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Attorneys for Plaintiff SARAH BACA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

SARAH BACA, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

v.

PRIMESOURCE BUILDING PRODUCTS,
INC., a Delaware corporation; NATIONWIDE
TCC ACQUISITION LLC, a Delaware limited
liability company; NWI ENTERPRISES, INC.,
a Delaware corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No: 22CV1054

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

FILED

AUG 23 2022

EL DORADO CO. SUPERIOR COURT
BY **W. Warden**
(DEPUTY CLERK)

**FILE BY
FAX**

1 REST PERIODS IN VIOLATION OF CAL.
2 LAB. CODE §§ 226.7 & 512 AND THE
3 APPLICABLE IWC WAGE ORDER;
4 6) FAILURE TO PROVIDE ACCURATE
5 ITEMIZED STATEMENTS IN
6 VIOLATION OF CAL. LAB. CODE § 226;
7 7) FAILURE TO PROVIDE WAGES WHEN
8 DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT LABOR
CODE SECTIONS 2698 ET SEQ.

DEMAND FOR A JURY TRIAL

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

THE PARTIES

13 1. Defendant PRIMESOURCE BUILDING PRODUCTS, INC. (“Defendant
14 Primesource”) is a Delaware corporation that at all relevant times mentioned herein conducted
15 and continues to conduct substantial and regular business throughout California.

16 2. Defendant NATIONWIDE TCC ACQUISITION LLC (“Defendant Nationwide”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and
17 continues to conduct substantial and regular business throughout California.

19 3. Defendant NWI ENTERPRISES, INC. (“Defendant NWI”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct
20 substantial and regular business throughout California.

22 4. Defendant Primesource, Defendant Nationwide, and Defendant NWI were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the
23 company PLAINTIFF performed work for respectively and are therefore jointly responsible as
24 employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

25 5. DEFENDANTS design, manufacture, and install cable railing in California,
26 including in Placer County where PLAINTIFF worked.

27 6. The true names and capacities, whether individual, corporate, subsidiary,
28 partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are

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

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

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

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

28 10. PLAINTIFF was employed by DEFENDANT in California from August of 2020
to June of 2022 and at all times was classified by DEFENDANT as a non-exempt employee, paid

1 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
2 minimum and overtime wages due for all time worked.

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

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

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

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

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1 **A. Meal Period Violations**

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

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

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

3 **B. Rest Period Violations**

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

18 **C. Wage Statement Violations**

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

27 22. From time to time during the CLASS PERIOD, when PLAINTIFF and other
28 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed

1 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
2 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
3 wage statements which failed to show, among other things, the total hours worked and all
4 applicable hourly rates in effect during the pay period and the corresponding amount of time
5 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
6 periods.

7 23. In addition, DEFENDANT, from time to time, failed to provide PLAINTIFF and
8 the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code §
9 226.

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

14 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

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

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

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

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

27 29. DEFENDANT was able to track the amount of time PLAINTIFF and the other
28 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to

1 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
2 wages earned and owed for all the work they performed.

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

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

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

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

17 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
18 **Sick Pay**

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

1 35. State law provides that employees must be paid overtime at one-and-one-half times
2 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS members were
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

5 36. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
6 Members’ compensation was DEFENDANT’s non-discretionary incentive program that paid
7 PLAINTIFF and other CLASS Members incentive wages based on their performance for
8 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
9 basis with bonus compensation when the employees met the various performance goals set by
10 DEFENDANTS.

11 37. However, from time-to-time, when calculating the regular rate of pay, in those pay
12 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
13 time, paid meal and rest period premium payments, and/or sick pay, and earned this non-
14 discretionary bonus or incentive, DEFENDANTS failed to accurately include the non-
15 discretionary bonus compensation and/or incentive and/or shift differential paid as part of the
16 employees’ “regular rate of pay” and/or calculated all hours worked rather than just all non-
17 overtime hours worked. Management and supervisors described the incentive/bonus program to
18 potential and new employees as part of the compensation package. As a matter of law, the
19 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
20 must be included in the “regular rate of pay.” The failure to do so has resulting in a systematic
21 underpayment of overtime and double time compensation, meal and rest period premiums, and
22 redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS Members by
23 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
24 for non-employees shall be calculated in the same manner as the regular rate of pay for the
25 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
26 actually works overtime in that workweek. DEFENDANT’s conduct, as articulated herein, by
27 failing to include the incentive compensation as part of the “regular rate of pay” for purposes of
28

1 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
2 recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

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

14 **F. Violations for Untimely Payment of Wages**

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

20 **G. Unlawful Rounding Violations**

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

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

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

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

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1 **H. CLASS ACTION ALLEGATIONS**

2 43. PLAINTIFF brings the First through Seventh Causes of Action as a class action
3 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
4 previously were employed by Defendant Primesource and/or Defendant Nationwide and/or
5 Defendant NWI in California and classified as non-exempt employees (“CALIFORNIA CLASS”)
6 during the period beginning four years prior to the filing of the Complaint and ending on a date
7 determined by the Court (“CLASS PERIOD”).

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

14 45. The members of the class are so numerous that joinder of all class members is
15 impractical.

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

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

- c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANT issued legally compliant wage statements;
- g. Whether DEFENDANT committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- h. Whether DEFENDANT committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- i. Whether DEFENDANT committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

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

50. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

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

1 52. There is a strong community of interest among PLAINTIFF and the members of
2 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
3 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
4 sustained.

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

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

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

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

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

10 58. 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
15 may be enjoined in any court of competent jurisdiction. The court may make such
16 orders or judgments, including the appointment of a receiver, as may be necessary
17 to prevent the use or employment by any person of any practice which constitutes
18 unfair competition, as defined in this chapter, or as may be necessary to restore to
19 any person in interest any money or property, real or personal, which may have
20 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
21 17203).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

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

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

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

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

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

4 111. From time to time during the CLASS PERIOD, when PLAINTIFF and other
5 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
6 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
7 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
8 wage statements which failed to show, among other things, the total hours worked and all
9 applicable hourly rates in effect during the pay period and the corresponding amount of time
10 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
11 periods. In addition, DEFENDANT, from time to time, failed to provide PLAINTIFF and the
12 CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.
13 DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing
14 injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These
15 damages include, but are not limited to, costs expended calculating the correct wages for all
16 missed meal and rest breaks and the amount of employment taxes which were not properly paid
17 to state and federal tax authorities. These damages are difficult to estimate. Therefore,
18 PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated
19 damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and
20 one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab.
21 Code § 226, in an amount according to proof at the time of trial (but in no event more than four
22 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA
23 CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

5 112. 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.

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

9 As used in this article:

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

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

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

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

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

30 117. Cal. Lab. Code § 203 provides:

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

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

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

10 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

25 122. PLAINTIFF brings this Representative Action on behalf of the State of California
26 with respect to herself and all other current and former employees employed by DEFENDANT
27 during the time period of June 17, 2021, until the present (the AGGRIEVED EMPLOYEES”).
28

1 123. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
2 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the
3 meaning of Labor Code Section 2699(c).

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

7 125. PLAINTIFF complied with the procedures for bringing suit specified in Labor
8 Code Section 2699.3. By certified letter, return receipt requested, dated June 17, 2022,
9 PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”)
10 and to DEENDANT of the specific provisions of the Labor Code alleged to have been violated,
11 including the facts and theories to support the alleged violations.

12 126. As of the date of this complaint, more than sixty-five (65) days after serving the
13 LWDA with notice of DEFENDANT’S violations, the LWDA has not provided any notice by
14 certified mail of its intent to investigate the DEFENDANT’S alleged violations as mandated by
15 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
16 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

17 127. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
18 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of
19 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
20 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802 and
21 2804 in the following amounts:

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

27 b. For violations of Labor Code Section 226(a), a civil penalty
28 in the amount of two hundred fifty dollars (\$250) for each

1 AGGRIEVED EMPLOYEE for any initial violation and one
2 thousand dollars for each subsequent violation [penalty per Labor
3 Code Section 226.3];

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

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

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

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

22 g. For violations of Labor Code Sections 1194, 1194.2, 1197,
23 1198 and 1199, a civil penalty in the amount of one hundred dollars
24 (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial
25 violation and two hundred dollars fifty (\$250) per AGGRIEVED
26 EMPLOYEE per pay period for each subsequent violation [penalty
27 per Labor Code Section].
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128. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

1 2. On behalf of the CALIFORNIA CLASS:

- 2 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
3 of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal.
4 Code of Civ. Proc. § 382;
- 5 b. Compensatory damages, according to proof at trial, including compensatory
6 damages for overtime compensation and separately owed rest periods, due to
7 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
8 applicable CLASS PERIOD plus interest thereon at the statutory rate;
- 9 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
10 the applicable IWC Wage Order;
- 11 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
12 which a violation occurs and one hundred dollars (\$100) per each member of the
13 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
14 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
15 violation of Cal. Lab. Code § 226
- 16 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
17 penalty from the due date thereof at the same rate until paid or until an action
18 therefore is commenced, in accordance with Cal. Lab. Code § 203.

19 3. On behalf of the State of California and with respect to all AGGRIEVED
20 EMPLOYEES:

- 21 a. Recovery of civil penalties as prescribe by the Labor Code Private Attorneys
22 General Act of 2004.
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1 4. On all claims:

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

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

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

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6 DATED: August 22, 2022

ZAKAY LAW GROUP, APLC

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8 By: 
9 Shani O. Zakay
10 Attorney for PLAINTIFF
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DEMAND FOR A JURY TRIAL

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

DATED: August 22, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF