

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

TIWANA & SONS INC., a California corporation; and DOES 1 through 50, Inclusive;

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

ISABELLA RUIZ, an individual, on behalf of herself, and on behalf of all persons similarly situated,

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

FILED

2021 JUL 19 11:47

BRANDON E. RILEY, CLERK

BY MIA STIPE
DEPUTY

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):

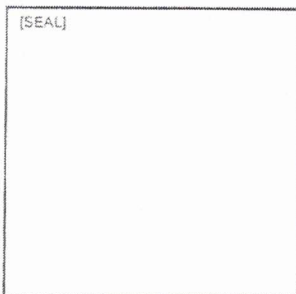
San Joaquin Superior Court
180 E. Weber Avenue
Stockton, CA 95202

STK-CV- UDE -2021- 6420

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
JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: JUL 19 2021
(Fecha) **BRANDON E. RILEY** Clerk, by MIA STIPE, 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):

VIA FAX

FILED

2021 JUL 19 PM 11:47

BRANDON E. RILEY, CLERK

BY _____
DEPUTY CLERK

JCL LAW FIRM, APC

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

Case No. STK-CV-¹⁰⁶-2021-₆₄₂₀

ISABELLA RUIZ, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

TIWANA & SONS INC., a California
corporation; and DOES 1 through 50,
Inclusive;

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY 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;

VIA FAX



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

DEMAND FOR JURY TRIAL

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

THE PARTIES

1. Defendant TIWANA & SONS INC. (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Joaquin, operates Subway franchises.

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

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

1 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
2 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
3 proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

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

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

14 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an
15 hourly basis and entitled to overtime pay and legally compliant meal and rest periods from June 2014
16 to July 2020.

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

22 8. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
23 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
24 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which
25 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
26 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of
27 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
28 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in

1 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to
2 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and
3 226.3.

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

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

11 JURISDICTION AND VENUE

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

16 12. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
17 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
18 and DEFENDANTS (i) currently maintains and at all relevant times, maintained offices and facilities
19 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
20 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

21 THE CONDUCT

22 13. In violation of the applicable sections of the California Labor Code and the requirements
23 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
24 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
25 compliant meal and rest period, failed to accurately compensate PLAINTIFF and the other members of
26 the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
27 members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the
28 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other

1 things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time
2 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
3 purposefully avoid the accurate and full payment for all time worked as required by California law
4 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
5 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
6 CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

7 **A. Meal Period Violations**

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

24 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
25 schedules, being required to remain responsive, and to respond to customers and supervisors throughout
26 their shifts, and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA
27 CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and
28 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS

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

12 **B. Rest Period Violations**

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

3 17. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally,
4 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the members of the
5 CALIFORNIA CLASS or required business expenses they incurred in direct consequence of
6 discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802,
7 employers are required to indemnify employees for all expenses incurred in the course and scope of
8 their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
10 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
11 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
12 unlawful."

13 18. From time-to-time during the CLASS PERIOD, PLAINTIFF and the members of the
14 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular phones,
15 and pay to purchase and maintain their own uniform, as a result of and in furtherance of their job duties
16 as employees for DEFENDANTS. But for the use of their personal cell phones and having clean
17 uniforms, PLAINTIFF and the members of the CALIFORNIA CLASS could not complete their
18 essential job duties. Notwithstanding, DEFENDANTS did not reimburse or indemnify PLAINTIFF or
19 the members of the CALIFORNIA CLASS for the cost associated with the use of their personal cellular
20 phones for DEFENDANTS' benefit. As a result, in the course of their employment with
21 DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred unreimbursed
22 business expenses which included, but were not limited to, costs related to the use of their personal
23 cellular phones, and the cost to purchase and maintain their own uniform, all on behalf of and for the
24 benefit of DEFENDANTS.

25 **D. Wage Statement Violations**

26 19. California Labor Code Section 226 requires an employer to furnish its employees an
27 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
28 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages

1 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
2 employee and only the last four digits of the employee's social security number or an employee
3 identification number other than a social security number, (8) the name and address of the legal entity
4 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee.

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

13 21. In addition to the violations described above, DEFENDANTS, from time to time, failed
14 to provide PLAINTIFF and the CALIFORNIA CLASS members with wage statements that comply
15 with Cal. Lab. Code § 226, and specifically DEFENDANTS failed to include the correct total number
16 of hours worked on the wage statements.

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

21 **E. CLASS ACTION ALLEGATIONS**

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

26 24. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been
27 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid
28 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal

1 and rest period policies, failure to separately compensate rest periods, failure to separately compensate
2 for all non-productive time, failure to provide accurate itemized wage statements, failure to maintain
3 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

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

5 26. Common questions of law and fact regarding DEFENDANTS' conduct, including but not
6 limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate
7 the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of
8 compensation for missed meal and rest period premiums, failing to provide legally compliant meal and
9 rest periods, failure to provide accurate itemized wage statements accurate, and failure ensure they are
10 paid at least minimum wage and overtime, exist as to all members of the class and predominate over
11 any questions affecting solely any individual members of the class. Among the questions of law and fact
12 common to the class are:

13 a. Whether DEFENDANTS maintained legally compliant meal period
14 policies and practices;

15 b. Whether DEFENDANTS maintained legally compliant rest period
16 policies and practices;

17 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
18 CALIFORNIA CLASS members accurate premium payments for missed
19 meal and rest periods;

20 d. Whether DEFENDANTS failed to pay PLAINTIFF and the
21 CALIFORNIA CLASS members overtime wages.

22 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
23 CALIFORNIA CLASS members at least minimum wage for all hours
24 worked.

25 f. Whether DEFENDANTS issued legally compliant wage statements;

26 g. Whether DEFENDANTS committed an act of unfair competition by
27 systematically failing to record and pay PLAINTIFF and the other members
28 of the CALIFORNIA CLASS for all time worked;

1 h. Whether DEFENDANTS committed an act of unfair competition by
2 systematically failing to record all meal and rest breaks missed by
3 PLAINTIFF and other CALIFORNIA CLASS members, even though
4 DEFENDANTS enjoyed the benefit of this work, required employees to
5 perform this work and permits or suffers to permit this work;

6 i. Whether DEFENDANTS committed an act of unfair competition in
7 violation of the UCL, by failing to provide the PLAINTIFF and the other
8 members of the CALIFORNIA CLASS with the legally required meal and
9 rest periods; and,

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

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

14 29. PLAINTIFF will fairly and adequately represent and protect the interests of the
15 CALIFORNIA CLASS members.

16 30. PLAINTIFF retained able class counsel with extensive experience in class action
17 litigation.

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

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

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

26 34. A class action is superior to other available methods for the fair and efficient adjudication
27 of this controversy because joinder of all class members is impractical. Moreover, since the damages
28 suffered by individual members of the class may be relatively small, the expense and burden of

1 individual litigation makes it practically impossible for the members of the class individually to redress
2 the wrongs done to them. Without class certification and determination of declaratory, injunctive,
3 statutory and other legal questions within the class format, prosecution of separate actions by individual
4 members of the CALIFORNIA CLASS will create the risk of:

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

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

12 35. Class treatment provides manageable judicial treatment calculated to bring an efficient
13 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of
14 DEFENDANTS.

15 **FIRST CAUSE OF ACTION**

16 **For Unlawful Business Practices**

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

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

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

21 37. DEFENDANTS are "person[s]" as that term is defined under Cal. Bus. and Prof. Code §
22 17021.

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

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

1 receiver, as may be necessary to prevent the use or employment by any
2 person of any practice which constitutes unfair competition, as defined in
3 this chapter, or as may be necessary to restore to any person in interest any
4 money or property, real or personal, which may have been acquired by
5 means of such unfair competition.

6 Cal. Bus. & Prof. Code § 17203.

7 39. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
8 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
9 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
10 “UCL”), by engaging and continuing to engage in business practices which violates California law,
11 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
12 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194,
13 1197, 1197.1, 1198, & 2802 for which this Court should issue declaratory and other equitable relief
14 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
15 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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



1 42. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
2 deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the other members of
3 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

4 43. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
5 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*,
6 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
7 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
8 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
9 Labor Code.

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

14 45. PLAINTIFF further demands on behalf of herself and on behalf of each CALIFORNIA
15 CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not
16 timely provided as required by law..

17 46. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
18 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
19 calculated overtime and missed meal and rest periods premiums.

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

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

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

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

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

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

19 **SECOND CAUSE OF ACTION**

20 **For Failure to Pay Overtime Compensation**

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

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

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

25 53. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period
26 beginning four years prior to the filing of the Complaint and the present (“LABOR CLASS PERIOD”)
27 bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and
28 the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees



1 for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
2 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

12 57. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
13 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they
14 worked or were not accurately compensated for all overtime hours worked.

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

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

28 60. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,



1 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
2 all overtime worked.

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

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

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

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

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

1 members of the CALIFORNIA CLASS for overtime worked.

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

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

19 **THIRD CAUSE OF ACTION**

20 **For Failure to Pay Minimum Wages**

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

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

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

25 69. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
26 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
27 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
28 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the

1 LABOR CLASS PERIOD.

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

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

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

9 73. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
10 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
11 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
12 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
13 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
14 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
15 of the CALIFORNIA CLASS.

16 74. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
17 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
18 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
19 of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

28 77. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the

1 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure
2 to pay all earned wages.

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

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

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

21 81. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
22 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of
23 any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code
24 and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed
25 to the CALIFORNIA CLASS members who have terminated their employment, DEFENDANTS'
26 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled
27 to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of
28 these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful,

1 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are
2 entitled to seek and recover statutory costs.

3 **FOURTH CAUSE OF ACTION**

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

5 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

28 85. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA

1 CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned
2 and due, interest, penalties, expenses and costs of suit.

3 **FIFTH CAUSE OF ACTION**

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

5 **[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

1 ///

2 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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



28

1 92. During the LABOR CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF
2 and the other members of the CALIFORNIA CLASS with complete and accurate wage statements
3 which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages
4 earned, (3) gross wages earned and (7) all applicable hourly rates in effect during the pay period and
5 the corresponding number of hours worked at each hourly rate by the employee in violation of
6 California Labor Code Section 226.

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

18 **SEVENTH CAUSE OF ACTION**

19 **For Failure to Reimburse Employees for Required Expenses**

20 **[Cal. Lab. Code § 2802]**

21 **(By PLAINTIFF Against All Defendants)**

- 22 1. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the
23 prior paragraphs of this Complaint.
- 24 2. Cal. Lab. Code § 2802 provides, in relevant part, that:
25 An employer shall indemnify his or her employee for all necessary
26 expenditures or losses incurred by the employee in direct consequence of
27 the discharge of his or her duties, or of his or her obedience to the directions
28

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

3 3. From time-to-time during the LABOR CLASS PERIOD, DEFENDANTS violated Cal.
4 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
5 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
6 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the
7 CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their
8 personal cellular phone and personal vehicle all on behalf of and for the benefit of DEFENDANTS.
9 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
10 DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of
11 DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse
12 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using their
13 personal cellular phones for DEFENDANTS within the course and scope of their employment for
14 DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS
15 are estopped by DEFENDANTS' conduct to assert any waiver of their expectation. Although these
16 expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA
17 CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the
18 CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and
19 regulations of California.

20 4. PLAINTIFF therefore demands reimbursement on behalf of the members of the
21 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on behalf
22 of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with interest at the statutory
23 rate and costs under Cal. Lab. Code § 2802.

24 **EIGHTH CAUSE OF ACTION**
25 **FAILURE TO PAY WAGES WHEN DUE**

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

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

28 94. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and



1 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

2 95. Cal. Lab. Code § 200 provides that:

3 As used in this article:(a) "Wages" includes all amounts for labor
4 performed by employees of every description, whether the amount
5 is fixed or ascertained by the standard of time, task, piece,
6 Commission basis, or other method of calculation. (b) "Labor"
7 includes labor, work, or service whether rendered or performed
8 under contract, subcontract, partnership, station plan, or other
9 agreement if the labor to be paid for is performed personally by the
10 person demanding payment.

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

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

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

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

27 99. Cal. Lab. Code § 203 provides:
28

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

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

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

15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
17 severally, as follows:

18 1. On behalf of the CALIFORNIA CLASS:

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

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

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

25 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
26 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other
27 members of the CALIFORNIA CLASS.

1 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes
2 of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. §
3 382;

4 1. Compensatory damages, according to proof at trial, including compensatory
5 damages for overtime compensation due PLAINTIFF and the other members of the
6 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus
7 interest thereon at the statutory rate;

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

13 3. Meal and rest period compensation pursuant to California Labor Code Section
14 226.7, 512 and the applicable IWC Wage Order;

15 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
16 1197; and,

17 2. On all claims:


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

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

20 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
21 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.
22

23 Dated: July 14, 2021

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

24 By: 
25 Jean-Claude Lapuyade
26 Attorneys for PLAINTIFF
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DEMAND FOR JURY TRIAL

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

Dated: July 14, 2021

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

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF



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