

**SUMMONS
(CITACION JUDICIAL)**

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

MOUNTAIN COUNTIES SUPPLY COMPANY, a California Corporation; and DOES 1-50, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

SERENITY JEAN DEWOLF, 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):

Siskiyou Superior Court
411 Fourth Street
Yreka, CA 96097

CASE NUMBER:

(Número del Caso):

CVCV 22-329

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: APR - 1 2022
(Fecha)

Clerk, by _____
(Secretario)

E. FISHER

, Deputy
(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: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):



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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SISKIYOU

APR -1 2022

BY: ENDORSED- E. FISHER
DEPUTY CLERK

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17 Attorneys for Plaintiff SERENITY JEAN DEWOLF

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **IN AND FOR THE COUNTY OF SISKIYOU**

20 SERENITY JEAN DEWOLF, an individual, on
21 behalf of herself and on behalf of all persons
22 similarly situated,

Case No: CUCV 22-329

CLASS ACTION COMPLAINT FOR:

23 Plaintiff,
24 v.
25 MOUNTAIN COUNTIES SUPPLY
26 COMPANY, a California Corporation; and
27 DOES 1-50, Inclusive,

28 Defendants.

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

DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802;
9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.]

DEMAND FOR A JURY TRIAL

Plaintiff SERENITY JEAN DEWOLF (“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:

THE PARTIES

1. Defendant MOUNTAIN COUNTIES SUPPLY COMPANY (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, owns, operates, and/or manages gas stations throughout the county of Siskiyou.

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

3. The agents, servants, and/or employees of the DEFENDANT and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendant, and personally participated in the conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.

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

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

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

16 6. PLAINTIFF was employed by DEFENDANT in California from January of 2018
17 to August of 2021 and at all times was classified by DEFENDANT as a non-exempt employee,
18 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
19 minimum and overtime wages due for all time worked.

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

26 8. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
27 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
28 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained

1 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
2 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
3 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
4 other members of the CALIFORNIA CLASS who have been economically injured by
5 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
6 relief.

7 9. DEFENDANT's uniform policies and practices alleged herein were unlawful,
8 unfair, and deceptive business practices whereby DEFENDANT retained and continues to retain
9 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

10 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
11 injunction enjoining such conduct by DEFENDANT in the future, relief for the named
12 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
13 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
14 equitable relief.

15 **JURISDICTION AND VENUE**

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

20 12. Venue is proper in this Court pursuant to California Code of Civil Procedure,
21 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
22 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
23 in this County and/or conducts substantial business in this County, and (ii) committed the
24 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

25 **THE CONDUCT**

26 13. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
28 matter of company policy, practice and procedure, intentionally, knowingly and systematically

1 failed to provide legally compliant meal and rest periods, failed to accurately compensate
2 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
3 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
4 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
5 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
6 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
7 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
8 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
9 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
10 applicable hourly rates in effect during the pay periods and the corresponding amount of time
11 worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to
12 purposefully avoid the accurate and full payment for all time worked as required by California
13 law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
14 who comply with the law. To the extent equitable tolling operates to toll claims by the
15 CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
16 accordingly.

17 **A. Meal Period Violations**

18 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
19 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
20 meaning the time during which an employee is subject to the control of an employer, including
21 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
22 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
23 without paying them for all the time they were under DEFENDANT's control. Specifically, as a
24 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
25 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-
26 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial
27 lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
28 minimum wage and overtime wages by regularly working without their time being accurately

1 recorded and without compensation at the applicable minimum wage and overtime rates.
2 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
3 CLASS Members for all time worked is evidenced by DEFENDANT's business records.

4 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
5 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
6 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
7 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
8 other CALIFORNIA CLASS Members were required from time to time to perform work as
9 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
10 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
11 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
12 these employees were required by DEFENDANT to work ten (10) hours of work from time to
13 time. Specifically, PLAINTIFF's manager would often alter her time clock records to make it
14 seem like there were no meal period violations. Further, from time to time, as a result of
15 DEFENDANT's understaffing, PLAINTIFF and other CALIFORNIA CLASS Members were
16 required to remain on-duty, on-premises and on call during their meal periods in order to tend to
17 DEFENDANT's customers, perform sales and gasoline transactions, and receive and respond to
18 work-related communications from DEFENDANT. The nature of the work performed by
19 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for limited and narrowly
20 construed "on-duty" meal period exception. When they were provided with meal periods,
21 PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to
22 remain on duty, on-premises and on call. PLAINTIFF and other CALIFORNIA CLASS
23 Members therefore forfeited meal breaks without additional compensation and in accordance with
24 DEFENDANT's strict corporate policy and practice.

25 **B. Rest Period Violations**

26 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
27 CALIFORNIA CLASS members were also required from time to time to work in excess of four
28 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work

1 requirements and DEFENDANT's inadequate staffing. Further, for the same reasons these
2 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
3 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
4 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
5 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
6 hours or more from time to time. Further, from time to time, as a result of DEFENDANT's
7 understaffing, PLAINTIFF and other CALIFORNIA CLASS Members were required to remain
8 on-duty, on-premises and on call during their rest periods in order to tend to DEFENDANT's
9 customers, perform sales and gasoline transactions, and receive and respond to work-related
10 communications from DEFENDANT. When they were provided with rest breaks, PLAINTIFF
11 and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty,
12 on-premises and/or on call. PLAINTIFF and other CALIFORNIA CLASS Members were also
13 not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules
14 and DEFENDANT's inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS
15 Members were from time to time denied their proper rest periods by DEFENDANT and
16 DEFENDANT's managers.

17 **C. Unreimbursed Business Expenses**

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

1 18. In the course of their employment, DEFENDANT required PLAINTIFF and other
2 CALIFORNIA CLASS Members to use their personal expenses to purchase outerwear containing
3 DEFENDANT’S company logo as a result of and in furtherance of their job duties as employees
4 for DEFENDANT. As a result of DEFENDANT forbidding PLAINTIFF and other
5 CALIFORNIA CLASS members from wearing outerwear that did not contain DEFENDANT’S
6 company logo, PLAINTIFF and other CALIFORNIA CLASS Members were required by
7 DEFENDANT to use their personal expenses to purchase outerwear containing DEFENDANT’S
8 company logo. Further, DEFENDANT failed to provide outerwear bearing its logo to
9 PLAINTIFF and other CALIFORNIA CLASS members free of charge, therefore PLAINTIFF
10 and other CALIFORNIA CLASS members had no choice but to use their own personal expenses
11 to purchase DEFENDANT’S outerwear. However, DEFENDANT unlawfully failed to reimburse
12 PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal expenses
13 to purchase outerwear containing DEFENDANT’S company logo. As a result, in the course of
14 their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS
15 Members incurred unreimbursed business expenses, but were not limited to, costs related to the
16 purchase of outerwear bearing DEFENDANT’S company logo, all on behalf of and for the benefit
17 of DEFENDANT.

18 **D. Wage Statement Violations**

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

27 20. From time to time during the CLASS PERIOD, when PLAINTIFF and other
28 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed

1 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
2 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
3 wage statements which failed to show, among other things, the total hours worked and all
4 applicable hourly rates in effect during the pay period and the corresponding amount of time
5 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
6 periods.

7 21. In addition to the foregoing violations, DEFENDANT, from time to time, failed to
8 provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
9 with all the requirements of Cal. Lab. Code § 226.

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

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

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

18 24. During the CLASS PERIOD, from time-to-time DEFENDANT required
19 PLAINTIFF and other members of the CALIFORNIA CLASS to perform post-shift work
20 multiple times per month, and spending time under DEFENDANT's control for which she was
21 not compensated. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS
22 to have to work while off-the-clock.

23 25. DEFENDANT directed and directly benefited from the uncompensated off-the-
24 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

28

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

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

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

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

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

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

21 32. From time-to-time during the CLASS PERIOD, DEFENDANT failed and
22 continue 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 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
25 due them for working overtime without compensation at the correct overtime and double time
26 rates, meal and rest period premiums, and sick pay rates. DEFENDANT's uniform policy and
27 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
28

1 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
2 law is evidenced by DEFENDANT’s business records.

3 33. 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 34. 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 CLASS MEMBERS incentive wages based on their performance for
10 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
11 basis with bonus compensation when the employees met the various performance goals set by
12 DEFENDANTS.

13 35. 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 paid sick pay, and earned non-
16 discretionary compensation, DEFENDANTS failed to accurately include the non-discretionary
17 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked
18 rather than just all non-overtime hours worked. As a matter of law, the compensation received
19 by PLAINTIFF and other CALIFORNIA CLASS members must be included in the “regular rate
20 of pay.” The failure to do so has resulted in a systematic underpayment of overtime and double
21 time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
22 CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code
23 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
24 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
25 sick time, whether or not the employee actually works overtime in that workweek.
26 DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive compensation
27 as part of the “regular rate of pay” for purposes of overtime, double time, paid meal and rest period
28 premium payments, and/or paid sick pay compensation was in violation of Cal. Lab. Code § 246

1 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or
2 204.

3 36. 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 sick pay.
8 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
9 of the correct overtime and double time compensation, meal and rest period premiums, and sick
10 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
11 unfair advantage over competitors who complied with the law. To the extent equitable tolling
12 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
13 CLASS PERIOD should be adjusted accordingly.

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

15 37. Pursuant to California Labor Code section 204, PLAINTIFF and the
16 CALIFORNIA CLASS members were entitled to timely payment of wages during their
17 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
18 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
19 meal period premium wages, and rest period premium wages within permissible time period.

20 **H. Suitable Seating Violations**

21 38. PLAINTIFF further alleges that the register counters in DEFENDANT's work
22 area provide ample space behind each counter area to allow for the presence and use of a stool or
23 seat by DEFENDANT's employees' during the performance of their work duties.
24 DEFENDANT's employees' working at DEFENDANT's locations spend a very substantial
25 portion, and, in many workdays, the vast majority of their working time behind these counters.
26 The nature of the position can reasonably be accomplished while using a seat/stool.

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

1 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly
2 and systematically failed to provide PLAINTIFF and the other Aggrieved Employees suitable
3 seating when the nature of these employees' work reasonably permitted sitting.

4 40. DEFENDANT knew or should have known that PLAINTIFF and other Aggrieved
5 Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere
6 with the performance of their duties, and that DEFENDANT did not provide suitable seating
7 and/or did not allow them to sit when it did not interfere with the performance of their duties. By
8 reason of this conduct applicable to PLAINTIFF and all Aggrieved Employees, DEFENDANT
9 violated California Labor Code Section 1198 and Wage Order 4-2001, Section 14 by failing to
10 provide suitable seats.

11 **I. Unlawful Deductions**

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

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

1 the use of her personal expenses to purchase outerwear containing DEFENDANTS' company
2 logo, on behalf of and in furtherance of her employment with DEFENDANTS. To date,
3 DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time
4 compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203.
5 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
6 \$75,000.

7 **J. CLASS ACTION ALLEGATIONS**

8 43. PLAINTIFF brings the First through Eighth Causes of Action as a class action
9 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANT's current
10 and former non-exempt California employees ("CALIFORNIA CLASS") during the period
11 beginning four years prior to the filing of the Complaint and ending on a date determined by the
12 Court ("CLASS PERIOD").

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

19 45. The members of the class are so numerous that joinder of all class members is
20 impractical.

21 46. Common questions of law and fact regarding DEFENDANT's conduct, including
22 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
23 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
24 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
25 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
26 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
27 minimum wage and overtime, exist as to all members of the class and predominate over any
28

1 questions affecting solely any individual members of the class. Among the questions of law and
2 fact common to the class are:

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

27 47. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
28 a result of DEFENDANT's conduct and actions alleged herein.

1 48. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
2 the same interests as the other members of the class.

3 49. PLAINTIFF will fairly and adequately represent and protect the interests of the
4 CALIFORNIA CLASS Members.

5 50. PLAINTIFF retained able class counsel with extensive experience in class action
6 litigation.

7 51. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
8 interests of the other CALIFORNIA CLASS Members.

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

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

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

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

27 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
28 which would as a practical matter be dispositive of the interests of the other

1 members not party to the adjudication or substantially impair or impeded their
2 ability to protect their interests.

3 55. Class treatment provides manageable judicial treatment calculated to bring an
4 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
5 the conduct of DEFENDANT.

6 **FIRST CAUSE OF ACTION**

7 **Unlawful Business Practices**

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

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

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

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

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

19 Any person who engages, has engaged, or proposes to engage in unfair competition
20 may be enjoined in any court of competent jurisdiction. The court may make such
21 orders or judgments, including the appointment of a receiver, as may be necessary
22 to prevent the use or employment by any person of any practice which constitutes
23 unfair competition, as defined in this chapter, or as may be necessary to restore to
24 any person in interest any money or property, real or personal, which may have
25 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
26 17203).

27 59. By the conduct alleged herein, DEFENDANT has engaged and continues to
28 engage in a business practice which violates California law, including but not limited to, the
applicable Wage Order(s), the California Code of Regulations and the California Labor Code
including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to

1 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
2 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

15 62. By the conduct alleged herein, DEFENDANT’s practices were also unlawful,
16 unfair and deceptive in that DEFENDANT’s employment practices caused PLAINTIFF and the
17 other members of the CALIFORNIA CLASS to be underpaid during their employment with
18 DEFENDANT.

19 63. By the conduct alleged herein, DEFENDANT’s practices were also unfair and
20 deceptive in that DEFENDANT’s uniform policies, practices and procedures failed to provide
21 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
22 as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

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

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

1 and economic harm unless DEFENDANT is restrained from continuing to engage in these
2 unlawful and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **Failure To Pay Minimum Wages**

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

6 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

10 72. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
11 for DEFENDANT’S willful and intentional violations of the California Labor Code and the
12 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
13 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

16 74. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
17 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
18 the minimum so fixed is unlawful.

19 75. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
20 including minimum wage compensation and interest thereon, together with the costs of suit.

21 76. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
22 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
23 worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and
24 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
25 CALIFORNIA CLASS.

26 77. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
28

1 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
2 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

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

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

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

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

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

27 83. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked

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

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

18 **THIRD CAUSE OF ACTION**

19 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

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

12 95. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
14 constituting a failure to pay all earned wages.

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

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

26 98. DEFENDANT knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
28 DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
2 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **Failure To Provide Required Meal Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

5 101. 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.

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

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

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

12 110. Cal. Labor Code § 226 provides that an employer must furnish employees with an
13 “accurate itemized” statement in writing showing:

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

- 1 h. the name and address of the legal entity that is the employer, and
2 i. all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.

4 111. When DEFENDANT did not accurately record PLAINTIFF's and other
5 CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, and separately
6 compensated meal and rest periods, DEFENDANT violated Cal. Lab. Code § 226 in that
7 DEFENDANT failed to provide an accurate wage statement in writing that properly and
8 accurately itemizes all wages, and missed meal and rest periods and reporting time wages owed
9 to PLAINTIFF and the other members of the CALIFORNIA CLASS and thereby also failed to
10 set forth the correct wages earned by the employees.

11 112. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
12 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
13 CLASS. These damages include, but are not limited to, costs expended calculating the correct
14 wages for all missed meal and rest breaks and the amount of employment taxes which were not
15 properly paid to state and federal tax authorities. These damages are difficult to estimate.
16 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
17 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
18 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
19 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
20 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
21 of the CALIFORNIA CLASS herein).

22 **SEVENTH CAUSE OF ACTION**

23 **Failure To Pay Wages When Due**

24 **(Cal. Lab. Code §§ 203)**

25 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

2 As used in this article:

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

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

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

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

13 If an employee not having a written contract for a definite period quits his or her
14 employment, his or her wages shall become due and payable not later than 72 hours
15 thereafter, unless the employee has given 72 hours previous notice of his or her intention
16 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
17 Notwithstanding any other provision of law, an employee who quits without providing a
18 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
19 designates a mailing address. The date of the mailing shall constitute the date of payment
20 for purposes of the requirement to provide payment within 72 hours of the notice of
21 quitting.

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

24 118. Cal. Lab. Code § 203 provides:

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

119. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
terminated, and DEFENDANT has not tendered payment of wages to these employees who were
underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
required by law.

120. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFF demand
up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all

1 employees who terminated employment during the CLASS PERIOD and demand an accounting
2 and payment of all wages due, plus interest and statutory costs as allowed by law.

3 **EIGHTH CAUSE OF ACTION**

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

5 **(Cal. Lab. Code §§ 2802)**

6 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

10 122. Cal. Lab. Code § 2802 provides, in relevant part, that:

11 An employer shall indemnify his or her employee for all necessary expenditures or losses
12 incurred by the employee in direct consequence of the discharge of his or her duties, or of
13 his or her obedience to the directions of the employer, even though unlawful, unless the
14 employee, at the time of obeying the directions, believed them to be unlawful

15 123. From time-to-time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
16 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
17 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
18 DEFENDANT's benefit. As a result of DEFENDANT forbidding PLAINTIFF and other
19 CALIFORNIA CLASS members from wearing outerwear that did not contain DEFENDANT'S
20 company logo, PLAINTIFF and other CALIFORNIA CLASS Members were required by
21 DEFENDANT to use their personal expenses to purchase outerwear containing DEFENDANT'S
22 company logo. Further, DEFENDANT failed to provide outerwear bearing its logo to
23 PLAINTIFF and other CALIFORNIA CLASS members free of charge, therefore PLAINTIFF
24 and other CALIFORNIA CLASS members had no choice but to use their own personal expenses
25 to purchase DEFENDANT'S outerwear. DEFENDANT failed to reimburse PLAINTIFF and the
26 members of the CALIFORNIA CLASS for expenses which included, but were not limited to,
27 costs related to using their personal expenses to purchase outerwear containing DEFENDANT'S
28 company logo all on behalf of and for the benefit of DEFENDANT. DEFENDANT's uniform
policy, practice and procedure was to not reimburse PLAINTIFF and the members of the
CALIFORNIA CLASS for expenses resulting from using their personal expenses to purchase

1 outerwear containing DEFENDANT’S company logo for DEFENDANT within the course and
2 scope of their employment for DEFENDANT. These expenses were necessary to complete their
3 principal job duties. DEFENDANT is estopped by DEFENDANT’s conduct to assert any waiver
4 of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF
5 and the members of the CALIFORNIA CLASS, DEFENDANT failed to indemnify and reimburse
6 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
7 is required to do under the laws and regulations of California.

8 124. PLAINTIFF therefore demands reimbursement on behalf of the members of the
9 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
10 on behalf of DEFENDANT, or his/her obedience to the directions of DEFENDANT, with interest
11 at the statutory rate and costs under Cal. Lab. Code § 2802.

12 **NINTH CAUSE OF ACTION**

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

14 **(Cal. Lab. Code §§2698 et seq.)**

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

16 125. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
17 herein, the prior paragraphs of this Complaint.

18 126. PAGA is a mechanism by which the State of California itself can enforce state labor
19 laws through the employee suing under the PAGA who does so as the proxy or agent of the state's
20 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
21 a law enforcement action designed to protect the public and not to benefit private parties. The
22 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
23 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
24 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
25 private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch.
26 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

27 127. PLAINTIFF, and such persons that may be added from time to time who satisfy the
28 requirements and exhaust the administrative procedures under the Private Attorney General Act,

1 bring this Representative Action on behalf of the State of California with respect to themselves and
2 all individuals who are or previously were employed by DEFENDANT and classified as non-
3 exempt employees in California during the time period of January 24, 2021 until the present (the
4 "AGGRIEVED EMPLOYEES").

5 128. On January 24, 2022, PLAINTIFF gave written notice by certified mail to the Labor
6 and Workforce Development Agency (the "Agency") and the employer of the specific
7 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
8 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period
9 for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section
10 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to Section
11 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as
12 herein defined.

13 129. The policies, acts and practices heretofore described were and are an unlawful
14 business act or practice because DEFENDANTS (a) failed to properly record and pay PLAINTIFF
15 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime
16 hours in violation of the Wage Order, (b) failed to provide accurate itemized wage statements, (c)
17 failed to provide mandatory meal breaks and rest breaks, (d) failed to pay meal and rest break
18 premiums, (e) failed to timely pay wages at the correct rate, and (f) failed to provide suitable seating,
19 all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but
20 not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3,
21 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804,
22 and Cal. Code Regs., Title 8, Section 1 1070(14) (Failure to Provide Suitable Seating), and the
23 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such
24 conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
25 Private Attorney General Act of 2004 as the representative of the State of California for the illegal
26 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

27 ///
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PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

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violation of Cal. Lab. Code § 226

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

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004;

4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: March 30, 2022

ZAKAY LAW GROUP, APLC

By:  _____

Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: March 30, 2022

ZAKAY LAW GROUP, APLC

By:  _____

Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



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Eduardo Garcia, Esq.
egarcia@jcl-lawfirm.com

January 24, 2022

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

MOUNTAIN COUNTIES SUPPLY COMPANY

c/o PRABHJOT S. RANDHAWA

723 Woodacre Dr.

Redding, CA 96002

Sent Via Certified Mail & Receipt No. 7021 2720 0000 9972 5436

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and Cal. Code Regs., Title 8, Section 1 1070(14) (Failure to Provide Suitable Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff SERENITY JEAN DEWOLF (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant MOUNTAIN COUNTIES SUPPLY COMPANY (“Defendant”). Plaintiff was employed by Defendant in California from January of 2018 to August of 2021 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of her time worked, and for all of her meal breaks and rest breaks. Defendant further failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and Cal. Code Regs., Title 8, Section 1 1070(14) (Failure to Provide Suitable Seating), violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant in California during the relevant claim period.

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

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

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

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

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

Enclosure (1)

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff SERENITY JEAN DEWOLF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SISKIYOU

SERENITY JEAN DEWOLF, an individual, on behalf of herself and on behalf of all persons similarly situated,

Plaintiff,

v.

MOUNTAIN COUNTIES SUPPLY COMPANY, a California Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

CODE §§ 201, 202 AND 203; and,
8) FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CALIFORNIA LABOR
CODE §2802.

DEMAND FOR A JURY TRIAL

Plaintiff SERENITY JEAN DEWOLF (“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:

THE PARTIES

1. Defendant MOUNTAIN COUNTIES SUPPLY COMPANY (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, owns, operates, and/or manages gas stations throughout the county of Siskiyou.

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

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

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

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

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

14 6. PLAINTIFF was employed by DEFENDANT in California from January of 2018
15 to August of 2021 and at all times was classified by DEFENDANT as a non-exempt employee,
16 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
17 minimum and overtime wages due for all time worked.

18 7. PLAINTIFF brings this Class Action on behalf of herself and a California class,
19 defined as all persons who are or previously were employed by DEFENDANT in California and
20 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
21 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
22 by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the
23 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

24 8. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
26 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
27 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
28 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction

1 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
2 other members of the CALIFORNIA CLASS who have been economically injured by
3 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
4 relief.

5 9. DEFENDANT's uniform policies and practices alleged herein were unlawful,
6 unfair, and deceptive business practices whereby DEFENDANT retained and continues to retain
7 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

8 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
9 injunction enjoining such conduct by DEFENDANT in the future, relief for the named
10 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
11 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
12 equitable relief.

13 **JURISDICTION AND VENUE**

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

18 12. Venue is proper in this Court pursuant to California Code of Civil Procedure,
19 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
20 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
21 in this County and/or conducts substantial business in this County, and (ii) committed the
22 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

23 **THE CONDUCT**

24 13. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
26 matter of company policy, practice and procedure, intentionally, knowingly and systematically
27 failed to provide legally compliant meal and rest periods, failed to accurately compensate
28 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest

1 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
2 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
3 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
4 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
5 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
6 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
7 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
8 applicable hourly rates in effect during the pay periods and the corresponding amount of time
9 worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to
10 purposefully avoid the accurate and full payment for all time worked as required by California
11 law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
12 who comply with the law. To the extent equitable tolling operates to toll claims by the
13 CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
14 accordingly.

15 **A. Meal Period Violations**

16 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
17 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
18 meaning the time during which an employee is subject to the control of an employer, including
19 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
20 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
21 without paying them for all the time they were under DEFENDANT's control. Specifically, as a
22 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
23 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-
24 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial
25 lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
26 minimum wage and overtime wages by regularly working without their time being accurately
27 recorded and without compensation at the applicable minimum wage and overtime rates.
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1 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
2 CLASS Members for all time worked is evidenced by DEFENDANT's business records.

3 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
4 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
5 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
6 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
7 other CALIFORNIA CLASS Members were required from time to time to perform work as
8 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
9 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
10 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
11 these employees were required by DEFENDANT to work ten (10) hours of work from time to
12 time. Specifically, PLAINTIFF's manager would often alter her time clock records to make it
13 seem like there were no meal period violations. Further, from time to time, as a result of
14 DEFENDANT's understaffing, PLAINTIFF and other CALIFORNIA CLASS Members were
15 required to remain on-duty, on-premises and on call during their meal periods in order to tend to
16 DEFENDANT's customers, perform sales and gasoline transactions, and receive and respond to
17 work-related communications from DEFENDANT. The nature of the work performed by
18 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for limited and narrowly
19 construed "on-duty" meal period exception. When they were provided with meal periods,
20 PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to
21 remain on duty, on-premises and on call. PLAINTIFF and other CALIFORNIA CLASS
22 Members therefore forfeited meal breaks without additional compensation and in accordance with
23 DEFENDANT's strict corporate policy and practice.

24 **B. Rest Period Violations**

25 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
26 CALIFORNIA CLASS members were also required from time to time to work in excess of four
27 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
28 requirements and DEFENDANT's inadequate staffing. Further, for the same reasons these

1 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
2 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
3 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
4 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
5 hours or more from time to time. Further, from time to time, as a result of DEFENDANT's
6 understaffing, PLAINTIFF and other CALIFORNIA CLASS Members were required to remain
7 on-duty, on-premises and on call during their rest periods in order to tend to DEFENDANT's
8 customers, perform sales and gasoline transactions, and receive and respond to work-related
9 communications from DEFENDANT. When they were provided with rest breaks, PLAINTIFF
10 and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty ,
11 on-premises and/or on call. PLAINTIFF and other CALIFORNIA CLASS Members were also
12 not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules
13 and DEFENDANT's inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS
14 Members were from time to time denied their proper rest periods by DEFENDANT and
15 DEFENDANT's managers.

16 **C. Unreimbursed Business Expenses**

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

1 18. In the course of their employment, DEFENDANT required PLAINTIFF and other
2 CALIFORNIA CLASS Members to use their personal expenses to purchase outerwear containing
3 DEFENDANT’S company logo as a result of and in furtherance of their job duties as employees
4 for DEFENDANT. As a result of DEFENDANT forbidding PLAINTIFF and other
5 CALIFORNIA CLASS members from wearing outerwear that did not contain DEFENDANT’S
6 company logo, PLAINTIFF and other CALIFORNIA CLASS Members were required by
7 DEFENDANT to use their personal expenses to purchase outerwear containing DEFENDANT’S
8 company logo. Further, DEFENDANT failed to provide outerwear bearing its logo to
9 PLAINTIFF and other CALIFORNIA CLASS members free of charge, therefore PLAINTIFF
10 and other CALIFORNIA CLASS members had no choice but to use their own personal expenses
11 to purchase DEFENDANT’S outerwear. However, DEFENDANT unlawfully failed to reimburse
12 PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal expenses
13 to purchase outerwear containing DEFENDANT’S company logo. As a result, in the course of
14 their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS
15 Members incurred unreimbursed business expenses, but were not limited to, costs related to the
16 purchase of outerwear bearing DEFENDANT’S company logo, all on behalf of and for the benefit
17 of DEFENDANT.

18 **D. Wage Statement Violations**

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

27 20. From time to time during the CLASS PERIOD, when PLAINTIFF and other
28 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed

1 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
2 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
3 wage statements which failed to show, among other things, the total hours worked and all
4 applicable hourly rates in effect during the pay period and the corresponding amount of time
5 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
6 periods.

7 21. In addition to the foregoing violations, DEFENDANT, from time to time, failed to
8 provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
9 with all the requirements of Cal. Lab. Code § 226.

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

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

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

18 24. During the CLASS PERIOD, from time-to-time DEFENDANT required
19 PLAINTIFF and other members of the CALIFORNIA CLASS to perform post-shift work
20 multiple times per month, and spending time under DEFENDANT's control for which she was
21 not compensated. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS
22 to have to work while off-the-clock.

23 25. DEFENDANT directed and directly benefited from the uncompensated off-the-
24 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

28

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

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

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

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

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

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

21 32. From time-to-time during the CLASS PERIOD, DEFENDANT failed and
22 continue 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 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
25 due them for working overtime without compensation at the correct overtime and double time
26 rates, meal and rest period premiums, and sick pay rates. DEFENDANT's uniform policy and
27 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
28

1 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
2 law is evidenced by DEFENDANT’s business records.

3 33. 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 34. 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 CLASS MEMBERS incentive wages based on their performance for
10 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
11 basis with bonus compensation when the employees met the various performance goals set by
12 DEFENDANTS.

13 35. 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 paid sick pay, and earned non-
16 discretionary compensation, DEFENDANTS failed to accurately include the non-discretionary
17 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked
18 rather than just all non-overtime hours worked. As a matter of law, the compensation received
19 by PLAINTIFF and other CALIFORNIA CLASS members must be included in the “regular rate
20 of pay.” The failure to do so has resulted in a systematic underpayment of overtime and double
21 time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
22 CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code
23 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
24 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
25 sick time, whether or not the employee actually works overtime in that workweek.
26 DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive compensation
27 as part of the “regular rate of pay” for purposes of overtime, double time, paid meal and rest period
28 premium payments, and/or paid sick pay compensation was in violation of Cal. Lab. Code § 246

1 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or
2 204.

3 36. 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 sick pay.
8 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
9 of the correct overtime and double time compensation, meal and rest period premiums, and sick
10 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
11 unfair advantage over competitors who complied with the law. To the extent equitable tolling
12 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
13 CLASS PERIOD should be adjusted accordingly.

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

15 37. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
16 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
17 paid not more than seven calendar days following the close of the payroll period. Cal. Lab. Code
18 § 210 provides:

19 [I]n addition to, and entirely independent and apart from, any other penalty
20 provided in this article, every person who fails to pay the wages of each employee
21 as provided in Sections. . . .204. . . shall be subject to a civil penalty as follows: (1)
22 For any initial violation, one hundred dollars (\$100) for each failure to pay each
23 employee; (2) For each subsequent violation, or any willful or intentional violation,
24 two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent
25 of the amount unlawfully withheld.

26 38. DEFENDANT from time to time failed to pay PLAINTIFF and members of the
27 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll
28 period in accordance with Cal. Lab. Code § 204(d).

29 **H. Suitable Seating Violations**

30 39. PLAINTIFF further alleges that the register counters in DEFENDANT's work
31 area provide ample space behind each counter area to allow for the presence and use of a stool or

1 seat by DEFENDANT's employees' during the performance of their work duties.
2 DEFENDANT's employees' working at DEFENDANT's locations spend a very substantial
3 portion, and, in many workdays, the vast majority of their working time behind these counters.
4 The nature of the position can reasonably be accomplished while using a seat/stool.

5 40. In violation of the applicable sections of the California Labor Code and the
6 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
7 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly
8 and systematically failed to provide PLAINTIFF and the other Aggrieved Employees suitable
9 seating when the nature of these employees' work reasonably permitted sitting.

10 41. DEFENDANT knew or should have known that PLAINTIFF and other Aggrieved
11 Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere
12 with the performance of their duties, and that DEFENDANT did not provide suitable seating
13 and/or did not allow them to sit when it did not interfere with the performance of their duties. By
14 reason of this conduct applicable to PLAINTIFF and all Aggrieved Employees, DEFENDANT
15 violated California Labor Code Section 1198 and Wage Order 4-2001, Section 14 by failing to
16 provide suitable seats.

17 **I. Unlawful Deductions**

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

22 **J. CLASS ACTION ALLEGATIONS**

23 43. PLAINTIFF brings the First through Eighth Causes of Action as a class action
24 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANT's current
25 and former non-exempt California employees ("CALIFORNIA CLASS") during the period
26 beginning four years prior to the filing of the Complaint and ending on a date determined by the
27 Court ("CLASS PERIOD").
28

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

7 45. The members of the class are so numerous that joinder of all class members is
8 impractical.

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

- 18 a. Whether DEFENDANT maintained legally compliant meal period policies and
19 practices;
- 20 b. Whether DEFENDANT maintained legally compliant rest period policies and
21 practices;
- 22 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
23 Members accurate premium payments for missed meal and rest periods;
- 24 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
25 Members accurate overtime wages;
- 26 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
27 Members at least minimum wage for all hours worked;

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

15 47. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
16 a result of DEFENDANT’s conduct and actions alleged herein.

17 48. PLAINTIFF’s claims are typical of the claims of the class, and PLAINTIFF has
18 the same interests as the other members of the class.

19 49. PLAINTIFF will fairly and adequately represent and protect the interests of the
20 CALIFORNIA CLASS Members.

21 50. PLAINTIFF retained able class counsel with extensive experience in class action
22 litigation.

23 51. Further, PLAINTIFF’s interests are coincident with, and not antagonistic to, the
24 interests of the other CALIFORNIA CLASS Members.

25 52. There is a strong community of interest among PLAINTIFF and the members of
26 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
27 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
28 sustained.

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

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

7 Any person who engages, has engaged, or proposes to engage in unfair competition
8 may be enjoined in any court of competent jurisdiction. The court may make such
9 orders or judgments, including the appointment of a receiver, as may be necessary
10 to prevent the use or employment by any person of any practice which constitutes
11 unfair competition, as defined in this chapter, or as may be necessary to restore to
12 any person in interest any money or property, real or personal, which may have
13 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
14 17203).

15 59. By the conduct alleged herein, DEFENDANT has engaged and continues to
16 engage in a business practice which violates California law, including but not limited to, the
17 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
18 including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
19 1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to
20 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
21 constitute unfair competition, including restitution of wages wrongfully withheld.

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

27 61. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
28 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
mandated meal and rest periods and the required amount of compensation for missed meal and
rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.

1 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
2 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

3 62. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
4 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 63. By the conduct alleged herein, DEFENDANT's practices were also unfair and
8 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
9 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
10 as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

25 67. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
27 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
28

1 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

8 69. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
10 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
11 engaging in any unlawful and unfair business practices in the future.

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

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

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

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

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

26 72. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
27 for DEFENDANT’S willful and intentional violations of the California Labor Code and the
28

1 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
2 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

5 74. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
7 the minimum so fixed is unlawful.

8 75. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
9 including minimum wage compensation and interest thereon, together with the costs of suit.

10 76. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
11 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
12 worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and
13 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
14 CALIFORNIA CLASS.

15 77. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
17 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
18 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

19 78. In committing these violations of the California Labor Code, DEFENDANT
20 inaccurately calculated the amount of time worked and consequently underpaid the actual time
21 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
22 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
23 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
24 laws and regulations.

25 79. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,
26 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
27 minimum wage compensation for their time worked for DEFENDANT.
28

1 80. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
3 failure to pay all earned wages.

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

9 82. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA CLASS are under-compensated for their time worked.
11 DEFENDANT systematically elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice
13 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
14 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
15 for their time worked.

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

24 84. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
25 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
26 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
27 California Labor Code and/or other applicable statutes. To the extent minimum wage
28 compensation is determined to be owed to the CALIFORNIA CLASS Members who have

1 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
2 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
3 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
4 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
5 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
6 recover statutory costs.

7 **THIRD CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

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

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

11 85. 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 86. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
15 for DEFENDANT's willful and intentional violations of the California Labor Code and the
16 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
17 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
18 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

1 90. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
2 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
3 they worked, including overtime work.

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

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

17 93. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
19 compensation for overtime worked.

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

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1 95. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
3 constituting a failure to pay all earned wages.

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

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

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

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

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

12 **FOURTH CAUSE OF ACTION**

13 **Failure To Provide Required Meal Periods**

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

15 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

19 102. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
20 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
21 required by the applicable Wage Order and Labor Code. The nature of the work performed by
22 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
23 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
24 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
25 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
26 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
27 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
28 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS

1 Members with a second off-duty meal period in some workdays in which these employees were
2 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
3 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
4 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

13 **FIFTH CAUSE OF ACTION**

14 **Failure To Provide Required Rest Periods**

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

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

17 105. 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.

20 106. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
21 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
22 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
23 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
24 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
25 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
26 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
27 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
28 CALIFORNIA CLASS Members were periodically denied their proper rest periods by

1 DEFENDANT and DEFENDANT’s managers. In addition, DEFENDANT failed to compensate
2 PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required by the
3 applicable Wage Order and Labor Code. As a result, DEFENDANT’s failure to provide
4 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
5 periods is evidenced by DEFENDANT’s business records.

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

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

14 **SIXTH 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)**

18 109. 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 Complaint.

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

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

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

111. When DEFENDANT did not accurately record PLAINTIFF's and other CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, and separately compensated meal and rest periods, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemizes all wages, and missed meal and rest periods and reporting time wages owed to PLAINTIFF and the other members of the CALIFORNIA CLASS and thereby also failed to set forth the correct wages earned by the employees.

112. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no

1 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
2 of the CALIFORNIA CLASS herein).

3 **SEVENTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code §§ 203)**

6 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

11 As used in this article:

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

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

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

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

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

118. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with
Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
quits, the wages of the employee shall continue as a penalty from the due date thereof at

1 the same rate until paid or until an action therefor is commenced; but the wages shall not
2 continue for more than 30 days.

3 119. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
4 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
5 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
6 required by law.

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

12 **EIGHTH CAUSE OF ACTION**

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

14 **(Cal. Lab. Code §§ 2802)**

15 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

19 122. Cal. Lab. Code § 2802 provides, in relevant part, that:

20 An employer shall indemnify his or her employee for all necessary expenditures or losses
21 incurred by the employee in direct consequence of the discharge of his or her duties, or of
22 his or her obedience to the directions of the employer, even though unlawful, unless the
23 employee, at the time of obeying the directions, believed them to be unlawful

24 123. From time-to-time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
25 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
26 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
27 DEFENDANT's benefit. As a result of DEFENDANT forbidding PLAINTIFF and other
28 CALIFORNIA CLASS members from wearing outerwear that did not contain DEFENDANT'S
company logo, PLAINTIFF and other CALIFORNIA CLASS Members were required by
DEFENDANT to use their personal expenses to purchase outerwear containing DEFENDANT'S
company logo. Further, DEFENDANT failed to provide outerwear bearing its logo to

1 PLAINTIFF and other CALIFORNIA CLASS members free of charge, therefore PLAINTIFF
2 and other CALIFORNIA CLASS members had no choice but to use their own personal expenses
3 to purchase DEFENDANT’S outerwear. DEFENDANT failed to reimburse PLAINTIFF and the
4 members of the CALIFORNIA CLASS for expenses which included, but were not limited to,
5 costs related to using their personal expenses to purchase outerwear containing DEFENDANT’S
6 company logo all on behalf of and for the benefit of DEFENDANT. DEFENDANT’s uniform
7 policy, practice and procedure was to not reimburse PLAINTIFF and the members of the
8 CALIFORNIA CLASS for expenses resulting from using their personal expenses to purchase
9 outerwear containing DEFENDANT’S company logo for DEFENDANT within the course and
10 scope of their employment for DEFENDANT. These expenses were necessary to complete their
11 principal job duties. DEFENDANT is estopped by DEFENDANT’s conduct to assert any waiver
12 of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF
13 and the members of the CALIFORNIA CLASS, DEFENDANT failed to indemnify and reimburse
14 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
15 is required to do under the laws and regulations of California.

16 124. PLAINTIFF therefore demands reimbursement on behalf of the members of the
17 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
18 on behalf of DEFENDANT, or his/her obedience to the directions of DEFENDANT, with interest
19 at the statutory rate and costs under Cal. Lab. Code § 2802.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
22 severally, as follows:

23 1. On behalf of the CALIFORNIA CLASS:

- 24 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
25 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
26 b. An order temporarily, preliminarily and permanently enjoining and restraining
27 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
28 c. An order requiring DEFENDANT to pay all overtime wages and all sums

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unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and

d. Restitutionary disgorgement of DEFENDANT’s ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT’s violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

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

b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;

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

d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for 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.

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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.

DATED: January 24, 202

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: January 24, 202

ZAKAY LAW GROUP, APLC

By:  _____

Shani O. Zakay
Attorney for PLAINTIFF

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mountain Counties Supply Co.
 c/o Prabhjot S. Randhawa
 723 Woodacre Dr.
 Redding, CA 96002



9590 9402 7020 1225 2853 41

2. Article Number (Transfer from service label)

7021 2720 0000 9972 5436

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A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

OTY C-46

C. Date of Delivery

1-28

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

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