

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
SUPERIOR COURT
FILED
JAN 27 2021
MICHAEL D. PLANET
Executive Officer and Clerk
BY: _____ Deputy
MARIANA SUAZO

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

ADIDAS AMERICA, INC., an Oregon corporation; and DOES 1 through 50, Inclusive;

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):
MONSERRAT LOPEZ, an individual, in her representative capacity on behalf of the State of California and fellow Aggrieved Employees

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. *¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

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.sucorte.ca.gov), 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.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Ventura Superior Court, Hall of Justice
800 South Victoria Avenue
Ventura, CA 93009

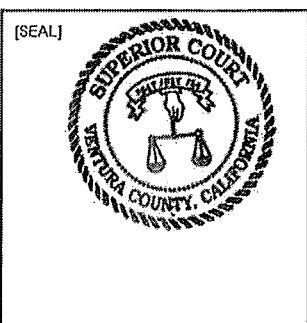
CASE NUMBER (Número del Caso):
56-2021-00549844-CU-OE-VTA

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):

ZAKAY LAW GROUP, APLC, 5850 Oberline Drive, Suite 230A, San Diego, CA 92121 Tel: (619) 255-9047

DATE: **JAN 27 2021** **MICHAEL D. PLANET** Clerk, by **MARIANA SUAZO** Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date)

VIA FAX

1 JEAN-CLAUDE LAPUYADE (SBN 248676)

2 JLAPUYADE@JCL-LAWFIRM.COM

3 **JCL LAW FIRM, APC**

3990 OLD TOWN AVENUE, SUITE C204

SAN DIEGO, CA 92110

TEL: (619) 599-8292

FAX: (619) 599-8291

5 SHANI O. ZAKAY (SBN 277924)

6 **ZAKAY LAW GROUP, APLC**

5850 OBERLIN DRIVE, SUITE 230A

SAN DIEGO, CA 92121

TEL: (619) 255-9047

FAX: (619) 404-9203

9 ATTORNEYS FOR PLAINTIFF

10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF VENTURA**

12 MONSERRAT LOPEZ, an individual, in her
13 representative capacity on behalf of the State of
California and fellow Aggrieved Employees,

14 Plaintiffs,

15 vs.

16 ADIDAS AMERICA, INC., an Oregon
17 corporation; and DOES 1 through 50, Inclusive;

18 Defendants.

VENTURA
SUPERIOR COURT
FILED

JAN 27 2021

MICHAEL D. PLANET
Executive Officer and Clerk

BY: _____, Deputy

MARIANA SUAZO

Case No. 56-2021-00549844-CU-OE-VTA

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698 *ET*
SEQ.

DEMAND FOR JURY TRIAL

VIA FAX

1 JEAN-CLAUDE LAPUYADE (SBN 248676)

2 JLAPUYADE@JCL-LAWFIRM.COM

3 **JCL LAW FIRM, APC**

4 3990 OLD TOWN AVENUE, SUITE C204

5 SAN DIEGO, CA 92110

6 TEL: (619) 599-8292

7 FAX: (619) 599-8291

8 SHANI O. ZAKAY (SBN 277924)

9 **ZAKAY LAW GROUP, APLC**

10 5850 OBERLIN DRIVE, SUITE 230A

11 SAN DIEGO, CA 92121

12 TEL: (619) 255-9047

13 FAX: (619) 404-9203

14 ATTORNEYS FOR PLAINTIFF

15 **SUPERIOR COURT OF CALIFORNIA**

16 **COUNTY OF VENTURA**

17 MONSERRAT LOPEZ, an individual, in her
18 representative capacity on behalf of the State of
19 California and fellow Aggrieved Employees,

20 Plaintiffs,

21 vs.

22 ADIDAS AMERICA, INC., an Oregon
23 corporation; and DOES 1 through 50, Inclusive;

24 Defendants.

Case No. _____

25 **REPRESENTATIVE ACTION**
26 **COMPLAINT FOR:**

- 27 1. VIOLATIONS OF THE PRIVATE
28 ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698 *ET*
SEQ.

DEMAND FOR JURY TRIAL

1 Plaintiff MONSERRAT LOPEZ (“PLAINTIFF”) an individual, in her representative
2 capacity on behalf the State of California, and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *supra*, against ADIDAS AMERICA, INC. (“DEFENDANT”), alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys General
8 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of the State of California and
9 other current and former aggrieved employees of DEFENDANT for engaging in a pattern and practice
10 of wage and hour violations under the California Labor Code.

11 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT decreased
12 their employment-related costs by systematically violating California wage and hour laws.

13 3. DEFENDANT’s systematic pattern of wage and hour and IWC Wage Order violations
14 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 15 a. Failure to provide compliant meal and rest periods;
- 16 b. Failure to allow employees to take duty-free, off-the-premises rest periods;
- 17 c. Failure to pay all minimum, regular and overtime wages;
- 18 d. Failure to provide suitable seating;
- 19 e. Failure to maintain true and accurate records;
- 20 f. Failure to provide accurate itemized wage statements;
- 21 g. Failure to pay employees wages for time spent getting their bags checked; and
- 22 h. Failure to timely pay wages due during, and upon termination of employment.

23 4. PLAINTIFF brings this representative action against DEFENDANT on behalf of other
24 aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid wages
25 permitted pursuant to California Labor Code § 2699, *et seq.*

26 5. PLAINTIFF reserves the right to name additional representatives throughout the State of
27 California.

1 **THE PARTIES**

2 6. DEFENDANT ADIDAS AMERICA, INC. (“DEFENDANT”) is an Oregon corporation
3 that at all relevant times mentioned herein conducted and continues to conduct substantial business in
4 the state of California, county of Ventura, owns, operates and/or manages a chain of athletic apparel
5 and equipment stores throughout California.

6 7. PLAINTIFF was employed by DEFENDANT at the Camarillo store location, as a non-
7 exempt cashier, paid on an hourly basis and entitled to overtime pay and legally compliant meal and
8 rest periods from approximately August of 2019 to August of 2020.

9 8. PLAINTIFF brings this action in her representative capacity on behalf of the State of
10 California and on behalf of all of DEFENDANT’s current and former non-exempt employees employed
11 in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et*
12 *seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANT between
13 October 27, 2019 and the present (“PAGA PERIOD”).

14 9. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code §
15 2699(c) because she was employed by DEFENDANT and suffered one or more of the alleged Labor
16 Code violations committed by DEFENDANT.

17 10. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were,
18 employees of DEFENDANT, within the meanings set forth in the California Labor Code and the
19 applicable Industrial Welfare Commission Wage Order.

20 11. Each of the fictitiously named defendants participated in the acts alleged in this
21 Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50,
22 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth
23 the true names and capacities of these fictitiously named defendants when their true names are
24 ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious
25 defendants have participated in the acts alleged in this Complaint.

26 12. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively
27 “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s
28 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated,

1 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days
2 of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties
3 for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

9 **JOINT EMPLOYER**

10 14. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce
11 any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

12 15. Section 558 of the California Labor Code provides that “any employer *or other person*
13 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall
15 be subject to a civil penalty...” (*Lab. Code* § 558(a).)

16 16. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person* acting
17 either individually or as an officer, agent, or employee of another person, who pays or causes to be paid
18 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
19 of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

20 17. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
21 a corporate employer’s owners, officers and directors, are subject to civil penalties for the employer’s
22 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does
23 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*
24 *Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009
25 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

26 18. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each
27 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees
28

1 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and
2 damages alleged herein.

3 19. At all relevant times, each DEFENDANTS, whether named or fictitious, was the agent,
4 employee or other person acting on behalf of each other DEFENDANTS, and, in participating in the
5 acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the
6 acts of the other.

7 20. Each DEFENDANTS, whether named or fictitious, exercised control over PLAINTIFF's
8 wages, working hours, and/or working conditions.

9 21. Each DEFENDANTS, whether named or fictitious, acted in all respects pertinent to this
10 action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy,
11 and the acts of each DEFENDANTS are legally attributable to the other DEFENDANTS.

12 **JURISDICTION AND VENUE**

13 1. This Court has jurisdiction over this Action pursuant to California Code of Civil
14 Procedure, Section 410.10. This Court has jurisdiction over PLAINTIFF's claims for civil penalties
15 under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

16 22. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
17 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
18 and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities
19 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
20 conduct herein alleged in this County against the AGGRIEVED EMPLOYEES.

21 **THE CONDUCT**

22 23. In violation of the applicable sections of the California Labor Code and the requirements
23 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
24 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
25 complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other
26 AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the other
27 AGGRIEVED EMPLOYEES for all time worked, and failed to issue to PLAINTIFF and the
28 AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things,

1 all applicable hourly rates in effect during the pay periods and the corresponding amount of time
2 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
3 purposefully avoid the accurate and full payment for all time worked as required by California law
4 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
5 comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
6 EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

7 **A. Meal Period Violations**

8 24. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
9 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
10 time during which an employee is subject to the control of an employer, including all the time the
11 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
12 DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them
13 for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's
14 demanding work requirements and DEFENDANTS' under staffing, DEFENDANTS required
15 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal
16 break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
17 should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where
18 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other AGGRIEVED
19 EMPLOYEES forfeited minimum wage and overtime wages by regularly working without their time
20 being accurately recorded and without compensation at the applicable minimum wage and overtime
21 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED
22 EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

23 25. From time-to-time during the PAGA PERIOD, as a result of their rigorous work schedules
24 and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other AGGRIEVED
25 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were
26 not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES
27 were required from time to time to perform work as ordered by DEFENDANTS for more than five (5)
28 hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time

1 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
2 for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours
3 of work from time to time. The nature of the work performed by the PLAINTIFF and the AGGRIEVED
4 EMPLOYEES does not qualify for limited and narrowly construed “on-duty” meal period exception.
5 PLAINTIFF and other members of the AGGRIEVED EMPLOYEES therefore forfeited meal breaks
6 without additional compensation and in accordance with DEFENDANTS’ strict corporate policy and
7 practice. DEFENDANTS failed to maintain adequate staffing levels while increasing the production
8 levels for each employee at the busy airports they provided services for.

9 **B. Rest Period Violations**

10 26. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
11 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
12 provided ten (10) minute rest periods as a result of their rigorous work schedule and DEFENDANTS’
13 inadequate staffing . Further, for the same reasons these employees were denied their first rest periods
14 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
15 time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six
16 (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10)
17 minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided
18 rest breaks, PLAINTIFF and other employees were required to remain on the premises and remain on
19 duty during those breaks. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided
20 with one-hour wages in lieu thereof. As a result of their rigorous work schedules and DEFENDANTS’
21 inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time
22 denied their proper rest periods by DEFENDANTS and DEFENDANTS’ managers.

23 **C. Off the Clock Work – Security Checks**

24 27. PLAINTIFF and AGGRIEVED EMPLOYEES would clock out of DEFENDANTS’
25 timekeeping system, in order to perform additional work for DEFENDANTS as required to meet
26 DEFENDANTS’ job requirements. Specifically, during the PAGA PERIOD, DEFENDANTS engaged
27 in the practice of requiring PLAINTIFF and AGGRIEVED EMPLOYEES to perform work off the
28 clock after clocking out in that DEFENDANTS, as a condition of employment, required these

1 employees from time to time to wait and submit to loss prevention inspections after clocking out at the
2 end of each scheduled shift, and if they left the store during off duty meal periods, for which
3 DEFENDANTS did not provide compensation for the time spent waiting for and submitting to
4 DEFENDANTS' loss prevention inspections off the clock.

5 28. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum
6 wage, overtime wage compensation, and meal break wages, by working without their time being
7 correctly recorded and without compensation at the applicable rates. DEFENDANTS' policy and
8 practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is
9 evidenced in DEFENDANTS' business records.

10 **D. Wage Statement Violations**

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

19 30. From time to time during the PAGA PERIOD, when PLAINTIFF and other
20 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal and
21 rest period premiums, or were not paid for all the time they spent working under DEFENDANTS'
22 control, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
23 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
24 among other things, all hours worked and the penalty payments for missed meal and rest periods.

25 31. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED
26 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
27 violations are knowing and intentional, were not isolated or due to an unintentional payroll error due
28 to clerical or inadvertent mistake.

1 **E. Suitable Seating Violations**

2 32. PLAINTIFF further alleges that the station counters in DEFENDANTS' stores provide
3 ample space behind each counter area to allow for the presence and use of a stool or seat by
4 DEFENDANTS' employees during the performance of their work duties. DEFENDANTS' employees
5 working at DEFENDANTS' stores spend a very substantial portion, and, in many workdays, the vast
6 majority of their working time behind these counters. The nature of the position can reasonably be
7 accomplished while using a seat/stool.

8 33. In violation of the applicable sections of the California Labor Code and the requirements
9 of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of
10 company policy, practice and procedure, intentionally, knowingly and systematically failed to provide
11 PLAINTIFF and the other Aggrieved Employees suitable seating when the nature of these employees'
12 work reasonably permitted sitting.

13 34. DEFENDANTS knew or should have known that PLAINTIFF and other AGGRIEVED
14 EMPLOYEES were entitled to suitable seating and/or were entitled to sit when it did not interfere with
15 the performance of their duties, and that DEFENDANTS did not provide suitable seating and/or did
16 not allow them to sit when it did not interfere with the performance of their duties. By reason of this
17 conduct applicable to PLAINTIFF and all AGGRIEVED EMPLOYEES, DEFENDANTS violated
18 California Labor Code Section 1198 and Wage Order 4-2001, Section 14 by failing to provide suitable
19 seats.

20 **FIRST CAUSE OF ACTION**

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

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

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

24 35. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
25 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

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

7 37. PLAINTIFF brings this Representative Action on behalf of the State of California with
8 respect to herself and all other current and former AGGRIEVED EMPLOYEES employed by
9 DEFENDANTS during the PAGA PERIOD.

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

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

16 40. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
17 Section 2699.3. By certified letter, return receipt requested, dated October 27, 2020, PLAINTIFF gave
18 written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANT of
19 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
20 to support the alleged violations. See Exhibit #1, attached hereto and incorporated by this reference
21 herein.

22 41. As of December 31, 2020, more than sixty-five (65) days after serving the LWDA with
23 notice of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of its
24 intent to investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section
25 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may
26 commence and is authorized to pursue this cause of action.

27 42. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to the
28 California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute

1 of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of
2 limitation and repose for civil causes of action that are 180 days or less, or (b) October 1, 2020 for
3 statutes of limitation and repose for civil causes of action that exceed 180 days.

4 43. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
5 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,
6 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, in the following
7 amounts:

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

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

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

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

27 e. For violations of Labor Code Section 2269(a), a civil penalty in the
28 amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE

1 per violation in an initial citation and one thousand dollars (\$1,000) per
2 AGGRIEVED EMPLOYEE for each subsequent violation [penalty per
3 Labor Code Section 226.3];

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

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

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

22
23 **PRAYER FOR RELIEF**

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

25 (a) For reasonable attorney’s fees and costs of suit to the extent permitted by law, including
26 pursuant to Labor Code § 2699, *et seq.*;

27 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
28 Private Attorneys General Act; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(c) For such other relief as the Court deems just and proper.

Dated: January 25, 2021

Respectfully Submitted,
ZAKAY LAW GROUP, A.P.C.

By: 
Shani O. Zakay
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: January 25, 2021

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

By: 
Shani O. Zakay
Attorneys for PLAINTIFF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

October 27, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

Adidas America, Inc.
c/o C T Corp System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
Certified Mail No. & Return Receipt

Adidas America, Inc.
c/o Michelle Briggs
Via Email at Michelle.Briggs@adidas-Group.com

Re: Notice of Violations of California Labor Code Sections §§ 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents MONSERRAT LOPEZ (the “Plaintiff”), and other aggrieved employees in a proposed class and representative action against ADIDAS AMERICA, INC (“Defendant”). This office intends on filing the enclosed Class Action 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 was employed by Defendant as a non-exempt employee in California from August 2019 to August 2020. Plaintiff contends that Defendant failed to provide compliant off-duty meal and rest periods, failed to fully compensate her for all time worked, failed to provide suitable seating, failed to provide duty-free off premise rest breaks, failed to pay wages for time spent during security checks, and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed complaint (“Complaint”) for the proposed class action 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 Defendant. 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. The proposed class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide 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 and Class Members

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.

Respectfully,



Shani O. Zakay
Attorney at Law

1 JEAN-CLAUDE LAPUYADE (SBN 248676)
2 JLAPUYADE@JCL-LAWFIRM.COM
3 **JCL LAW FIRM, APC**
4 3990 OLD TOWN AVENUE, SUITE C204
5 SAN DIEGO, CA 92110
6 TEL: (619) 599-8292; FAX: (619) 599-8291

7 SHANI O. ZAKAY (SBN 277924)
8 **ZAKAY LAW GROUP, APLC**
9 5850 OBERLIN DRIVE, SUITE 230A
10 SAN DIEGO, CA 92121
11 TEL: (619) 255-9047; FAX: (619) 404-9203

12 ATTORNEYS FOR PLAINTIFF

13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF VENTURA**

15 MONSERRAT LOPEZ, an individual, on
16 behalf of herself, and on behalf of all persons
17 similarly situated,

18 Plaintiffs,

19 vs.

20 ADIDAS AMERICA, INC., an Oregon
21 corporation; and DOES 1 through 50,
22 Inclusive;

23 DEFENDANTS.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203
8. VIOLATION OF CALIFORNIA LABOR CODE § 1198 AND CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 1 1070(14) (FAILURE TO PROVIDE SEATING)

DEMAND FOR JURY TRIAL

1
2 Plaintiff MONSERRAT LOPEZ (“PLAINTIFF”) an individual, on behalf of herself and all other
3 similarly situated current and former employees alleges on information and belief, except for his own
4 acts and knowledge which are based on personal knowledge, the following:

5 **THE PARTIES**

6 1. Defendant ADIDAS AMERICA, INC (“DEFENDANT” or “DEFENDANTS”) is an
7 Oregon corporation that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California, county of Ventura, owns, operates and/or manages a
9 chain of athletic apparel and equipment stores throughout California.

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

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

26 4. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
27 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused
28



1 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
2 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
3 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

9 6. PLAINTIFF has been employed by DEFENDANTS at the Camarillo store location, as a
10 non-exempt employee paid on an hourly basis and entitled to overtime pay and legally compliant meal
11 and rest periods from August 2019 to August 2020.

12 7. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
13 DEFENDANTS' current and former non-exempt California employees (the "CALIFORNIA CLASS")
14 at any time during the period beginning four (4) years prior to the filing of this Complaint and ending
15 on the date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
16 aggregate claim of CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00).

17 8. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
18 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
19 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which
20 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
21 periods or an additional hour of pay at the regular rate of compensation in lieu thereof in violation of
22 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
23 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in
24 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to
25 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and
26 226.3.



1 9. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair and
2 deceptive business practices whereby DEFENDANTS retained and continues to retain wages due
3 PLAINTIFF and the other members of the CALIFORNIA CLASS.

4 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
5 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other
6 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS's past
7 and current unlawful conduct, and all other appropriate legal and equitable relief.

8 **JURISDICTION AND VENUE**

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

13 12. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
14 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
15 and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities
16 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
17 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

18 **THE CONDUCT**

19 13. In violation of the applicable sections of the California Labor Code and the requirements
20 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
21 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
22 complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other members of
23 the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
24 members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the
25 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other
26 things, the amount of time worked. DEFENDANTS' uniform policies and practices are intended to
27 purposefully avoid the accurate and full payment for all time worked as required by California law
28 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who



1 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

3 **A. Meal Period Violations**

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

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



1 “on-duty” meal period exception. PLAINTIFF and other members of the CALIFORNIA CLASS
2 therefore forfeited meal breaks without additional compensation and in accordance with
3 DEFENDANTS’ strict corporate policy and practice. DEFENDANTS failed to maintain adequate
4 staffing levels while increasing the production levels for each employee at the busy airports they
5 provided services for.

6 **B. Rest Period Violations**

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

21 **C. Off the Clock Work – Security Checks**

22 17. PLAINTIFF and CALIFORNIA CLASS MEMBERS would clock out of
23 DEFENDANTS’s timekeeping system, in order to perform additional work for DEFENDANT as
24 required to meet DEFENDANT’s job requirements. Specifically, during the CLASS PERIOD,
25 DEFENDANT engaged in the practice of requiring PLAINTIFF and other CALIFORNIA CLASS
26 members to perform work off the clock after clocking out in that DEFENDANT, as a condition of
27 employment, required these employees from time to time to wait and submit to loss prevention
28 inspections after clocking out at the end of each scheduled shift, and if they left the store during off

1 duty meal periods, for which DEFENDANT did not provide compensation for the time spent waiting
2 for and submitting to DEFENDANT's loss prevention inspections off the clock.

3 18. As a result, PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum
4 wage, overtime wage compensation, and meal break wages, by working without their time being
5 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and
6 practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is
7 evidenced in DEFENDANT's business records.

8 **D. Wage Statement Violations**

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

17 20. From time to time during the CLASS PERIOD, when PLAINTIFF and other
18 CALIFORNIA CLASS members missed meal and rest breaks, or were paid inaccurate missed meal
19 and rest period premiums, or were not paid for all the time they spent working under DEFENDANT's
20 control, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
21 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other
22 things, all hours worked and the penalty payments for missed meal and rest periods.

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

27
28



1 **E. Suitable Seating Violations**

2 22. PLAINTIFF further alleges that the station counters in DEFENDANT's stores provide
3 ample space behind each counter area to allow for the presence and use of a stool or seat by
4 DEFENDANT's employees' during the performance of their work duties. DEFENDANT's
5 employees' working at DEFENDANT's stores spend a very substantial portion, and, in many
6 workdays, the vast majority of their working time behind these counters. The nature of the position
7 can reasonably be accomplished while using a seat/stool.

8 23. In violation of the applicable sections of the California Labor Code and the requirements
9 of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of
10 company policy, practice and procedure, intentionally, knowingly and systematically failed to provide
11 PLAINTIFF and the other Aggrieved Employees suitable seating when the nature of these employees'
12 work reasonably permitted sitting.

13 24. DEFENDANT knew or should have known that PLAINTIFF and other Aggrieved
14 Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the
15 performance of their duties, and that DEFENDANT did not provide suitable seating and/or did not
16 allow them to sit when it did not interfere with the performance of their duties. By reason of this conduct
17 applicable to PLAINTIFF and all Aggrieved Employees, DEFENDANT violated California Labor
18 Code Section 1198 and Wage Order 4-2001, Section 14 by failing to provide suitable seats.

19
20 **CLASS ACTION ALLEGATIONS**

21 25. PLAINTIFF brings the First through Seventh Causes of Action as a class action pursuant
22 to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-
23 exempt California employees ("CALIFORNIA CLASS") at any time during the period beginning four
24 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court ("CLASS
25 PERIOD").

26 26. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been
27 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid
28 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal



1 and rest period policies, failure to provide accurate itemized wage statements, failure to maintain
2 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

3 27. The members of the class are so numerous that joinder of all class members is impractical.

4 28. Common questions of law and fact regarding DEFENDANTS' conduct, including but not
5 limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately pay for
6 all time worked, failing to provide legally compliant meal and rest periods, failure to provide accurate
7 itemized wage statements accurate, and failure ensure they are paid at least minimum wage and
8 overtime, exist as to all members of the class and predominate over any questions affecting solely any
9 individual members of the class. Among the questions of law and fact common to the class are:

10 a. Whether DEFENDANTS maintained legally compliant meal period
11 policies and practices;

12 b. Whether DEFENDANTS maintained legally compliant rest period
13 policies and practices;

14 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
15 CALIFORNIA CLASS members accurate premium payments for missed
16 meal and rest periods;

17 d. Whether DEFENDANTS failed to pay PLAINTIFF and the
18 CALIFORNIA CLASS members accurate overtime wages.

19 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
20 CALIFORNIA CLASS members at least minimum wage for all hours
21 worked.

22 f. Whether DEFENDANTS issued legally compliant wage statements;

23 g. Whether DEFENDANTS committed an act of unfair competition by
24 systematically failing to record and pay PLAINTIFF and the other members
25 of the CALIFORNIA CLASS for all time worked;

26 h. Whether DEFENDANTS committed an act of unfair competition by
27 systematically failing to record all meal and rest breaks missed by
28 PLAINTIFF and other CALIFORNIA CLASS members, even though



1 DEFENDANTS enjoyed the benefit of this work, required employees to
2 perform this work and permits or suffers to permit this work;

3 i. Whether DEFENDANTS committed an act of unfair competition in
4 violation of the UCL, by failing to provide the PLAINTIFF and the other
5 members of the CALIFORNIA CLASS with the legally required meal and
6 rest periods; and,

7 29. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result
8 of DEFENDANTS' conduct and actions alleged herein.

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

11 31. PLAINTIFF will fairly and adequately represent and protect the interests of the
12 CALIFORNIA CLASS members.

13 32. PLAINTIFF retained able class counsel with extensive experience in class action
14 litigation.

15 33. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests
16 of the other CALIFORNIA CLASS members.

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

20 35. The questions of law and fact common to the CALIFORNIA CLASS members
21 predominate over any questions affecting only individual members, including legal and factual issues
22 relating to liability and damages.

23 36. A class action is superior to other available methods for the fair and efficient adjudication
24 of this controversy because joinder of all class members is impractical. Moreover, since the damages
25 suffered by individual members of the class may be relatively small, the expense and burden of
26 individual litigation makes it practically impossible for the members of the class individually to redress
27 the wrongs done to them. Without class certification and determination of declaratory, injunctive,
28 statutory and other legal questions within the class format, prosecution of separate actions by individual

1 members of the CALIFORNIA CLASS will create the risk of:

- 2 a. Inconsistent or varying adjudications with respect to individual members of the
3 CALIFORNIA CLASS which would establish incompatible standards of conduct for the
4 parties opposing the CALIFORNIA CLASS; and/or,
5 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
6 which would as a practical matter be dispositive of the interests of the other members not
7 party to the adjudication or substantially impair or impeded their ability to protect their
8 interests.

9 37. Class treatment provides manageable judicial treatment calculated to bring an efficient
10 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of
11 DEFENDANTS.

12 **FIRST CAUSE OF ACTION**

13 **For Unlawful Business Practices**

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

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

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

18 39. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
19 17021.

20 40. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair
21 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes
22 injunctive, declaratory, and/or other 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 make 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



1 money or property, real or personal, which may have been acquired by
2 means of such unfair competition.

3 Cal. Bus. & Prof. Code § 17203.

4 41. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
5 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
6 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
7 “UCL”), by engaging and continuing to engage in business practices which violates California law,
8 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
9 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194,
10 1197, 1197.1, 1198, for which this Court should issue declaratory and other equitable relief pursuant to
11 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
12 unfair competition, including restitution of wages wrongfully withheld.

13 42. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that
14 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
15 substantially injurious to employees, and were without valid justification or utility for which this Court
16 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
17 Professions Code, including restitution of wages wrongfully withheld.

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

26 44. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
27 deceptive in that DEFENDANTS’ employment practices caused PLAINTIFF and the other members of
28 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

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

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

11 47. PLAINTIFF further demands on behalf of herself and on behalf of each CALIFORNIA
12 CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not
13 timely provided as required by law.

14 48. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
15 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
16 calculated overtime and missed meal and rest periods premiums.

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

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

28 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,

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

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

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

16 **SECOND CAUSE OF ACTION**

17 **For Failure to Pay Overtime Compensation**

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

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

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

22 55. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
23 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
24 Welfare Commission requirements for DEFENDANTS' failure to pay these employees for all overtime
25 worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours
26 in a workday, and/or forty (40) hours in any workweek.

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

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

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

8 59. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
9 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they
10 worked or were not accurately compensated for all overtime hours worked.

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

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

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

27 63. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the
28 overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other

1 members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude
3 the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings this Action on
4 behalf of herself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-
5 negotiable, non-waivable rights provided by the State of California.

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

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

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

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

26 68. In performing the acts and practices herein alleged in violation of California labor laws,
27 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
28 them with the requisite overtime compensation, DEFENDANTS acted and continues to act intentionally,

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

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

15 **THIRD CAUSE OF ACTION**

16 **For Failure to Pay Minimum Wages**

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

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

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

21 71. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
22 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
23 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
24 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the
25 LABOR CLASS PERIOD.

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

28 73. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the

1 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
2 minimum so fixed is unlawful.

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

5 75. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
6 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
7 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
8 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
9 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
10 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
11 of the CALIFORNIA CLASS.

12 76. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
13 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
14 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
15 of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

24 79. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
25 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a failure
26 to pay all earned wages.

27 80. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
28 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,

1 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
2 suffer an economic injury in amounts which are presently unknown to them and which will be
3 ascertained according to proof at trial.

4 81. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
5 the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS
6 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
7 employees for their labor as a matter of uniform company policy, practice and procedure, and
8 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
9 members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

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

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

1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

21 86. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC
22 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not
23 provided a meal period, in accordance with the applicable Wage Order, one additional hour of
24 compensation at each employee's regular rate of compensation for each workday that a meal period was
25 not provided.

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

1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

7 89. During the LABOR CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
8 members were from time to time required to work in excess of four (4) hours without being provided
9 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
10 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period
11 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
12 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more
13 from time to time. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with
14 one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
15 CALIFORNIA CLASS members were periodically denied their proper rest periods by DEFENDANTS
16 and DEFENDANTS' managers.

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

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

25 //

26 //

27 //

28 //



1 **SIXTH CAUSE OF ACTION**

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

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

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

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

7 93. Cal. Labor Code § 226 provides that an employer must furnish employees with an
8 “accurate itemized” statement in writing showing:

- 9 1. Gross wages earned;
- 10 2. Total hours worked by the employee, except for any employee
11 whose compensation is solely based on a salary and who is exempt from
12 payment of overtime under subdivision (a) of Section 515 or any applicable
13 order of the Industrial Welfare Commission;
- 14 3. The number of piece-rate units earned and any applicable piece rate
15 if the employee is paid on a piece-rate basis;
- 16 4. All deductions, provided that all deductions made on written orders
17 of the employee may be aggregated and shown as one item;
- 18 5. Net wages earned;
- 19 6. The inclusive dates of the period for which the employee is paid,
- 20 7. The name of the employee and his or her social security number,
21 except that by January 1, 2008, only the last four digits of his or her social
22 security number or an employee identification number other than a social
23 security number may be shown on the itemized statement,
- 24 8. The name and address of the legal entity that is the employer, and
- 25 9. All applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the employee.

27 94. During the LABOR CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF
28 and the other members of the CALIFORNIA CLASS with complete and accurate wage statements

1 which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages
2 earned, (3) gross wages earned and (7) 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 in violation of
4 California Labor Code Section 226.

5 95. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §
6 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA
7 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for
8 the overtime worked and the amount of employment taxes which were not properly paid to state and
9 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other
10 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)
11 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
12 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and
13 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
14 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
15 member of the CALIFORNIA CLASS herein.

16 **SEVENTH CAUSE OF ACTION**

17 **FAILURE TO PAY WAGES WHEN DUE**

18 **(Cal Lab. Code §§201, 202, 203)**

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

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

22 97. Cal. Lab. Code § 200 provides that:

23 As used in this article:(a) "Wages" includes all amounts for labor
24 performed by employees of every description, whether the amount
25 is fixed or ascertained by the standard of time, task, piece,
26 Commission basis, or other method of calculation. (b) "Labor"
27 includes labor, work, or service whether rendered or performed
28 under contract, subcontract, partnership, station plan, or other



1 agreement if the labor to be paid for is performed personally by the
2 person demanding payment.

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

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

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

17 100. There was no definite term in PLAINTIFF’s or any CALIFORNIA CLASS Members’
18 employment contract.

19 101. Cal. Lab. Code § 203 provides:

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

26 102. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated
27 and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest
28 breaks, as required by law.

1 109. PLAINTIFF and AGGRIEVED EMPLOYEES are entitled to recover all remedies
2 available for violations of California Labor Code section 1198 and California Code of Regulations, Title
3 8, section 11070(14)

4 110. Pursuant to the civil penalties provided for in California Labor Code sections 2699 (f)
5 and (g), the State of California, PLAINTIFF and other aggrieved employees are entitled to recover civil
6 penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
7 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
8 subsequent violation, plus costs and attorneys' fees for violation of California Labor Code section 1198.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
12 severally, as follows:

13 1. On behalf of the CALIFORNIA CLASS:

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

16 B) An order temporarily, preliminarily and permanently enjoining and restraining
17 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

18 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
19 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

20 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for
21 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other
22 members of the CALIFORNIA CLASS.

23 E) That the Court certify the Second, Third, Fourth and Fifth Causes of Action asserted by
24 the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

25 1. Compensatory damages, according to proof at trial, including compensatory
26 damages for overtime compensation due PLAINTIFF and the other members of the
27 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus
28 interest thereon at the statutory rate;

