

**SUMMONS
(CITACION JUDICIAL)**

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/24/2024 at 03:04:16 PM
Clerk of the Superior Court
By Jonathan Renteria, Deputy Clerk

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

8757 MV PAYROLL, LLC, a California limited liability company; DRIFTWOOD HOSPITALITY MANAGEMENT II, LLC, a Delaware limited liability company; and DOES 1-50, Inclusive,

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

MATTHEW SHACHNO and IVAN MARTINEZ, individuals, on behalf of themselves, and on behalf of all persons similarly situated,

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): San Diego Superior Court
Hall of Justice Courthouse - 330 W Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso):
37-2024-00029491-CU-OE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. T: (619)599-8292 JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: **06/25/2024** Clerk, by  , 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):

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19 Attorneys for PLAINTIFFS

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **IN AND FOR THE COUNTY OF SAN DIEGO**

22 MATTHEW SHACHNO and IVAN
23 MARTINEZ, individuals, on behalf of
24 themselves, and on behalf of all persons
25 similarly situated,

26 Plaintiffs,

27 v.

28 8757 MV PAYROLL, LLC, a California
limited liability company; DRIFTWOOD
HOSPITALITY MANAGEMENT II, LLC, a
Delaware limited liability company; and DOES
1-50, Inclusive,

Defendants.

Case No: 37-2024-00029491-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

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

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- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
 - 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
 - 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
 - 9) FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB CODE § 351;

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DEMAND FOR A JURY TRIAL

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PLAINTIFFS MATTHEW SHACHNO (“Plaintiff Shachno”) and IVAN MARTINEZ (“Plaintiff Martinez”) (hereinafter collectively, “PLAINTIFFS”), individuals, on behalf of themselves and all other similarly situated current and former employees, allege on information and belief, except for their own acts and knowledge which are based on personal knowledge, the following:

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PRELIMINARY ALLEGATIONS

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1. Defendant 8757 MV PAYROLL, LLC (“Defendant MV Payroll”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

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2. Defendant DRIFTWOOD HOSPITALITY MANAGEMENT II, LLC (“Defendant Driftwood”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

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3. Defendant MV Payroll and Defendant Driftwood are the joint employers of PLAINTIFFS as evidenced by the documents issued to PLAINTIFFS and by the company PLAINTIFFS performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

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4. DEFENDANTS operate a hospitality management company in the state of California, including the county of San Diego, where PLAINTIFFS work.

1 5. Plaintiff Shachno is currently employed by DEFENDANTS in California as a non-
2 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
3 periods and payment of minimum and overtime wages due for all time worked.

4 6. Plaintiff Martinez is currently employed by DEFENDANTS in California as a non-
5 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
6 periods and payment of minimum and overtime wages due for all time worked.

7 7. PLAINTIFFS bring this Class Action on behalf of themselves, and a
8 CALIFORNIA CLASS defined as all persons who are or previously were employed by Defendant
9 MV Payroll and/or Defendant Driftwood and classified as non-exempt employees (the
10 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the
11 filing of this Complaint and ending on the date as determined by the Court (the “CLASS
12 PERIOD”). The amount in controversy for the aggregate claim of the CALIFORNIA CLASS
13 Members is under five million dollars (\$5,000,000.00).

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

25 9. The true names and capacities, whether individual, corporate, subsidiary,
26 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
27 presently unknown to PLAINTIFFS who therefore sue these DEFENDANTS by such fictitious
28 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this

1 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
2 ascertained. PLAINTIFFS are informed and believe, and based upon that information and belief
3 allege, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
4 inclusive, are responsible in some manner for one or more of the events and happenings that
5 proximately caused the injuries and damages hereinafter alleged.

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

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

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

25 13. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
26 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain
27 wages due to PLAINTIFFS and other members of the CALIFORNIA CLASS.

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

8 **A. Meal Period Violations**

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

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

1 DEFENDANTS failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with a
2 second off-duty meal period for some workdays in which these employees are required by
3 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
4 PLAINTIFFS and other CALIFORNIA CLASS Members does not qualify for the limited and
5 narrowly construed “on-duty” meal period exception. When they were provided with meal
6 periods, PLAINTIFFS and other CALIFORNIA CLASS Members were, from time to time,
7 required to remain on duty and on call. DEFENDANTS’ failure to provide PLAINTIFFS and the
8 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
9 DEFENDANTS’ business records. PLAINTIFFS and other members of the CALIFORNIA
10 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
11 DEFENDANTS’ strict corporate policy and practice.

12 **B. Rest Period Violations**

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

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1 **C. Unreimbursed Business Expenses**

2 21. DEFENDANTS as a matter of corporate policy, practice, and procedure,
3 intentionally, knowingly, and systematically failed to reimburse and indemnify PLAINTIFFS and
4 the other CALIFORNIA CLASS Members for required business expenses incurred by
5 PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging
6 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
7 are required to indemnify employees for all expenses incurred in the course and scope of their
8 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence
10 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
11 even though unlawful, unless the employee, at the time of obeying the directions, believed them
12 to be unlawful."

13 22. In the course of their employment, DEFENDANTS required PLAINTIFFS and
14 other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal
15 cell phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFFS and
16 other CALIFORNIA CLASS Members were required to use their personal cell phones in order to
17 perform work related tasks. However, DEFENDANTS unlawfully failed to reimburse
18 PLAINTIFFS and other CALIFORNIA CLASS Members for the use of their personal cell
19 phones. As a result, in the course of their employment with DEFENDANTS, PLAINTIFFS and
20 other CALIFORNIA CLASS Members incurred unreimbursed business expenses that included,
21 but were not limited to, costs related to the use of their personal cell phones all on behalf of and
22 for the benefit of DEFENDANTS.

23 **D. Wage Statement Violations**

24 23. California Labor Code Section 226 required an employer to furnish its employees
25 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
26 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
27 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
28 name of the employee and only the last four digits of the employee's social security number or an

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

4 24. From time to time during the CLASS PERIOD, when PLAINTIFFS and other
5 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
6 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
7 also failed to provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete
8 and accurate wage statements which failed to show the complete requirements under California
9 Labor Code sections 226(a)(1)-(9), including but not limited to, all deductions, the total hours
10 worked and all applicable hourly rates in effect during the pay period and the corresponding
11 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
12 meal and rest periods.

13 25. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
14 PLAINTIFFS and the CALIFORNIA CLASS Members with wage statements that comply with
15 Cal. Lab. Code § 226(a)(1)-(9).

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

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

21 27. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
22 continue to fail to accurately pay PLAINTIFFS and other members of the CALIFORNIA CLASS
23 for all hours worked.

24 28. During the CLASS PERIOD, from time-to-time DEFENDANTS required
25 PLAINTIFFS and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
26 work. This resulted in PLAINTIFFS and other members of the CALIFORNIA CLASS having to
27 work while off-the-clock.

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1 29. DEFENDANTS directed and directly benefited from the undercompensated off-
2 the-clock work performed by PLAINTIFFS and the other CALIFORNIA CLASS Members.

3 30. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
4 assignments, and employment conditions of PLAINTIFFS and the other members of the
5 CALIFORNIA CLASS.

6 31. DEFENDANTS were able to track the amount of time PLAINTIFFS and the other
7 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
8 document, track, or pay PLAINTIFFS and the other members of the CALIFORNIA CLASS all
9 wages earned and owed for all the work they performed.

10 32. PLAINTIFFS and the other members of the CALIFORNIA CLASS were non-
11 exempt employees, subject to the requirements of the California Labor Code.

12 33. DEFENDANTS' policies and practices deprived PLAINTIFFS and the other
13 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
14 for the off-the-clock work activities. Because PLAINTIFFS and the other members of the
15 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
16 eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime
17 pay.

18 34. DEFENDANTS knew or should have known that PLAINTIFFS and the other
19 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

20 35. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
21 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and
22 benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and
23 practice to not pay PLAINTIFFS and the members of the CALIFORNIA CLASS wages for all
24 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
25 records.

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1 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
2 **and Redeemed Sick Pay**

3 36. From time to time during the CLASS PERIOD, DEFENDANTS failed and
4 continue to fail to accurately calculate and pay PLAINTIFFS and the other CALIFORNIA
5 CLASS Members for their overtime and double time hours worked, meal and rest period
6 premiums, and redeemed sick pay. As a result, PLAINTIFFS and the other CALIFORNIA
7 CLASS Members forfeited wages due to them for working overtime without compensation at the
8 correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay
9 rates. DEFENDANTS’ uniform policy and practice not to pay the CALIFORNIA CLASS
10 Members at the correct rate for all overtime and double time worked, meal and rest period
11 premiums, and redeemed sick pay in accordance with applicable law is evidenced by
12 DEFENDANTS’ business records.

13 37. State law provides that employees must be paid overtime at one-and-one-half times
14 their “regular rate of pay.” PLAINTIFFS and other CALIFORNIA CLASS Members were
15 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
16 employee’s performance.

17 38. The second component of PLAINTIFFS’ and other CALIFORNIA CLASS
18 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
19 PLAINTIFFS and other CLASS MEMBERS incentive wages based on their performance for
20 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
21 basis with bonus compensation when the employees met the various performance goals set by
22 DEFENDANTS.

23 39. However, from-time-to-time, when calculating the regular rate of pay, in those pay
24 periods where PLAINTIFFS and other CALIFORNIA CLASS members worked overtime, double
25 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
26 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
27 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked
28 rather than just all non-overtime hours worked. Management and supervisors described the

1 incentive/bonus program to potential and new employees as part of the compensation package.
2 As a matter of law, the incentive compensation received by PLAINTIFFS and other
3 CALIFORNIA CLASS members must be included in the “regular rate of pay.” The failure to do
4 so has resulted in a systematic underpayment of overtime and double time compensation, meal
5 and rest period premiums, and redeemed sick pay to PLAINTIFFS and other CALIFORNIA
6 CLASS members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates
7 that paid sick time for non-employees shall be calculated in the same manner as the regular rate
8 of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not
9 the employee actually works overtime in that workweek. DEFENDANTS’ conduct, as articulated
10 herein, by failing to include the incentive compensation as part of the “regular rate of pay” for
11 purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of
12 which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

24 **G. Violations for Untimely Payment of Wages**

25 41. Pursuant to California Labor Code section 204, PLAINTIFFS and the
26 CALIFORNIA CLASS members were entitled to timely payment of wages during their
27 employment. PLAINTIFFS and the CALIFORNIA CLASS members, from time to time, did not
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1 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
2 meal period premium wages, and rest period premium wages within permissible time period.

3 42. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
4 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant
5 to Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall
6 become due and payable not later than 72 hours thereafter, unless the employee has given 72
7 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
8 or her wages at the time of quitting.” PLAINTIFFS and the CALIFORNIA CLASS Members
9 were, from time to time, not timely provided the wages earned and unpaid at the time of their
10 discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

11 43. As such, PLAINTIFFS demand up to thirty days of pay as penalty for not timely
12 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose
13 employment ended during the CLASS PERIOD.

14 **H. Unlawful Deductions**

15 44. DEFENDANTS, from time-to-time unlawfully deducted wages from
16 PLAINTIFFS and CALIFORNIA CLASS Members’ pay without explanations and without
17 authorization to do so or notice to PLAINTIFFS and the CALIFORNIA CLASS Members. As a
18 result, DEFENDANTS violated Labor Code § 221.

19 **I. Timekeeping Manipulation**

20 45. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
21 immutable timekeeping system to accurately record and pay PLAINTIFFS and other members
22 of the CALIFORNIA CLASS for the actual time PLAINTIFFS and other members of the
23 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
24 and rest breaks. As a result, DEFENDANTS were able to and did in fact, unlawfully, and
25 unilaterally alter the time recorded in DEFENDANTS’ timekeeping system for PLAINTIFFS
26 and other members of the CALIFORNIA CLASS in order to avoid paying these employees for
27 all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks
28 and missed rest breaks.

1 46. As a result, PLAINTIFFS and other members of the CALIFORNIA CLASS, from
2 time-to-time, forfeited time worked by working without their time being accurately recorded and
3 without compensation at the applicable pay rates.

4 47. The mutability of the timekeeping system also allowed DEFENDANTS to alter
5 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
6 timekeeping system so as to create the appearance that PLAINTIFFS and other members of the
7 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
8 were not at all times provided an off-duty meal break. This practice is a direct result of
9 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
10 minute off-duty meal breaks each day or otherwise compensating them for missed meal breaks.

11 48. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
12 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control and
13 benefit for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy
14 and practice to not pay PLAINTIFFS and the members of the CALIFORNIA CLASS wages for
15 all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
16 records.

17 **J. Unlawful Rounding Practices**

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

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

9 **K. Sick Pay Violations**

10 51. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after
11 July 1, 2015, works in California for the same employer for 30 or more days within a year from the
12 commencement of employment is entitled to paid sick days as specified in this section." Further,
13 Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to
14 time, DEFENDANTS failed to have a policy or practice in place that provided PLAINTIFFS and
15 other members of the CALIFORNIA CLASS with sick days and/or paid sick leave.

16 52. California Labor Code Section 246(i) requires an employer to furnish its employees
17 with written wage statements setting forth the amount of paid sick leave available. From time to
18 time, DEFENDANTS violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFFS and other
19 members of the CALIFORNIA CLASS with wage statements setting forth the amount of paid sick
20 leave available.

21 **L. Tip Pooling**

22 53. During the CALIFORNIA CLASS period, pursuant to DEFENDANTS' company
23 policies and practices, PLAINTIFFS and other CALIFORNIA CLASS Members were forced to
24 forfeit gratuities left for them by customers to DEFENDANTS' agents who provided no service
25 to the customers that resulted in the gratuity. DEFENDANTS routinely added service charges to
26 its food and beverage bills, which upon information and belief, served as gratuities for the service
27 staff. "Thus, depending upon how one chooses to read [labor code] section 350 a mandatory
28 service charge could be seen as either a sum paid by the customer 'over and above the actual

1 amount due...for food [and] drink...sold...to the patron.” *O’Grady v. Merchant Exchange*
2 *Productions, Inc.*, (2019) 41 Cal.App.5th 771, 780 (citing California Labor Code § 350(e)). It is
3 typical and customary in the hospitality industry that establishments impose gratuity and/or
4 service charges on the food and beverage bill. Thus, when customers paid these charges, it is
5 reasonable for them to have believed they were gratuities to be paid to the service staff. Indeed,
6 because many of these charges are depicted to customers, and the custom in the food and beverage
7 industry that gratuities are paid for food and beverage service, customers paid these charges
8 reasonably believing they were remitted to the service staff. However, DEFENDANTS have not
9 remitted the total proceeds of these gratuities to the non-managerial employees who serve the
10 food and beverages. Instead, DEFENDANTS have a policy and practice of using a portion of
11 these gratuities to pay managers or other non-service employees. As a result, PLAINTIFFS and
12 CALIFORNIA CLASS Members have not received the total proceeds of the gratuities, to which
13 they are entitled to under California law.

14 54. DEFENDANTS are generally in the business of owning and operating a hospitality
15 management company. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
16 CALIFORNIA CLASS Members were in the “chain of service” and earned gratuities based on
17 their service for their customers. However, PLAINTIFFS and CALIFORNIA CLASS Members
18 were forced to forfeit portions of their gratuities, which said gratuities were kept by
19 DEFENDANTS’ employees who were not in the chain of service from which the gratuity resulted.
20 PLAINTIFFS and other CALIFORNIA CLASS Members contend that any gratuities kept by
21 DEFENDANTS’ non-service employees were illegal and in violation of California law because
22 PLAINTIFFS and other CALIFORNIA CLASS Members provided the service for to whom the
23 gratuity should have been paid.

24 55. California Labor Code § 351 establishes the requirements for an employer
25 regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees.
26 California Labor Code § 351 expressly prohibits employers and their agents from collecting,
27 taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the term
28 “gratuity” as including any money that has been paid or given or left for an employee by a patron

1 of a business over and above the actual amount due the business for services rendered or for
2 goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires employers
3 to keep accurate records of all gratuities they receive, directly or indirectly.

4 56. Although tip pooling is not expressly prohibited by the Labor Code, employees
5 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
6 By distributing tips to employees who were not in the “chain of service,” DEFENDANTS have
7 violated and continue to violate the legal requirements for handling pooled tips.

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

26 **CLASS ACTION ALLEGATIONS**

27 58. PLAINTIFFS bring this Class Action on behalf of themselves, and a California
28 class defined as all persons who are or previously were employed by DEFENDANTS in

1 California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
2 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
3 date as determined by the Court (the “CLASS PERIOD”).

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

11 60. The members of the class are so numerous that joinder of all class members is
12 impractical.

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

- 22 a. Whether DEFENDANTS maintained legally compliant meal period policies and
23 practices;
- 24 b. Whether DEFENDANTS maintained legally compliant rest period policies and
25 practices;
- 26 c. Whether DEFENDANTS failed to pay PLAINTIFFS and the CALIFORNIA
27 CLASS Members accurate premium payments for missed meal and rest periods;

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- 1 d. Whether DEFENDANTS failed to pay PLAINTIFFS and the CALIFORNIA
- 2 CLASS Members accurate overtime wages;
- 3 e. Whether DEFENDANTS failed to pay PLAINTIFFS and the CALIFORNIA
- 4 CLASS Members at least minimum wage for all hours worked;
- 5 f. Whether DEFENDANTS failed to compensate PLAINTIFFS and the
- 6 CALIFORNIA CLASS Members for required business expenses;
- 7 g. Whether DEFENDANTS issued legally compliant wage statements;
- 8 h. Whether DEFENDANTS engaged in unlawful tip pooling practices and/or failed
- 9 to pay all earned tips to PLAINTIFFS and other members of the CALIFORNIA
- 10 CLASS;
- 11 i. Whether DEFENDANTS committed an act of unfair competition by
- 12 systematically failing to record and pay PLAINTIFFS and the other members of
- 13 the CALIFORNIA CLASS for all time worked;
- 14 j. Whether DEFENDANTS committed an act of unfair competition by
- 15 systematically failing to record all meal and rest breaks missed by PLAINTIFFS
- 16 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
- 17 the benefit of this work, required employees to perform this work and permits or
- 18 suffers to permit this work;
- 19 k. Whether DEFENDANTS committed an act of unfair competition in violation of
- 20 the UCL, by failing to provide PLAINTIFFS and the other members of the
- 21 CALIFORNIA CLASS with the legally required meal and rest periods.

22 62. PLAINTIFFS are members of the CALIFORNIA CLASS and suffered damages
23 as a result of DEFENDANTS’ conduct and actions alleged herein.

24 63. PLAINTIFFS’ claims are typical of the claims of the CALIFORNIA CLASS, and
25 PLAINTIFFS have the same interests as the other members of the class.

26 64. PLAINTIFFS will fairly and adequately represent and protect the interests of the
27 CALIFORNIA CLASS Members.

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

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

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

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

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

20 a. Inconsistent or varying adjudications with respect to individual members of the
21 CALIFORNIA CLASS which would establish incompatible standards of conduct
22 for the parties opposing the CALIFORNIA CLASS; and/or,

23 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
24 which would as a practical matter be dispositive of the interests of the other
25 members not party to the adjudication or substantially impair or impeded their
26 ability to protect their interests.

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

7 76. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
8 fraudulent in that DEFENDANTS’ uniform policy and practice failed to provide the legally
9 mandated meal and rest periods and the required amount of compensation for missed meal and
10 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
11 necessary business expenses incurred, due to a systematic business practice that cannot be
12 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
13 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
14 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
15 restitution of wages wrongfully withheld.

16 77. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful,
17 unfair, and deceptive in that DEFENDANTS’ employment practices caused PLAINTIFFS and
18 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
19 DEFENDANTS.

20 78. By the conduct alleged herein, DEFENDANTS’ practices were also unfair and
21 deceptive in that DEFENDANTS’ uniform policies, practices and procedures failed to provide
22 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members as
23 required by Cal. Lab. Code §§ 226.7 and 512.

24 79. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
25 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
26 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
27 each workday in which a second off-duty meal period was not timely provided for each ten (10)
28 hours of work.

1 80. PLAINTIFFS further demand on behalf of themselves and on behalf of each
2 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
3 not timely provided as required by law.

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

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

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

20 84. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
21 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
22 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
23 engaging in any unlawful and unfair business practices in the future.

24 85. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
25 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
26 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a
27 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
28 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal

1 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
2 unlawful and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

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

6 **Alleged by PLAINTIFFS and the CALIFORNIA CLASS against ALL Defendants)**

7 86. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, realleges and
8 incorporates by this reference, as though fully set forth herein, the prior paragraphs of this
9 Complaint.

10 87. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
11 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
12 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate
13 and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

16 89. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
17 commission is the minimum wage to be paid to employees, and the payment of a less wage than
18 the minimum so fixed is unlawful.

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

21 91. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFFS and
22 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
23 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
24 and intentionally deny timely payment of wages due to PLAINTIFFS and the other members of
25 the CALIFORNIA CLASS.

26 92. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
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1 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFFS
2 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

9 94. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
10 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive the correct
11 minimum wage compensation for his time worked for DEFENDANTS.

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

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

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

27 98. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked

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

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

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME COMPENSATION**

20 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

21 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against ALL Defendants)**

22 100. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
23 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
24 Complaint.

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

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

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

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

12 105. During the CLASS PERIOD, PLAINTIFFS and CALIFORNIA CLASS Members
13 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
14 they worked, including overtime work.

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

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

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1 108. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
2 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive the correct
3 overtime compensation for their time worked for DEFENDANTS.

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

12 110. During the CLASS PERIOD, PLAINTIFFS and the other members of the
13 CALIFORNIA CLASS were paid less for overtime worked than they were entitled to, constituting
14 a failure to pay all earned wages.

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

21 112. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
22 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true
23 amount of overtime they worked, PLAINTIFFS and the other members of the CALIFORNIA
24 CLASS have suffered and will continue to suffer an economic injury in amounts which are
25 presently unknown to them, and which will be ascertained according to proof at trial.

26 113. DEFENDANTS knew or should have known that PLAINTIFFS and the other
27 members of the CALIFORNIA CLASS were undercompensated for their time worked.
28 DEFENDANTS systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
2 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
3 PLAINTIFFS and the other members of the CALIFORNIA CLASS the correct overtime wages
4 for their overtime worked.

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES**

8 **(Cal. Lab. Code §§ 2802)**

9 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

13 125. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

19 126. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
20 Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA CLASS
21 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
22 benefit. DEFENDANTS failed to reimburse PLAINTIFFS and the CALIFORNIA CLASS
23 members for expenses which included, but were not limited to, personal expenses incurred for the
24 use of their personal cell phones, all on behalf of and for the benefit of DEFENDANTS.
25 Specifically, DEFENDANTS required PLAINTIFFS and other CALIFORNIA CLASS Members
26 to use their personal cell phones to execute their essential job duties on behalf of DEFENDANTS.
27 DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFFS and
28 the CALIFORNIA CLASS members for expenses resulting from the use of their personal cell
phones for DEFENDANTS within the course and scope of their employment for DEFENDANTS.
These expenses were necessary to complete their principal job duties. DEFENDANTS are

1 estopped by DEFENDANTS’ conduct to assert any waiver of this expectation. Although these
2 expenses were necessary expenses incurred by PLAINTIFFS and the CALIFORNIA CLASS
3 members, DEFENDANTS failed to indemnify and reimburse PLAINTIFFS and the
4 CALIFORNIA CLASS members for these expenses as an employer is required to do under the
5 laws and regulations of California.

6 127. PLAINTIFFS therefore demands reimbursement for expenditures or losses
7 incurred by him and the CALIFORNIA CLASS members in the discharge of their job duties for
8 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
9 statutory rate and costs under Cal. Lab. Code § 2802.

10 **SEVENTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

12 **(Cal. Lab. Code § 226)**

13 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

17 129. Cal. Labor Code § 226 provides that an employer must furnish employees with an
18 “accurate itemized” statement in writing showing:

- 19 a. Gross wages earned,
- 20 b. total hours worked by the employee, except for any employee whose compensation
21 is solely based on a salary and who is exempt from payment of overtime under
22 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
23 Commission,
- 24 c. the number of piece-rate units earned and any applicable piece rate if the employee
25 is paid on a piece-rate basis,
- 26 d. all deductions, provided that all deductions made on written orders of the employee
27 may be aggregated and shown as one item,
- 28 e. net wages earned,

- 1 f. the inclusive dates of the period for which the employee is paid,
- 2 g. the name of the employee and his or her social security number, except that by
- 3 January 1, 2008, only the last four digits of his or her social security number of an
- 4 employee identification number other than social security number may be shown
- 5 on the itemized statement,
- 6 h. the name and address of the legal entity that is the employer, and
- 7 i. all applicable hourly rates in effect during the pay period and the corresponding
- 8 number of hours worked at each hourly rate by the employee.

9 130. When DEFENDANTS did not accurately record PLAINTIFFS' and other
10 CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurately for
11 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
12 also failed to provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete
13 and accurate wage statements which failed to show the complete requirements under California
14 Labor Code sections 226(a)(1)-(9), including but not limited to, all deductions, the total hours
15 worked and all applicable hourly rates in effect during the pay period and the corresponding
16 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
17 meal and rest periods.

18 131. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
19 statements to PLAINTIFFS and members of the CALIFORNIA CLASS that complied with the
20 requirements of California Labor Code Section 226(a)(1)-(9).

21 132. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
22 § 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA
23 CLASS. These damages include, but are not limited to, costs expended calculating the correct
24 wages for all missed meal and rest breaks and the amount of employment taxes which were not
25 properly paid to state and federal tax authorities. These damages are difficult to estimate.
26 Therefore, PLAINTIFFS and the other members of the CALIFORNIA CLASS may elect to
27 recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
28 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay

1 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
2 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective
3 member of the CALIFORNIA CLASS herein).

4 **EIGHTH CAUSE OF ACTION**

5 **FAILURE TO PAY WAGES WHEN DUE**

6 **(Cal. Lab. Code § 203)**

7 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

11 134. Cal. Lab. Code § 200 provides that:

12 As used in this article:

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

19 135. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
20 an employee, the wages earned and unpaid at the time of discharge are due and payable
21 immediately."

22 136. Cal. Lab. Code § 202 provides, in relevant part, that:

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

29 137. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS
30 Members' employment contract.

31 138. Cal. Lab. Code § 203 provides:

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

6 139. The employment of many CALIFORNIA CLASS Members was terminated, and
7 DEFENDANTS have not tendered payment of wages to these employees who missed meal and
8 rest breaks, as required by law.

9 140. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
10 members of the CALIFORNIA CLASS whose employment has ended, PLAINTIFFS demand up
11 to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all
12 employees who terminated employment during the CLASS PERIOD and demand an accounting
13 and payment of all wages due, plus interest and statutory costs as allowed by law.

14 **NINTH CAUSE OF ACTION**

15 **FAILURE TO PAY STATUTORY GRATUITIES**

16 **(Cal. Lab. Code § 351 et seq.)**

17 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS and against all**
18 **Defendants)**

19 141. PLAINTIFFS, 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
21 Complaint.

22 142. DEFENDANTS' conduct, as set forth above, in failing to remit to non-managerial
23 employees the total proceeds of gratuities added to customers' bills constitutes a violation of
24 California Labor Code Section 351. This violation is enforceable pursuant to the California Unfair
25 Competition Law, Cal. Bus. And Prof. Code 17200 et seq. DEFENDANTS' conduct constitutes
26 unlawful, unfair, and/or fraudulent business acts or practices, in that DEFENDANTS have
27 violated California Labor Code Section 351 in not remitting to the non-managerial service
28 employees the total gratuities that were charged to customers.

143. As a proximate result of the aforementioned violations, PLAINTIFFS and
CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,

1 including the loss of gratuities to which they were entitled. and seek all wages earned and due,
2 interest, penalties, expenses and costs of suit.

3 **PRAYER FOR RELIEF**

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

6 1. On behalf of the CALIFORNIA CLASS:

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

17 2. On behalf of the CALIFORNIA CLASS:

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

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

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

f. The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys’ fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: May 10, 2024

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: May 10, 2024

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF