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**FILED**

by Superior Court of California, County of San Mateo

ON 6/2/2021

By /s/ Anthony Berini  
Deputy Clerk

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9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF SAN MATEO**

11 EMILY TOLOSA, on behalf of herself and  
12 on behalf of all persons similarly situated,

13 Plaintiffs,

14 v.

15 KENSINGTON REDWOOD CITY LLC, a  
Virginia Limited Liability Company;  
16 KENSINGTON SENIOR LIVING, LLC, a  
Virginia Limited Liability Company; and  
17 DOES 1-50, Inclusive,

18 DEFENDANTS.

Case No: 21-CIV-03030

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

**DEMAND FOR A JURY TRIAL**

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant KENSINGTON SENIOR LIVING, LLC (“Defendant KSL”) is a  
6 Limited Liability Company and at all relevant times mentioned herein conducted and continues  
7 to conduct substantial and regular business throughout California.

8 2. Defendant KENSINGTON REDWOOD CITY LLC, formerly known as  
9 FOUNTAIN SQUARE MANAGEMENT SERVICES LLC, (“Defendant KRC”) is a Limited  
10 Liability Company and at all relevant times mentioned herein conducted and continues to conduct  
11 substantial and regular business throughout California.

12 3. Defendant KSL and Defendant KRC were the joint employers of PLAINTIFF as  
13 evidenced by the contracts signed and by the company the PLAINTIFF performed work for  
14 respectively, and are therefore jointly responsible as employers for the conduct alleged herein and  
15 collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

16 4. DEFENDANTS operate senior care facilities and provide residential and  
17 vocational support to senior adults, including the San Mateo, California location where  
18 PLAINTIFF worked.

19 5. PLAINTIFF was employed by DEFENDANTS in California as a non-exempt  
20 employee entitled to minimum wages, overtime pay and meal and rest periods from March 8,  
21 2020 to July 25, 2020.

22 6. PLAINTIFF brings this Class Action on behalf of herself and a California class,  
23 defined as all individuals who are or previously were employed by Defendant KSL and/or  
24 Defendant KRC in California and classified as non-exempt employees (the “CALIFORNIA  
25 CLASS”) at any time during the period beginning four (4) years prior to the filing of the  
26 Complaint and ending on the date as determined by the Court (the “CALIFORNIA CLASS  
27 PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS  
28 Members is under five million dollars (\$5,000,000.00).

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

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

21           9.     The agents, servants and/or employees of the DEFENDANTS and each of them  
22 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its  
23 authority as the agent, servant and/or employee of the DEFENDANTS, and personally  
24 participated in the conduct alleged herein on behalf of the DEFENDANTS with respect to the  
25 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the  
26 other DEFENDANTS and all DEFENDANTS are jointly and severally liable to PLAINTIFF and  
27 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of  
28 the conduct of the DEFENDANTS' agents, servants and/or employees.

**THE CONDUCT**

1  
2           10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS  
3 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time  
4 worked, meaning the time during which an employee is subject to the control of an employer,  
5 including all the time the employee is suffered or permitted to work. From time to time,  
6 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without  
7 paying them for all the time they were under DEFENDANTS’ control. Specifically, due to  
8 DEFENDANTS’ unlawful rounding policy, PLAINTIFF performed work before and after the  
9 beginning of her shift, spending time under DEFENDANTS’ control for which she was not  
10 compensated. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited  
11 minimum wage and overtime compensation by regularly working without their time being  
12 accurately recorded and without compensation at the applicable minimum wage and overtime  
13 rates. DEFENDANTS’ uniform policy and practice not to pay PLAINTIFF and other  
14 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS’ business  
15 records.

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

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

7           13. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA  
8 CLASS Members were also from time to time unable to take off duty meal breaks and were not  
9 fully relieved of duty for meal periods. Specifically, PLAINTIFF and CALIFORNIA CLASS  
10 Members were from time to time interrupted during their off-duty meal breaks to complete tasks  
11 for DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS Members were required to  
12 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without  
13 receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and  
14 CALIFORNIA CLASS Members with a second off-duty meal period each workday in which  
15 these employees were required by DEFENDANTS to work ten (10) hours of work. Further,  
16 DEFENDANTS had in place a uniform policy and practice of requiring PLAINTIFF and other  
17 CALIFORNIA CLASS Members to carry communication devices, such as radios and/or walkie-  
18 talkies, on them during their entire shifts. DEFENDANTS' policy caused PLAINTIFF and other  
19 CALIFORNIA CLASS Members to remain on-call and on-duty during what was supposed to be  
20 their off-duty meal periods. PLAINTIFF and the other CALIFORNIA CLASS Members therefore  
21 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS'  
22 strict corporate policy and practice.

23           14. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and  
24 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours  
25 without being provided ten (10) minute rest periods. Further, these employees were denied their  
26 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)  
27 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between  
28 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for

1 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their  
2 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and  
3 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity  
4 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to  
5 remain on the premises, on-duty and on-call, and subject to DEFENDANTS' control in  
6 accordance with DEFENDANTS' policy. PLAINTIFF and other CALIFORNIA CLASS  
7 Members were also not provided with one hour wages in lieu thereof. Further, DEFENDANTS  
8 had in place a uniform policy and practice of requiring PLAINTIFF and other CALIFORNIA  
9 CLASS Members to carry communication devices, such as radios and/or walkie-talkies, on them  
10 during their entire shifts. DEFENDANTS' policy caused PLAINTIFF and other CALIFORNIA  
11 CLASS Members to remain on-call and on-duty during what was supposed to be their off-duty  
12 rest periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA  
13 CLASS Members were periodically denied their proper rest periods by DEFENDANTS and  
14 DEFENDANTS' managers.

15         15. Under California law, every employer shall pay to each employee, on the  
16 established payday for the period involved, not less than the applicable minimum wage for all  
17 hours worked in the payroll period, whether the remuneration is measured by time, piece,  
18 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time  
19 during which an employee is subject to the control of an employer and includes all the time the  
20 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFF and  
21 other CALIFORNIA CLASS Members were from time to time required to perform work for  
22 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal breaks.  
23 DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members  
24 for any of the time spent under DEFENDANTS' control while working off-the-clock. As such,  
25 DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA CLASS Members the  
26 applicable minimum wage for all hours worked in a payroll period.

27         16. In violation of the applicable sections of the California Labor Code and the  
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS 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 for all time  
3 worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid  
4 the payment of the correct compensation as required by California law which allowed  
5 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied  
6 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS  
7 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

8         17. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members  
9 worked during what was supposed to be their meal breaks or otherwise off the clock,  
10 DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA  
11 CLASS with complete and accurate wage statements which failed to show, among other things,  
12 the correct time worked, including, work performed in excess of eight (8) hours in a workday  
13 and/or forty (40) hours in any workweek, and the gross wages paid for those periods during the  
14 pay period, and the correct penalty payments or missed meal and rest periods in violation of  
15 California Labor Code Sections 226 and 226.2.

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

24         19. Aside from the violations listed herein, DEFENDANTS failed to issue to  
25 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor  
26 Code 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFF and the  
27 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.  
28 Code § 226.

1           20. By reason of this uniform conduct applicable to PLAINTIFF and all  
2 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in  
3 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the  
4 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately  
5 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA  
6 CLASS Members, and failed to pay PLAINTIFF and other CALIFORNIA CLASS Members the  
7 correct overtime rate. The proper recording of these employees’ missed meal and rest breaks, and  
8 proper payment of minimum wages and overtime, is the DEFENDANTS’ burden. As a result of  
9 DEFENDANTS’ intentional disregard of the obligation to meet this burden, DEFENDANTS  
10 failed to properly pay all required compensation for work performed by the members of the  
11 CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated  
12 thereunder as herein alleged.

13           21. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take  
14 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.  
15 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)  
16 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to  
17 provide PLAINTIFF with a second off-duty meal period each workday in which she was required  
18 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF  
19 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for  
20 the rest break. Further, DEFENDANTS had in place a uniform policy and practice of requiring  
21 PLAINTIFF to carry communication devices, such as radios and/or walkie-talkies, on her during  
22 her entire shift. DEFENDANTS’ policy caused PLAINTIFF to remain on-call and on-duty during  
23 what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest  
24 breaks without additional compensation and in accordance with DEFENDANTS’ strict corporate  
25 policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with a paystub that  
26 failed to accurately display PLAINTIFF’s correct time worked and wages, as well as payments  
27 for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a).  
28 To date, DEFENDANTS have not fully paid PLAINTIFF the overtime compensation still owed



1 to her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy  
2 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

3 **JURISDICTION AND VENUE**

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

8 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
9 Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times  
10 maintained offices and facilities in this County and/or conduct substantial business in this County,  
11 and (ii) committed the wrongful conduct herein alleged in this County against members of the  
12 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS

13 **THE CALIFORNIA CLASS**

14 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
15 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
16 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
17 individuals who are or previously were employed by Defendant KSL and/or Defendant KRC in  
18 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time  
19 during the period beginning four (4) years prior to the filing of the original complaint and ending  
20 on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in  
21 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million  
22 dollars (\$5,000,000.00).

23 25. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
24 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
25 accordingly.

26 26. DEFENDANTS, as a matter of company policy, practice and procedure, and in  
27 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
28 requirements, and the applicable provisions of California law, intentionally, knowingly, and

1 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal  
2 and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS,  
3 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform  
4 this work and permitted or suffered to permit this work.

5 27. DEFENDANTS have legal burden to establish that each and every CALIFORNIA  
6 CLASS Member was paid accurately and was provided all meal and rest breaks missed as required  
7 by California laws. DEFENDANTS, however, as a matter of uniform and systematic policy and  
8 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to  
9 have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member  
10 is paid as required by law, so as to satisfy its burden. This common business practice applicable  
11 to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as  
12 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the  
13 “UCL”) as causation, damages, and reliance are not elements of this claim.

14 28. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA  
15 CLASS Members is impracticable.

16 29. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under  
17 California law by:

- 18 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
19 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company  
20 policies, practices and procedures that failed to pay all wages due the  
21 CALIFORNIA CLASS for all time worked;
- 22 b. Committing an act of unfair competition in violation of the California Unfair  
23 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide  
24 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS  
25 members; and,
- 26 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code  
27 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place  
28 company policies, practices and procedures that uniformly and systematically

1 failed to record and pay PLAINTIFF and other members of the CALIFORNIA  
2 CLASS for all time worked, including minimum wages owed and overtime wages  
3 owed for work performed by these employees.

4 30. The Class Action meets the statutory prerequisites for the maintenance of a Class  
5 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

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

9 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
10 raised in this Complaint are common to the CALIFORNIA CLASS will apply  
11 uniformly to every member of the CALIFORNIA CLASS;

12 c. The claims of the representative PLAINTIFF are typical of the claims of each  
13 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of  
14 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an  
15 hourly basis who was subjected to the DEFENDANTS’ deceptive practice and  
16 policy which failed to provide the legally required meal and rest periods to the  
17 CALIFORNIA CLASS and thereby systematically underpaid compensation to  
18 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury  
19 as a result of DEFENDANTS’ employment practices. PLAINTIFF and the  
20 members of the CALIFORNIA CLASS were and are similarly or identically  
21 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
22 misconduct engaged in by DEFENDANTS; and

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

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

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
  - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or;
  - ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA CLASS as required by law;
  - i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seek declaratory relief holding that the DEFENDANTS’ policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

1 c. Common questions of law and fact exist as to the members of the CALIFORNIA  
2 CLASS, with respect to the practices and violations of California law as listed  
3 above, and predominate over any question affecting only individual  
4 CALIFORNIA CLASS Members, and a Class Action is superior to other available  
5 methods for the fair and efficient adjudication of the controversy, including  
6 consideration of:

7 i. The interests of the members of the CALIFORNIA CLASS in individually  
8 controlling the prosecution or defense of separate actions in that the  
9 substantial expense of individual actions will be avoided to recover the  
10 relatively small amount of economic losses sustained by the individual  
11 CALIFORNIA CLASS Members when compared to the substantial  
12 expense and burden of individual prosecution of this litigation;

13 ii. Class certification will obviate the need for unduly duplicative litigation  
14 that would create the risk of:

15 1. Inconsistent or varying adjudications with respect to individual  
16 members of the CALIFORNIA CLASS, which would establish  
17 incompatible standards of conduct for the DEFENDANTS; and/or;

18 2. Adjudications with respect to individual members of the  
19 CALIFORNIA CLASS would as a practical matter be dispositive  
20 of the interests of the other members not parties to the adjudication  
21 or substantially impair or impede their ability to protect their  
22 interests;

23 iii. In the context of wage litigation, because a substantial number of  
24 individual CALIFORNIA CLASS Members will avoid asserting their legal  
25 rights out of fear of retaliation by DEFENDANTS, which may adversely  
26 affect an individual's job with DEFENDANTS or with a subsequent  
27 employer, the Class Action is the only means to assert their claims through  
28 a representative; and

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

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

- 8           a. The questions of law and fact common to the CALIFORNIA CLASS predominate  
9           over any question affecting only individual CALIFORNIA CLASS Members  
10           because the DEFENDANTS' employment practices are uniform and  
11           systematically applied with respect to the CALIFORNIA CLASS.
- 12           b. A Class Action is superior to any other available method for the fair and efficient  
13           adjudication of the claims of the members of the CALIFORNIA CLASS because  
14           in the context of employment litigation a substantial number of individual  
15           CALIFORNIA CLASS Members will avoid asserting their rights individually out  
16           of fear of retaliation or adverse impact on their employment;
- 17           c. The members of the CALIFORNIA CLASS are so numerous that it is impractical  
18           to bring all members of the CALIFORNIA CLASS before the Court;
- 19           d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to  
20           obtain effective and economic legal redress unless the action is maintained as a  
21           Class Action;
- 22           e. There is a community of interest in obtaining appropriate legal and equitable relief  
23           for the acts of unfair competition, statutory violations and other improprieties, and  
24           in obtaining adequate compensation for the damages and injuries which  
25           DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
- 26           f. There is a community of interest in ensuring that the combined assets of  
27           DEFENDANTS are sufficient to adequately compensate the members of the  
28           CALIFORNIA CLASS for the injuries sustained;

- 1 g. DEFENDANTS have acted or refused to act on grounds generally applicable to  
2 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate  
3 with respect to the CALIFORNIA CLASS as a whole;
- 4 h. The members of the CALIFORNIA CLASS are readily ascertainable from the  
5 business records of DEFENDANTS; and
- 6 i. Class treatment provides manageable judicial treatment calculated to bring an  
7 efficient and rapid conclusion to all litigation of all wage and hour related claims  
8 arising out of the conduct of DEFENDANTS as to the members of the  
9 CALIFORNIA CLASS.

10 33. DEFENDANTS maintain records from which the Court can ascertain and identify  
11 by job title each of DEFENDANTS' employees who as have been systematically, intentionally  
12 and uniformly subjected to DEFENDANTS' company policy, practices and procedures as herein  
13 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles  
14 of similarly situated employees when they have been identified.

15 **THE CALIFORNIA LABOR SUB-CLASS**

16 34. PLAINTIFF further bring the Second, Third, Fourth, Fifth, Sixth, and Seventh  
17 causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA  
18 CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any  
19 time during the period three (3) years prior to the filing of the original complaint and ending on  
20 the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD")  
21 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of  
22 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

23 35. DEFENDANTS, as a matter of company policy, practice and procedure, and in  
24 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
25 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
26 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time  
27 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and  
28 other wages and premiums owed to these employees, even though DEFENDANTS enjoyed the

1 benefit of this work, required employees to perform this work and permitted or suffered to permit  
2 this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-  
3 CLASS Members wages to which these employees are entitled in order to unfairly cheat the  
4 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the  
5 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-  
6 CLASS PERIOD should be adjusted accordingly.

7         36. DEFENDANTS maintain records from which the Court can ascertain and identify  
8 by name and job title, each of DEFENDANTS' employees who have been systematically,  
9 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and  
10 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any  
11 additional job titles of similarly situated employees when they have been identified.

12         37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
13 CALIFORNIA LABOR SUB-CLASS Members is impracticable

14         38. Common questions of law and fact exist as to members of the CALIFORNIA  
15 LABOR SUB-CLASS, including, but not limited, to the following:

- 16         a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay  
17             compensation due to members of the CALIFORNIA LABOR SUB- CLASS for  
18             missed meal and rest breaks in violation of the California Labor Code and  
19             California regulations and the applicable California Wage Order;
- 20         b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of  
21             the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted  
22             thirty (30) minute meal breaks and rest periods;
- 23         c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of  
24             the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage  
25             statements;
- 26         d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to  
27             members of the CALIFORNIA LABOR SUB-CLASS in violation of the  
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- 1 California Labor Code and California regulations and the applicable California
- 2 Wage Order;
- 3 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
- 4 compensation for time worked, including overtime worked, under the overtime
- 5 pay requirements of California law;
- 6 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
- 7 conduct;
- 8 g. The proper measure of damages and penalties owed to the members of the
- 9 CALIFORNIA LABOR SUB-CLASS; and
- 10 h. Whether DEFENDANTS' conduct was willful.

11 39. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS  
12 under California law by:

- 13 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
- 14 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
- 15 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
- 16 § 1194;
- 17 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 18 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
- 19 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
- 20 Cal. Lab. Code §§ 1194 and 1197;
- 21 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
- 22 the other members of the CALIFORNIA CLASS with all legally required off-duty,
- 23 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 24 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 25 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 26 statement in writing showing all accurate rates in effect during the pay period and
- 27 the corresponding amount of time worked at each overtime rate by the employee;
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1 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an  
2 employee is discharged or quits from employment, the employer must pay the  
3 employee all wages due without abatement, by failing to tender full payment  
4 and/or restitution of wages owed or in the manner required by California law to  
5 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated  
6 their employment.

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

9 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so  
10 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members  
11 is impracticable and the disposition of their claims as a class will benefit the parties  
12 and the Court;

13 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
14 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS  
15 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-  
16 CLASS;

17 c. The claims of the representative PLAINTIFF are typical of the claims of each  
18 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the  
19 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt  
20 employee paid on an hourly basis who was subjected to the DEFENDANTS’  
21 practice and policy which failed to pay the correct amount of wages due to the  
22 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as  
23 a result of DEFENDANTS’ employment practices. PLAINTIFF and the members  
24 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically  
25 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
26 misconduct engaged in by DEFENDANTS; and

27 d. The representative PLAINTIFF will fairly and adequately represent and protect  
28 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel

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

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

9 a. Without class certification and determination of declaratory, injunctive, statutory  
10 and other legal questions within the class format, prosecution of separate actions  
11 by individual members of the CALIFORNIA LABOR SUB-CLASS will create  
12 the risk of:

13 i. Inconsistent or varying adjudications with respect to individual members  
14 of the CALIFORNIA LABOR SUB-CLASS which would establish  
15 incompatible standards of conduct for the parties opposing the  
16 CALIFORNIA LABOR SUB-CLASS; or

17 ii. Adjudication with respect to individual members of the CALIFORNIA  
18 LABOR SUB-CLASS which would as a practical matter be dispositive of  
19 interests of the other members not party to the adjudication or substantially  
20 impair or impede their ability to protect their interests.

21 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
22 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
23 SUB-CLASS, making appropriate class-wide relief with respect to the  
24 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly  
25 failed to pay all wages due for all time worked by the members of the  
26 CALIFORNIA LABOR SUB-CLASS as required by law;

27 c. Common questions of law and fact predominate as to the members of the  
28 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations

1 of California Law as listed above, and predominate over any question affecting  
2 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class  
3 Action is superior to other available methods for the fair and efficient adjudication  
4 of the controversy, including consideration of:

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

11 ii. Class certification will obviate the need for unduly duplicative litigation  
12 that would create the risk of:

13 1. Inconsistent or varying adjudications with respect to individual  
14 members of the CALIFORNIA LABOR SUB-CLASS, which  
15 would establish incompatible standards of conduct for the  
16 DEFENDANTS; and/or,

17 2. Adjudications with respect to individual members of the  
18 CALIFORNIA LABOR SUB-CLASS would as a practical matter  
19 be dispositive of the interests of the other members not parties to  
20 the adjudication or substantially impair or impede their ability to  
21 protect their interests;

22 iii. In the context of wage litigation because a substantial number of individual  
23 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their  
24 legal rights out of fear of retaliation by DEFENDANTS, which may  
25 adversely affect an individual's job with DEFENDANTS or with a  
26 subsequent employer, the Class Action is the only means to assert their  
27 claims through a representative; and,  
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iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS’ actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;

- 1 f. There is a community of interest in ensuring that the combined assets of  
2 DEFENDANTS are sufficient to adequately compensate the members of the  
3 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 g. DEFENDANTS have acted or refused to act on grounds generally applicable to  
5 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief  
6 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 7 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily  
8 ascertainable from the business records of DEFENDANTS. The CALIFORNIA  
9 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified  
10 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS  
11 PERIOD; and
- 12 i. Class treatment provides manageable judicial treatment calculated to bring an  
13 efficient and rapid conclusion to all litigation of all wage and hour related claims  
14 arising out of the conduct of DEFENDANTS as to the members of the  
15 CALIFORNIA LABOR SUB-CLASS.

16 **FIRST CAUSE OF ACTION**

17 **UNLAWFUL BUSINESS PRACTICES**

18 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

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

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

23 44. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
24 Code § 17021.

25 45. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines  
26 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203  
27 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition  
28 as follows:

1 Any person who engages, has engaged, or proposes to engage in unfair competition may  
2 be enjoined in any court of competent jurisdiction. The court may make such orders or  
3 judgments, including the appointment of a receiver, as may be necessary to prevent the  
4 use or employment by any person of any practice which constitutes unfair competition, as  
5 defined in this chapter, or as may be necessary to restore to any person in interest any  
6 money or property, real or personal, which may have been acquired by means of such  
7 unfair competition. (Cal. Bus. & Prof. Code § 17203).

8 46. By the conduct alleged herein, DEFENDANTS have engaged and continues to  
9 engage in a business practice which violates California law, including but not limited to, the  
10 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
11 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and  
12 1198 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.  
13 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute  
14 unfair competition, including restitution of wages wrongfully withheld.

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

21 48. By the conduct alleged herein, DEFENDANTS' practices were deceptive and  
22 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and  
23 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time  
24 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,  
25 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in  
26 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive  
27 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages  
28 wrongfully withheld.

49. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,  
unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
2 DEFENDANTS.

3 50. By the conduct alleged herein, DEFENDANTS' practices were also unfair and  
4 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide  
5 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

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

25 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
26 and do, seek such relief as may be necessary to restore to them the money and property which  
27 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the  
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1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
2 business practices, including earned but unpaid wages.

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

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

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**  
16 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

17 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**  
18 **DEFENDANTS)**

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

22 59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
23 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code  
24 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately  
25 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

26 60. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public  
27 policy, an employer must timely pay its employees for all hours worked.  
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1           61. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
2 commission is the minimum wage to be paid to employees, and the payment of a wage less than  
3 the minimum so fixed is unlawful.

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

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

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

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

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

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

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

1 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are  
2 presently unknown to them and which will be ascertained according to proof at trial.

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

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

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

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**THIRD CAUSE OF ACTION**

**FAILURE TO PAY OVERTIME COMPENSATION  
(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

**(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL  
DEFENDANTS)**

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

73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANTS’ failure to properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

77. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of overtime worked and correct applicable overtime rate for the amount of overtime they worked. As set forth herein, DEFENDANTS’ uniform policy and practice was to unlawfully and

1 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the  
2 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed  
3 to pay these employees the correct applicable overtime wages for all overtime worked.

4 78. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
5 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result  
6 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF  
7 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,  
8 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours  
9 in any workweek.

10 79. In committing these violations of the California Labor Code, DEFENDANTS  
11 inaccurately calculated the amount of overtime worked and the applicable overtime rates and  
12 consequently underpaid the actual time worked by PLAINTIFF and other members of the  
13 CALIFORNIA LABOR SUB-CLASS. DEFENDANTS acted in an illegal attempt to avoid the  
14 payment of all earned wages, and other benefits in violation of the California Labor Code, the  
15 Industrial Welfare Commission requirements and other applicable laws and regulations.

16 80. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
17 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive  
18 full compensation for all overtime worked.

19 81. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from  
20 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF  
21 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the  
22 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective  
23 bargaining agreement that would preclude the causes of action contained herein this Complaint.  
24 Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA LABOR SUB-  
25 CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by  
26 the State of California.

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

1           83.    DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the  
2 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in  
3 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &  
4 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
5 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed  
6 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT’S  
7 business records and witnessed by employees.

8           84.    By virtue of DEFENDANTS’ unlawful failure to accurately pay all earned  
9 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
10 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR  
11 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are  
12 presently unknown to them and which will be ascertained according to proof at trial.

13           85.    DEFENDANTS knew or should have known that PLAINTIFF and the other  
14 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime  
15 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross  
16 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice  
17 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay  
18 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable  
19 overtime rate.

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

28           87.    PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
therefore request recovery of all unpaid wages, including overtime wages, according to proof,  
interest, statutory costs, as well as the assessment of any statutory penalties against

1 DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable  
2 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA  
3 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANTS'  
4 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be  
5 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein  
6 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANTS' conduct as  
7 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other  
8 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**  
11 **(Cal. Lab. Code §§ 226.7 & 512)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**  
13 **DEFENDANTS)**

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

17 89. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all  
18 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR  
19 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of  
20 the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did  
21 not prevent these employees from being relieved of all of their duties for the legally required off-  
22 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other  
23 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by  
24 DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide  
25 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal  
26 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.  
27 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS  
28 therefore forfeited meal breaks without additional compensation and in accordance with  
DEFENDANTS' strict corporate policy and practice.







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

8           98. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate  
9 employees with an “accurate itemized” statement in writing showing:

- 10           a. The total hours of compensable rest and recovery periods, the rate of
- 11           compensation, and the gross wages paid for those periods during the
- 12           pay period; and
- 13           b. The total hours of other nonproductive time, the rate of
- 14           compensation, and the gross wages paid for that time during the pay
- 15           period.

16           99. When DEFENDANTS did not accurately record PLAINTIFF’S and other  
17 CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS also  
18 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete  
19 and accurate wage statements which failed to show, among other things, the correct overtime rate,  
20 the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFF and other  
21 CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall  
22 furnish each of his or her employees with an accurate itemized wage statement in writing showing,  
23 among other things, gross wages earned and all applicable hourly rates in effect during the pay  
24 period and the corresponding amount of time worked at each hourly rate. Aside from the  
25 violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an  
26 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*  
27 As a result, from time to time DEFENDANTS provided PLAINTIFF and the other members of  
28 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.



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

10 105. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-  
11 CLASS Members' employment contract.

12 106. Cal. Lab. Code § 203 provides:

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

18 107. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS  
19 Members terminated and DEFENDANTS have not tendered payment of wages, to these  
20 employees who missed meal and rest breaks, as required by law.

21 108. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the  
22 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF  
23 demands up to thirty days of pay as penalty for not paying all wages due at time of termination  
24 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS  
25 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory  
26 costs as allowed by law.

27 **EIGHTH CAUSE OF ACTION**

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

**(Cal. Lab. Code §§2698 et seq.)**

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

109. PLAINTIFF reallege and incorporates by this reference, as though fully set forth  
herein, the prior paragraphs of this Complaint.

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

10           111. PLAINTIFF, and such persons that may be added from time to time who satisfy  
11 the requirements and exhaust the administrative procedures under the Private Attorney General  
12 Act, bring this Representative Action on behalf of the State of California with respect to  
13 themselves and all individuals who are or previously were employed by DEFENDANT MGSACT  
14 and/or DEFENDANT A&A and classified as non-exempt employees in California during the time  
15 period of March 29, 2020 until the present (the "AGGRIEVED EMPLOYEES").

16           112. On March 29, 2021, PLAINTIFF gave written notice by certified mail to the Labor  
17 and Workforce Development Agency (the "Agency") and the employer of the specific  
18 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See  
19 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting  
20 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant  
21 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA  
22 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED  
23 EMPLOYEES as herein defined.

24           113. The policies, acts and practices heretofore described were and are an unlawful  
25 business act or practice because DEFENDANTS (a) failed to properly record and pay  
26 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,  
27 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized  
28 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, and (d) failed to

1 timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code  
2 §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246,  
3 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802 and the applicable Industrial Wage Order(s), and  
4 thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks  
5 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004  
6 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF  
7 and the other AGGRIEVED EMPLOYEES.

8  
9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANTS, jointly  
11 and severally, as follows:

12 1. On behalf of the CALIFORNIA CLASS:

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

23 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 24 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes  
25 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action  
26 pursuant to Cal. Code of Civ. Proc. § 382;
- 27 b. Compensatory damages, according to proof at trial, including compensatory  
28 damages for minimum wages, overtime wages, and other compensation due to

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PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

- 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 member of the CALIFORNIA LABOR SUB-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; and,
- e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-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.

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

- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

4. 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, §1194 and/or §1197.

DATED: June 2, 2021

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for Plaintiffs

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**DEMAND FOR A JURY TRIAL**

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

DATED: June 2, 2021

**ZAKAY LAW GROUP, APLC**

By:  \_\_\_\_\_

Shani O. Zakay  
Attorney for Plaintiffs



# **EXHIBIT 1**



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #36801

March 29, 2021

**Via Online Filing to LWDA and Certified Mail to Defendants**

**Labor and Workforce Development Agency**

Online Filing

<p><b>KENSINGTON SENIOR LIVING, LLC</b>  c/o BRIAN SELTZER  750 B STREET, SUITE 2100  SAN DIEGO CA 92101  <i>Via Certified Mail with Return Receipt</i>  <i>No. 7020 2450 0001 4373 5324</i></p> <p>c/o WAYNE G TATUSKO  3016 WILLIAMS DR, STE 200  FAIRFAX, VA, 22031 – 0000  <i>Via Certified Mail with Return Receipt</i>  <i>No. 7020 2450 0001 4373 5348</i></p>	<p><b>KENSINGTON REDWOOD CITY LLC</b>  c/o DANIEL B. GORHAM  FOUNTAIN SQUARE PROPERTIES, LLC  11921 FREEDOM DRIVE, SUITE 950  RESTON, VA, 20190 – 0000  <i>Via Certified Mail with Return Receipt</i>  <i>No. 7020 2450 0001 4373 5331</i></p>
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**Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our offices represent Plaintiff EMILY TOLOSA (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against KENSINGTON REDWOOD CITY LLC and KENSINGTON SENIOR LIVING, LLC (“Defendants”). Plaintiff was employed by Defendants in California between March of 2020 to July of 2020 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive payments. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages. As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, violates the

applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a long horizontal flourish extending to the right.

Shani O. Zakay  
Attorney for Plaintiff

1 **ZAKAY LAW GROUP, APLC**  
Shani O. Zakay (State Bar #277924)  
2 3990 Old Town Avenue, Suite C204  
San Diego, CA 92110  
3 Telephone: (619)255-9047  
Facsimile: (858) 404-9203

4 **JCL LAW FIRM, APC**  
5 Jean-Claude Lapuyade (State Bar #248676)  
3990 Old Town Avenue, Suite C204  
6 San Diego, CA 92110  
7 Telephone: (619)599-8292  
Facsimile: (619) 599-8291

8 Attorneys for Plaintiffs

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF SAN MATEO**

11 EMILY TOLOSA, on behalf of herself and  
12 on behalf of all persons similarly situated,

13 Plaintiffs,

14 v.

15 KENSINGTON REDWOOD CITY LLC, a  
Virginia Limited Liability Company;  
16 KENSINGTON SENIOR LIVING, LLC, a  
Virginia Limited Liability Company; and  
17 DOES 1-50, Inclusive,

18 DEFENDANTS.

Case No:

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

**DEMAND FOR A JURY TRIAL**

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

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant KENSINGTON SENIOR LIVING, LLC (“Defendant KSL”) is a  
6 Limited Liability Company and at all relevant times mentioned herein conducted and continues  
7 to conduct substantial and regular business throughout California.

8 2. Defendant KENSINGTON REDWOOD CITY LLC, formerly known as  
9 FOUNTAIN SQUARE MANAGEMENT SERVICES LLC, (“Defendant KRC”) is a Limited  
10 Liability Company and at all relevant times mentioned herein conducted and continues to conduct  
11 substantial and regular business throughout California.

12 3. Defendant KSL and Defendant KRC were the joint employers of PLAINTIFF as  
13 evidenced by the contracts signed and by the company the PLAINTIFF performed work for  
14 respectively, and are therefore jointly responsible as employers for the conduct alleged herein and  
15 collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

16 4. DEFENDANTS operate senior care facilities and provide residential and  
17 vocational support to senior adults, including

18 5. PLAINTIFF was employed by DEFENDANTS in California as a non-exempt  
19 employee entitled to minimum wages, overtime pay and meal and rest periods from March 8,  
20 2020 to July 25, 2020.

21 6. PLAINTIFF brings this Class Action on behalf of herself and a California class,  
22 defined as all individuals who are or previously were employed by Defendant KSL and/or  
23 Defendant KRC in California and classified as non-exempt employees (the “CALIFORNIA  
24 CLASS”) at any time during the period beginning four (4) years prior to the filing of the  
25 Complaint and ending on the date as determined by the Court (the “CALIFORNIA CLASS  
26 PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS  
27 Members is under five million dollars (\$5,000,000.00).

28 7. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA  
CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during

1 the CALIFORNIA CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice  
2 which failed to lawfully compensate these employees for all their time worked. DEFENDANTS’  
3 uniform policy and practice alleged herein is an unlawful, unfair and deceptive business practice  
4 whereby DEFENDANTS retained and continues to retain wages due to PLAINTIFF and the other  
5 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the  
6 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the  
7 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS  
8 who have been economically injured by DEFENDANTS’ past and current unlawful conduct, and  
9 all other appropriate legal and equitable relief.

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

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

27 ///

28 ///

**THE CONDUCT**

1  
2           10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS  
3 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time  
4 worked, meaning the time during which an employee is subject to the control of an employer,  
5 including all the time the employee is suffered or permitted to work. From time to time,  
6 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without  
7 paying them for all the time they were under DEFENDANTS’ control. Specifically, due to  
8 DEFENDANTS’ unlawful rounding policy, PLAINTIFF performed work before and after the  
9 beginning of her shift, spending time under DEFENDANTS’ control for which she was not  
10 compensated. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited  
11 minimum wage and overtime compensation by regularly working without their time being  
12 accurately recorded and without compensation at the applicable minimum wage and overtime  
13 rates. DEFENDANTS’ uniform policy and practice not to pay PLAINTIFF and other  
14 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS’ business  
15 records.

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

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

7           13. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA  
8 CLASS Members were also from time to time unable to take off duty meal breaks and were not  
9 fully relieved of duty for meal periods. Specifically, PLAINTIFF and CALIFORNIA CLASS  
10 Members were from time to time interrupted during their off-duty meal breaks to complete tasks  
11 for DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS Members were required to  
12 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without  
13 receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and  
14 CALIFORNIA CLASS Members with a second off-duty meal period each workday in which  
15 these employees were required by DEFENDANTS to work ten (10) hours of work. Further,  
16 DEFENDANTS had in place a uniform policy and practice of requiring PLAINTIFF and other  
17 CALIFORNIA CLASS Members to carry communication devices, such as radios and/or walkie-  
18 talkies, on them during their entire shifts. DEFENDANTS' policy caused PLAINTIFF and other  
19 CALIFORNIA CLASS Members to remain on-call and on-duty during what was supposed to be  
20 their off-duty meal periods. PLAINTIFF and the other CALIFORNIA CLASS Members therefore  
21 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS'  
22 strict corporate policy and practice.

23           14. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and  
24 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours  
25 without being provided ten (10) minute rest periods. Further, these employees were denied their  
26 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)  
27 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between  
28 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for



1 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their  
2 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and  
3 required by DEFENDANTS to work during their rest breaks. When they did have an opportunity  
4 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to  
5 remain on the premises, on-duty and on-call, and subject to DEFENDANTS' control in  
6 accordance with DEFENDANTS' policy. PLAINTIFF and other CALIFORNIA CLASS  
7 Members were also not provided with one hour wages in lieu thereof. Further, DEFENDANTS  
8 had in place a uniform policy and practice of requiring PLAINTIFF and other CALIFORNIA  
9 CLASS Members to carry communication devices, such as radios and/or walkie-talkies, on them  
10 during their entire shifts. DEFENDANTS' policy caused PLAINTIFF and other CALIFORNIA  
11 CLASS Members to remain on-call and on-duty during what was supposed to be their off-duty  
12 rest periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA  
13 CLASS Members were periodically denied their proper rest periods by DEFENDANTS and  
14 DEFENDANTS' managers.

15         15. Under California law, every employer shall pay to each employee, on the  
16 established payday for the period involved, not less than the applicable minimum wage for all  
17 hours worked in the payroll period, whether the remuneration is measured by time, piece,  
18 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time  
19 during which an employee is subject to the control of an employer and includes all the time the  
20 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFF and  
21 other CALIFORNIA CLASS Members were from time to time required to perform work for  
22 DEFENDANTS before and after their scheduled shifts, as well as during their off-duty meal breaks.  
23 DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members  
24 for any of the time spent under DEFENDANTS' control while working off-the-clock. As such,  
25 DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA CLASS Members the  
26 applicable minimum wage for all hours worked in a payroll period.

27         16. In violation of the applicable sections of the California Labor Code and the  
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS 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 for all time  
3 worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid  
4 the payment of the correct compensation as required by California law which allowed  
5 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied  
6 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS  
7 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

8       17. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members  
9 worked during what was supposed to be their meal breaks or otherwise off the clock,  
10 DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA  
11 CLASS with complete and accurate wage statements which failed to show, among other things,  
12 the correct time worked, including, work performed in excess of eight (8) hours in a workday  
13 and/or forty (40) hours in any workweek, and the gross wages paid for those periods during the  
14 pay period, and the correct penalty payments or missed meal and rest periods in violation of  
15 California Labor Code Sections 226 and 226.2.

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

24       19. Aside from the violations listed herein, DEFENDANTS failed to issue to  
25 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor  
26 Code 226 *et seq.* As a result, from time to time DEFENDANTS provided PLAINTIFF and the  
27 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.  
28 Code § 226.

1           20. By reason of this uniform conduct applicable to PLAINTIFF and all  
2 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in  
3 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the  
4 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately  
5 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA  
6 CLASS Members, and failed to pay PLAINTIFF and other CALIFORNIA CLASS Members the  
7 correct overtime rate. The proper recording of these employees’ missed meal and rest breaks, and  
8 proper payment of minimum wages and overtime, is the DEFENDANTS’ burden. As a result of  
9 DEFENDANTS’ intentional disregard of the obligation to meet this burden, DEFENDANTS  
10 failed to properly pay all required compensation for work performed by the members of the  
11 CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated  
12 thereunder as herein alleged.

13           21. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take  
14 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.  
15 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)  
16 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to  
17 provide PLAINTIFF with a second off-duty meal period each workday in which she was required  
18 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF  
19 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for  
20 the rest break. Further, DEFENDANTS had in place a uniform policy and practice of requiring  
21 PLAINTIFF to carry communication devices, such as radios and/or walkie-talkies, on her during  
22 her entire shift. DEFENDANTS’ policy caused PLAINTIFF to remain on-call and on-duty during  
23 what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest  
24 breaks without additional compensation and in accordance with DEFENDANTS’ strict corporate  
25 policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with a paystub that  
26 failed to accurately display PLAINTIFF’s correct time worked and wages, as well as payments  
27 for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a).  
28 To date, DEFENDANTS have not fully paid PLAINTIFF the overtime compensation still owed

1 to them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in  
2 controversy for PLAINTIFF individually do not exceed the sum or value of \$75,000.

### 3 **JURISDICTION AND VENUE**

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

8 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
9 Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times  
10 maintained offices and facilities in this County and/or conduct substantial business in this County,  
11 and (ii) committed the wrongful conduct herein alleged in this County against members of the  
12 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS

### 13 **THE CALIFORNIA CLASS**

14 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
15 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
16 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
17 individuals who are or previously were employed by Defendant KSL and/or Defendant KRC in  
18 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time  
19 during the period beginning four (4) years prior to the filing of the original complaint and ending  
20 on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in  
21 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million  
22 dollars (\$5,000,000.00).

23 25. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
24 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
25 accordingly.

26 26. DEFENDANTS, as a matter of company policy, practice and procedure, and in  
27 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
28 requirements, and the applicable provisions of California law, intentionally, knowingly, and

1 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal  
2 and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS,  
3 even though DEFENDANTS enjoyed the benefit of this work, required employees to perform  
4 this work and permitted or suffered to permit this work.

5 27. DEFENDANTS have the legal burden to establish that each and every  
6 CALIFORNIA CLASS Member was paid accurately and was provided all meal and rest breaks  
7 missed as required by California laws. DEFENDANTS, however, as a matter of uniform and  
8 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS  
9 PERIOD and still fails to have in place a policy or practice to ensure that each and every  
10 CALIFORNIA CLASS Member is paid as required by law, so as to satisfy its burden. This  
11 common business practice applicable to each and every CALIFORNIA CLASS Member can be  
12 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &  
13 Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not  
14 elements of this claim.

15 28. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA  
16 CLASS Members is impracticable.

17 29. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under  
18 California law by:

- 19 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§  
20 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company  
21 policies, practices and procedures that failed to pay all wages due the  
22 CALIFORNIA CLASS for all time worked;
- 23 b. Committing an act of unfair competition in violation of the California Unfair  
24 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide  
25 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS  
26 members; and,
- 27 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code  
28 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place

1 company policies, practices and procedures that uniformly and systematically  
2 failed to record and pay PLAINTIFF and other members of the CALIFORNIA  
3 CLASS for all time worked, including minimum wages owed and overtime wages  
4 owed for work performed by these employees.

5 30. The Class Action meets the statutory prerequisites for the maintenance of a Class  
6 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 7 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the  
8 joinder of all such persons is impracticable and the disposition of their claims as a  
9 class will benefit the parties and the Court;
- 10 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
11 raised in this Complaint are common to the CALIFORNIA CLASS will apply  
12 uniformly to every member of the CALIFORNIA CLASS;
- 13 c. The claims of the representative PLAINTIFF are typical of the claims of each  
14 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of  
15 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an  
16 hourly basis who was subjected to the DEFENDANTS’ deceptive practice and  
17 policy which failed to provide the legally required meal and rest periods to the  
18 CALIFORNIA CLASS and thereby systematically underpaid compensation to  
19 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury  
20 as a result of DEFENDANTS’ employment practices. PLAINTIFF and the  
21 members of the CALIFORNIA CLASS were and are similarly or identically  
22 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
23 misconduct engaged in by DEFENDANTS; and
- 24 d. The representative PLAINTIFF will fairly and adequately represent and protect  
25 the interest of the CALIFORNIA CLASS, and has retained counsel who are  
26 competent and experienced in Class Action litigation. There are no material  
27 conflicts between the claims of the representative PLAINTIFF and the members  
28 of the CALIFORNIA CLASS that would make class certification inappropriate.

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Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

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

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
  - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or;
  - ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA CLASS as required by law;
  - i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seek declaratory relief holding that the DEFENDANTS’ policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

1 c. Common questions of law and fact exist as to the members of the CALIFORNIA  
2 CLASS, with respect to the practices and violations of California law as listed  
3 above, and predominate over any question affecting only individual  
4 CALIFORNIA CLASS Members, and a Class Action is superior to other available  
5 methods for the fair and efficient adjudication of the controversy, including  
6 consideration of:

7 i. The interests of the members of the CALIFORNIA CLASS in individually  
8 controlling the prosecution or defense of separate actions in that the  
9 substantial expense of individual actions will be avoided to recover the  
10 relatively small amount of economic losses sustained by the individual  
11 CALIFORNIA CLASS Members when compared to the substantial  
12 expense and burden of individual prosecution of this litigation;

13 ii. Class certification will obviate the need for unduly duplicative litigation  
14 that would create the risk of:

15 1. Inconsistent or varying adjudications with respect to individual  
16 members of the CALIFORNIA CLASS, which would establish  
17 incompatible standards of conduct for the DEFENDANTS; and/or;

18 2. Adjudications with respect to individual members of the  
19 CALIFORNIA CLASS would as a practical matter be dispositive  
20 of the interests of the other members not parties to the adjudication  
21 or substantially impair or impede their ability to protect their  
22 interests;

23 iii. In the context of wage litigation, because a substantial number of  
24 individual CALIFORNIA CLASS Members will avoid asserting their legal  
25 rights out of fear of retaliation by DEFENDANTS, which may adversely  
26 affect an individual's job with DEFENDANTS or with a subsequent  
27 employer, the Class Action is the only means to assert their claims through  
28 a representative; and



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

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

- 8                   a. The questions of law and fact common to the CALIFORNIA CLASS predominate  
9                   over any question affecting only individual CALIFORNIA CLASS Members  
10                  because the DEFENDANTS’ employment practices are uniform and  
11                  systematically applied with respect to the CALIFORNIA CLASS.
- 12                  b. A Class Action is superior to any other available method for the fair and efficient  
13                  adjudication of the claims of the members of the CALIFORNIA CLASS because  
14                  in the context of employment litigation a substantial number of individual  
15                  CALIFORNIA CLASS Members will avoid asserting their rights individually out  
16                  of fear of retaliation or adverse impact on their employment;
- 17                  c. The members of the CALIFORNIA CLASS are so numerous that it is impractical  
18                  to bring all members of the CALIFORNIA CLASS before the Court;
- 19                  d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to  
20                  obtain effective and economic legal redress unless the action is maintained as a  
21                  Class Action;
- 22                  e. There is a community of interest in obtaining appropriate legal and equitable relief  
23                  for the acts of unfair competition, statutory violations and other improprieties, and  
24                  in obtaining adequate compensation for the damages and injuries which  
25                  DEFENDANTS’ actions have inflicted upon the CALIFORNIA CLASS;
- 26                  f. There is a community of interest in ensuring that the combined assets of  
27                  DEFENDANTS are sufficient to adequately compensate the members of the  
28                  CALIFORNIA CLASS for the injuries sustained;

- 1 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
- 2 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
- 3 with respect to the CALIFORNIA CLASS as a whole;
- 4 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
- 5 business records of DEFENDANTS; and
- 6 i. Class treatment provides manageable judicial treatment calculated to bring an
- 7 efficient and rapid conclusion to all litigation of all wage and hour related claims
- 8 arising out of the conduct of DEFENDANTS as to the members of the
- 9 CALIFORNIA CLASS.

10 33. DEFENDANTS maintain records from which the Court can ascertain and identify  
11 by job title each of DEFENDANTS’ employees who as have been systematically, intentionally  
12 and uniformly subjected to DEFENDANTS’ company policy, practices and procedures as herein  
13 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles  
14 of similarly situated employees when they have been identified.

15 **THE CALIFORNIA LABOR SUB-CLASS**

16 34. PLAINTIFF further bring the Second, Third, Fourth, Fifth, Sixth, and Seventh  
17 causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA  
18 CLASS classified as non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any  
19 time during the period three (3) years prior to the filing of the original complaint and ending on  
20 the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”)  
21 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of  
22 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

23 35. DEFENDANTS, as a matter of company policy, practice and procedure, and in  
24 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
25 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
26 willfully, engaged in a practice whereby DEFENDANTS failed to correctly pay for the time  
27 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and  
28 other wages and premiums owed to these employees, even though DEFENDANTS enjoyed the

1 benefit of this work, required employees to perform this work and permitted or suffered to permit  
2 this overtime work. DEFENDANTS have uniformly denied these CALIFORNIA LABOR SUB-  
3 CLASS Members wages to which these employees are entitled in order to unfairly cheat the  
4 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the  
5 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-  
6 CLASS PERIOD should be adjusted accordingly.

7 36. DEFENDANTS maintain records from which the Court can ascertain and identify  
8 by name and job title, each of DEFENDANTS' employees who have been systematically,  
9 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and  
10 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any  
11 additional job titles of similarly situated employees when they have been identified.

12 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
13 CALIFORNIA LABOR SUB-CLASS Members is impracticable

14 38. Common questions of law and fact exist as to members of the CALIFORNIA  
15 LABOR SUB-CLASS, including, but not limited, to the following:

- 16 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay  
17 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for  
18 missed meal and rest breaks in violation of the California Labor Code and  
19 California regulations and the applicable California Wage Order;
- 20 b. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of  
21 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted  
22 thirty (30) minute meal breaks and rest periods;
- 23 c. Whether DEFENDANTS failed to provide PLAINTIFF and the other members of  
24 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage  
25 statements;
- 26 d. Whether DEFENDANTS unlawfully failed to pay overtime compensation to  
27 members of the CALIFORNIA LABOR SUB-CLASS in violation of the  
28

- 1 California Labor Code and California regulations and the applicable California
- 2 Wage Order;
- 3 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
- 4 compensation for time worked, including overtime worked, under the overtime
- 5 pay requirements of California law;
- 6 f. Whether DEFENDANTS have engaged in unfair competition by the above-listed
- 7 conduct;
- 8 g. The proper measure of damages and penalties owed to the members of the
- 9 CALIFORNIA LABOR SUB-CLASS; and
- 10 h. Whether DEFENDANTS' conduct was willful.

11 39. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS  
12 under California law by:

- 13 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
- 14 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
- 15 overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code
- 16 § 1194;
- 17 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
- 18 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
- 19 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
- 20 Cal. Lab. Code §§ 1194 and 1197;
- 21 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
- 22 the other members of the CALIFORNIA CLASS with all legally required off-duty,
- 23 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 24 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
- 25 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
- 26 statement in writing showing all accurate rates in effect during the pay period and
- 27 the corresponding amount of time worked at each overtime rate by the employee;
- 28

1 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an  
2 employee is discharged or quits from employment, the employer must pay the  
3 employee all wages due without abatement, by failing to tender full payment  
4 and/or restitution of wages owed or in the manner required by California law to  
5 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated  
6 their employment.

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

9 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so  
10 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members  
11 is impracticable and the disposition of their claims as a class will benefit the parties  
12 and the Court;

13 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
14 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS  
15 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-  
16 CLASS;

17 c. The claims of the representative PLAINTIFF are typical of the claims of each  
18 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the  
19 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt  
20 employee paid on an hourly basis who was subjected to the DEFENDANTS’  
21 practice and policy which failed to pay the correct amount of wages due to the  
22 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as  
23 a result of DEFENDANTS’ employment practices. PLAINTIFF and the members  
24 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically  
25 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
26 misconduct engaged in by DEFENDANTS; and

27 d. The representative PLAINTIFF will fairly and adequately represent and protect  
28 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel

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

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

9 a. Without class certification and determination of declaratory, injunctive, statutory  
10 and other legal questions within the class format, prosecution of separate actions  
11 by individual members of the CALIFORNIA LABOR SUB-CLASS will create  
12 the risk of:

13 i. Inconsistent or varying adjudications with respect to individual members  
14 of the CALIFORNIA LABOR SUB-CLASS which would establish  
15 incompatible standards of conduct for the parties opposing the  
16 CALIFORNIA LABOR SUB-CLASS; or

17 ii. Adjudication with respect to individual members of the CALIFORNIA  
18 LABOR SUB-CLASS which would as a practical matter be dispositive of  
19 interests of the other members not party to the adjudication or substantially  
20 impair or impede their ability to protect their interests.

21 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
22 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
23 SUB-CLASS, making appropriate class-wide relief with respect to the  
24 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly  
25 failed to pay all wages due for all time worked by the members of the  
26 CALIFORNIA LABOR SUB-CLASS as required by law;

27 c. Common questions of law and fact predominate as to the members of the  
28 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations

1 of California Law as listed above, and predominate over any question affecting  
2 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class  
3 Action is superior to other available methods for the fair and efficient adjudication  
4 of the controversy, including consideration of:

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

11 ii. Class certification will obviate the need for unduly duplicative litigation  
12 that would create the risk of:

13 1. Inconsistent or varying adjudications with respect to individual  
14 members of the CALIFORNIA LABOR SUB-CLASS, which  
15 would establish incompatible standards of conduct for the  
16 DEFENDANTS; and/or,

17 2. Adjudications with respect to individual members of the  
18 CALIFORNIA LABOR SUB-CLASS would as a practical matter  
19 be dispositive of the interests of the other members not parties to  
20 the adjudication or substantially impair or impede their ability to  
21 protect their interests;

22 iii. In the context of wage litigation because a substantial number of individual  
23 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their  
24 legal rights out of fear of retaliation by DEFENDANTS, which may  
25 adversely affect an individual's job with DEFENDANTS or with a  
26 subsequent employer, the Class Action is the only means to assert their  
27 claims through a representative; and,  
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iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS’ actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;



- 1 f. There is a community of interest in ensuring that the combined assets of  
2 DEFENDANTS are sufficient to adequately compensate the members of the  
3 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 g. DEFENDANTS have acted or refused to act on grounds generally applicable to  
5 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief  
6 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 7 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily  
8 ascertainable from the business records of DEFENDANTS. The CALIFORNIA  
9 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified  
10 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS  
11 PERIOD; and
- 12 i. Class treatment provides manageable judicial treatment calculated to bring an  
13 efficient and rapid conclusion to all litigation of all wage and hour related claims  
14 arising out of the conduct of DEFENDANTS as to the members of the  
15 CALIFORNIA LABOR SUB-CLASS.

16 **FIRST CAUSE OF ACTION**

17 **UNLAWFUL BUSINESS PRACTICES**

18 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

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

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

23 44. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
24 Code § 17021.

25 45. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines  
26 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203  
27 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition  
28 as follows:

1 Any person who engages, has engaged, or proposes to engage in unfair competition may  
2 be enjoined in any court of competent jurisdiction. The court may make such orders or  
3 judgments, including the appointment of a receiver, as may be necessary to prevent the  
4 use or employment by any person of any practice which constitutes unfair competition, as  
5 defined in this chapter, or as may be necessary to restore to any person in interest any  
6 money or property, real or personal, which may have been acquired by means of such  
7 unfair competition. (Cal. Bus. & Prof. Code § 17203).

8 46. By the conduct alleged herein, DEFENDANTS have engaged and continues to  
9 engage in a business practice which violates California law, including but not limited to, the  
10 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
11 including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and  
12 1198 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.  
13 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute  
14 unfair competition, including restitution of wages wrongfully withheld.

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

21 48. By the conduct alleged herein, DEFENDANTS' practices were deceptive and  
22 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and  
23 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time  
24 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,  
25 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in  
26 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive  
27 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages  
28 wrongfully withheld.

49. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,  
unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
2 DEFENDANTS.

3 50. By the conduct alleged herein, DEFENDANTS' practices were also unfair and  
4 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide  
5 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

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

25 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
26 and do, seek such relief as may be necessary to restore to them the money and property which  
27 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the  
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1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
2 business practices, including earned but unpaid wages.

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

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

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**  
16 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

17 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**  
18 **DEFENDANTS)**

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

22 59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
23 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code  
24 and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately  
25 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

26 60. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public  
27 policy, an employer must timely pay its employees for all hours worked.  
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1           61. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
2 commission is the minimum wage to be paid to employees, and the payment of a wage less than  
3 the minimum so fixed is unlawful.

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

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

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

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

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

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

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

1 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are  
2 presently unknown to them and which will be ascertained according to proof at trial.

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

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

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

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**THIRD CAUSE OF ACTION**

**FAILURE TO PAY OVERTIME COMPENSATION  
(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

**(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL  
DEFENDANTS)**

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

73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANTS’ failure to properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

77. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of overtime worked and correct applicable overtime rate for the amount of overtime they worked. As set forth herein, DEFENDANTS’ uniform policy and practice was to unlawfully and

1 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and the  
2 other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANTS in fact failed  
3 to pay these employees the correct applicable overtime wages for all overtime worked.

4 78. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
5 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result  
6 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF  
7 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,  
8 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours  
9 in any workweek.

10 79. In committing these violations of the California Labor Code, DEFENDANTS  
11 inaccurately calculated the amount of overtime worked and the applicable overtime rates and  
12 consequently underpaid the actual time worked by PLAINTIFF and other members of the  
13 CALIFORNIA LABOR SUB-CLASS. DEFENDANTS acted in an illegal attempt to avoid the  
14 payment of all earned wages, and other benefits in violation of the California Labor Code, the  
15 Industrial Welfare Commission requirements and other applicable laws and regulations.

16 80. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
17 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive  
18 full compensation for all overtime worked.

19 81. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from  
20 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF  
21 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further PLAINTIFF and the  
22 other members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective  
23 bargaining agreement that would preclude the causes of action contained herein this Complaint.  
24 Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA LABOR SUB-  
25 CLASS based on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by  
26 the State of California.

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



1           83.    DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the  
2 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in  
3 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &  
4 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
5 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed  
6 to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT’S  
7 business records and witnessed by employees.

8           84.    By virtue of DEFENDANTS’ unlawful failure to accurately pay all earned  
9 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
10 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR  
11 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are  
12 presently unknown to them and which will be ascertained according to proof at trial.

13           85.    DEFENDANTS knew or should have known that PLAINTIFF and the other  
14 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime  
15 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross  
16 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice  
17 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay  
18 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable  
19 overtime rate.

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

28           87.    PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
therefore request recovery of all unpaid wages, including overtime wages, according to proof,  
interest, statutory costs, as well as the assessment of any statutory penalties against

1 DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable  
2 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA  
3 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANTS'  
4 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be  
5 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein  
6 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANTS' conduct as  
7 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other  
8 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**  
11 **(Cal. Lab. Code §§ 226.7 & 512)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**  
13 **DEFENDANTS)**

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

17 89. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all  
18 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR  
19 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of  
20 the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did  
21 not prevent these employees from being relieved of all of their duties for the legally required off-  
22 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other  
23 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by  
24 DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide  
25 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal  
26 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records.  
27 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS  
28 therefore forfeited meal breaks without additional compensation and in accordance with  
DEFENDANTS' strict corporate policy and practice.



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

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

9 **SIXTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

11 **(Cal. Lab. Code §§ 226 and 226.2)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all  
13 DEFENDANTS)**

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

17 97. 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  
21 compensation is solely based on a salary and who is exempt from payment of  
22 overtime under subdivision (a) of Section 515 or any applicable order of the  
23 Industrial Welfare 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  
27 employee may be aggregated and shown as one item;
- 28 e. Net wages earned;
- f. The inclusive dates of the period for which the employee is paid;

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

8 98. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate  
9 employees with an “accurate itemized” statement in writing showing:

- 10 a. The total hours of compensable rest and recovery periods, the rate of
- 11 compensation, and the gross wages paid for those periods during the
- 12 pay period; and
- 13 b. The total hours of other nonproductive time, the rate of
- 14 compensation, and the gross wages paid for that time during the pay
- 15 period.

16 99. When DEFENDANTS did not accurately record PLAINTIFF’S and other  
17 CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANTS also  
18 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete  
19 and accurate wage statements which failed to show, among other things, the correct overtime rate,  
20 the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFF and other  
21 CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall  
22 furnish each of his or her employees with an accurate itemized wage statement in writing showing,  
23 among other things, gross wages earned and all applicable hourly rates in effect during the pay  
24 period and the corresponding amount of time worked at each hourly rate. Aside from the  
25 violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an  
26 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*  
27 As a result, from time to time DEFENDANTS provided PLAINTIFF and the other members of  
28 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.



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

10 105. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-  
11 CLASS Members' employment contract.

12 106. Cal. Lab. Code § 203 provides:

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

18 107. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS  
19 Members terminated and DEFENDANTS have not tendered payment of wages, to these  
20 employees who missed meal and rest breaks, as required by law.

21 108. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the  
22 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF  
23 demands up to thirty days of pay as penalty for not paying all wages due at time of termination  
24 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS  
25 PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory  
26 costs as allowed by law.

### 27 **PRAYER FOR RELIEF**

28 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANTS, jointly  
and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining

1 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

2 c. An order requiring DEFENDANTS to pay all wages and all sums unlawfully  
3 withheld from compensation due to PLAINTIFF and the other members of the  
4 CALIFORNIA CLASS; and

5 d. Restitutionary disgorgement of DEFENDANT'S' ill-gotten gains into a fluid fund  
6 for restitution of the sums incidental to DEFENDANTS' violations due to  
7 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

8 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

9 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes  
10 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action  
11 pursuant to Cal. Code of Civ. Proc. § 382;

12 b. Compensatory damages, according to proof at trial, including compensatory  
13 damages for minimum wages, overtime wages, and other compensation due to  
14 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,  
15 during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest  
16 thereon at the statutory rate;

17 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
18 the applicable IWC Wage Order;

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

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

27 3. On all claims:

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



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- 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, §1194 and/or §1197.

DATED: \_\_\_\_\_, 2021

**ZAKAY LAW GROUP, APLC**


By:   
Shani O. Zakay  
Attorney for Plaintiffs

**DEMAND FOR A JURY TRIAL**

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

DATED: \_\_\_\_\_, 2021

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for Plaintiffs