

**SUMMONS  
(CITACION JUDICIAL)**

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

MATRIX PROVIDERS, INC., a Colorado corporation; and DOES 1-50, Inclusive,

**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**08/22/2023** at 04:14:10 PM

Clerk of the Superior Court  
By Sophia Felix, Deputy Clerk

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DANIELA RIVAS-MULIA, 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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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/](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://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):

Superior Court of California - San Diego - Hall of Justice Courthouse  
330 West Broadway  
San Diego, CA 92101

CASE NUMBER: 37-2023-00036339-CU-OE-CTL  
(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: 08/23/2023  
(Fecha)

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) *Sophia Felix* S. Felix (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 (specify):	
4.  by personal delivery on (date):

**SUMMONS**

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County of San Diego

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Clerk of the Superior Court  
By Sophia Felix, Deputy Clerk

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Attorneys for PLAINTIFF

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

DANIELA RIVAS-MULIA, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Plaintiffs,

v.

MATRIX PROVIDERS, INC., a Colorado corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: 37-2023-00036339-CU-OE-CTL

**CLASS ACTION COMPLAINT FOR:**

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

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

**DEMAND FOR A JURY TRIAL**

PLAINTIFF DANIELA RIVAS-MULIA (“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 MATRIX PROVIDERS, INC. (“DEFENDANT” and/or “DEFENDANTS”) is a Colorado corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT operates a medical staffing company throughout the state of California, including the county of San Diego, where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANT in California from February of 2023 to May of 2023 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 in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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



**THE CONDUCT**

1  
2           14. In violation of the applicable sections of the California Labor Code and the  
3 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a  
4 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically  
5 failed to provide legally compliant meal and rest periods, failed to accurately compensate  
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest  
7 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all  
8 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF  
9 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,  
10 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest  
11 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS  
12 Members for business expenses, and failed to issue to PLAINTIFF and the members of the  
13 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all  
14 applicable hourly rates in effect during the pay periods and the corresponding amount of time  
15 worked at each hourly rate. DEFENDANT’s uniform policies and practices are intended to  
16 purposefully avoid the accurate and full payment for all time worked as required by California  
17 law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors  
18 who comply with the law. To the extent equitable tolling operates to toll claims by the  
19 CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted  
20 accordingly.

21       **A. Meal Period Violations**

22           15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
23 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,  
24 meaning the time during which an employee is subject to the control of an employer, including  
25 all the time the employee is suffered or permitted to work. From time to time during the CLASS  
26 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work  
27 without paying them for all the time they were under DEFENDANT’s control. Specifically,  
28 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be

1 PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not  
2 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS  
3 Members forfeited minimum wage and overtime compensation by regularly working without their  
4 time being accurately recorded and without compensation at the applicable minimum wage and  
5 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other  
6 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business  
7 records.

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

27  
28 ///

1     **B. Rest Period Violations**

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

19     **C. Unreimbursed Business Expenses**

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



1 even though unlawful, unless the employee, at the time of obeying the directions, believed them  
2 to be unlawful."

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

12 **D. Wage Statement Violations**

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

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

1           22. Further, from time to time, DEFENDANTS included Sick hours into the  
2 computation of total hours worked for purposes of Cal. Lab. Code §226(a)(2), notwithstanding  
3 the fact that Sick hours are not considered hours worked. DEFENDANTS' inclusion of Sick hours  
4 into the total hours worked in itemized wage statements issued to PLAINTIFFS and other  
5 CALIFORNIA CLASS Members violates Cal. Lab. Code §226(a)(2).

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

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

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

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

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

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

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

26           29. DEFENDANT was able to track the amount of time PLAINTIFF and the other  
27 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to  
28

1 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
2 wages earned and owed for all the work they performed.

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

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

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

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

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

21 34. From time to time during the CLASS PERIOD, DEFENDANT failed and  
22 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS  
23 Members for their overtime and double time hours worked, meal and rest period premiums, and  
24 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members  
25 forfeited wages due to them for working overtime without compensation at the correct overtime  
26 and double time rates, meal and rest period premiums, and redeemed sick pay rates.  
27 DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at  
28

1 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick  
2 pay in accordance with applicable law is evidenced by DEFENDANT’S business records.

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

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

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

1 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the  
2 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

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

#### 12 **G. Reporting Time Violations**

13 39. Further, DEFENDANTS from time to time required PLAINTIFF and other  
14 CALIFORNIA CLASS Members to report to work, but were furnished less than half their  
15 scheduled shift’s worth of work and were not paid reporting time pay as required by Cal. Code  
16 Regs., tit. 8 § 11040, subdivision(A). Specifically, Subdivision 5(A) states, “(A) Each workday  
17 an employee is required to report for work and does report, but is not put to work or is furnished  
18 less than half said employee's usual or scheduled day's work, the employee shall be paid for half  
19 the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four  
20 (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.”  
21 In addition, when DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS  
22 Members to engage in additional work, this sometimes resulted in a second reporting for work in  
23 a single workday. In such a circumstance of a second reporting for work in a single workday,  
24 DEFENDANT failed to pay these employees reporting time pay as required by Cal. Code Regs.,  
25 tit. 8 § 11040. Subdivision 5(B) states: “If an employee is required to report for work a second  
26 time in any one workday and is furnished less than two (2) hours of work on the second reporting,  
27 said employee shall be paid for two (2) hours at the employee’s regular rate of pay, which shall  
28 be not less than the minimum wage.” Cal. Code Regs., tit. 8 § 11040, subd. 5(B).

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

2             40. 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             41. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the  
8 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to  
9 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become  
10 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours  
11 previous notice of his or her intention to quit, in which case the employee is entitled to his or her  
12 wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members were, from  
13 time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or  
14 at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

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

18     **I. Unlawful Deductions**

19             43. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF  
20 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do  
21 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT  
22 violated Labor Code § 221.

23     **J. Timekeeping Manipulation**

24             44. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an  
25 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of  
26 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the  
27 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal  
28 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and

1 unilaterally alter the time recorded in DEFENDANT’S timekeeping system for PLAINTIFF and  
2 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all  
3 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and  
4 missed rest breaks.

5 45. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from  
6 time-to-time, forfeited time worked by working without their time being accurately recorded and  
7 without compensation at the applicable pay rates.

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

15 47. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
16 forfeited wages due them for all hours worked at DEFENDANT’S direction, control and benefit  
17 for the time the timekeeping system was inoperable. 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 **K. Unlawful Rounding Practices**

22 48. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in  
23 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other  
24 CALIFORNIA CLASS Members for the actual time these employees worked each day,  
25 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding  
26 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being  
27 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did  
28 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS’ timekeeping

1 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying  
2 these employees for all their time worked, including the applicable overtime compensation for  
3 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from  
4 time to time, forfeited compensation for their time worked by working without their time being  
5 accurately recorded and without compensation at the applicable overtime rates.

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

12 **L. Sick Pay Violations**

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

20 51. California Labor Code Section 246(i) requires an employer to furnish its  
21 employees with written wage statements setting forth the amount of paid sick leave available.  
22 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish  
23 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting  
24 forth the amount of paid sick leave available.

25 52. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take  
26 off duty meal and rest breaks and were not fully relieved of duty for her rest and meal periods.  
27 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)  
28 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to



1 provide PLAINTIFF with a second off-duty meal period each workday in which they were  
2 required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided  
3 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the  
4 rest break. DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what  
5 was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest  
6 breaks without additional compensation and in accordance with DEFENDANT’S strict corporate  
7 policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that  
8 failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse  
9 PLAINTIFF for required business expenses related to, the use of her personal cell phones and  
10 computers, on behalf of and in furtherance of her employment with DEFENDANT. To date,  
11 DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time  
12 compensation still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203.  
13 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of  
14 \$75,000.

### 15 **CLASS ACTION ALLEGATIONS**

16 53. PLAINTIFF brings this Class Action on behalf of herself, and a California class  
17 defined as all persons who are or previously were employed by DEFENDANT in California and  
18 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period  
19 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined  
20 by the Court (the “CLASS PERIOD”).

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

27 55. The members of the class are so numerous that joinder of all class members is  
28 impractical.

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

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

1 of this work, required employees to perform this work and permits or suffers to  
2 permit this work;

3 j. Whether DEFENDANT committed an act of unfair competition in violation of the  
4 UCL, by failing to provide the PLAINTIFF and the other members of the  
5 CALIFORNIA CLASS with the legally required meal and rest periods.

6 57. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as  
7 a result of DEFENDANT's conduct and actions alleged herein.

8 58. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and  
9 PLAINTIFF have the same interests as the other members of the class.

10 59. PLAINTIFF will fairly and adequately represent and protect the interests of the  
11 CALIFORNIA CLASS Members.

12 60. PLAINTIFF retained able class counsel with extensive experience in class action  
13 litigation.

14 61. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the  
15 interest of the other CALIFORNIA CLASS Members.

16 62. There is a strong community of interest among PLAINTIFF and the members of  
17 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are  
18 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries  
19 sustained.

20 63. The questions of law and fact common to the CALIFORNIA CLASS Members  
21 predominate over any questions affecting only individual members, including legal and factual  
22 issues relating to liability and damages.

23 64. A class action is superior to other available methods for the fair and efficient  
24 adjudication of this controversy because joinder of all class members is impractical. Moreover,  
25 since the damages suffered by individual members of the class may be relatively small, the  
26 expense and burden of individual litigation makes it practically impossible for the members of  
27 the class individually to redress the wrongs done to them. Without class certification and  
28 determination of declaratory, injunctive, statutory, and other legal questions within the class

1 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS  
2 will create the risk of:

- 3 a. Inconsistent or varying adjudications with respect to individual members of the  
4 CALIFORNIA CLASS which would establish incompatible standards of conduct  
5 for the parties opposing the CALIFORNIA CLASS; and/or,
- 6 b. Adjudication with respect to individual members of the CALIFORNIA CLASS  
7 which would as a practical matter be dispositive of the interests of the other  
8 members not party to the adjudication or substantially impair or impeded their  
9 ability to protect their interests.

10 65. Class treatment provides manageable judicial treatment calculated to bring an  
11 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of  
12 the conduct of DEFENDANT.

13 **FIRST CAUSE OF ACTION**

14 **Unlawful Business Practices**

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

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

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

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

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

26 Any person who engages, has engaged, or proposes to engage in unfair competition may  
27 be enjoined in any court of competent jurisdiction. The court may make such orders or  
28 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

1 money or property, real or personal, which may have been acquired by means of such  
2 unfair competition. (Cal. Bus. & Prof. Code § 17203).

3 69. By the conduct alleged herein, DEFENDANT has engaged and continues to  
4 engage in a business practice which violates California law, including but not limited to, the  
5 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
6 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and  
7 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.  
8 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
9 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

24 72. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
25 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the  
26 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
27 DEFENDANT.

28 73. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide

1 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as  
2 required by Cal. Lab. Code §§ 226.7 and 512.

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

8 75. PLAINTIFF further demands on behalf of and on behalf of each CALIFORNIA  
9 CLASS member, one (1) hour of pay for each workday in which a rest period was not timely  
10 provided as required by law.

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

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

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

27 79. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
2 engaging in any unlawful and unfair business practices in the future.

3 80. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
4 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
5 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a  
6 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other  
7 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable  
8 legal and economic harm unless DEFENDANT is restrained from continuing to engage in these  
9 unlawful and unfair business practices.

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

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

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

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

17 82. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim  
18 for DEFENDANT's willful and intentional violations of the California Labor Code and the  
19 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate  
20 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

23 84. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
24 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
25 the minimum so fixed is unlawful.

26 85. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,  
27 including minimum wage compensation and interest thereon, together with the costs of suit.  
28

1           86. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the  
2 other members of the CALIFORNIA CLASS without regard to the correct amount of time they  
3 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and  
4 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the  
5 CALIFORNIA CLASS.

6           87. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
7 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
8 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF  
9 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

19           90. During the CLASS PERIOD, PLAINTIFF and the other members of the  
20 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a  
21 failure to pay all earned wages.

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

27           92. DEFENDANT knew or should have known that PLAINTIFF and the other  
28 members of the CALIFORNIA CLASS were under-compensated for their time worked.



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

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

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

25  
26  
27  
28 ///

1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

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

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

5 95. 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 96. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim  
9 for DEFENDANT's willful and intentional violations of the California Labor Code and the  
10 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees  
11 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,  
12 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

22 100. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members  
23 were required by DEFENDANT to work for DEFENDANTS and were not paid for all the time  
24 they worked, including overtime work.

25 101. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
26 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
27 implementing a uniform policy and practice that failed to accurately record overtime worked by  
28 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to

1 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,  
2 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve  
3 (12) hours in a workday, and/or forty (40) hours in any workweek.

4 102. In committing these violations of the California Labor Code, DEFENDANT  
5 inaccurately recorded overtime worked and consequently underpaid the overtime worked by  
6 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal  
7 attempt to avoid the payment of all earned wages, and other benefits in violation of the California  
8 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and  
9 regulations.

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

13 104. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
14 from the overtime requirements of the law. None of these exemptions are applicable to  
15 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the  
16 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining  
17 agreement that would preclude the causes of action contained herein this Complaint. Rather,  
18 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA CLASS based on  
19 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of  
20 California.

21 105. During the CLASS PERIOD, PLAINTIFF and the other members of the  
22 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to,  
23 constituting a failure to pay all earned wages.

24 106. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the  
25 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the  
26 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even  
27 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly  
28 required to work, and did in fact work overtime, and did in fact work overtime as to which

1 DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business  
2 records and witnessed by employees.

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

8 108. DEFENDANT knew or should have known that PLAINTIFF and the other  
9 members of the CALIFORNIA CLASS were undercompensated for their time worked.  
10 DEFENDANT systematically elected, either through intentional malfeasance or gross  
11 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and  
12 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay  
13 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages  
14 for their overtime worked.

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

23 110. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS  
24 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the  
25 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the  
26 California Labor Code and/or other applicable statutes. To the extent overtime compensation is  
27 determined to be owed to the CALIFORNIA CLASS Members who have terminated their  
28 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and

1 therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code §  
2 203, which penalties are sought herein. DEFENDANT's conduct as alleged herein was willful,  
3 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS  
4 Members are entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

12 112. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally  
13 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as  
14 required by the applicable Wage Order and Labor Code. The nature of the work performed by  
15 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being  
16 relieved of all of their duties for the legally required off-duty meal periods. As a result of their  
17 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often  
18 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,  
19 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with  
20 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by  
21 DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and  
22 CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which  
23 these employees were required by DEFENDANT to work ten (10) hours of work. As a result,  
24 PLAINTIFF and other members of the CALIFORNIA CLASS forfeited meal breaks without  
25 additional compensation and in accordance with DEFENDANT's strict corporate policy and  
26 practice.

27 113. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
28 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members

1 who were not provided a meal period, in accordance with the applicable Wage Order, one  
2 additional hour of compensation at each employee's regular rate of pay for each workday that a  
3 meal period was not provided.

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

7 **FIFTH CAUSE OF ACTION**

8 **Failure To Provide Required Rest Periods**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

9 **SIXTH CAUSE OF ACTION**

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

11 **(Cal. Lab. Code §§ 2802)**

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

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

16 120. Cal. Lab. Code § 2802 provides, in relevant part, that:

17 An employer shall indemnify his or her employee for all necessary expenditures or  
18 losses incurred by the employee in direct consequence of the discharge of his or her  
19 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.

20 121. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.  
21 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS  
22 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
23 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS  
24 members for expenses which included, but were not limited to, their personal cell phones and  
25 computers as a result of and in furtherance of their job duties, including but not limited to  
26 receiving and/or responding to work-related communications and perform work-related duties.  
27 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by  
28 DEFENDANTS to use their personal cell phones and computers to execute their essential job

1 duties on behalf of DEFENDANT. DEFENDANT’s uniform policy, practice and procedure was  
2 to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting  
3 from using their personal cell phones and computers for DEFENDANT within the course and  
4 scope of their employment for DEFENDANT. These expenses were necessary to complete their  
5 principal job duties. DEFENDANT is estopped by DEFENDANT’s conduct to assert any waiver  
6 of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF  
7 and the CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse  
8 PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is  
9 required to do under the laws and regulations of California.

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

14 **SEVENTH CAUSE OF ACTION**

15 **Failure To Provide Accurate Itemized Statements**

16 **(Cal. Lab. Code § 226)**

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

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

21 124. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
22 “accurate itemized” statement in writing showing:

- 23 a. Gross wages earned,  
24 b. (2) total hours worked by the employee, except for any employee whose  
25 compensation is solely based on a salary and who is exempt from payment of  
26 overtime under subdivision (a) of Section 515 or any applicable order of the  
27 Industrial Welfare Commission,  
28



- 1 c. the number of piece-rate units earned and any applicable piece rate if the employee
- 2 is paid on a piece-rate basis,
- 3 d. all deductions, provided that all deductions made on written orders of the employee
- 4 may be aggregated and shown as one item,
- 5 e. net wages earned,
- 6 f. the inclusive dates of the period for which the employee is paid,
- 7 g. the name of the employee and his or her social security number, except that by
- 8 January 1, 2008, only the last four digits of his or her social security number of an
- 9 employee identification number other than social security number may be shown
- 10 on the itemized statement,
- 11 h. the name and address of the legal entity that is the employer, and
- 12 i. all applicable hourly rates in effect during the pay period and the corresponding
- 13 number of hours worked at each hourly rate by the employee.

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

23 126. Further, from time to time, DEFENDANTS included Sick hours into the  
24 computation of total hours worked for purposes of Cal. Lab. Code §226(a)(2), notwithstanding  
25 the fact that Sick hours are not considered hours worked. DEFENDANTS' inclusion of Sick hours  
26 into the total hours worked in itemized wage statements issued to PLAINTIFFS and other  
27 CALIFORNIA CLASS Members violates Cal. Lab. Code §226(a)(2).

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1           131. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges  
2 an employee, the wages earned and unpaid at the time of discharge are due and payable  
3 immediately.”

4           132. Cal. Lab. Code § 202 provides, in relevant part, that:  
5 If an employee not having a written contract for a definite period quits his or her  
6 employment, his or her wages shall become due and payable not later than 72 hours  
7 thereafter, unless the employee has given 72 hours previous notice of his or her intention  
8 to quit, in which case the employee is entitled to his or her wages at the time of quitting.  
9 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.

10           133. There was no definite term in PLAINTIFF’S or any CALIFORNIA CLASS  
11 Members’ employment contract.

12           134. Cal. Lab. Code § 203 provides:  
13 If an employer willfully fails to pay, without abatement or reduction, in accordance with  
14 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who  
15 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.

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

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

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1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

15 2. On behalf of the CALIFORNIA CLASS:

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth  
17 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant  
18 to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory  
20 damages for overtime compensation due to PLAINTIFF and the other members of  
21 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest  
22 thereon at the statutory rate;
- 23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
24 the applicable IWC Wage Order;
- 25 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
26 which a violation occurs and one hundred dollars (\$100) per each member of the  
27 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding  
28 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: August 20, 2023

**ZAKAY LAW GROUP, APLC**


By:   
Shani O. Zakay  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: August 20, 2023

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for PLAINTIFF