

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

MARCOS RENTERIA AG SERVICES, INC., a California corporation;
and DOES 1-50, Inclusive,

ELECTRONICALLY FILED
Merced Superior Court
12/27/2022 2:33 PM
Amanda Toste
Clerk of the Superior Court
By: Brandon Chow, Deputy

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ARCELIA OCHOA, an individual, on behalf of herself, and on behalf of
all persons similarly situated,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Merced Superior Court - Old Courthouse
627 W 21st Street
Merced, CA 95340

CASE NUMBER: 22CV-04217
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (858) 599-8291
JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 12/27/2022 2:33 PM Amanda Toste Clerk, by _____, Deputy
(Fecha) *(Secretario)* *(Adjunto)*

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



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of *(specify)*:
3. on behalf of *(specify)*:

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other <i>(specify)</i> :	
4. by personal delivery on *(date)*:

This e-copy is the official court record (GC68150)

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Amanda Toste
Clerk of the Superior Court
By: Brandon Chow, Deputy

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

ARCELIA OCHOA, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Plaintiffs,

v.

MARCOS RENTERIA AG SERVICES, INC., a California corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: 22CV-04217

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.

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- LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant MARCOS RENTERIA AG SERVICES, INC. (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT is a staffing agency that staffs companies in California, including Foster Poultry Farms.

3. PLAINTIFF was employed by DEFENDANT in California from June of 2020 to August of 2021 as a non-exempt employee, paid on an hourly basis and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

4. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined as all persons who are or previously were employed by DEFENDANT who performed work for Foster Poultry Farms, LLC in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning February 1, 2020 and ending on the date as determined by the Court (the “CLASS PERIOD”). The amount in controversy for

1 the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
2 (\$5,000,000.00).

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

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

23 7. The agents, servants and/or employees of the Defendants and each of them acting
24 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
25 agent, servant and/or employee of the Defendants, and personally participated in the conduct
26 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
27 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
28 Defendants are jointly and severally liable to PLAINTIFF and the other members of the

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

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

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

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

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

22 **JURISDICTION AND VENUE**

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

27 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs

1 the CALIFORNIA CLASS across California, including in this County, and committed the
2 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

3 **THE CONDUCT**

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

23 **A. Meal Period Violations**

24 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. From time to time during the CLASS
28 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work

1 without paying them for all the time they were under DEFENDANT’s control. Specifically,
2 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
3 PLAINTIFF’S off-duty meal break. Indeed, there were many days where PLAINTIFF did not
4 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
5 Members forfeited minimum wage and overtime compensation by regularly working without their
6 time being accurately recorded and without compensation at the applicable minimum wage and
7 overtime rates. DEFENDANT’s uniform policy and practice not to pay PLAINTIFF and other
8 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT’s business
9 records.

10 16. From time to time during the CLASS PERIOD, as a result of their rigorous work
11 schedules and DEFENDANT’s inadequate staffing practices, PLAINTIFF and other
12 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
13 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
14 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
15 more than five (5) hours during some shifts without receiving a meal break. Further,
16 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
17 off-duty meal period for some workdays in which these employees are required by DEFENDANT
18 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
19 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed “on-
20 duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other
21 CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on
22 duty and on call. DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS
23 Members with legally required meal breaks is evidenced by DEFENDANT’s business records.
24 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks
25 without additional compensation and in accordance with DEFENDANT’s strict corporate policy
26 and practice.

27 **B. Rest Period Violations**

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

15 **C. Wage Statement Violations**

16 18. California Labor Code Section 226 required an employer to furnish its employees
17 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
18 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
19 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
20 name 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. From time to time during the CLASS PERIOD, when PLAINTIFF and other
25 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
26 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
27 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
28 accurate wage statements which failed to show, among other things, all deductions, the total hours

1 worked and all applicable hourly rates in effect during the pay period, and the corresponding
2 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
3 meal and rest periods. Further, DEFENDANT from time to time issued wage statements to
4 PLAINTIFF and other CALIFORNIA CLASS Members that violated Cal. Lab. Code § 226(a)(2).
5 Specifically, DEFENDANT added items, including but not limited, such as “Sick Pay” into the
6 computation of total hours worked. However, “Sick Pay” is not considered hours worked for
7 purposes of Cal. Lab. Code § 226(a)(2).

8 20. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
9 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
10 Cal. Lab. Code § 226.

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

15 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

16 22. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
17 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
18 for all hours worked.

19 23. During the CLASS PERIOD, from time-to-time DEFENDANT required
20 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
21 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to
22 work while off-the-clock.

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

25 25. DEFENDANT controlled the work schedules, duties, and protocols, applications,
26 assignments, and employment conditions of PLAINTIFF and the other members of the
27 CALIFORNIA CLASS.

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1 26. DEFENDANT was able to track the amount of time PLAINTIFF and the other
2 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
3 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
4 wages earned and owed for all the work they performed.

5 27. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
6 exempt employees, subject to the requirements of the California Labor Code.

7 28. DEFENDANT's policies and practices deprived PLAINTIFF and the other
8 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
9 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
10 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
11 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
12 pay.

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

15 30. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
16 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
17 benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and
18 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
19 hours worked in accordance with applicable law is evidenced by DEFENDANT's business
20 records.

21 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
22 **and Redeemed Sick Pay**

23 31. From time to time during the CLASS PERIOD, DEFENDANT failed and
24 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
25 Members for their overtime and double time hours worked, meal and rest period premiums, and
26 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
27 forfeited wages due to them for working overtime without compensation at the correct overtime
28 and double time rates, meal and rest period premiums, and redeemed sick pay rates.

1 DEFENDANT’s uniform policy and practice not to pay the CALIFORNIA CLASS Members at
2 the correct rate for all overtime and double time worked, meal and rest period premiums, and
3 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT’s business
4 records.

5 32. State law provides that employees must be paid overtime at one-and-one-half times
6 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
7 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
8 employee’s performance.

9 33. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
10 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
11 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
12 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
13 basis with bonus compensation when the employees met the various performance goals set by
14 DEFENDANTS.

15 34. However, from-time-to-time, when calculating the regular rate of pay, in those pay
16 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
17 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
18 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
19 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked
20 rather than just all non-overtime hours worked. Management and supervisors described the
21 incentive/bonus program to potential and new employees as part of the compensation package.
22 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
23 CLASS members must be included in the “regular rate of pay.” The failure to do so has resulted
24 in a systematic underpayment of overtime and double time compensation, meal and rest period
25 premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by
26 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
27 for non-employees shall be calculated in the same manner as the regular rate of pay for the
28 workweek in which the non-exempt employee uses paid sick time, whether or not the employee

1 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
2 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
3 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
4 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

16 **F. Unreimbursed Business Expenses**

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

28 37. In the course of their employment, DEFENDANT required PLAINTIFF and other

1 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell
2 phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
3 CALIFORNIA CLASS Members were required to purchase their own personal protective
4 equipment (“PPE”) in order to perform work related tasks. However, DEFENDANT unlawfully
5 failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the personal
6 expenses incurred for the purchase of their own PPE. As a result, in the course of their
7 employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members
8 incurred unreimbursed business expenses that included, but were not limited to, costs related to
9 the purchase of PPE, all on behalf of and for the benefit of DEFENDANT.

10 **G. Unlawful Rounding Practices**

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

23 39. Further, the mutability of DEFENDANTS’ timekeeping system and unlawful
24 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members’
25 time being inaccurately recorded. As a result, from time to time, DEFENDANTS’ unlawful
26 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
27 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
28 receiving an off-duty meal break.

1 **H. Timekeeping Manipulation**

2 40. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
3 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
4 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
5 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
6 and rest breaks. Specifically, due to DEFENDANT’s error-prone timekeeping system,
7 approximately five to eight minutes of PLAINTIFF and CALIFORNIA CLASS Member’s time
8 worked were taken each day. As a result, DEFENDANT was able to and did in fact, unlawfully,
9 and unilaterally alter the time recorded in DEFENDANTS’ timekeeping system for PLAINTIFF
10 and other members of the CALIFORNIA CLASS in order to avoid paying these employees for
11 all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
12 missed rest break.

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

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

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

1 **I. Violations for Untimely Payment of Wages**

2 44. Pursuant to California Labor Code section 204, PLAINTIFF and the
3 CALIFORNIA CLASS members were entitled to timely payment of wages during their
4 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
5 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
6 meal period premium wages, and rest period premium wages within permissible time period.

7 **J. Unlawful Deductions**

8 45. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
9 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
10 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
11 DEFENDANTS violated Labor Code § 221.

12 46. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
13 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
14 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
15 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
16 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
17 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
18 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
19 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was
20 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
21 without additional compensation and in accordance with DEFENDANT'S strict corporate policy
22 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
23 comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse PLAINTIFF for
24 required business expenses related to the use of her personal cell phone, personal vehicle and
25 purchase of uniforms, in violation of Cal. Lab. Code § 2802. To date, DEFENDANT has not
26 fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to her or
27 any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy for
28 PLAINTIFF individually does not exceed the sum or value of \$75,000.

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CLASS ACTION ALLEGATIONS

47. PLAINTIFF bring this Class Action on behalf of herself, and a California class defined as all persons who are or previously were employed by DEFENDANT who performed work for Foster Poultry Farms, LLC in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning February 1, 2020 and ending on the date as determined by the Court (the “CLASS PERIOD”).

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

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

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

- a. Whether DEFENDANT maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANT maintained legally compliant rest period policies and practices;

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

21 51. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
22 a result of DEFENDANT's conduct and actions alleged herein.

23 52. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
24 PLAINTIFF have the same interests as the other members of the class.

25 53. PLAINTIFF will fairly and adequately represent and protect the interests of the
26 CALIFORNIA CLASS Members.

27 54. PLAINTIFF retained able class counsel with extensive experience in class action
28 litigation.

1 55. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
2 interest of the other CALIFORNIA CLASS Members.

3 56. There is a strong community of interest among PLAINTIFF and the members of
4 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
5 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
6 sustained.

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

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

- 18 a. Inconsistent or varying adjudications with respect to individual members of the
19 CALIFORNIA CLASS which would establish incompatible standards of conduct
20 for the parties opposing the CALIFORNIA CLASS; and/or,
21 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
22 which would as a practical matter be dispositive of the interests of the other
23 members not party to the adjudication or substantially impair or impeded their
24 ability to protect their interests.

25 59. Class treatment provides manageable judicial treatment calculated to bring an
26 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
27 the conduct of DEFENDANT.

28 **FIRST CAUSE OF ACTION**

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Unlawful Business Practices

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

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

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

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

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

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

63. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

1 65. By the conduct alleged herein, DEFENDANT's practices were deceptive and
2 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
3 mandated meal and rest periods and the required amount of compensation for missed meal and
4 rest periods, and failed to pay minimum and overtime wages owed, due to a systematic business
5 practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
6 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
7 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
8 including restitution of wages wrongfully withheld.

9 66. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
10 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
11 other members of the CALIFORNIA CLASS to be underpaid during their employment with
12 DEFENDANT.

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

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

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

25 70. By and through the unlawful and unfair business practices described herein,
26 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
27 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
28 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the

1 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
2 to unfairly compete against competitors who comply with the law.

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

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

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

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

24 **SECOND CAUSE OF ACTION**

25 **Failure To Pay Minimum Wages**

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

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

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1 75. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
2 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
3 Complaint.

4 76. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
5 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
6 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
7 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

10 78. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
11 commission is the minimum wage to be paid to employees, and the payment of a less wage than
12 the minimum so fixed is unlawful.

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

15 80. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
16 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
17 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
18 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
19 CALIFORNIA CLASS.

20 81. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
21 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
22 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
23 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

24 82. In committing these violations of the California Labor Code, DEFENDANT
25 inaccurately calculated the correct time worked and consequently underpaid the actual time
26 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
27 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
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1 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
2 laws and regulations.

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

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

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

14 86. DEFENDANT knew or should have known that PLAINTIFF and the other
15 members of the CALIFORNIA CLASS were under-compensated for their time worked.
16 DEFENDANT systematically elected, either through intentional malfeasance or gross
17 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
18 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
19 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
20 for their time worked.

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

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

12 **THIRD CAUSE OF ACTION**

13 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

5 94. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
6 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
7 they worked, including overtime work.

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

15 96. In committing these violations of the California Labor Code, DEFENDANT
16 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
17 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
18 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
19 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
20 regulations.

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

24 98. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
25 from the overtime requirements of the law. None of these exemptions are applicable to
26 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
27 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
28 agreement that would preclude the causes of action contained herein this Complaint. Rather,

1 PLAINTIFF bring this Action on behalf of herself, and the CALIFORNIA CLASS, based on
2 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of
3 California.

4 99. During the CLASS PERIOD, PLAINTIFF and the other members of the
5 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
6 a failure to pay all earned wages.

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

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

19 102. DEFENDANT knew or should have known that PLAINTIFF and the other
20 members of the CALIFORNIA CLASS were undercompensated for their time worked.
21 DEFENDANT systematically elected, either through intentional malfeasance or gross
22 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
23 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF
24 and the other members of the CALIFORNIA CLASS the correct overtime wages for their
25 overtime worked.

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

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

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

16 **FOURTH CAUSE OF ACTION**

17 **Failure To Provide Required Meal Periods**

18 **(Cal. Lab. Code §§ 226.7 & 512)**

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

20 105. 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.

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

1 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
2 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
3 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
4 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
5 Members with a second off-duty meal period in some workdays in which these employees were
6 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
7 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
8 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

17 **FIFTH CAUSE OF ACTION**

18 **Failure To Provide Required Rest Periods**

19 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

1 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
2 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
3 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
4 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
5 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
6 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the
7 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
8 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
9 periods is evidenced by DEFENDANT's business records.

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

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

18 **SIXTH CAUSE OF ACTION**

19 **Failure To Pay Wages When Due**

20 **(Cal. Lab. Code § 203)**

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

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

25 114. Cal. Lab. Code § 200 provides that:

26 As used in this article:

- 27 (d) "Wages" includes all amounts for labor performed by employees of every
28 description, whether the amount is fixed or ascertained by the standard of time,
task, piece, Commission basis, or other method of calculation.

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

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

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

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

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

118. Cal. Lab. Code § 203 provides:

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

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

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

SEVENTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

2
3 121. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
4 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
5 Complaint.

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

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

26 123. When DEFENDANT did not accurately record PLAINTIFF’S and other
27 CALIFORNIA CLASS Members’ missed meal and rest breaks, or were paid inaccurate missed
28 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal.

1 Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA
2 CLASS Members with complete and accurate wage statements which failed to show, among other
3 things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked
4 and all applicable hourly rates in effect during the pay period and the corresponding amount of
5 time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal
6 and rest periods. Further, DEFENDANT from time to time issued wage statements to
7 PLAINTIFF and other CALIFORNIA CLASS Members that violated Cal. Lab. Code § 226(a)(2).
8 Specifically, DEFENDANT added items, including but not limited, such as “Sick Pay” into the
9 computation of total hours worked. However, “Sick Pay” is not considered hours worked for
10 purposes of Cal. Lab. Code § 226(a)(2).

11 124. In addition to the foregoing, DEFENDANT failed to provide itemized wage
12 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
13 requirements of California Labor Code Section 226.

14 125. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
15 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
16 CLASS. These damages include, but are not limited to, costs expended calculating the correct
17 wages for all missed meal and rest breaks and the amount of employment taxes which were not
18 properly paid to state and federal tax authorities. These damages are difficult to estimate.
19 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
20 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
21 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
22 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
23 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
24 of the CALIFORNIA CLASS herein).

25 **EIGHTH CAUSE OF ACTION**

26 **Failure To Reimburse Employees for Required Expenses**

27 **(Cal. Lab. Code §§ 2802)**

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

1 126. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
2 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
3 Complaint.

4 127. Cal. Lab. Code § 2802 provides, in relevant part, that:
5 An employer shall indemnify his or her employee for all necessary expenditures or
6 losses incurred by the employee in direct consequence of the discharge of his or her
7 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them
to be unlawful.

8 128. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
9 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
10 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
11 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
12 members for expenses which included, but were not limited to, the purchase of personal
13 protective equipment ("PPE") all on behalf of and for the benefit of DEFENDANT. Specifically,
14 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to the
15 purchase of PPE to execute their essential job duties on behalf of DEFENDANT.
16 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and
17 the CALIFORNIA CLASS members for expenses resulting from the purchase of PPE for
18 DEFENDANT within the course and scope of their employment for DEFENDANT. These
19 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
20 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
21 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,
22 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
23 members for these expenses as an employer is required to do under the laws and regulations of
24 California.

25 129. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
26 by her and the CALIFORNIA CLASS members in the discharge of their job duties for
27 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
28 statutory rate and costs under Cal. Lab. Code § 2802.

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable 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 each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

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violation of Cal. Lab. Code § 226

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

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

3. On all claims:

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

b. Such other and further relief as the Court deems just and equitable; and

c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: December 27, 2022

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: December 27, 2022

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF