

**SUMMONS
(CITACION JUDICIAL)**

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

NBR TOMATINA LLC, a California limited liability company; SYUFY ENTERPRISES, a California limited partnership; (see attached)

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

GINA RICCI, an individual, on behalf of herself, and on behalf of all persons similarly situated,

**Electronically
FILED**
by Superior Court of California, County of San Mateo

ON **11/22/2022**
By **/s/ Maria Coronel**
Deputy Clerk

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 Mateo Superior Court - Hall of Justice
400 County Center
Redwood City, CA 94063

CASE NUMBER:
(Número del Caso): **22-CIV-04939**

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: (858) 599-8291
JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: **11/22/2022** (Fecha) **Neal I. Taniguchi** Clerk, by **/s/ Maria Coronel**, 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):

SHORT TITLE: Gina Ricci v. NBR Tomatina LLC, et al.	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
 → If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (*Check only one box. Use a separate page for each type of party.*):

Plaintiff Defendant Cross-Complainant Cross-Defendant

NBR TOMATINA SAN MATEO LLC, a California limited liability company; NBR TOMATINA ALAMEDA LLC, a California limited liability company; NBR TOMATINA SAN JOSE LLC, a California limited liability company; NBR TOMATINA SANTA CLARA LLC, a California limited liability company; NBR TOMATINA SANTA ROSA LLC, a California limited liability company; NBR TOMATINA UNION CITY LLC, a California limited liability company; NBR TOMATINA WALNUT CREEK LLC, a California limited liability company; and DOES 1-50, Inclusive,

Page _____ of _____

Page 1 of 1

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Electronically
FILED
by Superior Court of California, County of San Mateo
ON
By 11/22/2022
/s/ Maria Coronel
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

GINA RICCI, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Plaintiffs,

v.

NBR TOMATINA LLC, a California limited liability company; SYUFY ENTERPRISES, a California limited partnership; NBR TOMATINA SAN MATEO LLC, a California limited liability company; NBR TOMATINA ALAMEDA LLC, a California limited liability company; NBR TOMATINA SAN JOSE LLC, a California limited liability company; NBR TOMATINA SANTA CLARA LLC, a California limited liability company; NBR TOMATINA SANTA ROSA LLC, a California limited liability company; NBR TOMATINA

Case No: 22-CIV-04939

CLASS ACTION COMPLAINT FOR:

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

1 UNION CITY LLC, a California limited
2 liability company; NBR TOMATINA
3 WALNUT CREEK LLC, a California limited
4 liability company; and DOES 1-50, Inclusive,

5 Defendants.

6 LAB. CODE §§ 226.7 & 512 AND THE
7 APPLICABLE IWC WAGE ORDER;
8 6) FAILURE TO REIMBURSE EMPLOYEES
9 FOR REQUIRED EXPENSES IN
10 VIOLATION OF CAL. LAB. CODE § 2802;
11 7) FAILURE TO PROVIDE WAGES WHEN
12 DUE IN VIOLATION OF CAL. LAB.
13 CODE §§ 201, 202 AND 203;
14 8) FAILURE TO PROVIDE ACCURATE
15 ITEMIZED STATEMENTS IN
16 VIOLATION OF CAL. LAB. CODE § 226.

17 **DEMAND FOR A JURY TRIAL**

18
19 PLAINTIFF GINA RICCI (“PLAINTIFF”), an individual, on behalf of herself and all other
20 similarly situated current and former employees, allege on information and belief, except for her
21 own acts and knowledge which are based on personal knowledge, the following:

22 **PRELIMINARY ALLEGATIONS**

23 1. Defendant NBR TOMATINA LLC (“Defendant Tomatina”) is a California limited
24 liability company that at all relevant times mentioned herein conducted and continues to conduct
25 substantial and regular business throughout California.

26 2. Defendant SYUFY ENTERPRISES (“Defendant Syufy”) is a California limited
27 partnership that at all relevant times mentioned herein conducted and continues to conduct
28 substantial and regular business throughout California.

1 3. Defendant NBR TOMATINA SAN MATEO LLC (“Defendant Tomatina San
2 Mateo”) is a California limited liability company that at all relevant times mentioned herein
3 conducted and continues to conduct substantial and regular business throughout California.

4 4. Defendant NBR TOMATINA ALAMEDA LLC (“Defendant Tomatina
5 Alameda”) is a California limited liability company that at all relevant times mentioned herein
6 conducted and continues to conduct substantial and regular business throughout California.

7 5. Defendant NBR TOMATINA SAN JOSE LLC (“Defendant Tomatina San Jose”) is a California limited liability company that at all relevant times mentioned herein conducted and
8 continues to conduct substantial and regular business throughout California.

1 6. Defendant NBR TOMATINA SANTA CLARA LLC (“Defendant Tomatina Santa
2 Clara”) is a California limited liability company that at all relevant times mentioned herein
3 conducted and continues to conduct substantial and regular business throughout California.

4 7. Defendant NBR TOMATINA SANTA ROSA LLC (“Defendant Tomatina Santa
5 Rosa”) is a California limited liability company that at all relevant times mentioned herein
6 conducted and continues to conduct substantial and regular business throughout California.

7 8. Defendant NBR TOMATINA UNION CITY LLC (“Defendant Tomatina Union
8 City”) is a California limited liability company that at all relevant times mentioned herein
9 conducted and continues to conduct substantial and regular business throughout California.

10 9. Defendant NBR TOMATINA WALNUT CREEK LLC (“Defendant Tomatina
11 Walnut Creek”) is a California limited liability company that at all relevant times mentioned
12 herein conducted and continues to conduct substantial and regular business throughout California.

13 10. PLAINTIFF alleges there has existed a unity of interest and ownership between
14 Defendants such that any individuality and separateness between the entities has ceased and all
15 Defendants are referred to herein as “DEFENDANT” and/or “DEFENDANT.”

16 11. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
17 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest
18 and ownership between Defendant Tomatina, Defendant Syufy, Defendant Tomatina San Mateo,
19 Defendant Tomatina Alameda, Defendant Tomatina San Jose, Defendant Tomatina Santa Clara,
20 Defendant Tomatina Santa Rosa, Defendant Tomatina Union City, and Defendant Tomatina
21 Walnut Creek such that any individuality and separateness between the entities has ceased.
22 Defendant Tomatina, Defendant Syufy, Defendant Tomatina San Mateo, Defendant Tomatina
23 Alameda, Defendant Tomatina San Jose, Defendant Tomatina Santa Clara, Defendant Tomatina
24 Santa Rosa, Defendant Tomatina Union City, and Defendant Tomatina Walnut Creek are
25 therefore alter egos of each other. Adherence to the fiction of the separate existence of
26 DEFENDANT would permit an abuse of the corporate privilege, and would promote injustice by
27 protecting DEFENDANT from liability for the wrongful acts committed by them.

28 12. PLAINTIFF further alleges that DEFENDANT are the alter egos of each other for
the following reasons:

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- a. On the California Secretary of State’s website (<https://businesssearch.sos.ca.gov/>) Defendant Tomatina, Defendant Syufy, Defendant Tomatina San Mateo, Defendant Tomatina Alameda, Defendant Tomatina San Jose, Defendant Tomatina Santa Clara, Defendant Tomatina Santa Rosa, Defendant Tomatina Union City, and Defendant Tomatina Walnut Creek have the same entity address and/or mailing address and/or Agent for Service of Process;
- b. On information and belief Defendant Tomatina, Defendant Syufy, Defendant Tomatina San Mateo, Defendant Tomatina Alameda, Defendant Tomatina San Jose, Defendant Tomatina Santa Clara, Defendant Tomatina Santa Rosa, Defendant Tomatina Union City, and Defendant Tomatina Walnut Creek utilize the same standardized employment forms and issue the same employment policies and same pay stubs;
- c. On information and belief Defendant Tomatina, Defendant Syufy, Defendant Tomatina San Mateo, Defendant Tomatina Alameda, Defendant Tomatina San Jose, Defendant Tomatina Santa Clara, Defendant Tomatina Santa Rosa, Defendant Tomatina Union City, and Defendant Tomatina Walnut Creek have an executive team which supervise and manage the operations of all of DEFENDANT’s restaurants, supervised and managed the finances of all of DEFENDANT’s restaurants, supervised and managed the marketing of all of DEFENDANT’s restaurants, supervised and managed the human resources of all of DEFENDANT’s restaurants, and supervised and managed the food and beverage offerings at all of DEFENDANT’s restaurants.

13. PLAINTIFF alleges that DEFENDANT’s various separate corporate entities are used by an individual or individuals, or by another corporation, to accomplish inequitable purposes, including to limit liability for the unlawful acts of DEFENDANT.

14. PLAINTIFF alleges that there is such a unity of interest and ownership between DEFENDANT’s various corporate entities that own DEFENDANT’s restaurants and the individual or individuals, or organization controlling those corporate entities that their separate personalities no longer exist.

1 15. PLAINTIFF further alleges that the failure to disregard the various corporate
2 entities would promote injustice.

3 16. Defendant Tomatina, Defendant Syufy, Defendant Tomatina San Mateo,
4 Defendant Tomatina Alameda, Defendant Tomatina San Jose, Defendant Tomatina Santa Clara,
5 Defendant Tomatina Santa Rosa, Defendant Tomatina Union City, and Defendant Tomatina
6 Walnut Creek were the joint employers of PLAINTIFF as evidenced by the documents issued to
7 PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore
8 jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or
9 “DEFENDANT.”

10 17. DEFENDANTS own, operate, and/or manage Tomatina restaurants throughout the
11 state of California, including in the county of San Mateo, where PLAINTIFF worked.

12 18. PLAINTIFF was employed by DEFENDANT in California from February of 2020
13 to July of 2021 as a non-exempt employee, paid on an hourly basis and entitled to the legally
14 required meal and rest periods and payment of minimum and overtime wages due for all time
15 worked.

16 19. PLAINTIFF brings this Class Action on behalf of herself and a California class,
17 defined as all persons who are or previously were employed by Defendant Tomatina and/or
18 Defendant Tomatina San Mateo and/or Defendant Tomatina Alameda and/or Defendant Tomatina
19 San Jose and/or Defendant Tomatina Santa Clara and/or Defendant Tomatina Santa Rosa and/or
20 Defendant Tomatina Union City and/or Defendant Tomatina Walnut Creek (collectively,
21 “Tomatina Defendants”) and/or non-exempt employees employed by Defendant Syufy who
22 performed work for one or more of the Tomatina Defendants in California and classified as non-
23 exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four
24 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
25 (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the
26 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

27 20. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
28 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during

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

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

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

27 23. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the
28 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or

1 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
2 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
3 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
4 at all relevant times.

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

10 25. DEFENDANT’S uniform policies and practices alleged herein were unlawful,
11 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
12 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

13 26. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
14 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
15 other members of the CALIFORNIA CLASS who has been economically injured by
16 DEFENDANT’S past and current unlawful conduct, and all other appropriate legal and equitable
17 relief.

18 **JURISDICTION AND VENUE**

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

23 28. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
25 the CALIFORNIA CLASS across California, including in this County, and committed the
26 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

27 **THE CONDUCT**

28

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

20 **A. Meal Period Violations**

21 30. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
22 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
23 meaning the time during which an employee is subject to the control of an employer, including
24 all the time the employee is suffered or permitted to work. From time to time during the CLASS
25 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
26 without paying them for all the time they were under DEFENDANT’s control. Specifically,
27 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
28 PLAINTIFF’S off-duty meal break. Indeed, there were many days where PLAINTIFF did not

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

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

26 **B. Rest Period Violations**

27 32. From time to time during the CLASS PERIOD, PLAINTIFF and other
28 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without

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

16 **C. Unreimbursed Business Expenses**

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

1 34. In the course of their employment, DEFENDANT required PLAINTIFF and other
2 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell
3 phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
4 CALIFORNIA CLASS Members were required to use their own cell phones in order to perform
5 work related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and
6 other CALIFORNIA CLASS Members for the personal expenses incurred for the use of their
7 personal cell phones. As a result, in the course of their employment with DEFENDANT, the
8 PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business
9 expenses that included, but were not limited to, costs related to the use of their personal cell
10 phones, all on behalf of and for the benefit of DEFENDANT.

11 **D. Wage Statement Violations**

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

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

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1 37. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
3 Cal. Lab. Code § 226.

4 38. As a result, DEFENDANT issued PLAINTIFF and other members of the
5 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
6 DEFENDANT’s violations are knowing and intentional, were not isolated due to an unintentional
7 payroll error due to clerical or inadvertent mistake.

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

9 39. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
10 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
11 for all hours worked.

12 40. During the CLASS PERIOD, from time-to-time DEFENDANT required
13 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
14 working. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have
15 to work while off-the-clock.

16 41. DEFENDANT directed and directly benefited from the undercompensated off-the-
17 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

18 42. DEFENDANT controlled the work schedules, duties, and protocols, applications,
19 assignments, and employment conditions of PLAINTIFF and the other members of the
20 CALIFORNIA CLASS.

21 43. DEFENDANT was able to track the amount of time PLAINTIFF and the other
22 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
23 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
24 wages earned and owed for all the work they performed.

25 44. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
26 exempt employees, subject to the requirements of the California Labor Code.

27 45. DEFENDANT’s policies and practices deprived PLAINTIFF and the other
28 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed

1 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
2 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
3 eight (8) hours per day, DEFENDANT’s policies and practices also deprived them of overtime
4 pay.

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

7 47. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
8 forfeited wages due to them for all hours worked at DEFENDANT’s direction, control, and
9 benefit for the time spent working while off-the-clock. DEFENDANT’s uniform policy and
10 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
11 hours worked in accordance with applicable law is evidenced by DEFENDANT’s business
12 records.

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

15 48. From time to time during the CLASS PERIOD, DEFENDANT failed and
16 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
17 Members for their overtime and double time hours worked, meal and rest period premiums, and
18 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
19 forfeited wages due to them for working overtime without compensation at the correct overtime
20 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
21 DEFENDANT’s uniform policy and practice not to pay the CALIFORNIA CLASS Members at
22 the correct rate for all overtime and double time worked, meal and rest period premiums, and
23 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT’s business
24 records.

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

1 50. The second component of PLAINTIFF's and other CALIFORNIA CLASS
2 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
3 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
4 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
5 basis with bonus compensation when the employees met the various performance goals set by
6 DEFENDANTS.

7 51. However, from-time-to-time, when calculating the regular rate of pay, in those pay
8 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
9 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
10 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
11 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
12 rather than just all non-overtime hours worked. Management and supervisors described the
13 incentive/bonus program to potential and new employees as part of the compensation package.
14 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
15 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted
16 in a systematic underpayment of overtime and double time compensation, meal and rest period
17 premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by
18 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
19 for non-employees shall be calculated in the same manner as the regular rate of pay for the
20 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
21 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
22 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
23 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
24 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

25 52. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
27 matter of company policy, practice, and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate

1 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
2 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
3 of the correct overtime and double time compensation, meal and rest period premiums, and sick
4 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
5 unfair advantage over competitors who complied with the law. To the extent equitable tolling
6 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
7 CLASS PERIOD should be adjusted accordingly.

8 **G. Unlawful Rounding Violations**

9 53. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
10 an immutable timekeeping system to accurately record and pay PLAINTIFF and other
11 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
12 overtime hours. Specifically, DEFENDANT had in place an unlawful rounding policy and
13 practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
14 undercompensated for all of their time worked. As a result, DEFENDANT was able to and did in
15 fact unlawfully, and unilaterally round the time recorded in DEFENDANT'S timekeeping system
16 for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these
17 employees for all their time worked, including the applicable overtime compensation for overtime
18 worked. As a result, PLAINTIFF, and other CALIFORNIA CLASS Members, from time to time,
19 forfeited compensation for their time worked by working without their time being accurately
20 recorded and without compensation at the applicable overtime rates.

21 54. Further, the mutability of DEFENDANT'S timekeeping system and unlawful
22 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
23 being inaccurately recorded. As a result, from time to time, DEFENDANT'S unlawful rounding
24 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
25 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
26 duty meal break. Additionally, DEFENDANT'S unlawful rounding policy and practice caused
27 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
28 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

1 **H. Timekeeping Manipulation**

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

11 56. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
12 time-to-time, forfeited time worked by working without their time being accurately recorded and
13 without compensation at the applicable pay rates.

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

21 58. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
22 forfeited wages due them for all hours worked at DEFENDANTS’ direction, control and benefit
23 for the time the timekeeping system was inoperable. DEFENDANTS’ uniform policy and
24 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
25 hours worked in accordance with applicable law is evidenced by DEFENDANTS’ business
26 records.

27 **I. Violations for Untimely Payment of Wages**

28

1 “Tomatina Defendants”) and/or non-exempt employees employed by Defendant Syufy who
2 performed work for one or more of the Tomatina Defendants in California and classified as non-
3 exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four
4 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
5 (the “CLASS PERIOD”).

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

12 63. The members of the class are so numerous that joinder of all class members is
13 impractical.

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

- 23 a. Whether DEFENDANT maintained legally compliant meal period policies and
24 practices;
- 25 b. Whether DEFENDANT maintained legally compliant rest period policies and
26 practices;
- 27 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
28 Members accurate premium payments for missed meal and rest periods;

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

19 65. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
20 a result of DEFENDANT’s conduct and actions alleged herein.

21 66. PLAINTIFF’S claims are typical of the claims of the CALIFORNIA CLASS, and
22 PLAINTIFF have the same interests as the other members of the class.

23 67. PLAINTIFF will fairly and adequately represent and protect the interests of the
24 CALIFORNIA CLASS Members.

25 68. PLAINTIFF retained able class counsel with extensive experience in class action
26 litigation.

27 69. Further, PLAINTIFF’S interests are coincident with, and not antagonistic to, the
28 interest of the other CALIFORNIA CLASS Members.

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

2 74. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
3 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
4 Complaint.

5 75. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
6 Code § 17021.

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

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

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

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

30 79. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
31 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally

1 mandated meal and rest periods and the required amount of compensation for missed meal and
2 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
3 necessary business expenses incurred, due to a systematic business practice that cannot be
4 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
5 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
6 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
7 restitution of wages wrongfully withheld.

8 80. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
9 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
10 other members of the CALIFORNIA CLASS to be underpaid during their employment with
11 DEFENDANT.

12 81. By the conduct alleged herein, DEFENDANT's practices were also unfair and
13 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
14 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
15 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

24 84. By and through the unlawful and unfair business practices described herein,
25 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
26 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
27 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
28

1 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
2 to unfairly compete against competitors who comply with the law.

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

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

13 87. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
14 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
15 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
16 engaging in any unlawful and unfair business practices in the future.

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

24 **SECOND CAUSE OF ACTION**

25 **Failure To Pay Minimum Wages**

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

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

28

1 89. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
2 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
3 Complaint.

4 90. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
5 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
6 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
7 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

10 92. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
11 commission is the minimum wage to be paid to employees, and the payment of a less wage than
12 the minimum so fixed is unlawful.

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

15 94. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
16 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
17 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
18 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
19 CALIFORNIA CLASS.

20 95. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
21 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
22 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
23 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

24 96. In committing these violations of the California Labor Code, DEFENDANT
25 inaccurately calculated the correct time worked and consequently underpaid the actual time
26 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
27 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
28

1 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
2 laws and regulations.

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

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

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

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

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

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

5 108. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
6 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
7 they worked, including overtime work.

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

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

21 111. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,
22 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
23 overtime compensation for their time worked for DEFENDANT.

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

1 PLAINTIFF bring this Action on behalf of herself, and the CALIFORNIA CLASS, based on
2 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of
3 California.

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

7 114. DEFENDANT 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
9 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
10 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
11 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT
12 failed to accurately record and pay as evidenced by DEFENDANT's business records and
13 witnessed by employees.

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

19 116. DEFENDANT knew or should have known that PLAINTIFF and the other
20 members of the CALIFORNIA CLASS were undercompensated for their time worked.
21 DEFENDANT systematically elected, either through intentional malfeasance or gross
22 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
23 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF
24 and the other members of the CALIFORNIA CLASS the correct overtime wages for their
25 overtime worked.

26 117. In performing the acts and practices herein alleged in violation of California labor
27 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
28 and provide them with the requisite compensation, DEFENDANT acted and continues to act

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

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

16 **FOURTH CAUSE OF ACTION**

17 **Failure To Provide Required Meal Periods**

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

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

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

23 120. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
24 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
25 required by the applicable Wage Order and Labor Code. The nature of the work performed by
26 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
27 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
28 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not

1 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
2 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
3 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
4 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
5 Members with a second off-duty meal period in some workdays in which these employees were
6 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
7 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
8 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

17 **FIFTH CAUSE OF ACTION**

18 **Failure To Provide Required Rest Periods**

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

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

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

24 124. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
25 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
26 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
27 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
28 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and

1 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
2 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
3 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
4 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
5 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
6 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the
7 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
8 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
9 periods is evidenced by DEFENDANT's business records.

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

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

18 **SIXTH CAUSE OF ACTION**

19 **Failure To Reimburse Employees for Required Expenses**

20 **(Cal. Lab. Code §§ 2802)**

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

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

25 128. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

1 As used in this article:

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

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

11 134. Cal. Lab. Code § 202 provides, in relevant part, that:

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

21 135. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS
22 Members' employment contract.

23 136. Cal. Lab. Code § 203 provides:

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

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

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

1 **EIGHTH CAUSE OF ACTION**

2 **Failure To Provide Accurate Itemized Statements**

3 **(Cal. Lab. Code § 226)**

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

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

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

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

1 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

2 b. An order temporarily, preliminarily and permanently enjoining and restraining
3 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

4 c. An order requiring DEFENDANT to pay all overtime wages and all sums
5 unlawfully withheld from compensation due to PLAINTIFF and the other members
6 of the CALIFORNIA CLASS; and

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

10 2. On behalf of the CALIFORNIA CLASS:

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

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

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

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

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

28 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA

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CLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys’ fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: November 22, 2022

JCL LAW FIRM, APC


By: 
 Jean-Claude Lapuyade
 Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: November 22, 2022

JCL LAW FIRM, APC

By: 
 Jean-Claude Lapuyade
 Attorney for PLAINTIFF