the applicable sections of the California Labor Code and the
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
16 matter of company policy, practice and procedure, intentionally, knowingly and systematically
17 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
18 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to
19 purposefully avoid the payment for all time worked as required by California law which allows
20 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
21 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
22 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
23 accordingly.

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

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

7 13. In the course of their employment, PLAINTIFF and other CALIFORNIA
8 CLASS Members as a business expense, were required by DEFENDANT to use their own
9 personal cellular phones and personal expenses for gas as a result of and in furtherance of their
10 job duties as employees for DEFENDANT but were not reimbursed or indemnified by
11 DEFENDANT for the cost associated with the use of their personal cellular phones and personal
12 expenses for gas for DEFENDANT'S benefit. Specifically, PLAINTIFF and other
13 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell
14 phones and personal expenses for gas to conduct work related business. As a result, in the
15 course of their employment with DEFENDANT the PLAINTIFF and other members of the
16 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
17 limited to, costs related to the use of their personal cellular phones and personal expenses for
18 gas all on behalf of and for the benefit of DEFENDANT.

19 14. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
20 the CALIFORNIA CLASS were paid in part on a piece-rate basis. In those instances where
21 PLAINTIFF and the CALIFORNIA CLASS were paid in part on a piece-rate basis,
22 PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately compensated for all
23 non-productive time at an hourly rate that is no less than the applicable minimum wage.
24 Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA CLASS were
25 paid in part on a piece-rate basis, DEFENDANT failed to separately compensate PLAINTIFF
26 and the CALIFORNIA CLASS for all non-productive time, including but not limited to, paid
27 rest periods, at an hourly rate that is no less than the applicable minimum wage. As a result,
28 PLAINTIFF and the CALIFORNIA CLASS forfeited minimum wages and overtime wages by

1 DEFENDANT’S failure to separately compensate their non-productive time at an hourly rate
2 that is no less than the applicable minimum wage.

3 15. By reason of this uniform conduct applicable to PLAINTIFF and the other
4 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
5 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
6 (the "UCL"), by engaging in a uniform company-wide policy, practice and procedure which
7 failed to accurately calculate and record all missed meal and rest periods by PLAINTIFF and
8 other CALIFORNIA CLASS Members. The proper recording of these employees’ missed meal
9 and rest breaks is the DEFENDANT’s burden. As a result of DEFENDANT’s intentional
10 disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate
11 and/or pay all required compensation for work performed by the members of the CALIFORNIA
12 CLASS and violated the California Labor Code and regulations promulgated thereunder as
13 herein alleged.

14 16. Subsequent to PLAINTIFF’S termination, on January 20, 2022, PLAINTIFF
15 caused a written request via certified mail to be delivered to DEFENDANTS for PLAINTIFF’S
16 personnel and employment records, including but not limited to (1) payroll records; (2)
17 employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF’S complete employment
18 file.

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

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

4 18. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally
5 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
6 Labor Code and failed to pay her all minimum and overtime wages due to her. DEFENDANT
7 did not have a policy or practice which provided timely off-duty meal and rest breaks to
8 PLAINTIFF and also failed to compensate PLAINTIFF for her missed meal and rest breaks.
9 The nature of the work performed by the PLAINTIFF did not prevent her from being relieved of
10 all of her duties for the legally required off-duty meal periods. As a result, DEFENDANT's
11 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
12 DEFENDANT's business records. As a result of DEFENDANT not accurately recording all
13 missed meal and rest periods and/or the correct overtime rate, and/or separately compensated
14 rest breaks, the wage statements issued to PLAINTIFF by DEFENDANT violated California
15 law, and in particular, Labor Code Section 226(a). Further, failed to provide and/or make
16 available to PLAINTIFF her personnel records, payroll records, employment contracts, and
17 entire employment file within (30) days of all her requests on January 20, 2022. To date,
18 DEFENDANT has yet to pay PLAINTIFF all of her overtime wages due to her and
19 DEFENDANT has failed to pay any penalty wages owed to her under California Labor Code
20 Section 203 and/or 204. The amount in controversy for PLAINTIFF individually does not
21 exceed the sum or value of \$75,000.

22 **JURISDICTION AND VENUE**

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

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

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

4 **THE CALIFORNIA CLASS**

5 21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
6 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
7 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
8 persons who are or previously were employed by DEFENDANT in California who were paid in
9 whole or in part on a piece rate basis (the "CALIFORNIA CLASS") at any time during the
10 period beginning four years from the date of the filing of this Complaint and ending on the date
11 as determined by the Court (the "CALIFORNIA CLASS PERIOD") The amount in controversy
12 for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
13 (\$5,000,000.00).

14 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA
15 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
16 accordingly.

17 23. DEFENDANT, as a matter of company policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
19 requirements, and the applicable provisions of California law, intentionally, knowingly, and
20 willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
21 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
22 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
23 permits or suffers to permit this work.

24 24. DEFENDANT has the legal burden to establish that each and every
25 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
26 required by California laws. The DEFENDANT, however, as a matter of uniform and
27 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
28 PERIOD and still fails to have in place a policy or practice to ensure that each and every

1 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
2 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
3 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
4 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

5 25. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
6 CLASS Members is impracticable.

7 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
8 California law by:

- 9 a. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
10 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
11 in place company policies, practices and procedures that uniformly and
12 systematically failed to record and pay PLAINTIFF and the other members of the
13 CALIFORNIA CLASS for all time worked, including minimum wages owed and
14 overtime wages owed for work performed by these employees;
- 15 b. Committing an act of unfair competition in violation of the UCL, by failing to
16 provide mandatory meal and/or rest breaks to PLAINTIFF and the
17 CALIFORNIA CLASS members; and
- 18 c. Committing an act of unfair competition in violation of the UCL, by failing to
19 separately compensate PLAINTIFF and the CALIFORNIA CLASS Members for
20 their rest breaks.

21 27. The Class Action meets the statutory prerequisites for the maintenance of a Class
22 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 23 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
24 joinder of all such persons is impracticable and the disposition of their claims as
25 a class will benefit the parties and the Court;
- 26 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
27 raised in this Complaint are common to the CALIFORNIA CLASS will apply
28 uniformly to every member of the CALIFORNIA CLASS;

- 1 c. The claims of the representative PLAINTIFF are typical of the claims of each
2 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
3 of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on
4 a piece-rate basis who was subjected to the DEFENDANT's deceptive practice
5 and policy which failed to provide the legally required meal and rest periods to
6 the CALIFORNIA CLASS and thereby systematically underpaid compensation
7 to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic
8 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
9 members of the CALIFORNIA CLASS were and are similarly or identically
10 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
11 misconduct engaged in by DEFENDANT; and
- 12 d. The representative PLAINTIFF will fairly and adequately represent and protect
13 the interest of the CALIFORNIA CLASS, and have retained counsel who are
14 competent and experienced in Class Action litigation. There are no material
15 conflicts between the claims of the representative PLAINTIFF and the members
16 of the CALIFORNIA CLASS that would make class certification inappropriate.
17 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
18 CALIFORNIA CLASS Members.

19 28. In addition to meeting the statutory prerequisites to a Class Action, this action is
20 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 21 a. Without class certification and determination of declaratory, injunctive, statutory
22 and other legal questions within the class format, prosecution of separate actions
23 by individual members of the CALIFORNIA CLASS will create the risk of:
- 24 i. Inconsistent or varying adjudications with respect to individual members
25 of the CALIFORNIA CLASS which would establish incompatible
26 standards of conduct for the parties opposing the CALIFORNIA CLASS;
27 and/or;
- 28

1 ii. Adjudication with respect to individual members of the CALIFORNIA
2 CLASS which would as a practical matter be dispositive of interests of
3 the other members not party to the adjudication or substantially impair or
4 impede their ability to protect their interests.

5 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
6 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
7 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
8 DEFENDANT uniformly failed to pay all wages due to members of the
9 CALIFORNIA CLASS as required by law;

10 i. With respect to the First Cause of Action, the final relief on behalf of the
11 CALIFORNIA CLASS sought does not relate exclusively to restitution
12 because through this claim PLAINTIFF seeks declaratory relief holding
13 that the DEFENDANT's policy and practices constitute unfair
14 competition, along with declaratory relief, injunctive relief, and incidental
15 equitable relief as may be necessary to prevent and remedy the conduct
16 declared to constitute unfair competition;

17 c. Common questions of law and fact exist as to the members of the CALIFORNIA
18 CLASS, with respect to the practices and violations of California law as listed
19 above, and predominate over any question affecting only individual
20 CALIFORNIA CLASS Members, and a Class Action is superior to other
21 available methods for the fair and efficient adjudication of the controversy,
22 including consideration of:

23 i. The interests of the members of the CALIFORNIA CLASS in
24 individually controlling the prosecution or defense of separate actions in
25 that the substantial expense of individual actions will be avoided to
26 recover the relatively small amount of economic losses sustained by the
27 individual CALIFORNIA CLASS Members when compared to the
28

1 substantial expense and burden of individual prosecution of this
2 litigation;

3 ii. Class certification will obviate the need for unduly duplicative litigation
4 that would create the risk of:

5 1. Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA CLASS, which would establish
7 incompatible standards of conduct for the DEFENDANT; and/or;

8 2. Adjudications with respect to individual members of the
9 CALIFORNIA CLASS would as a practical matter be dispositive
10 of the interests of the other members not parties to the
11 adjudication or substantially impair or impede their ability to
12 protect their interests;

13 iii. In the context of wage litigation, because a substantial number of
14 individual CALIFORNIA CLASS Members will avoid asserting their
15 legal rights out of fear of retaliation by DEFENDANT, which may
16 adversely affect an individual's job with DEFENDANT or with a
17 subsequent employer, the Class Action is the only means to assert their
18 claims through a representative; and

19 iv. A class action is superior to other available methods for the fair and
20 efficient adjudication of this litigation because class treatment will
21 obviate the need for unduly and unnecessary duplicative litigation that is
22 likely to result in the absence of certification of this action pursuant to
23 Cal. Code of Civ. Proc. § 382.

24 29. The Court should permit this action to be maintained as a Class Action pursuant
25 to Cal. Code of Civ. Proc. § 382 because:

26 a. The questions of law and fact common to the CALIFORNIA CLASS
27 predominate over any question affecting only individual CALIFORNIA CLASS
28

Members because the DEFENDANT's employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS.

- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims

1 arising out of the conduct of DEFENDANT as to the members of the
2 CALIFORNIA CLASS.

3 30. DEFENDANT maintains records from which the Court can ascertain and
4 identify by job title each of DEFENDANT's employees who as have been systematically,
5 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
6 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
7 any additional job titles of similarly situated employees when they have been identified.

8 **THE CALIFORNIA LABOR SUB-CLASS**

9 31. PLAINTIFF further brings the Second, Third, Fourth Fifth, Sixth, Seventh, and
10 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
11 CALIFORNIA CLASS who were employed by DEFENDANT in California (the
12 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning three years
13 from the date of the filing of this Complaint and ending on the date as determined by the Court
14 (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. §
15 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
16 CLASS Members is under five million dollars (\$5,000,000.00).

17 32. DEFENDANT, as a matter of company policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
19 requirements, and the applicable provisions of California law, intentionally, knowingly,
20 willfully, and systematically willfully, engaged in a practice whereby DEFENDANT failed to
21 correctly calculate compensation for the time worked by PLAINTIFF and the other members of
22 the CALIFORNIA LABOR SUB-CLASS and separately compensated rest breaks owed to these
23 employees, even though DEFENDANT enjoyed the benefit of this work, required employees to
24 perform this work and permitted or suffered to permit this work. DEFENDANT has uniformly
25 denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees
26 are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent
27 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
28

1 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
2 accordingly.

3 33. DEFENDANT maintains records from which the Court can ascertain and
4 identify by name and job title, each of DEFENDANT's employees who have been
5 systematically, intentionally and uniformly subjected to DEFENDANT's company policy,
6 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint
7 to include these additional job titles when they have been identified.

8 34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
9 CALIFORNIA LABOR SUB-CLASS Members is impracticable

10 35. Common questions of law and fact exist as to members of the CALIFORNIA
11 LABOR SUB-CLASS, including, but not limited, to the following:

- 12 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
13 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
14 minimum wages, overtime wages, missed meal and rest breaks in violation of the
15 California Labor Code and California regulations and the applicable California
16 Wage Order;
- 17 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
18 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
19 statements;
- 20 c. Whether DEFENDANT has engaged in unfair competition by the above-listed
21 conduct;
- 22 d. The proper measure of damages and penalties owed to the members of the
23 CALIFORNIA LABOR SUB-CLASS; and
- 24 e. Whether DEFENDANT's conduct was willful.

25 36. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
26 under California law by:

- 27 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
28 PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS all

wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;

d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks, and to separately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for rest breaks;

e. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

37. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

- 1 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
2 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
3 CLASS and will apply uniformly to every member of the CALIFORNIA
4 LABOR SUB-CLASS;
- 5 c. The claims of the representative PLAINTIFF are typical of the claims of each
6 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
7 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
8 employee paid on a piece-rate basis who was subjected to the DEFENDANT's
9 practice and policy which failed to pay the correct amount of wages due to the
10 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
11 a result of DEFENDANT's employment practices. PLAINTIFF and the members
12 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
13 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
14 misconduct engaged in by DEFENDANT; and
- 15 d. The representative PLAINTIFF will fairly and adequately represent and protect
16 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
17 counsel who are competent and experienced in Class Action litigation. There are
18 no material conflicts between the claims of the representative PLAINTIFF and
19 the members of the CALIFORNIALABOR SUB-CLASS that would make class
20 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
21 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
22 Members.

23 38. In addition to meeting the statutory prerequisites to a Class Action, this action is
24 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 25 a. Without class certification and determination of declaratory, injunctive, statutory
26 and other legal questions within the class format, prosecution of separate actions
27 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
28 the risk of:

- 1 i. Inconsistent or varying adjudications with respect to individual members
2 of the CALIFORNIA LABOR SUB-CLASS which would establish
3 incompatible standards of conduct for the parties opposing the
4 CALIFORNIA LABOR SUB-CLASS; or
- 5 ii. Adjudication with respect to individual members of the CALIFORNIA
6 LABOR SUB-CLASS which would as a practical matter be dispositive of
7 interests of the other members not party to the adjudication or
8 substantially impair or impede their ability to protect their interests.
- 9 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
10 refused to act on grounds generally applicable to the CALIFORNIA LABOR
11 SUB-CLASS, making appropriate class-wide relief with respect to the
12 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
13 uniformly fails to pay all wages due. Including the correct wages for all time
14 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required
15 by law;
- 16 c. Common questions of law and fact predominate as to the members of the
17 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
18 violations of California Law as listed above, and predominate over any question
19 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
20 Class Action is superior to other available methods for the fair and efficient
21 adjudication of the controversy, including consideration of:
- 22 i. The interests of the members of the CALIFORNIA LABOR SUB-
23 CLASS in individually controlling the prosecution or defense of separate
24 actions in that the substantial expense of individual actions will be
25 avoided to recover the relatively small amount of economic losses
26 sustained by the individual CALIFORNIA LABOR SUB-CLASS
27 Members when compared to the substantial expense and burden of
28 individual prosecution of this litigation;

1 ii. Class certification will obviate the need for unduly duplicative litigation
2 that would create the risk of:

3 1. Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA LABOR SUB-CLASS, which
5 would establish incompatible standards of conduct for the
6 DEFENDANT; and/or,

7 2. Adjudications with respect to individual members of the
8 CALIFORNIA LABOR SUB-CLASS would as a practical matter
9 be dispositive of the interests of the other members not parties to
10 the adjudication or substantially impair or impede their ability to
11 protect their interests;

12 iii. In the context of wage litigation because a substantial number of
13 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
14 asserting their legal rights out of fear of retaliation by DEFENDANT,
15 which may adversely affect an individual's job with DEFENDANT or
16 with a subsequent employer, the Class Action is the only means to assert
17 their claims through a representative; and,

18 iv. A class action is superior to other available methods for the fair and
19 efficient adjudication of this litigation because class treatment will
20 obviate the need for unduly and unnecessary duplicative litigation that is
21 likely to result in the absence of certification of this action pursuant to
22 Cal. Code of Civ. Proc. § 382.

23 39. This Court should permit this action to be maintained as a Class Action pursuant
24 to Cal. Code of Civ. Proc. § 382 because:

25 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
26 CLASS predominate over any question affecting only individual CALIFORNIA
27 LABOR SUB-CLASS Members;

- 1 b. A Class Action is superior to any other available method for the fair and efficient
2 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
3 CLASS because in the context of employment litigation a substantial number of
4 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
5 their rights individually out of fear of retaliation or adverse impact on their
6 employment;
- 7 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
8 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
9 CLASS before the Court;
- 10 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
11 not be able to obtain effective and economic legal redress unless the action is
12 maintained as a Class Action;
- 13 e. There is a community of interest in obtaining appropriate legal and equitable
14 relief for the acts of unfair competition, statutory violations and other
15 improprieties, and in obtaining adequate compensation for the damages and
16 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
17 LABOR SUB-CLASS;
- 18 f. There is a community of interest in ensuring that the combined assets of
19 DEFENDANT are sufficient to adequately compensate the members of the
20 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 21 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
22 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
23 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 24 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
25 ascertainable from the business records of DEFENDANT. The CALIFORNIA
26 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
27 employed by DEFENDANT in California during the CALIFORNIA LABOR
28 SUB-CLASS PERIOD; and

- 1 i. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims
3 arising out of the conduct of DEFENDANT as to the members of the
4 CALIFORNIA LABOR SUB-CLASS.

5 **FIRST CAUSE OF ACTION**

6 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

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

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

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

25 43. 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,

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

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

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

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

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

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

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

3 49. PLAINTIFF further demands on behalf of themselves and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
5 was not timely provided as required by law.

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

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

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

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

26 54. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
28 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As

1 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
2 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
3 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
4 engage in these unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

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

8 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all**
9 **Defendants)**

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

13 56. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor
15 Code and the Industrial Welfare Commission requirements for DEFENDANT'S failure to
16 accurately calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS
17 Members.

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

20 58. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
21 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
22 than the minimum so fixed is unlawful.

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

25 60. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
26 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
27 amount of time they worked, and instead paying PLAINTIFF and other members of the
28 CALIFORNIA LABOR SUB-CLASS on a piece-rate per-visit basis. As set forth herein,

1 DEFENDANT’S uniform policy and practice was to unlawfully and intentionally deny timely
2 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR
3 SUB-CLASS.

4 61. DEFENDANT’S uniform pattern of unlawful wage and hour practices
5 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
6 whole, as a result of implementing a uniform policy and practice that denied accurate
7 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
8 CLASS in regards to minimum wage pay.

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

15 63. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
16 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
17 receive the minimum wage compensation for all their time worked for DEFENDANT.

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

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

27 66. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS are under-compensated for their time

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME COMPENSATION**

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

4 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all**
5 **Defendants)**

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

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

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

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

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

25 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
27 DEFENDANT and were not paid for all the time they worked, including overtime work.
28

1 75. DEFENDANT's uniform pattern of unlawful wage and hour practices
2 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
3 whole, as a result of implementing a uniform policy and practice that failed to accurately record
4 time worked, including overtime worked by PLAINTIFF and other CALIFORNIA LABOR
5 SUB-CLASS Members and denied accurate compensation to PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the
7 overtime work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in
8 a workday, and/or forty (40) hours in any workweek.

9 76. In committing these violations of the California Labor Code, DEFENDANT
10 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
11 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in
12 an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
13 California Labor Code, the Industrial Welfare Commission requirements and other applicable
14 laws and regulations.

15 77. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
16 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
17 receive full compensation for overtime worked.

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

26 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
28 worked that they are entitled to, constituting a failure to pay all earned wages.

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

8 81. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
9 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS for all overtime worked by these employees, PLAINTIFF and the other members of the
11 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
12 injury in amounts which are presently unknown to them and which will be ascertained
13 according to proof at trial.

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

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

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

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

15 **(Cal. Lab. Code §§ 226.7 & 512)**

16 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
17 **Defendants)**

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

21 86. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
22 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
23 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
24 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS
25 did not prevent these employees from being relieved of all of their duties for the legally required
26 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
27 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
28 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide

1 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
2 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
3 Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members
4 with a second off-duty meal period in some workdays in which these employees were required
5 by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other members
6 of the CALIFORNIA LABOR SUB-CLASS forfeited meal breaks without additional
7 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

18 **(Cal. Lab. Code §§ 226.7 & 512)**

19 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
20 **Defendants)**

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

24 90. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
25 Members were required to work in excess of four (4) hours without being provided ten (10)
26 minute rest periods. Further, these employees were denied their first rest periods of at least ten
27 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
28 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,

1 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
2 (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
3 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work
4 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
5 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.
6 In addition, because of DEFENDANT's pay plan for PLAINTIFF and CALIFORNIA LABOR
7 SUB-CLASS Members (being paid a flat rate only), DEFENDANT failed to compensate
8 PLAINTIFF and CALIFORNIA LABOR SUB- CLASS Members for their rest periods as
9 required by the applicable Wage Order and Labor Code. DEFENDANT did not have a policy or
10 practice which paid for off-duty rest periods to PLAINTIFF and the other CALIFORNIA
11 LABOR SUB-CLASS Members when they were paid piece rate pay only. As a result,
12 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
13 Members with all the legally required paid rest periods is evidenced by DEFENDANT's
14 business records.

15 91. DEFENDANT further violated California Labor Code §§ 226.7 and the
16 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
17 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
18 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
19 each workday that rest period was not provided.

20 92. As a proximate result of the aforementioned violations, PLAINTIFF and
21 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
22 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
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1 95. When DEFENDANT did not accurately record PLAINTIFF's and other
2 CALIFORNIA LABOR SUB-CLASS Members' wages, and missed meal and rest breaks, and
3 separately compensated rest periods, DEFENDANT violated Cal. Lab. Code § 226 in that
4 DEFENDANT failed to provide an accurate wage statement in writing that properly and
5 accurately itemizes all wages, and missed meal and rest periods and reporting time wages owed
6 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby
7 also failed to set forth the correct wages earned by the employees. Further, from time to time,
8 DEFENDANT included Vacation hours into the computation of total hours worked for purposes
9 of Cal. Lab. Code § 226(a)(2), notwithstanding the fact that Vacation hours are not considered
10 hours worked. DEFENDANT's inclusion of Vacation hours into the total hours worked in
11 itemized wage statements issued to PLAINTIFF and other CALIFORNIA LABOR SUB-
12 CLASS Members violates Cal. Lab. Code § 226(a)(2). Aside from the violations listed above in
13 this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
14 lists all the requirements under California Labor Code 226 *et seq.*

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

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1 payment for purposes of the requirement to provide payment within 72 hours of the
2 notice of quitting.

3 101. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
4 SUB-CLASS Members' employment contract.

5 102. Cal. Lab. Code § 203 provides:

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

11 103. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
12 CLASS Members terminated and DEFENDANT has not tendered payment of wages to these
13 employees who were underpaid for minimum wage and/or overtime wage, and/or missed meal
14 and rest breaks, as required by law.

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

21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

23 **(Cal. Lab. Code §§ 2802)**

24 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
25 **Defendants)**

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

106. 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.

107. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT'S benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones and personal expenses for gas all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones and personal expenses for gas for work-related business. DEFENDANT'S uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones and personal expenses for gas for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT are estopped by DEFENDANT'S conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

15 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
17 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
18 action pursuant to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for minimum wages, overtime compensation, unreimbursed expenses,
21 and separately owed rest periods, due to PLAINTIFF and the other members of
22 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
23 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 24 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
25 the applicable IWC Wage Order;
- 26 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
27 which a violation occurs and one hundred dollars (\$100) per each member of the
28 CALIFORNIA LABOR SUB-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 LABOR SUB-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 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: March 25, 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: March 25, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

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 40 Caroline Morrison, Esq.
 514 Via De La Valle, Ste 207
 Solana Beach, CA 92075



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