

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

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

OAKWOOD VILLAGE, INC. a California corporation; and DOES 1 through 50, Inclusive;

ELECTRONICALLY FILED
Superior Court of California,
County of Placer
05/07/2021 at 08:28:25 AM

Clk: Marina C Olivarez Fuentes, Deputy Clerk

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

CHRISTIANE T. HILDEN, 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):
Placer Superior Court, Santucci Justice Center Courthouse
10820 Justice Center Drive
Roseville, CA 95678

CASE NUMBER: **S-CV-0046676**
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291
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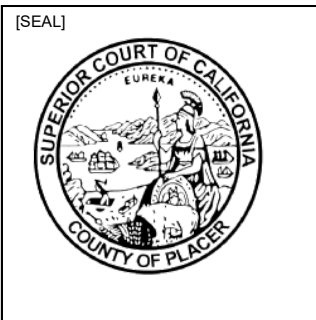
DATE: **05/07/2021**
(Fecha)

Clerk, by Marina C Olivarez Fuentes, Deputy
(Secretario) (Adjunto)

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

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: 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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11
12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF PLACER**

14 CHRISTIANE T. HILDEN, an individual, on
behalf of herself, and on behalf of all persons
15 similarly situated,

16 Plaintiffs,

17 vs.

18 OAKWOOD VILLAGE, INC. a California
corporation; and DOES 1 through 50,
19 Inclusive;

20 DEFENDANTS.
21

Case No. S-CV-0046676

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698 *ET SEQ.*

DEMAND FOR JURY TRIAL

1 Plaintiff CHRISTIANE T. HILDEN (“PLAINTIFF”) an individual, in her representative
2 capacity on behalf of the herself, the State of California, and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *supra*, against OAKWOOD VILLAGE, INC. (“DEFENDANT”), alleges on
4 information and belief, except for her own acts and knowledge which are based on personal knowledge,
5 the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys General
8 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former
9 aggrieved employees of DEFENDANT for engaging in a pattern and practice of wage and hour
10 violations under the California Labor Code.

11 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT decreased
12 their employment-related costs by systematically violating California wage and hour laws.

13 3. DEFENDANT’s systematic pattern of wage and hour and IWC Wage Order violations
14 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 15 a. Failure to provide compliant meal periods;
- 16 b. Failure to provide compliant rest periods;
- 17 c. Failure to pay all minimum, regular and overtime wages;
- 18 d. Failure to reimburse for business expenses;
- 19 e. Failure to maintain true and accurate records;
- 20 f. Failure to pay sick time;
- 21 g. Failure to provide accurate itemized wage statements; and
- 22 h. Failure to timely pay wages due during, and upon termination of employment.

23 4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of herself
24 and all other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid
25 wages permitted pursuant to California Labor Code § 2699, *et seq.*

26 5. PLAINTIFF reserves the right to name additional representatives throughout the State of
27 California.



1 **THE PARTIES**

2 6. Defendant OAKWOOD VILLAGE, INC (“DEFENDANT”) is a California corporation that at
3 all relevant times mentioned herein conducted and continues to conduct substantial business in the state
4 of California, county of Placer, owns, operates and/or manages an assisted living facility.

5 7. PLAINTIFF has been employed by DEFENDANTS as a non-exempt employee, paid on
6 an hourly basis and entitled to minimum wage and overtime pay and legally compliant meal and rest
7 periods from November 2017 to December 2020.

8 8. PLAINTIFF brings this action in her representative capacity on behalf of the State of
9 California and on behalf of all of DEFENDANT’s current and former non-exempt employees employed
10 in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et*
11 *seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANT between
12 February 24, 2020 and the present (“PAGA PERIOD”).

13 9. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code §
14 2699(c) because she was employed by DEFENDANT and suffered one or more of the alleged Labor
15 Code violations committed by DEFENDANT.

16 10. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were,
17 employees of DEFENDANT, within the meanings set forth in the California Labor Code and the
18 applicable Industrial Welfare Commission Wage Order.

19 11. Each of the fictitiously named defendants participated in the acts alleged in this
20 Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50,
21 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth
22 the true names and capacities of these fictitiously named defendants when their true names are
23 ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious
24 defendants have participated in the acts alleged in this Complaint.

25 12. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively
26 “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s
27 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated,
28 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days



1 of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties
2 for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

8 **JOINT EMPLOYER**

9 14. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce
10 any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

11 15. Section 558 of the California Labor Code provides that “any employer *or other person*
12 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
13 provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall
14 be subject to a civil penalty...” (*Lab. Code* § 558(a).);

15 16. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person* acting
16 either individually or as an officer, agent, or employee of another person, who pays or causes to be paid
17 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
18 of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

19 17. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
20 a corporate employer’s owners, officers and directors, are subject to civil penalties for the employer’s
21 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does
22 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*
23 *Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009
24 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

25 18. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each
26 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees
27 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and
28 damages alleged herein.



1 purposefully avoid the accurate and full payment for all time worked as required by California law
2 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
3 comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
4 EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

5 **Meal Period Violations**

6 24. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
7 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
8 time during which an employee is subject to the control of an employer, including all the time the
9 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
10 DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them
11 for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's
12 demanding work requirements, being required to carry, remain responsive and to respond to work calls
13 on company issued cordless communication devices throughout their shifts, and DEFENDANTS'
14 under staffing, DEFENDANTS required PLAINTIFF to work while clocked out during what was
15 supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
16 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
17 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the
18 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime wages by
19 regularly working without their time being accurately recorded and without compensation at the
20 applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay
21 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
22 DEFENDANTS' business records.

23 25. From time-to-time during the PAGA PERIOD, as a result of their rigorous work
24 schedules, being required to carry, remain responsive and to respond to work calls on company issued
25 cordless communication devices throughout their shifts, and DEFENDANTS' inadequate staffing
26 practices, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time unable to take
27 thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods.
28 PLAINTIFF and other AGGRIEVED EMPLOYEES were required from time to time to perform work



1 as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal
2 break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and AGGRIEVED
3 EMPLOYEES with a second off-duty meal period for some workdays in which these employees were
4 required by DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work
5 performed by the PLAINTIFF and the AGGRIEVED EMPLOYEES does not qualify for limited and
6 narrowly construed “on-duty” meal period exception. When they were provided with meal periods,
7 PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time, required to remain on
8 the premises, on duty, and/or on call. PLAINTIFF and other AGGRIEVED EMPLOYEES therefore
9 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS’ strict
10 corporate policy and practice. DEFENDANTS failed to maintain adequate staffing levels while
11 increasing the production levels for each employee at the busy airports they provided services for.

12 **Rest Period Violations**

13 26. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
14 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
15 provided ten (10) minute rest periods as a result of their rigorous work schedule, being required to
16 carry, remain responsive and to respond to work calls on company issued cordless communication
17 devices throughout their shifts, and DEFENDANTS’ inadequate staffing. Further, for the same reasons
18 these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
19 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10)
20 minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
21 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
22 more from time to time. When they were provided with rest breaks, PLAINTIFF and other
23 AGGRIEVED EMPLOYEES were, from time to time, required to remain on the premises, on duty,
24 and/or on call. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-
25 hour wages in lieu thereof. As a result of their rigorous work schedules and DEFENDANTS’
26 inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time
27 denied their proper rest periods by DEFENDANTS and DEFENDANTS’ managers.

28 ///



1 **Overtime and Sick Pay Regular Rate Violation**

2 27. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail
3 to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
4 overtime hours worked. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited
5 wages due them for working overtime without compensation at the correct overtime rates.
6 DEFENDANTS’ uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct
7 overtime rate for all overtime worked in accordance with applicable law is evidenced by
8 DEFENDANTS’ business records.

9 28. State law provides that employees must be paid overtime at one-and-one-half times their
10 “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an
11 hourly rate plus incentive pay that was tied to specific elements of an employee’s performance.

12 29. The second component of PLAINTIFF’S and other AGGRIEVED EMPLOYEES
13 compensation was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFF and
14 other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS.
15 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus and/or
16 commission compensation when the employees met the various performance goals set by
17 DEFENDANTS. These incentive payments are identified as “Bonus” and/or “Commission” in the
18 wage statements issued by DEFENDANTS to PLAINTIFF and the other AGGRIEVED
19 EMPLOYEES.

20 30. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
21 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime and earned this non-
22 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
23 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked rather
24 than just all non-overtime hours worked. Further, when calculating the regular rate of pay in order to
25 pay sick pay to PLAINTIFF and AGGRIEVED EMPLOYEES, DEFENDANTS failed to include the
26 incentive compensation as part of the employees’ “regular rate of pay” for purposes of calculating sick
27 pay. Management and supervisors described the incentive/bonus program to potential and new
28 employees as part of the compensation package. As a matter of law, the incentive compensation



1 received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the “regular rate
2 of pay.” The failure to do so has resulted in a systematic underpayment of overtime and/or sick pay
3 compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANTS.

4 31. Specifically, California Labor Code Section 246 mandates that paid sick time for non-
5 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
6 the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in
7 that workweek. DEFENDANT’S conduct, as articulated herein, by failing to include the incentive
8 compensation as part of the “regular rate of pay” for purposes of sick pay compensation was in violation
9 of Cal. Lab. Code § 246.

10 32. In violation of the applicable sections of the California Labor Code and the requirements
11 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
12 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
13 other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime and/or sick pay
14 compensation. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
15 the payment of the correct overtime and/or sick pay compensation as required by California law which
16 allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
17 complied with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
18 EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

19 **Unreimbursed Business Expenses Violation**

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



1 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
2 employee, at the time of obeying the directions, believed them to be unlawful."

3 34. In the course of their employment, DEFENDANTS required PLAINTIFF and other
4 AGGRIEVED EMPLOYEES to use DEFENDANTS' their personal cell phones as a result of and in
5 furtherance of their job duties as employees for DEFENDANT. However, DEFENDANTS unlawfully
6 failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for their use of their personal
7 cell phones. As a result, in the course of their employment with DEFENDANTS the PLAINTIFF and
8 other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses, but were not limited to,
9 costs related to the use of their personal cellular phones, all on behalf of and for the benefit of
10 DEFENDANT.

11 **Wage Statement Violations**

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

20 36. From time to time during the PAGA PERIOD, when PLAINTIFF and other
21 AGGRIEVED EMPLOYEES missed meal and rest breaks, were paid inaccurate missed meal and rest
22 period premiums, were paid overtime in the same pay period where they earned a non-discretionary
23 incentive award, or were not paid for all hours worked, DEFENDANTS also failed to provide
24 PLAINTIFF and the other AGGRIEVED EMPLOYEES with complete and accurate wage statements
25 which failed to show, among other things, all applicable hourly rates in effect during the pay period
26 and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty
27 payments or missed meal and rest periods.



1 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general
2 to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
3 claims cannot be subject to arbitration.

4 42. PLAINTIFF brings this Representative Action on behalf of the State of California with
5 respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by
6 DEFENDANTS during the PAGA PERIOD.

7 43. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the
8 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of
9 Labor Code Section 2699(c).

10 44. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
11 PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to
12 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

13 45. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
14 Section 2699.3. By certified letter, return receipt requested, dated February 24, 2021, PLAINTIFF
15 gave written notice to the Labor and Workforce Development Agency ("LWDA") and to
16 DEENDANTS of the specific provisions of the Labor Code alleged to have been violated, including
17 the facts and theories to support the alleged violations. (See Exhibit 1).

18 46. As of April 30, 2021, more than sixty-five (65) days after serving the LWDA with notice
19 of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of its intent to
20 investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section
21 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may
22 commence and is authorized to pursue this cause of action.

23 47. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to the
24 California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute
25 of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of
26 limitation and repose for civil causes of action that are 180 days or less, of (b) October 1, 2020 for
27 statutes of limitation and repose for civil causes of action that exceed 180 days.

28



1 48. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
2 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,
3 202, 203, 204, 206.5, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802 in the
4 following amounts:

5 a. For violation of Labor Code Sections 201, 202, 203, and 204, one
6 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period
7 for the initial violation and two hundred dollars (\$200) for AGGRIEVED
8 EMPLOYEE per pay period for each subsequent violation [penalty per
9 Labor Code Section 2699(f)(2)];

10 b. For violations of Labor Code Section 226(a), a civil penalty in the
11 amount of two hundred fifty dollars (\$250) for each AGGRIEVED
12 EMPLOYEE for any initial violation and one thousand dollars for each
13 subsequent violation [penalty per Labor Code Section 226.3];

14 c. For violations of Labor Code Sections 204, a civil penalty in the
15 amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE
16 for any initial violation and two hundred dollars (\$200) for AGGRIEVED
17 EMPLOYEE for each subsequent violation [penalty per Labor Code
18 Section 210];

19 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil
20 penalty in the amount of fifty dollars (\$50) for each underpaid
21 AGGRIEVED EMPLOYEE for the initial violation and hundred dollars
22 (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent
23 violation [penalty per Labor Code Section 558];

24 e. For violations of Labor Code Section 2269(a), a civil penalty in the
25 amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE
26 per violation in an initial citation and one thousand dollars (\$1,000) per
27 AGGRIEVED EMPLOYEE for each subsequent violation [penalty per
28 Labor Code Section 226.3];



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f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

2. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the AGGRIEVED EMPLOYEEES are entitled to an award of reasonable attorney’s fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

- (a) For reasonable attorney’s fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;
- (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and
- (c) For such other relief as the Court deems just and proper.

Dated: April 30, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.


By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: April 30, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF



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EXHIBIT 1





ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client #35501

February 24, 2021

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

OAKWOOD VILLAGE, INC. Martine D. Harmon 4020 Sierra College Blvd., #200 Rocklin, CA 95677	
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Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 206.5, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Christiane T. Hilden (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Oakwood Village, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from November of 2017 to December of 2020 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive awards. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked and for all of their meal breaks and rest breaks. Defendant also failed to reimburse Plaintiff and other aggrieved employees for business-related expenses. 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, violates Labor Code §§ 201, 202, 203, 204, 206.5, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against 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.

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 filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,

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

Shani O. Zakay
Attorney for Plaintiff

1 JEAN-CLAUDE LAPUYADE (SBN 248676)

2 JLAPUYADE@JCL-LAWFIRM.COM

3 **JCL LAW FIRM, APC**

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9 **ZAKAY LAW GROUP, APLC**

10 5850 OBERLIN DRIVE, SUITE 230A

11 SAN DIEGO, CA 92121

12 TEL: (619) 255-9047

13 FAX: (619) 404-9203

14 ATTORNEYS FOR PLAINTIFF

15 **SUPERIOR COURT OF CALIFORNIA**
16 **COUNTY OF PLACER**

17 CHRISTIANE T. HILDEN, an individual, on
18 behalf of herself, and on behalf of all persons
19 similarly situated,

20 Plaintiffs,

21 vs.

22 OAKWOOD VILLAGE, INC. a California
23 corporation; and DOES 1 through 50,
24 Inclusive;

25 DEFENDANTS.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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 PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203;
8. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
9. UNPAID SICK PAY IN VIOLATION OF CAL. LAB. CODE §§ 246, *et seq.*

DEMAND FOR JURY TRIAL

1
2 Plaintiff CHRISTIANE T. HILDEN (“PLAINTIFF”) an individual, on behalf of herself and all
3 other similarly situated current and former employees alleges on information and belief, except for her
4 own acts and knowledge which are based on personal knowledge, the following:

5 **THE PARTIES**

6 1. Defendant OAKWOOD VILLAGE, INC (“DEFENDANT”) is a California corporation
7 that at all relevant times mentioned herein conducted and continues to conduct substantial business in
8 the state of California, county of Placer, owns, operates and/or manages an assisted living facility.

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

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

25 4. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
26 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused
27 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
28



1 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
2 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

8 6. PLAINTIFF has been employed by DEFENDANTS as a non-exempt salesclerk, paid on
9 an hourly basis and entitled to certain non-discretionary incentive awards, bonuses, overtime pay and
10 legally compliant meal and rest periods from November 2017 to December 2020.

11 7. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of
12 DEFENDANTS current and former non-exempt California employees (the "CALIFORNIA CLASS")
13 at any time during the period beginning four years from the date of the filing of this Complaint and
14 ending on a date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
15 aggregate claim of CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00).

16 8. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
17 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
18 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which
19 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
20 periods or an additional hour of pay at the regular rate of compensation in lieu thereof in violation of
21 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
22 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in
23 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to
24 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and
25 226.3.

26 9. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair and
27 deceptive business practices whereby DEFENDANTS retained and continues to retain wages due
28 PLAINTIFF and the other members of the CALIFORNIA CLASS.



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

5 **JURISDICTION AND VENUE**

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

10 12. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
11 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
12 and DEFENDANTS (i) currently maintains and at all relevant times, maintained offices and facilities
13 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
14 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

15 **THE CONDUCT**

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



1 **A. Meal Period Violations**

2 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
3 required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning
4 the time during which an employee is subject to the control of an employer, including all the time the
5 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
6 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work without paying
7 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
8 PLAINTIFF's demanding work requirements, being required to carry, remain responsive and to
9 respond to work calls on company issued cordless communication devices throughout their shifts, and
10 DEFENDANTS' under staffing, DEFENDANTS required PLAINTIFF to work while clocked out
11 during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to
12 time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-
13 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch.
14 As a result, the PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum wage and
15 overtime wages by regularly working without their time being accurately recorded and without
16 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy
17 and practice not to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked is
18 evidenced by DEFENDANTS' business records.

19 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
20 schedules, being required to carry, remain responsive and to respond to work calls on company issued
21 cordless communication devices throughout their shifts, and DEFENDANTS' inadequate staffing
22 practices, PLAINTIFF and other CALIFORNIA CLASS members were from time to time unable to
23 take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods.
24 PLAINTIFF and other CALIFORNIA CLASS members were required from time to time to perform
25 work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving
26 a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
27 CALIFORNIA CLASS members with a second off-duty meal period for some workdays in which these
28 employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The

1 nature of the work performed by the PLAINTIFF and the members of the CALIFORNIA CLASS does
2 not qualify for limited and narrowly construed “on-duty” meal period exception. When they were
3 provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time
4 to time, required to remain on the premises, on duty, and/or on call. PLAINTIFF and other members
5 of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
6 accordance with DEFENDANTS’ strict corporate policy and practice. DEFENDANTS failed to
7 maintain adequate staffing levels while increasing the production levels for each employee at the busy
8 airports they provided services for.

9 **B. Rest Period Violations**

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

25 **C. Overtime and Sick Pay Regular Rate Violation**

26 17. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to
27 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for
28 their overtime hours worked. As a result, PLAINTIFF and the other CALIFORNIA CLASS members



1 forfeited wages due them for working overtime without compensation at the correct overtime rates.
2 DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA CLASS members the
3 correct overtime rate for all overtime worked in accordance with applicable law is evidenced by
4 DEFENDANTS' business records.

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

8 19. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'
9 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
10 other CLASS MEMBERS incentive wages based on their performance for DEFENDANTS. The non-
11 discretionary bonus program provided all employees paid on an hourly basis with bonus and/or
12 commission compensation when the employees met the various performance goals set by
13 DEFENDANTS. These incentive payments are identified as "Bonus" and/or "Commission" in the
14 wage statements issued by DEFENDANTS to PLAINTIFF and the other CALIFORNIA CLASS
15 members.

16 20. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
17 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime and earned this non-
18 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
19 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather
20 than just all non-overtime hours worked. Further, when calculating the regular rate of pay in order to
21 pay sick pay to PLAINTIFF and CALIFORNIA CLASS Members, DEFENDANTS failed to include
22 the incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating
23 sick pay. Management and supervisors described the incentive/bonus program to potential and new
24 employees as part of the compensation package. As a matter of law, the incentive compensation
25 received by PLAINTIFF and other CALIFORNIA CLASS members must be included in the "regular
26 rate of pay." The failure to do so has resulted in a systematic underpayment of overtime and/or sick
27 pay compensation to PLAINTIFF and other CALIFORNIA CLASS members by DEFENDANTS.
28



1 21. Specifically, California Labor Code Section 246 mandates that paid sick time for non-
2 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
3 the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in
4 that workweek. DEFENDANT’S conduct, as articulated herein, by failing to include the incentive
5 compensation as part of the “regular rate of pay” for purposes of sick pay compensation was in violation
6 of Cal. Lab. Code § 246.

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

16 **D. Unreimbursed Business Expenses Violation**

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

27 24. In the course of their employment, DEFENDANTS required PLAINTIFF and other
28 CALIFORNIA CLASS Members to use DEFENDANTS’ their personal cell phones as a result of and



1 in furtherance of their job duties as employees for DEFENDANT. However, DEFENDANTS
2 unlawfully failed to reimburse PLAINTIFF and other members of the CALIFORNIA CLASS for their
3 use of their personal cell phones. As a result, in the course of their employment with DEFENDANTS
4 the PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business
5 expenses, but were not limited to, costs related to the use of their personal cellular phones, all on behalf
6 of and for the benefit of DEFENDANT.

7 **E. Wage Statement Violations**

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

16 26. From time to time during the CLASS PERIOD, when PLAINTIFF and other
17 CALIFORNIA CLASS members missed meal and rest breaks, were paid inaccurate missed meal and
18 rest period premiums, were paid overtime in the same pay period where they earned a non-discretionary
19 incentive award, or were not paid for all hours worked, DEFENDANTS also failed to provide
20 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage
21 statements which failed to show, among other things, all applicable hourly rates in effect during the
22 pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for
23 penalty payments or missed meal and rest periods.

24 27. For instance, PLAINTIFF received remuneration from DEFENDANTS described as
25 “Retro Pay”. DEFENDANTS violated California Labor Code Section 226 by failing to list the
26 applicable hourly rate and the corresponding number of hours worked at the applicable hourly rate for
27 this line item of remuneration described as “Retro Pay”. PLAINTIFF, and all those similarly situated
28 members of the CALIFORNIA CLASS, suffered damage as a result of DEFENDANTS’



1 aforementioned violation because he could not promptly and easily determine from the wage statement
2 alone the applicable hourly rate and the corresponding number of hours worked at the applicable hourly
3 rate for this line item of remuneration described as “Retro Pay”.

4 28. In addition to the violations described above, DEFENDANTS, from time to time, failed
5 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
6 with Cal. Lab. Code § 226, and specifically DEFENDANTS failed to include the correct total number
7 of hours worked on the wage statements.

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

12 **F. CLASS ACTION ALLEGATIONS**

13 30. PLAINTIFF brings the First through Ninth Causes of Action as a class action pursuant to
14 California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS’ current and former non-
15 exempt California employees (“CALIFORNIA CLASS”) during the period beginning four years prior
16 to the filing of the Complaint and ending on a date determined by the Court (“CLASS PERIOD”).

17 31. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been
18 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid
19 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal
20 and rest period policies, failure to separately compensate rest periods, failure to separately compensate
21 for all non-productive time, failure to provide accurate itemized wage statements, failure to maintain
22 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

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

24 33. Common questions of law and fact regarding DEFENDANTS’ conduct, including but not
25 limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate
26 the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of
27 compensation for missed meal and rest period premiums, failing to provide legally compliant meal and
28 rest periods, failure to provide accurate itemized wage statements accurate, and failure ensure they are



1 paid at least minimum wage and overtime, exist as to all members of the class and predominate over
2 any questions affecting solely any individual members of the class. Among the questions of law and fact
3 common to the class are:

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



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j. Whether DEFENDANTS committed an act of unfair competition by systematically failing to reimburse PLAINTIFF and other members of the CALIFORNIA CLASS for required business expenses.

34. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

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

36. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS members.

37. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

38. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests of the other CALIFORNIA CLASS members.

39. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

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

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

a. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the

1 parties opposing the CALIFORNIA CLASS; and/or,

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

6 42. Class treatment provides manageable judicial treatment calculated to bring an efficient
7 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of
8 DEFENDANTS.

9 **FIRST CAUSE OF ACTION**

10 **For Unlawful Business Practices**

11 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

12 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

15 44. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
16 17021.

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

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

28 Cal. Bus. & Prof. Code § 17203.

1 46. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
2 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
3 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
4 “UCL”), by engaging and continuing to engage in business practices which violates California law,
5 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
6 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512,
7 1194, 1197, 1197.1, 1198 & 2802, for which this Court should issue declaratory and other equitable
8 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
9 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

23 49. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
24 deceptive in that DEFENDANTS’ employment practices caused PLAINTIFF and the other members of
25 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

26 50. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
27 deceptive in that DEFENDANTS’ uniform policies, practices and procedures failed to, *inter alia*,
28 provide the legally mandated meal and rest periods, the required accurate amount of compensation for

1 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
2 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
3 Labor Code.

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

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

11 53. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
12 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
13 calculated overtime and missed meal and rest periods premiums.

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

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

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

1 unpaid wages for all overtime worked.

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

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

13 **SECOND CAUSE OF ACTION**

14 **For Failure to Pay Overtime Compensation**

15 **[Cal. Lab. Code §§ 510, *et seq.*]**

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

17 59. 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 Complaint.

19 60. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period
20 beginning four years prior to the filing of the Complaint and the present (“LABOR CLASS PERIOD”)
21 bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and
22 the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees
23 for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
24 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

27 62. Cal. Lab. Code § 510 further provides that employees in California shall not be employed
28 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they

1 receive additional compensation beyond their regular wages in amounts specified by law.

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

6 64. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
7 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they
8 worked or were not accurately compensated for all overtime hours worked.

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

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

22 67. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
23 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
24 all overtime worked.

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

1 the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings this Action on
2 behalf of himself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-
3 negotiable, non-waivable rights provided by the State of California.

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

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

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

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

24 73. In performing the acts and practices herein alleged in violation of California labor laws,
25 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
26 them with the requisite overtime compensation, DEFENDANTS acted and continues to act intentionally,
27 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
28 with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the

1 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
2 in order to increase company profits at the expense of these employees

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

13 **THIRD CAUSE OF ACTION**

14 **For Failure to Pay Minimum Wages**

15 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

17 75. 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 Complaint.

19 76. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
20 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
21 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
22 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the
23 LABOR CLASS PERIOD.

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

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

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

3 80. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
4 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
5 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
6 work while clocked out during what was supposed to be PLAINTIFF’s off-duty meal break without
7 compensation. Further, as set forth herein, DEFENDANTS’ uniform policy and practice was to
8 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
9 of the CALIFORNIA CLASS.

10 81. DEFENDANTS’ uniform pattern of unlawful wage and hour practices manifested,
11 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
12 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
13 of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

25 85. By virtue of DEFENDANTS’ unlawful failure to accurately pay all earned compensation
26 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
27 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
28 suffer an economic injury in amounts which are presently unknown to them and which will be





1 ascertained according to proof at trial.

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

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **For Failure to Provide Required Meal Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

5 89. 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 Complaint.

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

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

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

1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Provide Required Rest Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

5 93. 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 Complaint.

7 94. During the LABOR CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
8 members were from time to time required to work in excess of four (4) hours without being provided
9 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
10 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period
11 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
12 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more
13 from time to time. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with
14 one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
15 CALIFORNIA CLASS members were periodically denied their proper rest periods by DEFENDANTS
16 and DEFENDANTS' managers.

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

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

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1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Provide Accurate Itemized Statements**

3 **[Cal. Lab. Code §§ 226 and 226.2]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

5 97. 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 Complaint.

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

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

27 99. During the LABOR CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF
28 and the other members of the CALIFORNIA CLASS with complete and accurate wage statements

1 which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages
2 earned, (3) gross wages earned and (7) all applicable hourly rates in effect during the pay period and
3 the corresponding number of hours worked at each hourly rate by the employee in violation of
4 California Labor Code Section 226.

5 100. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §
6 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA
7 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for
8 the overtime worked and the amount of employment taxes which were not properly paid to state and
9 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other
10 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)
11 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
12 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and
13 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
14 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
15 member of the CALIFORNIA CLASS herein.

16 **SEVENTH CAUSE OF ACTION**

17 **FAILURE TO PAY WAGES WHEN DUE**

18 **(Cal Lab. Code §§201, 202, 203)**

19 **((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))**

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

22 102. Cal. Lab. Code § 200 provides that:

23 As used in this article:(a) "Wages" includes all amounts for labor
24 performed by employees of every description, whether the amount
25 is fixed or ascertained by the standard of time, task, piece,
26 Commission basis, or other method of calculation. (b) "Labor"
27 includes labor, work, or service whether rendered or performed
28 under contract, subcontract, partnership, station plan, or other



1 agreement if the labor to be paid for is performed personally by the
2 person demanding payment.

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

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

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

17 105. There was no definite term in PLAINTIFF’s or any CALIFORNIA CLASS Members’
18 employment contract.

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

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

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

1 108. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members
2 of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand up to thirty days of pay as
3 penalty for not paying all wages due at time of termination for all employees who terminated
4 employment during the LABOR CLASS PERIOD, and demands an accounting and payment of all
5 wages due, plus interest and statutory costs as allowed by law.

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED BUSINESS EXPENSES**

8 **(Cal Lab. Code §§ 2802)**

9 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

13 110. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

17 111. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing
18 to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
19 required expenses incurred in the discharge of their job duties for DEFENDANT’S benefit. In the course
20 of their employment, DEFENDANT required PLAINTIFF and other CALIFORNIA LABOR SUB-
21 CLASS Members to use their personal cellular phones as a result of and in furtherance of their job
22 duties as employees for DEFENDANT. However, DEFENDANT failed to reimburse PLAINTIFF and
23 other CALIFORNIA LABOR SUB-CLASS Members for the use of their personal cellular phones. As
24 a result, in the course of their employment with DEFENDANT the PLAINTIFF and other members of
25 the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses, but were not
26 limited to, costs related to the use their personal cellular phones all on behalf of and for the benefit of
27 DEFENDANT. DEFENDANT’S uniform policy, practice and procedure was to cause PLAINTIFF
28 and the CALIFORNIA LABOR SUB-CLASS members to incur personal business expenses from using

1 their personal cellular phones. These expenses were necessary to complete their principal job duties.
2 DEFENDANT is estopped by DEFENDANT’S conduct to assert any waiver of this expectation.
3 Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA
4 LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and
5 the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to
6 do under the laws and regulations of California.

7 112. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by
8 her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for
9 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate
10 and costs under Cal. Lab. Code § 2802.

11 **NINTH CAUSE OF ACTION**

12 **UNPAID SICK PAY**

13 **(Cal Lab. Code §§ 246, *et seq.*)**

14 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

18 114. Cal. Labor Code Sections 246(l)(1) mandates that “[p]aid sick time for nonexempt
19 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
20 the employee uses paid sick time, whether or not the employee actually works overtime in that
21 workweek.”

22 115. From time-to-time, during the PLAINTIFF and other members of the CALIFORNIA
23 LABOR SUB-CLASS were compensated at an hourly rate plus either non-discretionary incentive pay.
24 As a matter of law, the incentive compensation and/or piece-rate compensation received by PLAINTIFF
25 and other members of the CALIFORNIA LABOR SUB-CLASS must be included in the “regular rate
26 of pay.”

27 116. From time-to-time during the CLASS PERIOD, in those pay periods where PLAINTIFF
28 and other members of the CALIFORNIA LABOR SUB-CLASS earned hourly compensation and either

1 non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to properly
2 calculate the regular rate of pay for purposes of compensating paid sick time by omitting non-
3 discretionary incentive pay from the regular rate of pay.

4 117. DEFENDANT's uniform policy and practice of omitting non-discretionary incentive pay
5 and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick pay, resulted in the
6 underpayment of sick pay wages to PLAINTIFF and other members of the CALIFORNIA LABOR
7 SUB-CLASS. PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore
8 request recovery of all unpaid wages, including sick pay wages, according to proof, interest, statutory
9 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
10 by the California Labor Code and/or other applicable statutes. To the extent overtime compensation is
11 determined to be owed to other members of the CALIFORNIA LABOR SUB-CLASS who have
12 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202,
13 and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code §
14 203, which penalties are sought herein on behalf of other members of the CALIFORNIA LABOR SUB-
15 CLASS. DEFENDANT'S conduct as alleged herein was willful, intentional and not in good
16 faith. Further, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS are
entitled to seek and recover statutory costs.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
19 severally, as follows:

20 1. On behalf of the CALIFORNIA CLASS:

21 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as
22 a class action pursuant to Cal. Code of Civ. Proc. § 382;

23 B) An order temporarily, preliminarily and permanently enjoining and restraining
24 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

25 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
26 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,
27
28

1 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for
2 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other
3 members of the CALIFORNIA CLASS.

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

7 1. Compensatory damages, according to proof at trial, including compensatory
8 damages for minimum wages, overtime wages, unreimbursed expenses, and other
9 compensation due PLAINTIFF and the other members of the CALIFORNIA CLASS,
10 during the applicable CALIFORNIA CLASS PERIOD plus interest thereon at the
11 statutory rate;

12 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
13 which a violation occurs and one hundred dollars (\$100) per each member of the
14 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an
15 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation
16 of Cal. Lab. Code § 226;

17 3. Meal and rest period compensation pursuant to California Labor Code Section
18 226.7, 512 and the applicable IWC Wage Order;

19 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
20 1197; and,

21 2. On all claims:

22 A) An award of interest, including prejudgment interest at the legal rate;

23 B) Such other and further relief as the Court deems just and equitable; and,

24 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
25 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

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Dated: _____

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 

Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: _____

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 

Jean-Claude Lapuyade
Attorneys for PLAINTIFF



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