

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Monnett De La Torre (State Bar #272884)
Andrea Amaya Silva (State Bar #348080)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com
aamaya@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

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

Assigned for All Purposes:
Judge Randall J. Sherman
Dept. CX105

Attorneys for PLAINTIFF

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE COUNTY**

STEPHANIE IMMINGS, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Plaintiffs,

v.

GREAT SUBS SC II, LLC, a California limited liability company; H & H WEST, LLC, a California limited liability company; GREAT SUBS, LLC, a California limited liability company; GREAT SUBS SC I, LLC, a California limited liability company; GREAT SUBS SC IV, LLC, a California limited liability company; GREAT SUBS SC III, LLC, a California limited liability company; J & H WEST, LLC, a California limited liability company; GREAT SUBS SOUTHERN CALIFORNIA, LLC, a California limited liability company; GREAT SUBS SC V, LLC, a California limited liability company; and DOES 1-50, Inclusive,

Defendants.

Case No: 30-2024-01408266-CU-OE-CXC

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

PLAINTIFF STEPHANIE IMMINGS (“PLAINTIFF”), an individual, on behalf of herself and all other similarly situated current and former employees, allege on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

- 1. Defendant GREAT SUBS SCII LLC (“Defendant GS II”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.
- 2. Defendant H & H WEST, LLC (“Defendant H&H”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.
- 3. Defendant GREAT SUBS, LLC (“Defendant GS”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.
- 4. Defendant GREAT SUBS SC I, LLC (“Defendant GS I”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.
- 5. Defendant GREAT SUBS SC IV, LLC (“Defendant GS IV”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

1 6. Defendant GREAT SUBS SC III, LLC (“Defendant GS III”) is a California limited
2 liability company that at all relevant times mentioned herein conducted and continues to conduct
3 substantial and regular business throughout California.

4 7. Defendant J & H WEST, LLC (“Defendant J&H”) is a California limited liability
5 company that at all relevant times mentioned herein conducted and continues to conduct
6 substantial and regular business throughout California.

7 8. Defendant GREAT SUBS SOUTHERN CALIFORNIA, LLC (“Defendant GS
8 SC”) is a California limited liability company that at all relevant times mentioned herein
9 conducted and continues to conduct substantial and regular business throughout California.

10 9. Defendant GREAT SUBS SC V, LLC (“Defendant GS V”) is a California limited
11 liability company that at all relevant times mentioned herein conducted and continues to conduct
12 substantial and regular business throughout California.

13 10. Defendant GS II, Defendant H&H, Defendant GS, Defendant GS I, Defendant GS
14 IV, Defendant GS III , Defendant J&H , Defendant GS SC, and Defendant GS V were the joint
15 employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF, by the company
16 PLAINTIFF performed work for respectively and each exerted control over the hours, wages
17 and/or working conditions of PLAINTIFF and the other members of the CALIFORNIA CLASS,
18 and are therefore jointly responsible as employers for the conduct alleged herein as
19 “DEFENDANTS” and/or “DEFENDANT.”

20 11. DEFENDANTS own and operate a restaurant franchise throughout the state of
21 California, including the county of Orange, where PLAINTIFF worked.

22 12. PLAINTIFF was employed by DEFENDANTS in California from June of 2019
23 through June of 2023, as a non-exempt employee, paid on an hourly basis, and entitled to the
24 legally required meal and rest periods and payment of minimum and overtime wages due for all
25 time worked.

26 13. PLAINTIFF brings this Class Action on behalf of herself and a California class,
27 defined as all persons who are or previously were employed by Defendant GS II and/or Defendant
28 H&H and/or Defendant GS and/or Defendant GS I and/or Defendant GS IV and/or Defendant GS

1 III and/or Defendant J&H and/or Defendant GS SC and/or Defendant GS V and classified as non-
2 exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four
3 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
4 (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the
5 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

17 15. The true names and capacities, whether individual, corporate, subsidiary,
18 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
19 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
20 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
21 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
22 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
23 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
24 inclusive, are responsible in some manner for one or more of the events and happenings that
25 proximately caused the injuries and damages hereinafter alleged.

26 16. The agents, servants and/or employees of the Defendants and each of them acting
27 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
28 agent, servant and/or employee of the Defendants, and personally participated in the conduct

1 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
2 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
3 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
4 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
5 Defendants' agents, servants and/or employees.

6 17. DEFENDANT was PLAINTIFF'S employer or persons acting on behalf of the
7 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or
8 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
9 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
10 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
11 at all relevant times.

12 18. DEFENDANTS were PLAINTIFF'S employer or persons acting on behalf of
13 PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person,
14 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
15 employee a wage less than the minimum fixed by California state law, and as such, are subject to
16 civil penalties for each underpaid employee.

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

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

25 **JURISDICTION AND VENUE**

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

3 22. Venue is proper in this Court pursuant to California Code of Civil Procedure,
4 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
5 the CALIFORNIA CLASS across California, including in this County, and committed the
6 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

7 **THE CONDUCT**

8 **Wage and Hour Class Action Claims**

9 22. In violation of the applicable sections of the California Labor Code and the
10 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a
11 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
12 failed to provide legally compliant meal and rest periods, failed to accurately compensate
13 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
14 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
15 time worked, failed to compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
16 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
17 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
18 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
19 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
20 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
21 applicable hourly rates in effect during the pay periods and the corresponding amount of time
22 worked at each hourly rate. DEFENDANT’s uniform policies and practices are intended to
23 purposefully avoid the accurate and full payment for all time worked as required by California
24 law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
25 who comply with the law. To the extent equitable tolling operates to toll claims by the
26 CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
27 accordingly.

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1 **A. Meal Period Violations**

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

16 24. From time to time during the CLASS PERIOD, as a result of their rigorous work
17 schedules and DEFENDANT’s inadequate staffing practices, PLAINTIFF and other
18 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
19 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
20 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
21 more than five (5) hours during some shifts without receiving a meal break. The nature of the
22 work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for
23 the limited and narrowly construed “on-duty” meal period exception. When they were provided
24 with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to
25 time, required to remain on duty and on call. DEFENDANT’s failure to provide PLAINTIFF and
26 the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
27 DEFENDANT’s business records. PLAINTIFF and other members of the CALIFORNIA CLASS
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1 therefore forfeit meal breaks without additional compensation and in accordance with
2 DEFENDANT's strict corporate policy and practice.

3 **B. Rest Period Violations**

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

18 **C. Unreimbursed Business Expenses**

19 26. DEFENDANT as a matter of corporate policy, practice, and procedure,
20 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
21 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
22 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
23 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
24 are required to indemnify employees for all expenses incurred in the course and scope of their
25 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct consequence
27 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
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1 even though unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful."

3 27. In the course of their employment, DEFENDANT required PLAINTIFF and other
4 CALIFORNIA CLASS Members to use their personal cell phones and vehicles as a result of and
5 in furtherance of their job duties, including but not limited to receiving and/or responding to work-
6 related communications and performing work-related duties. However, DEFENDANT
7 unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the
8 use of their personal cell phones and vehicles. As a result, in the course of their employment with
9 DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
10 unreimbursed business expenses that included, but were not limited to, costs related to the use of
11 their personal cell phones and vehicles.

12 **D. Wage Statement Violations**

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

21 29. From time to time during the CLASS PERIOD, when PLAINTIFF and other
22 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
23 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
24 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
25 accurate wage statements which failed to show, among other things, all deductions, the total hours
26 worked and all applicable hourly rates in effect during the pay period and the corresponding
27 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
28 meal and rest periods.

1 30. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
3 Cal. Lab. Code § 226.

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

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

9 32. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
10 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
11 for all hours worked.

12 33. During the CLASS PERIOD, from time-to-time DEFENDANT required
13 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
14 work, including but not limited to, opening and closing keyholder duties, and assisting
15 DEFENDANT’S customers. This resulted in PLAINTIFF and other members of the
16 CALIFORNIA CLASS having to work while off-the-clock.

17 34. DEFENDANT directed and directly benefited from the undercompensated off-the-
18 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

19 35. DEFENDANT controlled the work schedules, duties, and protocols, applications,
20 assignments, and employment conditions of PLAINTIFF and the other members of the
21 CALIFORNIA CLASS.

22 36. DEFENDANT was able to track the amount of time PLAINTIFF and the other
23 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
24 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
25 wages earned and owed for all the work they performed.

26 37. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
27 exempt employees, subject to the requirements of the California Labor Code.
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1 38. DEFENDANT’s policies and practices deprived PLAINTIFF and the other
2 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
3 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
4 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
5 eight (8) hours per day, DEFENDANT’s policies and practices also deprived them of overtime
6 pay.

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

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

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

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

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

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

9 44. However, from time to time, when calculating the regular rate of pay in those pay
10 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
11 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
12 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
13 compensation as part of the employee's "regular rate of pay" and/or calculated all hours worked
14 rather than just all non-overtime hours worked. Management and supervisors described the
15 incentive/bonus program to potential and new employees as part of the compensation package.
16 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
17 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
18 in a systematic underpayment of overtime and double time compensation, meal and rest period
19 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
20 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that
21 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
22 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
23 not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as
24 articulated herein, by failing to include the incentive compensation as part of the "regular rate of
25 pay" for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
26 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

27 45. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a

1 matter of company policy, practice, and procedure, intentionally and knowingly failed to
2 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
3 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
4 sick pay as required by California law which allowed DEFENDANT to illegally profit and gain
5 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
6 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANT, the
7 CLASS PERIOD should be adjusted accordingly.

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

9 46. Pursuant to California Labor Code section 204, PLAINTIFF and the
10 CALIFORNIA CLASS members were entitled to timely payment of wages during their
11 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
12 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
13 meal period premium wages, and rest period premium wages within permissible time period.

14 47. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
15 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to
16 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become
17 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
18 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
19 wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members were, from
20 time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or
21 at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

22 48. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
23 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose
24 employment ended during the CLASS PERIOD.

25 **H. Unlawful Deductions**

26 49. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
27 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
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1 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT
2 violated Labor Code § 221.

3 **I. Timekeeping Manipulation**

4 50. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an
5 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
6 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
7 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
8 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
9 unilaterally alter the time recorded in DEFENDANT’S timekeeping system for PLAINTIFF and
10 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
11 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
12 missed rest breaks.

13 51. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
14 time-to-time, forfeited time worked by working without their time being accurately recorded and
15 without compensation at the applicable pay rates.

16 52. The mutability of the timekeeping system also allowed DEFENDANT to alter
17 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT’S
18 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
19 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
20 were not at all times provided an off-duty meal break. This practice is a direct result of
21 DEFENDANT’S uniform policy and practice of denying employees uninterrupted thirty (30)
22 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

23 53. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 forfeited wages due them for all hours worked at DEFENDANT’S direction, control and benefit
25 for the time the timekeeping system was inoperable. DEFENDANT’S uniform policy and
26 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
27 hours worked in accordance with applicable law is evidenced by DEFENDANT’S business
28 records.

1 **J. Unlawful Rounding Practices**

2 54. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
3 an immutable timekeeping system to accurately record and pay PLAINTIFF and other
4 CALIFORNIA CLASS Members for the actual time these employees worked each day,
5 including overtime hours. Specifically, DEFENDANT had in place an unlawful rounding policy
6 and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
7 undercompensated for all of their time worked. As a result, DEFENDANT were able to and did
8 in fact unlawfully, and unilaterally round the time recorded in DEFENDANT’S timekeeping
9 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
10 these employees for all their time worked, including the applicable overtime compensation for
11 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
12 time to time, forfeited compensation for their time worked by working without their time being
13 accurately recorded and without compensation at the applicable overtime rates.

14 55. Further, the mutability of DEFENDANTS’ timekeeping system and unlawful
15 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members’ time
16 being inaccurately recorded. As a result, from time to time, DEFENDANTS’ unlawful rounding
17 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
18 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
19 off-duty meal break.

20 **K. Sick Pay Violations**

21 56. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
22 July 1, 2015, works in California for the same employer for 30 or more days within a year from
23 the commencement of employment is entitled to paid sick days as specified in this section.”
24 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From
25 time to time, DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF
26 and other members of the CALIFORNIA CLASS with sick days and/or paid sick leave.

27 57. California Labor Code Section 246(i) requires an employer to furnish its
28 employees with written wage statements setting forth the amount of paid sick leave available.

1 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF
2 and other members of the CALIFORNIA CLASS with wage statements setting forth the amount
3 of paid sick leave available.

4 **L. Tip Pooling**

5 58. During the CALIFORNIA CLASS period, pursuant to DEFENDANTS' company
6 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
7 forfeit gratuities left for them by customers to DEFENDANTS' agents who provided no service
8 to the customers that resulted in the gratuity. DEFENDANTS routinely added gratuity tips and
9 service charges to its food and beverage bills. These gratuities and service charges reasonably
10 appear to be gratuities for the service staff. It is typical and customary in the hospitality industry
11 that establishments impose gratuity charges on the food and beverage bill. Thus, when customers
12 paid these charges, it is reasonable for them to have believed they were gratuities to be paid to the
13 service staff. Indeed, because many of these charges are depicted to customers, and the custom in
14 the food and beverage industry that gratuities are paid for food and beverage service, customers
15 paid these charges reasonably believing they were remitted to the service staff. However,
16 DEFENDANTS have not remitted the total proceeds of these gratuities to the non-managerial
17 employees who serve the food and beverages. Instead, DEFENDANTS have a policy and practice
18 of using a portion of these gratuities to pay managers or other non-service employees. As a result,
19 PLAINTIFF and CALIFORNIA CLASS Members have not received the total proceeds of the
20 gratuities, to which they are entitled to under California law.

21 59. DEFENDANTS are generally in the business of owning and operating a restaurant.
22 During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
23 Members were in the "chain of service" and earned gratuities based on their service for their
24 customers. However, PLAINTIFF and CALIFORNIA CLASS Members were forced to forfeit
25 portions of their gratuities, which said gratuities were kept by DEFENDANTS' employees who
26 were not in the chain of service from which the gratuity resulted. PLAINTIFF and other
27 CALIFORNIA CLASS Members contend that any gratuities kept by DEFENDANTS' non-
28 service employees were illegal and in violation of California law because PLAINTIFF and other

1 CALIFORNIA CLASS Members provided the service for to whom the gratuity should have been
2 paid.

3 60. California Labor Code § 351 establishes the requirements for an employer
4 regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees.
5 California Labor Code § 351 expressly prohibits employers and their agents from collecting,
6 taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the term
7 “gratuity” as including any money that has been paid or given or left for an employee by a patron
8 of a business over and above the actual amount due the business for services rendered or for
9 goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires employers
10 to keep accurate records of all gratuities they receive, directly or indirectly.

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

15 62. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
16 off duty meal and rest breaks and were not fully relieved of duty for his rest and meal periods.
17 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
18 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
19 provide PLAINTIFF with a second off-duty meal period each workday in which they were
20 required by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
21 PLAINTIFF with a rest break, they required PLAINTIFF to remain on premises, on-duty and on-
22 call for the rest break. DEFENDANTS’ policy caused PLAINTIFF to remain on-call and on-duty
23 during what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal
24 and rest breaks without additional compensation and in accordance with DEFENDANTS’ strict
25 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
26 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to
27 reimburse PLAINTIFF for required business expenses related to the use of his personal cell phone
28 on behalf of and in furtherance of his employment with DEFENDANTS. To date,

1 DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time
2 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
3 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
4 \$75,000.

5 CLASS ACTION ALLEGATIONS

6 63. PLAINTIFF brings this Class Action on behalf of herself, and a California class
7 defined as all persons who are or previously were employed by Defendant GS II and/or
8 Defendant H&H and/or Defendant GS and/or Defendant GS I and/or Defendant GS IV and/or
9 Defendant GS III and/or Defendant J&H and/or Defendant GS SC and/or Defendant GS V and
10 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
11 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
12 by the Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the
13 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

14 64. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
15 deprived of wages and penalties from unpaid wages earned and due, including but not limited to,
16 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
17 illegal meal and rest period policies, failure to reimburse for business expenses, failure to
18 compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure
19 to maintain required records, and interest, statutory and civil penalties, attorney’s fees, costs, and
20 expenses.

21 65. The members of the class are so numerous that joinder of all class members is
22 impractical.

23 66. Common questions of law and fact regarding DEFENDANT’s conduct, including
24 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to
25 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
26 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
27 provide legally compliant meal and rest periods, failed to reimburse for business expenses,
28 failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid

1 at least minimum wage and overtime, exist as to all members of the class and predominate over
2 any questions affecting solely any individual members of the class. Among the questions of law
3 and fact common to the class are:

- 4 a. Whether DEFENDANT maintained legally compliant meal period policies and
5 practices;
- 6 b. Whether DEFENDANT maintained legally compliant rest period policies and
7 practices;
- 8 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
9 Members accurate premium payments for missed meal and rest periods;
- 10 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
11 Members accurate overtime wages;
- 12 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
13 Members at least minimum wage for all hours worked;
- 14 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
15 CLASS Members for required business expenses;
- 16 g. Whether DEFENDANT issued legally compliant wage statements;
- 17 h. Whether DEFENDANT committed an act of unfair competition by systematically
18 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
19 CLASS for all time worked;
- 20 i. Whether DEFENDANT committed an act of unfair competition by systematically
21 failing to record all meal and rest breaks missed by PLAINTIFF and other
22 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
23 of this work, required employees to perform this work and permits or suffers to
24 permit this work;
- 25 j. Whether DEFENDANT committed an act of unfair competition in violation of the
26 UCL, by failing to provide the PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with the legally required meal and rest periods.
28

1 67. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
2 a result of DEFENDANT's conduct and actions alleged herein.

3 68. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
4 PLAINTIFF have the same interests as the other members of the class.

5 69. PLAINTIFF will fairly and adequately represent and protect the interests of the
6 CALIFORNIA CLASS Members.

7 70. PLAINTIFF retained able class counsel with extensive experience in class action
8 litigation.

9 71. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
10 interest of the other CALIFORNIA CLASS Members.

11 72. There is a strong community of interest among PLAINTIFF and the members of
12 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
13 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
14 sustained.

15 73. The questions of law and fact common to the CALIFORNIA CLASS Members
16 predominate over any questions affecting only individual members, including legal and factual
17 issues relating to liability and damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **SECOND CAUSE OF ACTION**

6 **Failure To Pay Minimum Wages**

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

8 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

12 92. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
13 for DEFENDANT's willful and intentional violations of the California Labor Code and the
14 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate
15 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

23 96. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
24 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
25 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
26 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
27 CALIFORNIA CLASS.

28

1 97. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

14 100. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
16 failure to pay all earned wages.

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

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

1 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
2 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
3 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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

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

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

4 114. 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 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
7 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 PLAINTIFF brings this Action on behalf of herself, and the CALIFORNIA CLASS based on
10 DEFENDANT’s violations of non-negotiable, non-waivable rights provided by the State of
11 California.

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

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

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

27 118. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

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

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Reimburse Employees For Required Expenses**

8 **(Cal. Lab. Code §§ 2802)**

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

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

13 130. 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
unlawful, unless the employee, at the time of obeying the directions, believed them
to be unlawful.

17 131. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
18 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
19 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
20 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
21 members for expenses which included, but were not limited to, their personal cell phones as a
22 result of and in furtherance of their job duties, including but not limited to receiving and/or
23 responding to work-related communications and performing work-related duties. Specifically,
24 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to
25 use their personal cell phones to execute their essential job duties on behalf of DEFENDANT.
26 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and
27 the CALIFORNIA CLASS members for expenses resulting from using their personal cell phones
28 for DEFENDANT within the course and scope of their employment for DEFENDANT. These

1 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
2 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
3 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,
4 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
5 members for these expenses as an employer is required to do under the laws and regulations of
6 California.

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

11 **SEVENTH CAUSE OF ACTION**

12 **Failure To Provide Accurate Itemized Statements**

13 **(Cal. Lab. Code § 226)**

14 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

18 134. Cal. Labor Code § 226 provides that an employer must furnish employees with an
19 "accurate itemized" statement in writing showing:

- 20 a. Gross wages earned,
- 21 b. (2) total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment of
23 overtime under subdivision (a) of Section 515 or any applicable order of the
24 Industrial Welfare Commission,
- 25 c. the number of piece-rate units earned and any applicable piece rate if the employee
26 is paid on a piece-rate basis,
- 27 d. all deductions, provided that all deductions made on written orders of the employee
28 may be aggregated and shown as one item,

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

135. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

136. Specifically, DEFENDANTS from time to time failed to issue wage statements to PLAINTIFF and other CALIFORNIA CLASS members that listed the total hours worked, in violation of Cal. Lab. Code § 226(a)(2).

137. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

138. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not

1 properly paid to state and federal tax authorities. These damages are difficult to estimate.
2 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to
3 recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
4 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
5 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
6 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
7 member of the CALIFORNIA CLASS herein).

8 **EIGHTH CAUSE OF ACTION**

9 **Failure To Pay Wages When Due**

10 **(Cal. Lab. Code § 203)**

11 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

15 140. Cal. Lab. Code § 200 provides that:

16 As used in this article:

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

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

26 142. Cal. Lab. Code § 202 provides, in relevant part, that:

27 If an employee not having a written contract for a definite period quits his or her
28 employment, his or her wages shall become due and payable not later than 72 hours
thereafter, unless the employee has given 72 hours previous notice of his or her intention
to quit, in which case the employee is entitled to his or her wages at the time of quitting.
Notwithstanding any other provision of law, an employee who quits without providing a
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

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

3 143. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS
4 Members' employment contract.

5 144. Cal. Lab. Code § 203 provides:

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

11 145. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
12 terminated, and DEFENDANT has not tendered payment of wages to these employees who
13 missed meal and rest breaks, as required by law.

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

19 **NINTH CAUSE OF ACTION**

20 **FAILURE TO PAY STATUTORY GRATUITIES**

21 **(Cal. Lab. Code § 351 et seq.)**

22 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all**
23 **Defendants)**

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

27 148. DEFENDANT's conduct, as set forth above, in failing to remit to non-managerial
28 employees the total proceeds of gratuities added to customers' bills constitutes a violation of
California Labor Code Section 351. This violation is enforceable pursuant to the California
Unfair Competition Law, Cal. Bus. And Prof. Code 17200 et seq. DEFENDANT's conduct
constitutes unlawful, unfair, and/or fraudulent business acts or practices, in that DEFENDANT

1 has violated California Labor Code Section 351 in not remitting to the non-managerial service
2 employees the total gratuities that were charged to customers.

3 23. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
5 including the loss of gratuities to which they were entitled. and seek all wages earned and due,
6 interest, penalties, expenses and costs of suit.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
9 severally, as follows:

10 1. On behalf of the CALIFORNIA CLASS:

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

21 2. On behalf of the CALIFORNIA CLASS:

- 22 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and
23 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
24 pursuant to Cal. Code of Civ. Proc. § 382;
- 25 b. Compensatory damages, according to proof at trial, including compensatory
26 damages for overtime compensation due to PLAINTIFF and the other members of
27 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
28 thereon at the statutory rate;

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- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA 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 PLAINTIFF 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: June 20, 2024

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

DATED: June 20, 2024

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF