

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:

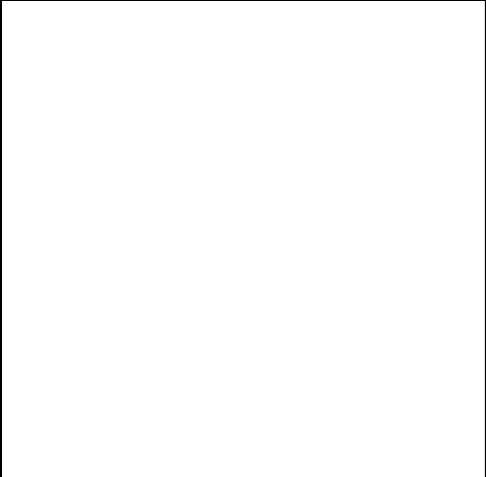
(AVISO AL DEMANDADO):

LANDRY'S PAYROLL, INC., a Texas corporation; LANDRY'S MANAGEMENT, INC., a Nevada corporation; MASTRO'S RESTAURANTS, LLC, a Nevada limited liability company; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

NOELLE SALMAS, 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):
Riverside Superior Court - Riverside Historic Courthouse
4050 Main Street
Riverside, CA 92501

CASE NUMBER: CVRI2300832
(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):
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 02/17/2023 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)*:

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

NOELLE SALMAS, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Plaintiff,

v.

LANDRY'S PAYROLL, INC., a Texas corporation; LANDRY'S MANAGEMENT, INC., a Nevada corporation; MASTRO'S RESTAURANTS, LLC, a Nevada limited liability company; and DOES 1-50, Inclusive,

Defendants.

Case No: **CVRI 2300832**

CLASS ACTION COMPLAINT FOR:

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

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- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
 - 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant LANDRY’S PAYROLL, INC. (“Defendant Landry’s Payroll”) is a Texas corporation at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant LANDRY’S MANAGEMENT, INC. (“Defendant Landry’s Management”) is a Nevada corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant MASTRO’S RESTAURANTS, LLC (“Defendant Mastro’s Restaurants”) is a Nevada limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

4. Defendant Landry’s Payroll, Defendant Landry’s Management and Defendant Mastro’s Restaurants were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

5. DEFENDANTS own, operate, and/or manage restaurants throughout the state of California, including in the county of Riverside, where PLAINTIFF worked.

6. PLAINTIFF was employed by DEFENDANTS in California from May of 2022 to September of 2022 as a non-exempt employee, paid an hourly basis and entitled to the legally

1 required meal and rest periods and payment of minimum and overtime wages due for all time
2 worked.

3 7. PLAINTIFF brings this Class Action on behalf of herself and a California class,
4 defined as all persons who are or previously were employed by Defendant Landry's Payroll and/or
5 Defendant Landry's Management and/or Defendant Mastro's Restaurants who performed work
6 for Defendant Mastro's Restaurants in California and classified as non-exempt employees (the
7 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing
8 of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD").
9 The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is
10 under five million dollars (\$5,000,000.00).

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

22 9. The true names and capacities, whether individual, corporate, subsidiary,
23 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
24 presently unknown to PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious
25 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
26 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
27 ascertained. PLAINTIFFS is informed and believes, and based upon that information and belief
28 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,

1 inclusive, are responsible in some manner for one or more of the events and happenings that
2 proximately caused the injuries and damages hereinafter alleged.

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

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

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

22 13. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
23 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain
24 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

25 14. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
26 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and
27 other members of the CALIFORNIA CLASS who has been economically injured by
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1 DEFENDANTS’ past and current unlawful conduct, and all other appropriate legal and equitable
2 relief.

3 **JURISDICTION AND VENUE**

4 15. 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 16. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ
10 the CALIFORNIA CLASS across California, including in this County, and committed the
11 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

12 **THE CONDUCT**

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

1 the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted
2 accordingly.

3 **A. Meal Period Violations**

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

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

1 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
2 required to remain on duty and on call. DEFENDANTS' failure to provide PLAINTIFF and the
3 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
4 DEFENDANTS' business records. PLAINTIFF and other members of the CALIFORNIA
5 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
6 DEFENDANTS' strict corporate policy and practice.

7 **B. Rest Period Violations**

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

22 **C. Wage Statement Violations**

23 21. California Labor Code Section 226 required an employer to furnish its employees
24 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
25 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
26 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
27 name of the employee and only the last four digits of the employee's social security number or an
28 employee identification number other than a social security number, (8) the name and address of

1 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the employee.

3 22. From time to time during the CLASS PERIOD, when PLAINTIFF and other
4 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
5 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
6 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
7 accurate wage statements which failed to show, among other things, all deductions, the total hours
8 worked and all applicable hourly rates in effect during the pay period and the corresponding
9 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
10 meal and rest periods.

11 23. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
12 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
13 Cal. Lab. Code § 226.

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

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

19 25. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
20 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
21 for all hours worked.

22 26. During the CLASS PERIOD, from time-to-time DEFENDANTS required
23 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
24 working. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have
25 to work while off-the-clock.

26 27. DEFENDANTS directed and directly benefited from the undercompensated off-
27 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.
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1 28. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
2 assignments, and employment conditions of PLAINTIFF and the other members of the
3 CALIFORNIA CLASS.

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

8 30. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
9 exempt employees, subject to the requirements of the California Labor Code.

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

16 32. DEFENDANTS knew or should have known that PLAINTIFF and the other
17 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

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

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

26 34. From time to time during the CLASS PERIOD, DEFENDANTS failed and
27 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
28 Members for their overtime and double time hours worked, meal and rest period premiums, and

1 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
2 forfeited wages due to them for working overtime without compensation at the correct overtime
3 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
4 DEFENDANTS' uniform policy and practice not to pay the CALIFORNIA CLASS Members at
5 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick
6 pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

7 35. State law provides that employees must be paid overtime at one-and-one-half times
8 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
9 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
10 employee's performance.

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

17 37. However, from time to time, when calculating the regular rate of pay in those pay
18 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
19 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
20 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
21 compensation as part of the employee's "regular rate of pay" and/or calculated all hours worked
22 rather than just all non-overtime hours worked. Management and supervisors described the
23 incentive/bonus program to potential and new employees as part of the compensation package.
24 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
25 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
26 in a systematic underpayment of overtime and double time compensation, meal and rest period
27 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
28 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that

1 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
2 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
3 not the employee actually works overtime in that workweek. DEFENDANTS’ conduct, as
4 articulated herein, by failing to include the incentive compensation as part of the “regular rate of
5 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
6 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

7 38. In violation of the applicable sections of the California Labor Code and the
8 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a
9 matter of company policy, practice, and procedure, intentionally and knowingly failed to
10 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
11 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
12 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
13 an 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 DEFENDANTS, the
15 CLASS PERIOD should be adjusted accordingly.

16 **F. Unlawful Rounding Practices**

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

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

7 **G. Timekeeping Manipulation**

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

16 42. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
17 time-to-time, forfeited time worked by working without their time being accurately recorded and
18 without compensation at the applicable pay rates.

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

26 44. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
27 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
28 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and

1 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
2 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
3 records.

4 **H. Violations for Untimely Payment of Wages**

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

10 **I. Unlawful Deductions**

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

15 47. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
16 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
17 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
18 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
19 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
20 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
21 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
22 rest break. 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
24 rest breaks without additional compensation and in accordance with DEFENDANTS' strict
25 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
26 paystubs that failed to comply with Cal. Lab. Code § 226. To date, DEFENDANTS have not
27 fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to her
28

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

3 **CLASS ACTION ALLEGATIONS**

4 48. PLAINTIFF brings this Class Action on behalf of herself, and a California class
5 defined as all persons who are or previously were employed by Defendant Landry’s Payroll and/or
6 Defendant Landry’s Management and/or Defendant Mastro’s Restaurants who performed work
7 for Defendant Mastro’s Restaurants in California and classified as non-exempt employees (the
8 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the
9 filing of this Complaint and ending on the date as determined by the Court (the “CLASS
10 PERIOD”).

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

17 50. The members of the class are so numerous that joinder of all class members is
18 impractical.

19 51. Common questions of law and fact regarding DEFENDANTS’ conduct, including
20 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
21 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
22 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
23 compliant meal and rest periods, failure to provide accurate itemized wage statements accurate,
24 and failure to ensure they are paid at least minimum wage and overtime, exist as to all members
25 of the class and predominate over any questions affecting solely any individual members of the
26 class. Among the questions of law and fact common to the class are:

- 27 a. Whether DEFENDANT maintained legally compliant meal period policies and
28 practices;

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

23 52. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
24 a result of DEFENDANTS’ conduct and actions alleged herein.

25 53. PLAINTIFF’S claims are typical of the claims of the CALIFORNIA CLASS, and
26 PLAINTIFF has the same interests as the other members of the class.

27 54. PLAINTIFF will fairly and adequately represent and protect the interests of the
28 CALIFORNIA CLASS Members.

1 55. PLAINTIFF retained able class counsel with extensive experience in class action
2 litigation.

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

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

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

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

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

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

27 60. Class treatment provides manageable judicial treatment calculated to bring an
28 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of

1 the conduct of DEFENDANT.

2 **FIRST CAUSE OF ACTION**

3 **Unlawful Business Practices**

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

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

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

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

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

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

22 64. By the conduct alleged herein, DEFENDANTS have engaged and continue to
23 engage in a business practice which violates California law, including but not limited to, the
24 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
25 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
26 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
27 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
28 constitute unfair competition, including restitution of wages wrongfully withheld.

65. By the conduct alleged herein, DEFENDANTS’ 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

1 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203
2 of the California Business & Professions Code, including restitution of wages wrongfully
3 withheld.

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

12 67. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
13 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
14 other members of the CALIFORNIA CLASS to be underpaid during their employment with
15 DEFENDANTS.

16 68. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
17 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
18 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
19 required by Cal. Lab. Code §§ 226.7 and 512.

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

25 70. PLAINTIFF further demands on behalf of herself and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
27 not timely provided as required by law.
28

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

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

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

17 74. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
18 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
19 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
20 engaging in any unlawful and unfair business practices in the future.

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

28 ///

1 **SECOND CAUSE OF ACTION**

2 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

24 81. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
25 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
26 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
27 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.
28

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

20 89. 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 90. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
24 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees
26 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
27 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.
28

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

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

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

10 94. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
11 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
12 they worked, including overtime work.

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

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

26 97. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
27 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
28 overtime compensation for their time worked for DEFENDANTS.

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

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

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

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

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

1 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
2 their overtime worked.

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

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

21 **FOURTH CAUSE OF ACTION**

22 **Failure To Provide Required Meal Periods**

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

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

25 105. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and
26 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
27 Complaint.
28

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

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

20 108. As a proximate result of the aforementioned violations, PLAINTIFF and
21 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
22 and seek all wages earned and due, interest, penalties, expenses and costs of suit.
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1 **FIFTH CAUSE OF ACTION**

2 **Failure To Provide Required Rest Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

8 110. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
9 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
10 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
11 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
12 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
13 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
14 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
15 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
16 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
17 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
18 compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as
19 required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to
20 provide PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid
21 rest periods is evidenced by DEFENDANTS' business records.

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

27
28

1 i. all applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate by the employee.

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code § 203)**

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

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

8 119. Cal. Lab. Code § 200 provides that:

9 As used in this article:

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

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

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

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

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

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

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

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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 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: February 17, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFFS

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DEMAND FOR A JURY TRIAL

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

DATED: February 17, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF