

FIRST AMENDED SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

JAYLEX LLC dba EZ CARELINK, a California limited liability company, previously named as fictitious DOE I; RES-CARE, INC., a Kentucky corporation; (Additional Parties Attachment form is attached)

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

CHARLETTE PERE, an individual, on behalf of herself, and on behalf of all persons similarly situated,

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

JUN 16 2023

BY Sylvia Guajardo
SYLVIA GUAJARDO, DEPUTY

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 Bernardino Superior Court - San Bernardino Justice Center
247 West 3rd Street
San Bernardino, CA 92415

CASE NUMBER:
(Número del Caso):

CIVSB2227164

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

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

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203

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

DATE:

(Fecha)

JUN 16 2023

Clerk, by
(Secretario)

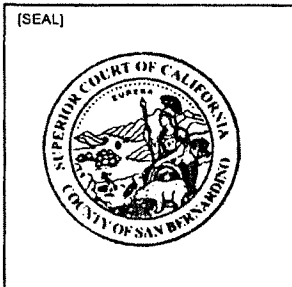
Sylvia Guajardo

Deputy
(Adjunto)

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

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

(SEAL)



NOTICE TO THE PERSON SERVED: You are served

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

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

SHORT TITLE: Pere v. Jaylex LLC dba EZ Carelink, et al.	CASE NUMBER: CIVSB2227164
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INSTRUCTIONS FOR USE

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

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

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

ROCKCREEK, INC., a California corporation; ALTERNATIVE CHOICES, INC., a California corporation; RSCR INLAND, INC., a California corporation and DOES 2 through 30, Inclusive;

CASE ATTACHMENT COVER PAGE		(ENDORSED) ELECTRONICALLY FILED BY SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino on Jun 13, 2023 <i>CLERK OF THE SUPERIOR COURT</i> <i>Deputy Clerk: Rina L. Phillips</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, CA 92415 BRANCH NAME: San Bernardino Justice Center WEBSITE: http://www.sb-court.org		
ATTACHMENT NAME: Declaration: FIRST AMENDED CLASS ACTION COMPLAINT		
CASE NAME: CHARLETTE PERE vs. EZ CARELINK CORP., et al.		CASE NUMBER: CIVSB2227164
Please log on to www.TurboCourt.com regularly for updates		

Please staple this to your original attachment

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for Plaintiff CHARLETTE PERE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

CHARLETTE PERE, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

JAYLEX LLC dba EZ CARELINK, a
California limited liability company,
previously named as fictitious DOE 1; RES-
CARE, INC., a Kentucky corporation;
ROCKCREEK, INC., a California
corporation; ALTERNATIVE CHOICES,
INC., a California corporation; RSCR
INLAND, INC., a California corporation and
DOES 2 through 30, Inclusive;

Defendants.

Case No. CIVSB2227164

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

8. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ

DEMAND FOR JURY TRIAL

Plaintiff CHARLETTE PERE ("PLAINTIFF"), an individual, on behalf of herself and all other similarly situated current and former independent contractors alleges on information and belief, except her own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFF is an individual who works as a nurse assistant in California for defendants JAYLEX LLC dba EZ CARELINK ("Defendant JAYLEX"), a California limited liability company, previously named as fictitious DOE 1, RES-CARE, INC. ("Defendant Res-Care"), a Kentucky corporation; ROCKCREEK, INC. ("Defendant Rockcreek"), a California corporation; ALTERNATIVE CHOICES, INC. ("Defendant Alternative Choices"), a California corporation; and RSCR INLAND, INC. ("Defendant RSCR Inland"), a California corporation (hereinafter, collectively referred to as "DEFENDANTS" and/or "DEFENDANT"). PLAINTIFF alleges that DEFENDANTS have violated and continue to violate the California Labor Code protections applicable to California employees because DEFENDANTS have misclassified its California employees as independent contractors. In order to provide services to their patients, DEFENDANTS hire California workers to aid DEFENDANTS in providing services in the usual course of DEFENDANT's healthcare services to their clients. DEFENDANTS controlled and directed the work performed by PLAINTIFF and the other similarly situated misclassified California workers by, among other things, scheduling hours of work, providing job site information, and issuing written policies and procedures for the performance of work and conduct in the workplace. PLAINTIFF and the other similarly situated misclassified California workers are not and were not engaged in a customarily independently established trade, occupation or business as the same nature of the work performed. The costs, as proscribed by law, of the personnel hired to work for DEFENDANTS, includes not only the pay of these employees but the cost of the employer's share of tax payments to the federal and state governments for income taxes, social security taxes, Medicare insurance, unemployment insurance and payments for workers' compensation insurance. To avoid the payment of these legally proscribed expenses to the fullest

1 extent possible, DEFENDANTS devised a scheme to place the responsibility for the payment of these
2 costs and expenses of DEFENDANTS on the shoulders of PLAINTIFF and other similarly situated
3 California employees. As employer, DEFENDANTS are legally responsible for the payment of all
4 these expenses. This lawsuit is brought in order to collect the wages due to PLAINTIFF and all those
5 similarly situated misclassified independent contractors as DEFENDANTS' employees, the cost of
6 the employer's share of payments to the federal and state governments for income taxes, social
7 security taxes, Medicare insurance, unemployment insurance and payments for workers'
8 compensation insurance, plus penalties and interest.

9 **THE PARTIES**

10 2. Defendant JAYLEX is a California limited liability company, previously named as
11 fictitious DOE 1, that at all relevant times mentioned herein conducted and continues to conduct
12 substantial business in the State of California, County of San Bernardino.

13 3. Defendant Res-Care is a Kentucky corporation, that at all relevant times mentioned
14 herein conducted and continues to conduct substantial business in the State of California, County of
15 San Bernardino.

16 4. Defendant Rockcreek is a California corporation, that at all relevant times mentioned
17 herein conducted and continues to conduct substantial business in the State of California, County of
18 San Bernardino.

19 5. Defendant Alternative Choices is a California corporation, that at all relevant times
20 mentioned herein conducted and continues to conduct substantial business in the State of California,
21 County of San Bernardino.

22 6. Defendant RSCR Inland is a California corporation, that at all relevant times
23 mentioned herein conducted and continues to conduct substantial business in the State of California,
24 County of San Bernardino.

25 7. Defendants were the joint employers of PLAINTIFF as evidenced by the contracts
26 signed and by the company PLAINTIFF performed work for respectively and are therefore jointly
27 responsible for employers for the conduct alleged herein as "DEFENDANTS" and/or
28 "DEFENDANT."

1 8. Defendant Res-Care, Defendant Rockcreek, Defendant Alternative Choices and
2 Defendant RSCR Inland utilize independent contractors to provide its clients with a variety of
3 healthcare services.

4 9. Defendant JALYEX owns and operates a staffing agency and staffs many companies
5 in California, including at Defendant Res-Care, Defendant Rockcreek, Defendant Alternative Choices
6 and Defendant RSCR Inland.

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

16 11. The agents, servants and/or employees of the DEFENDANTS and each of them acting
17 on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the
18 agent, servant and/or employee of the DEFENDANTS, and personally participated in the conduct
19 alleged herein on behalf of the DEFENDANTS with respect to the conduct alleged herein.
20 Consequently, the acts of DEFENDANTS are legally attributable to the other and all DEFENDANTS
21 are jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
22 proximate result of the conduct of the DEFENDANTS’ agents, servants and/or employees.

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

28 13. DEFENDANTS were PLAINTIFF’s employer or persons acting on behalf of

1 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
2 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
3 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
4 for each underpaid employee.

5 14. PLAINTIFF worked as a nurse assistant for DEFENDANTS from March 2019 to July
6 of 2022 and was at all times during her employment classified by DEFENDANTS as an independent
7 contractor.

8 15. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined
9 as all persons who are or previously were employed by Defendant JAYLEX and/or Defendant Res-
10 Care and/or Defendant Rockcreek and/or Defendant Alternative Choices and/or Defendant RSCR
11 Inland who performed work for Defendant Res-Care and/or Defendant Rockcreek and/or Defendant
12 Alternative Choices and/or Defendant RSCR Inland in California as independent contractors
13 ("CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of
14 the original Complaint and ending on the date as determined by the Court (the "CLASS PERIOD").
15 The amount in controversy for the aggregate claim of CALIFORNIA CLASS members is under five
16 million dollars (\$5,000,000.00).

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

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

24 **THE CONDUCT**

25 **A. Misclassification**

26 18. DEFENDANTS engaged in a pattern and practice of misclassifying California workers
27 as independent contractors, hired to perform work and services core to DEFENDANTS' businesses, in
28 violation of California Labor Code Section 226.8. California Labor Code Section 226.8 provides that

1 “[i]t is unlawful for any person or employer to engage in ...[w]illful misclassification of an individual
2 as an independent contractor.” The penalty for willful misclassification of employees is a “civil penalty
3 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
4 each violation, in addition to any other penalties or fines permitted by law.” It is further provided that,
5 in the event that an employer is found to have engaged in “a pattern or practice of these violations,” the
6 penalties increase to “not less than ten thousand dollars (\$10,000) and not more than twenty-five
7 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by
8 law.” Cal. Labor Code § 226.8.

9 19. Similarly, PLAINTIFF and other members of the CALIFORNIA CLASS were not
10 compensated overtime wages for any of their time spent working in excess of eight (8) hours in a
11 workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF and
12 other members of the CALIFORNIA CLASS were paid the hourly rate to perform labor services on
13 DEFENDANT’S behalf. PLAINTIFF and other workers were not compensated any other wages
14 besides the non-negotiable hourly rate. Specifically, DEFENDANTS would schedule PLAINTIFF’s
15 hours, which resulted, from time to time, in PLAINTIFF working throughout her shift without the
16 legally-required meal and rest periods. DEFENDANTS failed to pay PLAINTIFF any compensation
17 for overtime wages at the overtime rate of one-and-a-half times the regular rate of pay for any time
18 spent working in excess of eight (8) hours in a workday, twelve (12) hours in a workday, and/or forty
19 (40) hours in a workweek. The finite set of tasks required to be performed by the workers includes,
20 but is not limited to, ensuring the safety of the patients and facilitating various activities for the patients,
21 all in accordance with DEFENDANT’S business practices and policies.

22 20. As a result, stripped of all the legal fictions and artificial barriers to an honest
23 classification of the relationship between PLAINTIFF and all the other members of the CALIFORNIA
24 CLASS on the one hand, and DEFENDANTS on the other hand, PLAINTIFF and all the other members
25 of the CALIFORNIA CLASS are and were employees of DEFENDANTS and not independent
26 contractors of DEFENDANTS and should therefore be properly classified as non-exempt, hourly
27 employees.

28 21. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA CLASS

1 members as defined by DEFENDANTS was executed by them through the performance of non-exempt
2 labor. Specifically, PLAINTIFF and other CALIFORNIA CLASS members performed non-exempt
3 tasks, including but not limited to, caring for patients by ensuring their safety and facilitating various
4 activities for the patients.

5 22. Although PLAINTIFF and the other CALIFORNIA CLASS members performed non-
6 exempt labor subject to DEFENDANT'S complete control over the manner and means of performance,
7 DEFENDANTS instituted a blanket classification policy, practice and procedure by which all of these
8 CALIFORNIA CLASS Members were classified as "independent contractors" exempt from
9 compensation for overtime worked, meal breaks and rest breaks, and reimbursement for business
10 related expenses. By reason of this uniform misclassification, the CALIFORNIA CLASS Members
11 were also required to pay DEFENDANT's share of payroll taxes and mandatory insurance premiums.
12 As a result of this uniform misclassification practice, policy and procedure applicable to PLAINTIFF
13 and the other CALIFORNIA CLASS Members who performed this work for DEFENDANT,
14 DEFENDANTS committed acts of unfair competition in violation of the California Unfair Competition
15 law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy,
16 practice and procedure which failed to properly classify PLAINTIFF and the other CALIFORNIA
17 CLASS members as employees and thereby failed to pay them wages for all time worked,
18 reimbursement of business related expenses, failed to provide them with meal and rest breaks, and
19 failed to reimburse these employees for the employer's share of payroll taxes and mandatory insurance.

20 23. DEFENDANTS, as a matter of law, has the burden of proving that employees are
21 properly classified and that DEFENDANTS otherwise comply with applicable laws. DEFENDANTS,
22 as a matter of corporate policy, erroneously and unilaterally classified all the CALIFORNIA CLASS
23 Members as independent contractors in violation of the California Labor Code and regulations
24 promulgated thereunder.

25 i. **Plaintiff and Other Members of the California Class Were Not Free from**
26 **the Control and Direction of Defendants**

27 24. DEFENDANTS controlled and directed the work performed by PLAINTIFF and the
28 other similarly situated misclassified California workers by, among other things, scheduling hours of

1 work, providing job site facility, enforcing a dress code and issuing written policies and procedures for
2 the performance of work and conduct in the workplace. Upon hire, the position was represented by
3 DEFENDANTS to PLAINTIFF and the other workers as an independent contractor position in
4 exchange for an hourly rate and/or flat rate of pay for the time they spend providing labor and services
5 to DEFENDANT's third-party clients and patients.

6 25. To perform their job duties, PLAINTIFF and the other members of the CALIFORNIA
7 CLASS perform work subject to the control of DEFENDANTS in that DEFENDANTS had the
8 authority to exercise complete control over the work performed and the manner and means in which
9 the work was performed. DEFENDANT provided the patients and DEFENDANT provided the
10 instructions as to how to perform their work. Specifically, DEFENDANT issues policies and
11 procedures regarding every work-related task performed by PLAINTIFF and other CALIFORNIA
12 CLASS members, including control and direction regarding, caring for patients by ensuring their safety
13 and facilitating various activities for the patients, all in accordance with DEFENDANT's business
14 practices and policies.

15 26. California Labor Code § 3357 defines "employee" as "every person in the service of an
16 employer under any appointment or contract of hire or apprenticeship, express or implied, oral or
17 written, whether lawfully or unlawfully employed." Additionally, to the California Labor Code's
18 presumption that workers are employees, the California Supreme Court has determined the most
19 significant factor to be considered in distinguishing an independent contractor from an employee is
20 whether the *employer or principal has control or the right to control the work both as to the work*
21 *performed and the manner and means in which the work is performed*. DEFENDANT heavily
22 controlled both the work performed and the manner and means in which the PLAINTIFF and other
23 workers performed their work in that:

24 (a) PLAINTIFF and other members of the CALIFORNIA CLASS were not
25 involved in a distinct business, but instead were provided with instructions as to how to
26 perform their work and the manner and means in which the work was to be performed
27 by means of DEFENDANT and DEFENDANT's manuals and written instructions;

28 (b) PLAINTIFF and other members of the CALIFORNIA CLASS were

continuously provided with training and supervision, including following DEFENDANT's company documents, and received training from DEFENDANT as to how and in what way to perform the services;

(c) DEFENDANT set the requirements as to what policies and procedures all of the workers were to follow, including but not limited to, flat rates and/or hourly rates and location of assignment;

(d) PLAINTIFF and other members of the CALIFORNIA CLASS had no opportunity for profit or loss because DEFENDANT only paid these workers a flat rate and/or an hourly rate. DEFENDANT controlled and assigned the workers which tasks were to be performed;

(e) PLAINTIFF and other members of the CALIFORNIA CLASS performed services and labor which are part of the core of DEFENDANT's principal business and is closely integrated with and essential to the employer's business of services and labor to their patients;

(f) PLAINTIFF and other members of the CALIFORNIA CLASS performed the work themselves and did not hire others to perform their work for them;

(g) PLAINTIFF and other members of the CALIFORNIA CLASS did not have the authority to make employment-related personnel decisions;

(h) PLAINTIFF and other members of the CALIFORNIA CLASS were provided with schedules to follow and patients to treat in accordance with DEFENDANT'S instructions;

(i) PLAINTIFF and other members of the CALIFORNIA CLASS performed their work in a particular order and sequence in accordance with DEFENDANTS' company policies; and,

(j) DEFENDANT had the "right" to control every critical aspect of DEFENDANT labor operation in that DEFENDANT provided the client or patient, assigned where PLAINTIFF and other members of the CALIFORNIA CLASS were to go, assigned the hourly rate or flat rate, enforced a dress code, and step by step instructions to

1 PLAINTIFF and other members of the CALIFORNIA CLASS as to the entire process
2 of working at DEFENDANTS' facility. PLAINTIFF and other workers provided
3 services and labor for DEFENDANTS' patients and were not actually in business for
4 themselves.

5 ii. **Plaintiff and Other Members of the California Class Did Not Perform Work**
6 **Outside the Usual Course of Defendant's Business**

7 27. DEFENDANT willfully misclassified PLAINTIFF and other members of the
8 CALIFORNIA CLASS who provided DEFENDANT with healthcare services for DEFENDANT's
9 clients. In other words, PLAINTIFF and other similarly situated California workers provided
10 DEFENDANT with work and services within the usual course of DEFENDANT's business.

11 28. Defendant JAYLEX markets itself to the public, PLAINTIFF, and other members of the
12 CALIFORNIA CLASS as a staffing agency for various professions, including nursing and caregiving.
13 Defendant Res-Care, Defendant Rockcreek, Defendant Alternative Choices and Defendant RSCR
14 Inland market themselves to the public, PLAINTIFF and other members of the CALIFORNIA CLASS
15 as a provider of specialized healthcare services. As a result, DEFENDANT unquestionably holds itself
16 out to the public, PLAINTIFF and other members of the CALIFORNIA CLASS as a provider of
17 specialized healthcare services. Therefore, the performance of caring for patients by ensuring the safety
18 of the patients, ensuring that the patients are eating, and facilitating various activities for the patients
19 by PLAINTIFF and other members of the CALIFORNIA CLASS is not outside DEFENDANT'S usual
20 course of business.

21 iii. **Plaintiff and Other Members of the California Class Were Not Engaged in**
22 **an Independently Established Trade, Occupation, or Business of the Same**
23 **Nature as the Work Performed for Defendant**

24 29. PLAINTIFF and the other members of the CALIFORNIA CLASS are not and were not
25 engaged in a customarily independently established trade, occupation or business as the same nature of
26 the work performed.

27 **B. Meal Period Violations**

28 30. In California, an employer may not employ an employee for a work period of more than

1 five hours per day without providing the employee with a duty-free meal period of not less than thirty
2 minutes, except that if the total work period per day of the employee is no more than six hours, the
3 meal period may be waived by mutual consent of both the employer and employee. A second duty-free
4 meal period of not less than thirty minutes is required if an employee works more than ten hours per
5 day, except that if the total hours worked is no more than 12 hours, the second duty-free meal period
6 may be waived by mutual consent of the employer and employee only if the first meal period was not
7 waived. Labor Code Section 512.

8 31. If an employer fails to provide an employee a duty-free meal period in accordance with
9 an applicable IWC Order, the employer must pay one additional hour of pay at the employee's regular
10 rate of pay for each workday that the meal period is not provided. IWC Orders and Labor Code Section
11 226.7. This additional hour is not counted as hours worked for purposes of overtime calculations.

12 32. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
13 independent contractors and their rigorous work schedules, PLAINTIFF and other CALIFORNIA
14 CLASS members were not provided with a thirty (30) minute duty-free meal period and were not fully
15 relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS members were
16 required from time-to-time to perform work as ordered by DEFENDANT for more than five (5) hours
17 during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to
18 provide PLAINTIFF and CALIFORNIA CLASS members with a second duty-free meal period for
19 some workdays in which these employees were required by DEFENDANT to work ten (10) hours of
20 work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
21 without additional compensation and in accordance with DEFENDANT's strict corporate policy and
22 practice. Moreover, PLAINTIFF and other members of the CALIFORNIA CLASS were not provided
23 with one-hour wages in lieu of their legally mandated duty-free meal and rest periods.

24 **C. Rest Period Violations**

25 33. The applicable IWC Wage Order requires that employers must authorize and permit
26 nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of
27 each work period. The rest period is based on the total hours worked daily and must be at the minimum
28 rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. The

1 Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a
2 “major fraction” of four. A rest period is not required for employees whose total daily work time is less
3 than three and one-half hours. The rest period is counted as time worked and therefore, the employer
4 must pay for such periods.

5 34. If an employer fails to provide an employee a rest period in accordance with an applicable
6 IWC Order, the employer shall pay the employee one additional hour of pay at the employee’s regular
7 rate of pay for each workday that the rest period is not provided. Labor Code Section 226.7. Thus, if
8 an employer does not provide all of the rest periods required in a workday, the employee is entitled to
9 one additional hour of pay for that workday, not one additional hour of pay for each rest period that
10 was not provided during that workday.

11 35. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
12 independent contractors and their rigorous work schedules PLAINTIFF and other CALIFORNIA
13 CLASS members were also required to work in excess of four (4) hours without being provided ten
14 (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
15 (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and
16 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
17 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
18 (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS members were also not provided
19 with one-hour wages in lieu thereof. As a result of their misclassification and rigorous work schedules,
20 PLAINTIFF and other CALIFORNIA CLASS members were from time-to-time denied their proper
21 rest periods by DEFENDANT and DEFENDANT’S managers.

22 **D. Failure to Pay Minimum, Regular and Overtime Wages**

23 36. From time-to-time during the CLASS PERIOD, DEFENDANT failed to accurately
24 record and pay PLAINTIFF and other CALIFORNIA CLASS members for the actual amount of time
25 these employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
26 is required to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked, meaning
27 the time during which an employee was subject to the control of an employer, including all the time
28 the employee was permitted or suffered to permit this work. DEFENDANT required PLAINTIFF and

CALIFORNIA CLASS members to work off the clock without paying them for all the time they were under DEFENDANT's control. PLAINTIFF and other CALIFORNIA CLASS Members also worked more than eight hours in a workday and/or forty hours in a workweek, but DEFENDANT failed to pay these employees overtime pay as DEFENDANT only paid a flat rate or an hourly rate for all time worked. Consequently, PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum wages and overtime wage compensation by working without their time being correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's business records. As a result, DEFENDANT failed to compensate PLAINTIFF and the members of the CALIFORNIA CLASS all minimum, regular and overtime wages for all hours worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and 510.

E. Wage Statement Violations

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

38. From time-to-time during the CLASS PERIOD, as a result of, *inter alia*, of DEFENDANT's intentional and willful misclassification of PLAINTIFF and the members of the CALIFORNIA CLASS as independent contractors rather than employees, DEFENDANT failed to issue wage statements and/or issued inaccurate itemized wages statements to PLAINTIFF and the members of the CALIFORNIA CLASS that failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or

1 an employee identification number other than a social security number, (8) the name and address of the
2 legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and
3 the corresponding number of hours worked at each hourly rate by the employee.

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

8 **F. Unfair Competition**

9 40. By reason of this conduct applicable to PLAINTIFF and all the CALIFORNIA CLASS
10 members, DEFENDANT committed acts of unfair competition in violation of the California Unfair
11 Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-
12 wide policy, practice and procedure which failed to correctly classify PLAINTIFF and the
13 CALIFORNIA CLASS members as employees. The proper classification of these employees is
14 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet
15 this burden, DEFENDANT failed to pay all required wages for work performed by PLAINTIFF and
16 other CALIFORNIA CLASS Members and violated the California Labor Code and regulations
17 promulgated thereunder as herein alleged.

18 41. PLAINTIFF as a worker for DEFENDANT, was classified by DEFENDANT as an
19 independent contractor and thus did not receive pay for all time worked, including minimum and
20 overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also required to
21 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving
22 a meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF therefore forfeited
23 meal and rest breaks without additional compensation and in accordance with DEFENDANT's strict
24 corporate policy and practice which did not provide for mandatory meal and rest breaks. To date,
25 DEFENDANT has not fully paid PLAINTIFF all wages still owed to her or any penalty wages owed
26 to her under California Labor Code § 203. The amount in controversy for PLAINTIFF individually
27 does not exceed the sum or value of \$75,000.

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1 **THE CALIFORNIA CLASS**

2 42. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
3 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
4 pursuant to Cal. Code of Civ. Proc. § 382, for violations during the CLASS PERIOD on behalf of the
5 CALIFORNIA CLASS. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
6 Members is under five million dollars (\$5,000,000.00).

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

9 44. All CALIFORNIA CLASS members who performed and continue to perform this work
10 for DEFENDANT during the CLASS PERIOD are similarly situated in that they are subject to
11 DEFENDANT's policy and practice that required them to perform work without compensation as
12 required by law.

13 45. During the CLASS PERIOD, DEFENDANT violated the rights of the PLAINTIFF and
14 the CALIFORNIA CLASS members under California law, without limitation, in the following
15 manners:

16 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
17 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as employer, devised and implemented
18 a scheme whereby PLAINTIFF and the CALIFORNIA CLASS members are forced to unlawfully,
19 unfairly and deceptively shoulder the cost of DEFENDANT'S wages for all unpaid wages, business
20 related expenses, and DEFENDANT's share of employment taxes, social security taxes, unemployment
21 insurance and workers' compensation insurance;

22 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
23 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively having in place company policies,
24 practices and procedures that uniformly misclassified PLAINTIFF and the CALIFORNIA CLASS
25 members as independent contractors;

26 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
27 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively failing to have in place a company
28 policy, practice and procedure that accurately determined the amount of working time spent by

1 PLAINTIFF and the CALIFORNIA CLASS members performing non-exempt employee labor;

2 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
3 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the other members of the
4 CALIFORNIA CLASS with all legally required meal and rest breaks; and,

5 (f) Committing an act of unfair competition in violation of the UCL, by violating
6 Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFF and the
7 members of the CALIFORNIA CLASS who were improperly classified as exempt, and retaining the
8 unpaid overtime to the benefit of DEFENDANT.

9 46. As a result of DEFENDANT's policies, practices and procedures, there are numerous
10 questions of law and fact common to all CALIFORNIA CLASS members who worked for during the
11 CLASS PERIOD. These questions include, but are not limited, to the following:

12 (a) Whether PLAINTIFF and other CALIFORNIA CLASS members were
13 misclassified as independent contractors by DEFENDANT;

14 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS members all afforded
15 all the protections of the California Labor Code that apply when properly classified as non-exempt
16 employees;

17 (c) Whether DEFENDANT's policies, practices and pattern of conduct described in
18 this Complaint was and is unlawful;

19 (d) Whether DEFENDANT unlawfully failed to pay their share of state and federal
20 employment taxes as required by state and federal tax laws;

21 (e) Whether DEFENDANT's policy, practice and procedure of classifying the
22 CALIFORNIA CLASS members as independent contractors exempt from hourly wages laws for all
23 time worked and failing to pay the CALIFORNIA CLASS members all amounts due violates applicable
24 provisions of California State law;

25 (f) Whether DEFENDANT unlawfully failed to keep and furnish the CALIFORNIA
26 CLASS members with accurate records of all time worked;

27 (g) Whether DEFENDANT has engaged in unfair competition by the above-listed
28 conduct; and,

1 (h) Whether DEFENDANT's conduct was willful.

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

4 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the
5 joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the
6 parties and the Court;

7 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
8 raised in this Complaint are common to the CALIFORNIA CLASS and will apply to every
9 CALIFORNIA CLASS member;

10 (c) The claims of the representative PLAINTIFF are typical of the claims of each
11 member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS members, was
12 classified as an independent contractor upon hiring based on the defined corporate policies and practices
13 and labors under DEFENDANT'S procedure that failed to properly classify the PLAINTIFF and the
14 CALIFORNIA CLASS members. PLAINTIFF sustained economic injury as a result of DEFENDANT's
15 employment practices. PLAINTIFF and the CALIFORNIA CLASS members were and are similarly or
16 identically harmed by the same unlawful, unfair, deceptive and persuasive pattern of misconduct
17 engaged in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS members that they
18 were not entitled to minimum wages, the employer's share of payment of payroll taxes and mandatory
19 insurance, and reimbursement for business expenses based on the defined corporate policies and
20 practices, and unfairly failed to pay these employees who were improperly classified as independent
21 contractors; and,

22 (d) The representative PLAINTIFF will fairly and adequately represent and protect
23 the interest of the CALIFORNIA CLASS, and has retained counsel who is competent and experienced
24 in Class Action litigation. There are no material conflicts between the claims of the representative
25 PLAINTIFF and the CALIFORNIA CLASS members that would make class certification inappropriate.
26 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all employees in the
27 CALIFORNIA CLASS.

28 48. In addition to meeting the statutory prerequisites to a Class Action, this Action is properly

1 maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

2 (a) Without class certification and determination of declaratory, injunctive, statutory
3 and other legal questions within the class format, prosecution of separate actions by individual members
4 of the CALIFORNIA CLASS will create the risk of:

5 (i) Inconsistent or varying adjudications with respect to individual members
6 of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties
7 opposing the CALIFORNIA CLASS; and/or,

8 (ii) Adjudication with respect to individual members of the CALIFORNIA
9 CLASS which would as a practical matter be dispositive of the interests of the other members not party
10 to the adjudication or substantially impair or impeded their ability to protect their interests.

11 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds generally
12 applicable to the CALIFORNIA CLASS making appropriate class-wide relief with respect to the
13 CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the
14 CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take
15 proper steps to determine whether the CALIFORNIA CLASS members were properly classified as
16 independent contractors, and thereby denied these employees' wages and payments for business
17 expenses and the employer's share of payroll taxes and mandatory insurance as required by law.

18 (i) With respect to the First Cause of Action, the final relief on behalf of the
19 CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim the
20 PLAINTIFF seeks declaratory relief holding that DEFENDANT's policies and practices constitute
21 unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct
22 declared to constitute unfair competition.

23 (c) Common questions of law and fact exist as to members of the CALIFORNIA
24 CLASS with respect to the practices and violations of California and federal law as listed above, and
25 predominate over any question affecting only individual members, and a Class Action is superior to
26 other available methods for the fair and efficient adjudication of the controversy, including consideration
27 of:

28 (i) The interest of the CALIFORNIA CLASS members in individually

controlling the prosecution or defense of separate actions;

(ii) The extent and nature of any litigation concerning the controversy already commenced by or against members of the CALIFORNIA CLASS;

(iii) In the context of wage litigation because as a practical matter a substantial number of individual CALIFORNIA CLASS members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative;

(iv) The desirability or undesirability of concentration the litigation of the claims in the particular forum;

(v) The difficulties likely to be encountered in the management of a Class Action; and,

(vi) The basis of DEFENDANT'S policies and practices applied to all the CALIFORNIA CLASS members.

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

(a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual members;

(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;

(c) The CALIFORNIA CLASS members are so numerous that it is impractical to bring all CALIFORNIA CLASS members before the Court;

(d) PLAINTIFF, and the 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;

1 (f) There is a community of interest in ensuring that the combined assets and
2 available insurance of DEFENDANT are sufficient to adequately compensate the CALIFORNIA
3 CLASS members for any injuries sustained;

4 (g) DEFENDANT has acted or has refused to act on grounds generally applicable to
5 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the
6 CLASS as a whole;

7 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
8 business records of DEFENDANT; and,

9 (i) Class treatment provides manageable judicial treatment calculated to bring an
10 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
11 DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

12 50. DEFENDANT maintain records from which the Court can ascertain and identify by
13 name and job title, each of DEFENDANT's employees who have been intentionally subjected to
14 DEFENDANT's corporate policies, practices and procedures as herein alleged. PLAINTIFF will seek
15 leave to amend the complaint to include any additional job titles of similarly situated employees when
16 they have been identified.

17 **THE CALIFORNIA LABOR SUB-CLASS**

18 51. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
19 of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS
20 who are or previously were employed by Defendant JAYLEX and/or Defendant Res-Care and/or
21 Defendant Rockcreek and/or Defendant Alternative Choices and/or Defendant RSCR Inland who
22 performed work for Defendant Res-Care and/or Defendant Rockcreek and/or Defendant Alternative
23 Choices and/or Defendant RSCR Inland in California as independent contractors (the "CALIFORNIA
24 LABOR SUB-CLASS) at any time during the period three (3) years prior to the filing of the Complaint
25 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
26 PERIOD") pursuant to Cal. Code of Civ. Proc § 382. The amount in controversy for the aggregate
27 claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
28 (\$5,000,000.00).

1 52. DEFENDANTS, as a matter of corporate policy, practice and procedure, and in
2 violation of the applicable California Labor Code (“Labor Code”), and Industrial Welfare Commission
3 (“IWC”) Wage Order requirements intentionally, knowingly, and willfully, on the basis of job title
4 alone and without regard to the actual overall requirements of the job, systematically classified
5 PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS as independent
6 contractors in order to avoid the payment of all wages, and in order to avoid the obligations under the
7 applicable California Labor Code provisions. To the extent equitable tolling operates to toll claims by
8 the CALIFORNIA LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR SUB-
9 CLASS PERIOD should be adjusted accordingly.

10 53. DEFENDANTS maintain records from which the Court can ascertain and identify by
11 job title each of DEFENDANTS’ employees who as CALIFORNIA LABOR SUB-CLASS Members
12 have been systematically, intentionally and uniformly misclassified as independent contractors as a
13 matter of DEFENDANTS’ corporate policy, practices and procedures. PLAINTIFF will seek leave to
14 amend the complaint to include these additional job titles when they have been identified.

15 54. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
16 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

17 55. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS under
18 California law by:

19 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by misclassifying and
20 thereby failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
21 correct minimum wages for which DEFENDANT is liable;

22 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby failing
23 to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
24 pay for a workday longer than eight (8) hours and/or a workweek longer than forty (40) hours for which
25 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

26 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
27 and the other members of the CALIFORNIA LABOR SUBCLASS with all legally required off-duty,
28 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

1 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS who were improperly classified as independent
3 contractors with an accurate itemized statement in writing showing the gross wages earned, the net
4 wages earned, all applicable hourly rates in effect during the pay period and the corresponding amount
5 of time worked at each hourly rate by the employee;

6 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
7 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of
8 their job duties; and,

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

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

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

19 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
20 are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply
21 to every member of the CALIFORNIA LABOR SUB-CLASS;

22 (c) The claims of the representative PLAINTIFF are typical of the claims of each
23 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all other members of the
24 CALIFORNIA LABOR SUB-CLASS was improperly classified as an independent contractor and was
25 thus denied minimum wage pay and meal and rest breaks, among other things, as a result of
26 DEFENDANT's systematic classification practices. PLAINTIFF and all other members of the
27 CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT's
28 violations of the laws of California; and,

1 (d) The representative PLAINTIFF will fairly and adequately represent and protect
2 the interest of the CALIFORNIA LABOR SUB-CLASS and has retained counsel who are competent
3 and experienced in Class Action litigation. There are no material conflicts between the claims of the
4 representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would
5 make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will
6 vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

9 (a) Without class certification and determination of declaratory, injunctive,
10 statutory and other legal questions within the class format, prosecution of separate actions by individual
11 members of the CALIFORNIA LABOR SUBCLASS will create the risk of: 1) Inconsistent or varying
12 adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which
13 would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR
14 SUB-CLASS; or, 2) Adjudication with respect to individual members of the CALIFORNIA LABOR
15 SUB-CLASS which would as a practical matter be dispositive of interests of the other members not
16 party to the adjudication or substantially impair or impede their ability to protect their interests.

17 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
18 refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making
19 appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in
20 that the DEFENDANT uniformly classified and treated the members of the CALIFORNIA LABOR
21 SUB-CLASS as independent contractors and, thereafter, uniformly failed to take proper steps to
22 determine whether the CALIFORNIA LABOR SUBCLASS Members were properly classified as
23 independent contractors, and thereby denied these employees the protections afforded to them under
24 the California Labor Code;

25 (c) Common questions of law and fact predominate as to the members of the
26 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California law as
27 listed above, and predominate over any question affecting only individual CALIFORNIA LABOR
28 SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and

1 efficient adjudication of the controversy, including consideration of:

2 i) The interests of the members of the CALIFORNIA LABOR SUB-
3 CLASS in individually controlling the prosecution or defense of separate actions in that the substantial
4 expense of individual actions will be avoided to recover the relatively small amount of economic losses
5 sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the
6 substantial expense and burden of individual prosecution of this litigation;

7 ii) Class certification will obviate the need for unduly duplicative litigation
8 that would create the risk of:

9 A. Inconsistent or varying adjudications with respect to individual
10 members of the CALIFORNIA LABOR SUBCLASS, which would establish incompatible standards
11 of conduct for the DEFENDANT; and/or,

12 B. Adjudications with respect to individual members of the
13 CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the
14 other members not parties to the adjudication or substantially impair or impede their ability to protect
15 their interests;

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

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

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

27 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-
28 CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS

1 Members;

2 (b) A Class Action is superior to any other available method for the fair and efficient
3 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the
4 context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-
5 CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse
6 impact on their 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-CLASS before the Court;

9 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members,
10 will not be able to obtain effective and economic legal redress unless the action is maintained as a Class
11 Action;

12 (e) There is a community of interest in obtaining appropriate legal and equitable
13 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
14 adequate compensation for the damages and injuries which DEFENDANT'S actions have inflicted
15 upon the CALIFORNIA LABOR SUB-CLASS;

16 (f) There is a community of interest in ensuring that the combined assets of
17 DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR
18 SUB-CLASS for the injuries sustained;

19 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
20 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect
21 to the CALIFORNIA LABOR SUB-CLASS as a whole;

22 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
23 ascertainable from the business records of DEFENDANT; and,

24 (i) Class treatment provides manageable judicial treatment calculated to bring a
25 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the
26 conduct of DEFENDANT.

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1 **JURISDICTION AND VENUE**

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

6 60. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and 395.5,
7 because DEFENDANT (i) currently maintains and at all relevant times maintained its principal offices
8 and facilities in this County and/or conducts substantial business in this County, and (ii) committed the
9 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and
10 CALIFORNIA LABOR SUB-CLASS.

11 **FIRST CAUSE OF ACTION**

12 **For Unlawful, Unfair and Deceptive Business Practices**

13 **[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]**

14 **(By PLAINTIFF and the CALIFORNIA CLASS Against All DEFENDANT)**

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

17 62. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code §
18 17021.

19 63. Section 17200 of the California Business & Professions Code defines unfair competition
20 as any unlawful, unfair or fraudulent business act or practice. Section 17200 applies to violations of
21 labor laws in the employment context. Section 17203 authorizes injunctive, declaratory and/or other
22 equitable relief with respect to unfair competition as follows:

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

California Business & Professions Code § 17203.

1 64. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
2 business practice which violates California law, including but not limited to the applicable Industrial
3 Wage Orders, the California Labor Code including Sections 201, 202, 203, 204, 210, 221, 226.7, 226.8,
4 510, 512, 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations § 11090, for which
5 this Court should issue declaratory, injunctive, and other equitable relief, pursuant to Cal. Bus. & Prof.
6 § 17203, as may be necessary to prevent and remedy the conduct held to constitute unfair competition,
7 including restitution of wages wrongfully withheld, business expenses wrongfully withheld and for the
8 payment of the employer's share of income taxes, social security taxes, unemployment insurance and
9 workers' compensation insurance.

10 65. By the conduct alleged herein DEFENDANT has obtained valuable property, money,
11 and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived
12 them of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of
13 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and injunctive relief is
14 necessary to prevent and remedy this unfair competition, and pecuniary compensation alone would not
15 afford adequate and complete relief.

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

21 67. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent
22 in that DEFENDANT's policy and practice was to represent to the CALIFORNIA CLASS Members
23 that they were not entitled to overtime and minimum wages, payment for payroll taxes or mandatory
24 insurance and other benefits as required by California law, when in fact these representations were false
25 and likely to deceive and for which this Court should issue injunctive and equitable relief, pursuant to
26 Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

27 68. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
28 deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members

1 of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

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

7 70. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
8 and do, seek a declaration that the described business practices were unlawful, unfair and deceptive,
9 and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful
10 and unfair business practices in the future.

11 71. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
12 deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally
13 required meal and rest breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as
14 required by Cal. Lab. Code §§ 226.7 and 512.

15 72. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
16 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll taxes
17 and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty meal period
18 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday
19 in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

20 73. PLAINTIFF further demands on behalf of herself and each member of the
21 CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not timely
22 provided as required by law.

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

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

76. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair business practices.

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

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

SECOND CAUSE OF ACTION

For Failure to Pay Minimum Wages

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

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)

79. 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.

80. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring

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

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

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

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

11 84. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members
12 of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked.
13 As set forth herein, DEFENDANT’S policy and practice was to unlawfully and intentionally deny
14 timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR
15 SUB-CLASS.

16 85. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
17 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
18 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the other
19 members of the CALIFORNIA LABOR SUB-CLASS regarding minimum wage pay.

20 86. In committing these violations of the California Labor Code, DEFENDANT inaccurately
21 calculate the correct time worked and consequently underpays the actual time worked by PLAINTIFF
22 and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal
23 attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor
24 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

25 87. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
26 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive the
27 correct minimum wage compensation for their time worked for DEFENDANT.

28 88. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were
2 entitled to, constituting a failure to pay all earned wages.

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

8 90. DEFENDANT knew or should have known that PLAINTIFF and the other members of
9 the CALIFORNIA LABOR SUB-CLASS are under compensated for their time worked.
10 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
11 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor and
12 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the
13 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

22 92. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as
24 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
25 Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined
26 to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their
27 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore
28 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which

1 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members.
2 DEFENDANT’S conduct as alleged herein was willful, intentional and not in good faith. Further,
3 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover
4 statutory costs.

5 **THIRD CAUSE OF ACTION**

6 **For Failure to Pay Overtime Wages**

7 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

8 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

11 94. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed to pay
12 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for the time they
13 worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 &
14 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members were regularly
15 required to work, and did in fact work, overtime that DEFENDANT never recorded as evidenced by
16 DEFENDANT’S business records and witnessed by DEFENDANT’S employees.

17 95. By virtue of DEFENDANT’S unlawful failure to pay compensation to PLAINTIFF and
18 the CALIFORNIA CLASS Members for all overtime worked by these employees, PLAINTIFF and
19 CALIFORNIA LABOR SUB-CLASS Members have suffered, and will continue to suffer, an
20 economic in amounts which are presently unknown to them and which can be ascertained according to
21 proof at trial.

22 96. DEFENDANT knew or should have known that PLAINTIFF and the CALIFORNIA
23 CLASS Members were misclassified as independent contractors and DEFENDANT elected, either
24 through intentional malfeasance or gross nonfeasance, not to pay them for their labor as a matter of
25 corporate policy, practice and procedure.

26 97. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members therefore request
27 recovery of all compensation according to proof, interest, costs, as well as the assessment of any
28 statutory penalties against DEFENDANT in a sum as provided by the California Labor Code and/or

1 other statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
2 LABOR SUB-CLASS Members who have terminated their employment, these employees would also
3 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein.
4 Further, PLAINTIFF and the CALIFORNIA LABOR SUBCLASS Members are entitled to seek and
5 recover statutory costs.

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

14 **FOURTH CAUSE OF ACTION**

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

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

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
18 **DEFENDANT)**

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

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

1 duty by DEFENDANT for their meal periods. Additionally, DEFENDANT’S failure to provide
2 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
3 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT’S business records. As a
4 result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore
5 forfeited meal breaks without additional compensation and in accordance with DEFENDANT’S strict
6 corporate policy and practice.

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

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

15 **FIFTH CAUSE OF ACTION**

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

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

18 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

22 104. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
23 Members were required to work in excess of four (4) hours without being provided ten (10) minute rest
24 periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for
25 some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
26 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest
27 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and
28 other CALIFORNIA LABOR SUBCLASS Members were also not provided with one-hour wages in

1 lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
2 LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT
3 and DEFENDANT’S managers.

4 105. 88. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
5 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
6 Members who were not provided a rest period, in accordance with the applicable Wage Order, one
7 additional hour of compensation at each employee’s regular rate of pay for each workday that rest
8 period was not provided.

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

12 **SIXTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 226]**

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

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

26 109. From time-to-time during the CALIFORNIA LABOR SUB-CLASS PERIOD,
27 DEFENDANT issued inaccurate itemized wages statements to PLAINTIFF and the members of the
28 CALIFORNIA LABOR SUB-CLASS that failed to accurately showing (1) gross wages earned, (2)

1 total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
2 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,
3 (7) the name of the employee and only the last four digits of the employee's social security number or
4 an employee identification number other than a social security number, (8) the name and address of the
5 legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and
6 the corresponding number of hours worked at each hourly rate by the employee.

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

11 111. DEFENDANT knowingly and intentionally failed to comply with Labor Code § 226,
12 causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS.
13 These damages include, but are not limited to, costs expended calculating the true amount of time
14 worked and the amount of employment taxes which were not properly paid to state and federal tax
15 authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members
16 of the CALIFORNIA LABOR SUB-CLASS elect to recover liquidated damages of \$50.00 for the
17 initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay
18 period pursuant to Labor Code § 226, in an amount according to proof at the time of trial (but in no
19 event more than \$4,000.00 for PLAINTIFF and each respective member of the CALIFORNIA LABOR
20 SUB-CLASS herein).

21 **SEVENTH CAUSE OF ACTION**

22 **For Failure to Pay Wages When Due**

23 **[Cal. Lab. Code §§ 201, 202 and 203]**

24 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

28 ///

1 113. Cal. Lab. Code § 200 states that:

2 As used in this article:

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

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

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

13 115. Cal. Lab. Code § 202 states, in relevant part, that:

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

24 116. There was no definite term in PLAINTIFF's or any other CALIFORNIA LABOR SUB-
25 CLASS Members' employment contract.

26 117. Cal. Lab. Code § 203 states:

27 If an employer willfully fails to pay, without abatement or reduction, in
28 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an

1 employee who is discharged or who quits, the wages of the employee shall
2 continue as a penalty from the due date thereof at the same rate until paid
3 or until an action therefor is commenced; but the wages shall not continue
4 for more than 30 days.

5 118. The employment of PLAINTIFF and many other CALIFORNIA LABOR SUB-CLASS
6 Members has terminated, yet as to those individuals whose employment terminated, DEFENDANT did
7 not timely tender payment of all wages owed as required by law.

8 119. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of
9 the CALIFORNIA LABOR SUB-CLASS whose employment terminated, PLAINTIFF demands thirty
10 days of pay as penalty for not paying all wages due at time of termination for all individuals in the
11 CALIFORNIA LABOR SUB-CLASS who terminated employment during the CALIFORNIA LABOR
12 SUB-CLASS PERIOD plus interest and statutory costs as allowed.

13 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

28 ///

1 122. PLAINTIFF, and such persons that may be added from time to time who satisfy the
2 requirements and exhaust the administrative procedures under the Private Attorney General Act,
3 bring this Representative Action on behalf of the State of California with respect to herself and all
4 individuals classified as independent contractors who worked for Defendant JAYLEX and/or
5 Defendant Res-Care and/or Defendant Rockcreek and/or Defendant Alternative Choices and/or
6 Defendant RSCR Inland who performed work for Defendant Res-Care and/or Defendant Rockcreek
7 and/or Defendant Alternative Choices and/or Defendant RSCR Inland in California during the time
8 period of November 4, 2021 until the present (the "AGGRIEVED EMPLOYEES").

9 123. On November 4, 2022, PLAINTIFF gave written notice by certified mail to the Labor
10 and Workforce Development Agency (the "Agency") and the employer of the specific provisions of
11 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
12 hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add
13 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may
14 now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
15 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

16 124. The policies, acts and practices heretofore described were and are an unlawful business
17 act or practice because DEFENDANTS misclassified the AGGRIEVED EMPLOYEES as
18 independent contractors, and as a result (a) failed to pay AGGRIEVED EMPLOYEES minimum
19 wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally required meal
20 and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct regular rate of pay, (d)
21 failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e) failed to timely pay wages,
22 all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
23 limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
24 226.8, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804,
25 and 3357, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties
26 as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
27 Labor Code Private Attorney General Act of 2004 as the representative of the State of California for
28 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for 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 minimum and overtime wages and all
10 sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the
11 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 PLAINTIFF and to the other
14 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 action pursuant to
18 Cal. Code of Civ. Proc. § 382;

19 B) Compensatory damages, according to proof at trial, including compensation due
20 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
21 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

22 C) The wages of all terminated individuals in the CALIFORNIA LABOR SUB-
23 CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is
24 commenced, in accordance with Cal. Lab. Code § 203;

25 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
26 in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA
27 LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty
28 of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

1 E) Meal and rest period compensation pursuant to California Labor Code Section
2 226.7 and the applicable IWC Wage Order;

3 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
4 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit; and,

5 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

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

7 A) Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act
8 of 2004;

9 4. On all claims:

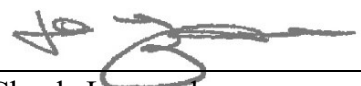
10 A) An award of interest, including prejudgment interest at the legal rate;

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

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

14
15 Dated: June 13, 2023

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

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

20 **DEMAND FOR JURY TRIAL**

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

22
23 Dated: June 13, 2023

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

24
25 By: 
26 Jean-Claude Lapuyade
27 Attorneys for PLAINTIFF
28

EXHIBIT 1



Client # 55601

November 4, 2022

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

EZ CARELINK CORP.

c/o LegalZoom.com, Inc.

Joyce Yi

Sandra Menjivar

Vanity Alexander

Kathleen Capps

Tony Rivera Jr.

Carlos Chavez

Octavio Victor

101 N. Brand Blvd.

11th Floor

Glendale, CA 91203

Sent via Certified Mail and Return Receipt
7022 2410 0001 4932 6700

ROCKCREEK, INC.

c/o CSC – Lawyers Incorporating Service

2710 Gateway Oaks Dr., Suite 150N

Sacramento, CA 95833

Sent via Certified Mail and Return Receipt
7022 2410 0000 2184 1062

ALTERNATIVE CHOICES, INC.

c/o CSC – Lawyers Incorporating Service

2710 Gateway Oaks Dr., Suite 150N

Sacramento, CA 95833

Sent via Certified Mail and Return Receipt
7022 2410 0001 4932 6717

RES-CARE, INC.

c/o CSC – Lawyers Incorporating Service

2710 Gateway Oaks Dr., Suite 150N

Sacramento, CA 95833

Sent via Certified Mail and Return Receipt
7022 2410 0001 4932 6724

RSCR INLAND, INC.

c/o CSC – Lawyers Incorporating Service

2710 Gateway Oaks Dr., Suite 150N

Sacramento, CA 95833

Sent via Certified Mail and Return Receipt
7022 2410 0000 2181 2574

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, 226.8, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and 3357, and 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 CHARLETTE PERE (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendants EZ CARELINK CORP. (“Defendant EZ Carelink”), RES-CARE, INC. (“Defendant Res-Care”), ROCKCREEK, INC. (“Defendant Rockcreek”), ALTERNATIVE CHOICES, INC. (“Defendant Alternative Choices”), and RSCR INLAND, INC. (“Defendant RSCR Inland”) (collectively “Defendants”). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The

purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff worked for Defendants in California from March of 2019 to July of 2022. Plaintiff was classified by Defendants as an independent contractor, however Plaintiff or any of the other workers who were classified as independent contractors were: (1) not free from Defendant's control, (2) the work performed was not outside of Defendant's usual course of business and (3) not engaged in an independently established trade, occupation or business. As a result, Plaintiff and other aggrieved employees worked time for which they were unlawfully not paid the correct minimum wage and overtime compensation. Further, Plaintiff and other aggrieved employees were not provided with the legally required meal and rest breaks in accordance with California law. Additionally, Plaintiff contends that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep time records showing when Plaintiff began and ended each shift and meal period

As a consequence, Plaintiff contend that Defendants failed to fully compensate her and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendants' conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 226.8, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and 3357, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as individuals classified as independent contractors who worked for Defendant EZ Carelink and/or Defendant Res-Care and/or Defendant Rockcreek and/or Defendant Alternative Choices and/or Defendant RSCR Inland who performed work for Defendant Res-Care and/or Defendant Rockcreek and/or Defendant Alternative Choices and/or Defendant RSCR Inland in California during the relevant claim period.

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

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

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

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



Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

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

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

Attorneys for Plaintiff CHARLETTE PERE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

CHARLETTE PERE, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

EZ CARELINK CORP., a California
corporation; RES-CARE, INC., a Kentucky
corporation; ROCKCREEK, INC., a
California corporation; ALTERNATIVE
CHOICES, INC., a California corporation;
RSCR INLAND, INC., a California
corporation and DOES 1 through 30,
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 WAGE 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.

DEMAND FOR JURY TRIAL

Plaintiff CHARLETTE PERE ("PLAINTIFF"), an individual, on behalf of herself and all other similarly situated current and former independent contractors alleges on information and belief, except her own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFF is an individual who works as a nurse assistant in California for defendants EZ CARELINK CORP. ("Defendant EZ Carelink"), a California corporation; RES-CARE, INC. ("Defendant Res-Care"), a Kentucky corporation; ROCKCREEK, INC. ("Defendant Rockcreek"), a California corporation; ALTERNATIVE CHOICES, INC. ("Defendant Alternative Choices"), a California corporation; and RSCR INLAND, INC. ("Defendant RSCR Inland"), a California corporation (hereinafter, collectively referred to as "DEFENDANTS" and/or "DEFENDANT"). PLAINTIFF alleges that DEFENDANTS have violated and continue to violate the California Labor Code protections applicable to California employees because DEFENDANTS have misclassified its California employees as independent contractors. In order to provide services to their patients, DEFENDANTS hire California workers to aid DEFENDANTS in providing services in the usual course of DEFENDANT's healthcare services to their clients. DEFENDANTS controlled and directed the work performed by PLAINTIFF and the other similarly situated misclassified California workers by, among other things, scheduling hours of work, providing job site information, and issuing written policies and procedures for the performance of work and conduct in the workplace. PLAINTIFF and the other similarly situated misclassified California workers are not and were not engaged in a customarily independently established trade, occupation or business as the same nature of the work performed. The costs, as proscribed by law, of the personnel hired to work for DEFENDANTS, includes not only the pay of these employees but the cost of the employer's share of tax payments to the federal and state governments for income taxes, social security taxes, Medicare insurance, unemployment insurance and payments for workers' compensation insurance. To avoid the payment of these legally proscribed expenses to the fullest extent possible, DEFENDANTS

1 devised a scheme to place the responsibility for the payment of these costs and expenses of
2 DEFENDANTS on the shoulders of PLAINTIFF and other similarly situated California employees.
3 As employer, DEFENDANTS are legally responsible for the payment of all these expenses. This
4 lawsuit is brought in order to collect the wages due to PLAINTIFF and all those similarly situated
5 misclassified independent contractors as DEFENDANTS' employees, the cost of the employer's
6 share of payments to the federal and state governments for income taxes, social security taxes,
7 Medicare insurance, unemployment insurance and payments for workers' compensation insurance,
8 plus penalties and interest.

9 THE PARTIES

10 2. Defendant EZ Carelink is a California corporation, that at all relevant times mentioned
11 herein conducted and continues to conduct substantial business in the State of California, County of
12 San Bernardino.

13 3. Defendant Res-Care is a Kentucky corporation, that at all relevant times mentioned
14 herein conducted and continues to conduct substantial business in the State of California, County of
15 San Bernardino.

16 4. Defendant Rockcreek is a California corporation, that at all relevant times mentioned
17 herein conducted and continues to conduct substantial business in the State of California, County of
18 San Bernardino.

19 5. Defendant Alternative Choices is a California corporation, that at all relevant times
20 mentioned herein conducted and continues to conduct substantial business in the State of California,
21 County of San Bernardino.

22 6. Defendant RSCR Inland is a California corporation, that at all relevant times
23 mentioned herein conducted and continues to conduct substantial business in the State of California,
24 County of San Bernardino.

25 7. Defendants were the joint employers of PLAINTIFF as evidenced by the contracts
26 signed and by the company PLAINTIFF performed work for respectively and are therefore jointly
27 responsible for employers for the conduct alleged herein as "DEFENDANTS" and/or
28 "DEFENDANT."

1 8. Defendant Res-Care, Defendant Rockcreek, Defendant Alternative Choices and
2 Defendant RSCR Inland utilize independent contractors to provide its clients with a variety of
3 healthcare services.

4 9. Defendant EZ Carelink owns and operates a staffing agency and staffs many
5 companies in California, including at Defendant Res-Care, Defendant Rockcreek, Defendant
6 Alternative Choices and Defendant RSCR Inland.

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

16 11. The agents, servants and/or employees of the DEFENDANTS and each of them acting
17 on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the
18 agent, servant and/or employee of the DEFENDANTS, and personally participated in the conduct
19 alleged herein on behalf of the DEFENDANTS with respect to the conduct alleged herein.
20 Consequently, the acts of DEFENDANTS are legally attributable to the other and all DEFENDANTS
21 are jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
22 proximate result of the conduct of the DEFENDANTS’ agents, servants and/or employees.

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

28 13. DEFENDANTS were PLAINTIFF’s employer or persons acting on behalf of

1 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
2 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
3 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
4 for each underpaid employee.

5 14. PLAINTIFF worked as a nurse assistant for DEFENDANTS from March 2019 to July
6 of 2022 and was at all times during her employment classified by DEFENDANTS as an independent
7 contractor.

8 15. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined
9 as all persons who are or previously were employed by Defendant EZ Carelink and/or Defendant Res-
10 Care and/or Defendant Rockcreek and/or Defendant Alternative Choices and/or Defendant RSCR
11 Inland who performed work for Defendant Res-Care and/or Defendant Rockcreek and/or Defendant
12 Alternative Choices and/or Defendant RSCR Inland in California as independent contractors
13 ("CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of
14 this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD"). The
15 amount in controversy for the aggregate claim of CALIFORNIA CLASS members is under five million
16 dollars (\$5,000,000.00).

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

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

24 **THE CONDUCT**

25 **A. Misclassification**

26 18. DEFENDANTS engaged in a pattern and practice of misclassifying California workers
27 as independent contractors, hired to perform work and services core to DEFENDANTS' businesses, in
28 violation of California Labor Code Section 226.8. California Labor Code Section 226.8 provides that

1 “[i]t is unlawful for any person or employer to engage in ...[w]illful misclassification of an individual
2 as an independent contractor.” The penalty for willful misclassification of employees is a “civil penalty
3 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
4 each violation, in addition to any other penalties or fines permitted by law.” It is further provided that,
5 in the event that an employer is found to have engaged in “a pattern or practice of these violations,” the
6 penalties increase to “not less than ten thousand dollars (\$10,000) and not more than twenty-five
7 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by
8 law.” Cal. Labor Code § 226.8.

9 19. Similarly, PLAINTIFF and other members of the CALIFORNIA CLASS were not
10 compensated overtime wages for any of their time spent working in excess of eight (8) hours in a
11 workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF and
12 other members of the CALIFORNIA CLASS were paid the hourly rate to perform labor services on
13 DEFENDANT’S behalf. PLAINTIFF and other workers were not compensated any other wages
14 besides the non-negotiable hourly rate. Specifically, DEFENDANTS would schedule PLAINTIFF’s
15 hours, which resulted, from time to time, in PLAINTIFF working throughout her shift without the
16 legally-required meal and rest periods. DEFENDANTS failed to pay PLAINTIFF any compensation
17 for overtime wages at the overtime rate of one-and-a-half times the regular rate of pay for any time
18 spent working in excess of eight (8) hours in a workday, twelve (12) hours in a workday, and/or forty
19 (40) hours in a workweek. The finite set of tasks required to be performed by the workers includes,
20 but is not limited to, ensuring the safety of the patients and facilitating various activities for the patients,
21 all in accordance with DEFENDANT’S business practices and policies.

22 20. As a result, stripped of all the legal fictions and artificial barriers to an honest
23 classification of the relationship between PLAINTIFF and all the other members of the CALIFORNIA
24 CLASS on the one hand, and DEFENDANTS on the other hand, PLAINTIFF and all the other members
25 of the CALIFORNIA CLASS are and were employees of DEFENDANTS and not independent
26 contractors of DEFENDANTS and should therefore be properly classified as non-exempt, hourly
27 employees.

28 21. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA CLASS

1 members as defined by DEFENDANTS was executed by them through the performance of non-exempt
2 labor. Specifically, PLAINTIFF and other CALIFORNIA CLASS members performed non-exempt
3 tasks, including but not limited to, caring for patients by ensuring their safety and facilitating various
4 activities for the patients.

5 22. Although PLAINTIFF and the other CALIFORNIA CLASS members performed non-
6 exempt labor subject to DEFENDANT'S complete control over the manner and means of performance,
7 DEFENDANTS instituted a blanket classification policy, practice and procedure by which all of these
8 CALIFORNIA CLASS Members were classified as "independent contractors" exempt from
9 compensation for overtime worked, meal breaks and rest breaks, and reimbursement for business
10 related expenses. By reason of this uniform misclassification, the CALIFORNIA CLASS Members
11 were also required to pay DEFENDANT's share of payroll taxes and mandatory insurance premiums.
12 As a result of this uniform misclassification practice, policy and procedure applicable to PLAINTIFF
13 and the other CALIFORNIA CLASS Members who performed this work for DEFENDANT,
14 DEFENDANTS committed acts of unfair competition in violation of the California Unfair Competition
15 law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-wide policy,
16 practice and procedure which failed to properly classify PLAINTIFF and the other CALIFORNIA
17 CLASS members as employees and thereby failed to pay them wages for all time worked,
18 reimbursement of business related expenses, failed to provide them with meal and rest breaks, and
19 failed to reimburse these employees for the employer's share of payroll taxes and mandatory insurance.

20 23. DEFENDANTS, as a matter of law, has the burden of proving that employees are
21 properly classified and that DEFENDANTS otherwise comply with applicable laws. DEFENDANTS,
22 as a matter of corporate policy, erroneously and unilaterally classified all the CALIFORNIA CLASS
23 Members as independent contractors in violation of the California Labor Code and regulations
24 promulgated thereunder.

25 i. **Plaintiff and Other Members of the California Class Were Not Free from**
26 **the Control and Direction of Defendants**

27 24. DEFENDANTS controlled and directed the work performed by PLAINTIFF and the
28 other similarly situated misclassified California workers by, among other things, scheduling hours of

1 work, providing job site facility, enforcing a dress code and issuing written policies and procedures for
2 the performance of work and conduct in the workplace. Upon hire, the position was represented by
3 DEFENDANTS to PLAINTIFF and the other workers as an independent contractor position in
4 exchange for an hourly rate and/or flat rate of pay for the time they spend providing labor and services
5 to DEFENDANT's third-party clients and patients.

6 25. To perform their job duties, PLAINTIFF and the other members of the CALIFORNIA
7 CLASS perform work subject to the control of DEFENDANTS in that DEFENDANTS had the
8 authority to exercise complete control over the work performed and the manner and means in which
9 the work was performed. DEFENDANT provided the patients and DEFENDANT provided the
10 instructions as to how to perform their work. Specifically, DEFENDANT issues policies and
11 procedures regarding every work-related task performed by PLAINTIFF and other CALIFORNIA
12 CLASS members, including control and direction regarding, caring for patients by ensuring their safety
13 and facilitating various activities for the patients, all in accordance with DEFENDANT's business
14 practices and policies.

15 26. California Labor Code § 3357 defines "employee" as "every person in the service of an
16 employer under any appointment or contract of hire or apprenticeship, express or implied, oral or
17 written, whether lawfully or unlawfully employed." Additionally, to the California Labor Code's
18 presumption that workers are employees, the California Supreme Court has determined the most
19 significant factor to be considered in distinguishing an independent contractor from an employee is
20 whether the *employer or principal has control or the right to control the work both as to the work*
21 *performed and the manner and means in which the work is performed*. DEFENDANT heavily
22 controlled both the work performed and the manner and means in which the PLAINTIFF and other
23 workers performed their work in that:

24 (a) PLAINTIFF and other members of the CALIFORNIA CLASS were not
25 involved in a distinct business, but instead were provided with instructions as to how to
26 perform their work and the manner and means in which the work was to be performed
27 by means of DEFENDANT and DEFENDANT's manuals and written instructions;

28 (b) PLAINTIFF and other members of the CALIFORNIA CLASS were

continuously provided with training and supervision, including following DEFENDANT's company documents, and received training from DEFENDANT as to how and in what way to perform the services;

(c) DEFENDANT set the requirements as to what policies and procedures all of the workers were to follow, including but not limited to, flat rates and/or hourly rates and location of assignment;

(d) PLAINTIFF and other members of the CALIFORNIA CLASS had no opportunity for profit or loss because DEFENDANT only paid these workers a flat rate and/or an hourly rate. DEFENDANT controlled and assigned the workers which tasks were to be performed;

(e) PLAINTIFF and other members of the CALIFORNIA CLASS performed services and labor which are part of the core of DEFENDANT's principal business and is closely integrated with and essential to the employer's business of services and labor to their patients;

(f) PLAINTIFF and other members of the CALIFORNIA CLASS performed the work themselves and did not hire others to perform their work for them;

(g) PLAINTIFF and other members of the CALIFORNIA CLASS did not have the authority to make employment-related personnel decisions;

(h) PLAINTIFF and other members of the CALIFORNIA CLASS were provided with schedules to follow and patients to treat in accordance with DEFENDANT'S instructions;

(i) PLAINTIFF and other members of the CALIFORNIA CLASS performed their work in a particular order and sequence in accordance with DEFENDANTS' company policies; and,

(j) DEFENDANT had the "right" to control every critical aspect of DEFENDANT labor operation in that DEFENDANT provided the client or patient, assigned where PLAINTIFF and other members of the CALIFORNIA CLASS were to go, assigned the hourly rate or flat rate, enforced a dress code, and step by step instructions to

1 PLAINTIFF and other members of the CALIFORNIA CLASS as to the entire process
2 of working at DEFENDANTS' facility. PLAINTIFF and other workers provided
3 services and labor for DEFENDANTS' patients and were not actually in business for
4 themselves.

5 ii. **Plaintiff and Other Members of the California Class Did Not Perform Work**
6 **Outside the Usual Course of Defendant's Business**

7 27. DEFENDANT willfully misclassified PLAINTIFF and other members of the
8 CALIFORNIA CLASS who provided DEFENDANT with healthcare services for DEFENDANT's
9 clients. In other words, PLAINTIFF and other similarly situated California workers provided
10 DEFENDANT with work and services within the usual course of DEFENDANT's business.

11 28. Defendant EZ Carelink markets itself to the public, PLAINTIFF, and other members of
12 the CALIFORNIA CLASS as a staffing agency for various professions, including nursing and
13 caregiving. Defendant Res-Care, Defendant Rockcreek, Defendant Alternative Choices and Defendant
14 RSCR Inland market themselves to the public, PLAINTIFF and other members of the CALIFORNIA
15 CLASS as a provider of specialized healthcare services. As a result, DEFENDANT unquestionably
16 holds itself out to the public, PLAINTIFF and other members of the CALIFORNIA CLASS as a
17 provider of specialized healthcare services. Therefore, the performance of caring for patients by
18 ensuring the safety of the patients, ensuring that the patients are eating, and facilitating various activities
19 for the patients by PLAINTIFF and other members of the CALIFORNIA CLASS is not outside
20 DEFENDANT'S usual course of business.

21 iii. **Plaintiff and Other Members of the California Class Were Not Engaged in**
22 **an Independently Established Trade, Occupation, or Business of the Same**
23 **Nature as the Work Performed for Defendant**

24 29. PLAINTIFF and the other members of the CALIFORNIA CLASS are not and were not
25 engaged in a customarily independently established trade, occupation or business as the same nature of
26 the work performed.

27 **B. Meal Period Violations**

28 30. In California, an employer may not employ an employee for a work period of more than

1 five hours per day without providing the employee with a duty-free meal period of not less than thirty
2 minutes, except that if the total work period per day of the employee is no more than six hours, the
3 meal period may be waived by mutual consent of both the employer and employee. A second duty-free
4 meal period of not less than thirty minutes is required if an employee works more than ten hours per
5 day, except that if the total hours worked is no more than 12 hours, the second duty-free meal period
6 may be waived by mutual consent of the employer and employee only if the first meal period was not
7 waived. Labor Code Section 512.

8 31. If an employer fails to provide an employee a duty-free meal period in accordance with
9 an applicable IWC Order, the employer must pay one additional hour of pay at the employee's regular
10 rate of pay for each workday that the meal period is not provided. IWC Orders and Labor Code Section
11 226.7. This additional hour is not counted as hours worked for purposes of overtime calculations.

12 32. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
13 independent contractors and their rigorous work schedules, PLAINTIFF and other CALIFORNIA
14 CLASS members were not provided with a thirty (30) minute duty-free meal period and were not fully
15 relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS members were
16 required from time-to-time to perform work as ordered by DEFENDANT for more than five (5) hours
17 during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to
18 provide PLAINTIFF and CALIFORNIA CLASS members with a second duty-free meal period for
19 some workdays in which these employees were required by DEFENDANT to work ten (10) hours of
20 work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
21 without additional compensation and in accordance with DEFENDANT's strict corporate policy and
22 practice. Moreover, PLAINTIFF and other members of the CALIFORNIA CLASS were not provided
23 with one-hour wages in lieu of their legally mandated duty-free meal and rest periods.

24 **C. Rest Period Violations**

25 33. The applicable IWC Wage Order requires that employers must authorize and permit
26 nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of
27 each work period. The rest period is based on the total hours worked daily and must be at the minimum
28 rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. The

1 Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a
2 “major fraction” of four. A rest period is not required for employees whose total daily work time is less
3 than three and one-half hours. The rest period is counted as time worked and therefore, the employer
4 must pay for such periods.

5 34. If an employer fails to provide an employee a rest period in accordance with an applicable
6 IWC Order, the employer shall pay the employee one additional hour of pay at the employee’s regular
7 rate of pay for each workday that the rest period is not provided. Labor Code Section 226.7. Thus, if
8 an employer does not provide all of the rest periods required in a workday, the employee is entitled to
9 one additional hour of pay for that workday, not one additional hour of pay for each rest period that
10 was not provided during that workday.

11 35. From time-to-time during the CLASS PERIOD, as a result of their misclassification as
12 independent contractors and their rigorous work schedules PLAINTIFF and other CALIFORNIA
13 CLASS members were also required to work in excess of four (4) hours without being provided ten
14 (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
15 (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and
16 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
17 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
18 (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS members were also not provided
19 with one-hour wages in lieu thereof. As a result of their misclassification and rigorous work schedules,
20 PLAINTIFF and other CALIFORNIA CLASS members were from time-to-time denied their proper
21 rest periods by DEFENDANT and DEFENDANT’S managers.

22 **D. Failure to Pay Minimum, Regular and Overtime Wages**

23 36. From time-to-time during the CLASS PERIOD, DEFENDANT failed to accurately
24 record and pay PLAINTIFF and other CALIFORNIA CLASS members for the actual amount of time
25 these employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
26 is required to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked, meaning
27 the time during which an employee was subject to the control of an employer, including all the time
28 the employee was permitted or suffered to permit this work. DEFENDANT required PLAINTIFF and

CALIFORNIA CLASS members to work off the clock without paying them for all the time they were under DEFENDANT's control. PLAINTIFF and other CALIFORNIA CLASS Members also worked more than eight hours in a workday and/or forty hours in a workweek, but DEFENDANT failed to pay these employees overtime pay as DEFENDANT only paid a flat rate or an hourly rate for all time worked. Consequently, PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum wages and overtime wage compensation by working without their time being correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's business records. As a result, DEFENDANT failed to compensate PLAINTIFF and the members of the CALIFORNIA CLASS all minimum, regular and overtime wages for all hours worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and 510.

E. Wage Statement Violations

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

38. From time-to-time during the CLASS PERIOD, as a result of, *inter alia*, of DEFENDANT's intentional and willful misclassification of PLAINTIFF and the members of the CALIFORNIA CLASS as independent contractors rather than employees, DEFENDANT failed to issue wage statements and/or issued inaccurate itemized wages statements to PLAINTIFF and the members of the CALIFORNIA CLASS that failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or

1 an employee identification number other than a social security number, (8) the name and address of the
2 legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and
3 the corresponding number of hours worked at each hourly rate by the employee.

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

8 **F. Unfair Competition**

9 40. By reason of this conduct applicable to PLAINTIFF and all the CALIFORNIA CLASS
10 members, DEFENDANT committed acts of unfair competition in violation of the California Unfair
11 Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a company-
12 wide policy, practice and procedure which failed to correctly classify PLAINTIFF and the
13 CALIFORNIA CLASS members as employees. The proper classification of these employees is
14 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet
15 this burden, DEFENDANT failed to pay all required wages for work performed by PLAINTIFF and
16 other CALIFORNIA CLASS Members and violated the California Labor Code and regulations
17 promulgated thereunder as herein alleged.

18 41. PLAINTIFF as a worker for DEFENDANT, was classified by DEFENDANT as an
19 independent contractor and thus did not receive pay for all time worked, including minimum and
20 overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also required to
21 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving
22 a meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF therefore forfeited
23 meal and rest breaks without additional compensation and in accordance with DEFENDANT's strict
24 corporate policy and practice which did not provide for mandatory meal and rest breaks. To date,
25 DEFENDANT has not fully paid PLAINTIFF all wages still owed to her or any penalty wages owed
26 to her under California Labor Code § 203. The amount in controversy for PLAINTIFF individually
27 does not exceed the sum or value of \$75,000.

28 **THE CALIFORNIA CLASS**

1 42. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
2 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
3 pursuant to Cal. Code of Civ. Proc. § 382, for violations during the CLASS PERIOD on behalf of the
4 CALIFORNIA CLASS. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
5 Members is under five million dollars (\$5,000,000.00).

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

8 44. All CALIFORNIA CLASS members who performed and continue to perform this work
9 for DEFENDANT during the CLASS PERIOD are similarly situated in that they are subject to
10 DEFENDANT's policy and practice that required them to perform work without compensation as
11 required by law.

12 45. During the CLASS PERIOD, DEFENDANT violated the rights of the PLAINTIFF and
13 the CALIFORNIA CLASS members under California law, without limitation, in the following
14 manners:

15 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
16 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as employer, devised and implemented
17 a scheme whereby PLAINTIFF and the CALIFORNIA CLASS members are forced to unlawfully,
18 unfairly and deceptively shoulder the cost of DEFENDANT'S wages for all unpaid wages, business
19 related expenses, and DEFENDANT's share of employment taxes, social security taxes, unemployment
20 insurance and workers' compensation insurance;

21 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
22 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively having in place company policies,
23 practices and procedures that uniformly misclassified PLAINTIFF and the CALIFORNIA CLASS
24 members as independent contractors;

25 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
26 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively failing to have in place a company
27 policy, practice and procedure that accurately determined the amount of working time spent by
28 PLAINTIFF and the CALIFORNIA CLASS members performing non-exempt employee labor;

1 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
2 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with all legally required meal and rest breaks; and,

4 (f) Committing an act of unfair competition in violation of the UCL, by violating
5 Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to PLAINTIFF and the
6 members of the CALIFORNIA CLASS who were improperly classified as exempt, and retaining the
7 unpaid overtime to the benefit of DEFENDANT.

8 46. As a result of DEFENDANT's policies, practices and procedures, there are numerous
9 questions of law and fact common to all CALIFORNIA CLASS members who worked for during the
10 CLASS PERIOD. These questions include, but are not limited, to the following:

11 (a) Whether PLAINTIFF and other CALIFORNIA CLASS members were
12 misclassified as independent contractors by DEFENDANT;

13 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS members all afforded
14 all the protections of the California Labor Code that apply when properly classified as non-exempt
15 employees;

16 (c) Whether DEFENDANT's policies, practices and pattern of conduct described in
17 this Complaint was and is unlawful;

18 (d) Whether DEFENDANT unlawfully failed to pay their share of state and federal
19 employment taxes as required by state and federal tax laws;

20 (e) Whether DEFENDANT's policy, practice and procedure of classifying the
21 CALIFORNIA CLASS members as independent contractors exempt from hourly wages laws for all
22 time worked and failing to pay the CALIFORNIA CLASS members all amounts due violates applicable
23 provisions of California State law;

24 (f) Whether DEFENDANT unlawfully failed to keep and furnish the CALIFORNIA
25 CLASS members with accurate records of all time worked;

26 (g) Whether DEFENDANT has engaged in unfair competition by the above-listed
27 conduct; and,

28 (h) Whether DEFENDANT's conduct was willful.

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

3 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the
4 joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the
5 parties and the Court;

6 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
7 raised in this Complaint are common to the CALIFORNIA CLASS and will apply to every
8 CALIFORNIA CLASS member;

9 (c) The claims of the representative PLAINTIFF are typical of the claims of each
10 member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS members, was
11 classified as an independent contractor upon hiring based on the defined corporate policies and practices
12 and labors under DEFENDANT'S procedure that failed to properly classify the PLAINTIFF and the
13 CALIFORNIA CLASS members. PLAINTIFF sustained economic injury as a result of DEFENDANT's
14 employment practices. PLAINTIFF and the CALIFORNIA CLASS members were and are similarly or
15 identically harmed by the same unlawful, unfair, deceptive and persuasive pattern of misconduct
16 engaged in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS members that they
17 were not entitled to minimum wages, the employer's share of payment of payroll taxes and mandatory
18 insurance, and reimbursement for business expenses based on the defined corporate policies and
19 practices, and unfairly failed to pay these employees who were improperly classified as independent
20 contractors; and,

21 (d) The representative PLAINTIFF will fairly and adequately represent and protect
22 the interest of the CALIFORNIA CLASS, and has retained counsel who is competent and experienced
23 in Class Action litigation. There are no material conflicts between the claims of the representative
24 PLAINTIFF and the CALIFORNIA CLASS members that would make class certification inappropriate.
25 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all employees in the
26 CALIFORNIA CLASS.

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

1 (a) Without class certification and determination of declaratory, injunctive, statutory
2 and other legal questions within the class format, prosecution of separate actions by individual members
3 of the CALIFORNIA CLASS will create the risk of:

4 (i) Inconsistent or varying adjudications with respect to individual members
5 of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties
6 opposing the CALIFORNIA CLASS; and/or,

7 (ii) Adjudication with respect to individual members of the CALIFORNIA
8 CLASS which would as a practical matter be dispositive of the interests of the other members not party
9 to the adjudication or substantially impair or impeded their ability to protect their interests.

10 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds generally
11 applicable to the CALIFORNIA CLASS making appropriate class-wide relief with respect to the
12 CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the
13 CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take
14 proper steps to determine whether the CALIFORNIA CLASS members were properly classified as
15 independent contractors, and thereby denied these employees' wages and payments for business
16 expenses and the employer's share of payroll taxes and mandatory insurance as required by law.

17 (i) With respect to the First Cause of Action, the final relief on behalf of the
18 CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim the
19 PLAINTIFF seeks declaratory relief holding that DEFENDANT's policies and practices constitute
20 unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct
21 declared to constitute unfair competition.

22 (c) Common questions of law and fact exist as to members of the CALIFORNIA
23 CLASS with respect to the practices and violations of California and federal law as listed above, and
24 predominate over any question affecting only individual members, and a Class Action is superior to
25 other available methods for the fair and efficient adjudication of the controversy, including consideration
26 of:

27 (i) The interest of the CALIFORNIA CLASS members in individually
28 controlling the prosecution or defense of separate actions;

(ii) The extent and nature of any litigation concerning the controversy already commenced by or against members of the CALIFORNIA CLASS;

(iii) In the context of wage litigation because as a practical matter a substantial number of individual CALIFORNIA CLASS members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative;

(iv) The desirability or undesirability of concentration the litigation of the claims in the particular forum;

(v) The difficulties likely to be encountered in the management of a Class Action; and,

(vi) The basis of DEFENDANT'S policies and practices applied to all the CALIFORNIA CLASS members.

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

(a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual members;

(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;

(c) The CALIFORNIA CLASS members are so numerous that it is impractical to bring all CALIFORNIA CLASS members before the Court;

(d) PLAINTIFF, and the 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 and

1 available insurance of DEFENDANT are sufficient to adequately compensate the CALIFORNIA
2 CLASS members for any injuries sustained;

3 (g) DEFENDANT has acted or has refused to act on grounds generally applicable to
4 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the
5 CLASS as a whole;

6 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
7 business records of DEFENDANT; and,

8 (i) Class treatment provides manageable judicial treatment calculated to bring an
9 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
10 DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

11 50. DEFENDANT maintain records from which the Court can ascertain and identify by
12 name and job title, each of DEFENDANT's employees who have been intentionally subjected to
13 DEFENDANT's corporate policies, practices and procedures as herein alleged. PLAINTIFF will seek
14 leave to amend the complaint to include any additional job titles of similarly situated employees when
15 they have been identified.

16 **THE CALIFORNIA LABOR SUB-CLASS**

17 51. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
18 of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS
19 who are or previously were employed by Defendant EZ Carelink and/or Defendant Res-Care and/or
20 Defendant Rockcreek and/or Defendant Alternative Choices and/or Defendant RSCR Inland who
21 performed work for Defendant Res-Care and/or Defendant Rockcreek and/or Defendant Alternative
22 Choices and/or Defendant RSCR Inland in California as independent contractors (the "CALIFORNIA
23 LABOR SUB-CLASS) at any time during the period three (3) years prior to the filing of the Complaint
24 and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
25 PERIOD") pursuant to Cal. Code of Civ. Proc § 382. The amount in controversy for the aggregate
26 claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
27 (\$5,000,000.00).

28 52. DEFENDANTS, as a matter of corporate policy, practice and procedure, and in

1 violation of the applicable California Labor Code (“Labor Code”), and Industrial Welfare Commission
2 (“IWC”) Wage Order requirements intentionally, knowingly, and willfully, on the basis of job title
3 alone and without regard to the actual overall requirements of the job, systematically classified
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS as independent
5 contractors in order to avoid the payment of all wages, and in order to avoid the obligations under the
6 applicable California Labor Code provisions. To the extent equitable tolling operates to toll claims by
7 the CALIFORNIA LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR SUB-
8 CLASS PERIOD should be adjusted accordingly.

9 53. DEFENDANTS maintain records from which the Court can ascertain and identify by
10 job title each of DEFENDANTS’ employees who as CALIFORNIA LABOR SUB-CLASS Members
11 have been systematically, intentionally and uniformly misclassified as independent contractors as a
12 matter of DEFENDANTS’ corporate policy, practices and procedures. PLAINTIFF will seek leave to
13 amend the complaint to include these additional job titles when they have been identified.

14 54. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
15 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

16 55. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS under
17 California law by:

18 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by misclassifying and
19 thereby failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the
20 correct minimum wages for which DEFENDANT is liable;

21 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby failing
22 to pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime
23 pay for a workday longer than eight (8) hours and/or a workweek longer than forty (40) hours for which
24 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

25 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
26 and the other members of the CALIFORNIA LABOR SUBCLASS with all legally required off-duty,
27 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;

28 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the

1 members of the CALIFORNIA LABOR SUB-CLASS who were improperly classified as independent
2 contractors with an accurate itemized statement in writing showing the gross wages earned, the net
3 wages earned, all applicable hourly rates in effect during the pay period and the corresponding amount
4 of time worked at each hourly rate by the employee;

5 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
6 CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of
7 their job duties; and,

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

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

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

18 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
19 are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply
20 to every member of the CALIFORNIA LABOR SUB-CLASS;

21 (c) The claims of the representative PLAINTIFF are typical of the claims of each
22 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all other members of the
23 CALIFORNIA LABOR SUB-CLASS was improperly classified as an independent contractor and was
24 thus denied minimum wage pay and meal and rest breaks, among other things, as a result of
25 DEFENDANT's systematic classification practices. PLAINTIFF and all other members of the
26 CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT's
27 violations of the laws of California; and,

28 (d) The representative PLAINTIFF will fairly and adequately represent and protect

1 the interest of the CALIFORNIA LABOR SUB-CLASS and has retained counsel who are competent
2 and experienced in Class Action litigation. There are no material conflicts between the claims of the
3 representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would
4 make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will
5 vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

8 (a) Without class certification and determination of declaratory, injunctive,
9 statutory and other legal questions within the class format, prosecution of separate actions by individual
10 members of the CALIFORNIA LABOR SUBCLASS will create the risk of: 1) Inconsistent or varying
11 adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which
12 would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR
13 SUB-CLASS; or, 2) Adjudication with respect to individual members of the CALIFORNIA LABOR
14 SUB-CLASS which would as a practical matter be dispositive of interests of the other members not
15 party to the adjudication or substantially impair or impede their ability to protect their interests.

16 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
17 refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making
18 appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in
19 that the DEFENDANT uniformly classified and treated the members of the CALIFORNIA LABOR
20 SUB-CLASS as independent contractors and, thereafter, uniformly failed to take proper steps to
21 determine whether the CALIFORNIA LABOR SUBCLASS Members were properly classified as
22 independent contractors, and thereby denied these employees the protections afforded to them under
23 the California Labor Code;

24 (c) Common questions of law and fact predominate as to the members of the
25 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California law as
26 listed above, and predominate over any question affecting only individual CALIFORNIA LABOR
27 SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and
28 efficient adjudication of the controversy, including consideration of:

1 i) The interests of the members of the CALIFORNIA LABOR SUB-
2 CLASS in individually controlling the prosecution or defense of separate actions in that the substantial
3 expense of individual actions will be avoided to recover the relatively small amount of economic losses
4 sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the
5 substantial expense and burden of individual prosecution of this litigation;

6 ii) Class certification will obviate the need for unduly duplicative litigation
7 that would create the risk of:

8 A. Inconsistent or varying adjudications with respect to individual
9 members of the CALIFORNIA LABOR SUBCLASS, which would establish incompatible standards
10 of conduct for the DEFENDANT; and/or,

11 B. Adjudications with respect to individual members of the
12 CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the
13 other members not parties to the adjudication or substantially impair or impede their ability to protect
14 their interests;

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

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

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

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

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 LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

(d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-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 LABOR SUB-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 LABOR SUB-CLASS for the injuries sustained;

(g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

(h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT; and,

(i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

JURISDICTION AND VENUE

59. 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

1 brought as a Class Action on behalf PLAINTIFF and on behalf of similarly situated employees of
2 DEFENDANT pursuant to Cal. Code of Civ. Proc. Section 382.

3 60. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and 395.5,
4 because DEFENDANT (i) currently maintains and at all relevant times maintained its principal offices
5 and facilities in this County and/or conducts substantial business in this County, and (ii) committed the
6 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and
7 CALIFORNIA LABOR SUB-CLASS.

8 **FIRST CAUSE OF ACTION**

9 **For Unlawful, Unfair and Deceptive Business Practices**

10 **[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]**

11 **(By PLAINTIFF and the CALIFORNIA CLASS Against All DEFENDANT)**

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

14 62. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code §
15 17021.

16 63. Section 17200 of the California Business & Professions Code defines unfair competition
17 as any unlawful, unfair or fraudulent business act or practice. Section 17200 applies to violations of
18 labor laws in the employment context. Section 17203 authorizes injunctive, declaratory and/or other
19 equitable relief with respect to unfair competition as follows:

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

28 California Business & Professions Code § 17203.

64. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
business practice which violates California law, including but not limited to the applicable Industrial
Wage Orders, the California Labor Code including Sections 201, 202, 203, 204, 210, 221, 226.7, 226.8,

1 510, 512, 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations § 11090, for which
2 this Court should issue declaratory, injunctive, and other equitable relief, pursuant to Cal. Bus. & Prof.
3 § 17203, as may be necessary to prevent and remedy the conduct held to constitute unfair competition,
4 including restitution of wages wrongfully withheld, business expenses wrongfully withheld and for the
5 payment of the employer's share of income taxes, social security taxes, unemployment insurance and
6 workers' compensation insurance.

7 65. By the conduct alleged herein DEFENDANT has obtained valuable property, money,
8 and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived
9 them of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of
10 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and injunctive relief is
11 necessary to prevent and remedy this unfair competition, and pecuniary compensation alone would not
12 afford adequate and complete relief.

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

18 67. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent
19 in that DEFENDANT's policy and practice was to represent to the CALIFORNIA CLASS Members
20 that they were not entitled to overtime and minimum wages, payment for payroll taxes or mandatory
21 insurance and other benefits as required by California law, when in fact these representations were false
22 and likely to deceive and for which this Court should issue injunctive and equitable relief, pursuant to
23 Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

24 68. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
25 deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members
26 of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

27 69. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
28 do, seek such relief as may be necessary to restore to them the money and property which

1 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
2 CLASS have been deprived, by means of the above described unlawful and unfair business practices,
3 including earned but unpaid wages for all time worked.

4 70. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
5 and do, seek a declaration that the described business practices were unlawful, unfair and deceptive,
6 and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful
7 and unfair business practices in the future.

8 71. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
9 deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally
10 required meal and rest breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as
11 required by Cal. Lab. Code §§ 226.7 and 512.

12 72. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
13 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll taxes
14 and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty meal period
15 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday
16 in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

17 73. PLAINTIFF further demands on behalf of herself and each member of the
18 CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not timely
19 provided as required by law.

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

26 75. All the acts described herein as violations of, among other things, the Industrial Welfare
27 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, are
28 unlawful and in violation of public policy, are immoral, unethical, oppressive and unscrupulous, are

1 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
2 Bus. & Prof. Code §§ 17200 *et seq.*

3 76. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
4 do, seek such relief as may be necessary to restore to them the money and property which
5 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
6 CLASS have been deprived, by means of the above described unlawful and unfair business practices.

7 77. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
8 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
9 that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and
10 unfair business practices in the future.

11 78. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
12 and/or adequate remedy at law that will end the unlawful and unfair business practices of
13 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result
14 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
15 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
16 harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair
17 business practices.

18 **SECOND CAUSE OF ACTION**

19 **For Failure to Pay Minimum Wages**

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

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

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

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

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

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

8 84. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members
9 of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked.
10 As set forth herein, DEFENDANT'S policy and practice was to unlawfully and intentionally deny
11 timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR
12 SUB-CLASS.

13 85. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
15 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the other
16 members of the CALIFORNIA LABOR SUB-CLASS regarding minimum wage pay.

17 86. In committing these violations of the California Labor Code, DEFENDANT inaccurately
18 calculate the correct time worked and consequently underpays the actual time worked by PLAINTIFF
19 and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal
20 attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor
21 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

22 87. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive the
24 correct minimum wage compensation for their time worked for DEFENDANT.

25 88. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were
27 entitled to, constituting a failure to pay all earned wages.

28 89. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned compensation

1 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for the true time
2 they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS have
3 suffered and will continue to suffer an economic injury in amounts which are presently unknown to
4 them and which will be ascertained according to proof at trial.

5 90. DEFENDANT knew or should have known that PLAINTIFF and the other members of
6 the CALIFORNIA LABOR SUB-CLASS are under compensated for their time worked.
7 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
8 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor and
9 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the
10 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

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

19 92. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as
21 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
22 Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined
23 to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their
24 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore
25 these individuals are 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 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover

1 statutory costs.

2 **THIRD CAUSE OF ACTION**

3 **For Failure to Pay Overtime Wages**

4 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

5 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

8 94. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed to pay
9 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for the time they
10 worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 &
11 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members were regularly
12 required to work, and did in fact work, overtime that DEFENDANT never recorded as evidenced by
13 DEFENDANT'S business records and witnessed by DEFENDANT'S employees.

14 95. By virtue of DEFENDANT'S unlawful failure to pay compensation to PLAINTIFF and
15 the CALIFORNIA CLASS Members for all overtime worked by these employees, PLAINTIFF and
16 CALIFORNIA LABOR SUB-CLASS Members have suffered, and will continue to suffer, an
17 economic in amounts which are presently unknown to them and which can be ascertained according to
18 proof at trial.

19 96. DEFENDANT knew or should have known that PLAINTIFF and the CALIFORNIA
20 CLASS Members were misclassified as independent contractors and DEFENDANT elected, either
21 through intentional malfeasance or gross nonfeasance, not to pay them for their labor as a matter of
22 corporate policy, practice and procedure.

23 97. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members therefore request
24 recovery of all compensation according to proof, interest, costs, as well as the assessment of any
25 statutory penalties against DEFENDANT in a sum as provided by the California Labor Code and/or
26 other statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
27 LABOR SUB-CLASS Members who have terminated their employment, these employees would also
28 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein.

1 Further, PLAINTIFF and the CALIFORNIA LABOR SUBCLASS Members are entitled to seek and
2 recover statutory costs.

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

11 **FOURTH CAUSE OF ACTION**

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

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

14 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
15 **DEFENDANT)**

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

19 100. During the CALIFORNIA LABOR SUB-CLASS PERIOD, from time to time,
20 DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the
21 other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
22 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-
23 CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the
24 legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and
25 other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of
26 duty by DEFENDANT for their meal periods. Additionally, DEFENDANT'S failure to provide
27 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
28 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT'S business records. As a

1 result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore
2 forfeited meal breaks without additional compensation and in accordance with DEFENDANT’S strict
3 corporate policy and practice.

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

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

12 **FIFTH CAUSE OF ACTION**

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

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

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

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

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

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

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)

107. 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 of this Complaint.

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

109. From time-to-time during the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT issued inaccurate itemized wages statements to PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or

1 an employee identification number other than a social security number, (8) the name and address of the
2 legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and
3 the corresponding number of hours worked at each hourly rate by the employee.

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

8 111. DEFENDANT knowingly and intentionally failed to comply with Labor Code § 226,
9 causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS.
10 These damages include, but are not limited to, costs expended calculating the true amount of time
11 worked and the amount of employment taxes which were not properly paid to state and federal tax
12 authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members
13 of the CALIFORNIA LABOR SUB-CLASS elect to recover liquidated damages of \$50.00 for the
14 initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay
15 period pursuant to Labor Code § 226, in an amount according to proof at the time of trial (but in no
16 event more than \$4,000.00 for PLAINTIFF and each respective member of the CALIFORNIA LABOR
17 SUB-CLASS herein).

18 **SEVENTH CAUSE OF ACTION**

19 **For Failure to Pay Wages When Due**

20 **[Cal. Lab. Code §§ 201, 202 and 203]**

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All DEFENDANT)**

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

25 113. Cal. Lab. Code § 200 states that:

26 As used in this article:

27 (a) "Wages" includes all amounts for labor performed by
28 employees of every description, whether the amount is fixed or ascertained

1 by the standard of time, task, piece, Commission basis, or other method of
2 calculation.

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

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

9 115. Cal. Lab. Code § 202 states, in relevant part, that:

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

20 116. There was no definite term in PLAINTIFF's or any other CALIFORNIA LABOR SUB-
21 CLASS Members' employment contract.

22 117. Cal. Lab. Code § 203 states:

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

118. The employment of PLAINTIFF and many other CALIFORNIA LABOR SUB-CLASS Members has terminated, yet as to those individuals whose employment terminated, DEFENDANT did not timely tender payment of all wages owed as required by law.

119. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated, PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and statutory costs as allowed.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for 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 minimum and 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.

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 compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable

1 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

2 C) The wages of all terminated individuals in the CALIFORNIA LABOR SUB-
3 CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is
4 commenced, in accordance with Cal. Lab. Code § 203;

5 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
6 in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA
7 LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty
8 of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

9 E) Meal and rest period compensation pursuant to California Labor Code Section
10 226.7 and the applicable IWC Wage Order;

11 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
12 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit; and,

13 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

14 3. On all claims:

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

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

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

19
20 Dated: November __, 2022

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

21
22
23 By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

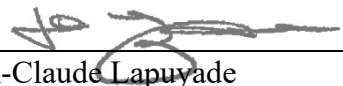
24
25 **DEMAND FOR JURY TRIAL**

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

27
28 Dated: November __, 2022

Respectfully Submitted,

JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

EXHIBIT