

SUMMONS (CITACION JUDICIAL)

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

WINDSOR TWIN PALMS HEALTHCARE CENTER, LLC, a California limited liability company; and DOES 1-50, Inclusive,

Electronically FILED by
Superior Court of California,
County of Los Angeles
8/24/2023 7:22 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Nunez, Deputy Clerk

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MARY FRANKLIN, an individual, on behalf of herself, and on behalf of all persons similarly situated,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California - Los Angeles - Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER:

(Número del Caso): 23STCV20411

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 08/24/2023
(Fecha)

Clerk, by David W. Slayton, Executive Officer/Clerk of Court, Deputy
(Secretario) J. Nunez (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):

[SEAL]



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County of Los Angeles
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David W. Slayton,
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By J. Nunez, Deputy Clerk

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15 Attorneys for PLAINTIFF

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **IN AND FOR THE COUNTY OF LOS ANGELES**

18 MARY FRANKLIN, an individual, on behalf of
19 herself, and on behalf of all persons similarly
20 situated,

21 Plaintiff,

22 v.

23 WINDSOR TWIN PALMS HEALTHCARE
24 CENTER, LLC, a California limited liability
25 company; and DOES 1-50, Inclusive,

26 Defendants.

Case No: **23STCV20411**

CLASS ACTION COMPLAINT FOR:

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

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

DEMAND FOR A JURY TRIAL

MARY FRANKLIN (“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:

PRELIMINARY ALLEGATIONS

1. Defendant WINDSOR TWIN PALMS HEALTHCARE CENTER, LLC. (“DEFENDANT” and/or “DEFENDANTS”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANTS operate nursing homes in the state of California, including in the county of Los Angeles where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANTS in California from August of 2015 to September of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

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

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

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

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

THE CONDUCT

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

22 **A. Meal Period Violations**

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

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

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

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1 **B. Rest Period Violations**

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

16 **C. Unreimbursed Business Expenses**

17 18. DEFENDANTS 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 DEFENDANTS. 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
24 her employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
26 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
27 believed them to be unlawful."

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

12 **D. Wage Statement Violations**

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

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

1 22. In addition to the foregoing, DEFENDANTS, 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 23. As a result, DEFENDANTS issued PLAINTIFF and other members of the
5 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
6 DEFENDANTS' 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 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
10 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
11 for all hours worked.

12 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required
13 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
14 work, including but not limited to, time spent undergoing Covid-19 health screenings which
15 included temperature checks and questionnaires, and performing document and charting work.
16 This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work
17 while off-the-clock.

18 26. DEFENDANTS directed and directly benefited from the undercompensated off-
19 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

20 27. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
21 assignments, and employment conditions of PLAINTIFF and the other members of the
22 CALIFORNIA CLASS.

23 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
24 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
25 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
26 wages earned and owed for all the work they performed.

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

1 30. DEFENDANTS’ policies and practices deprived PLAINTIFF and the other
2 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
3 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
4 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
5 eight (8) hours per day, DEFENDANTS’ policies and practices also deprived them of overtime
6 pay.

7 31. DEFENDANTS knew or should have known that PLAINTIFF and the other
8 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

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

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

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

26 34. State law provides that employees must be paid overtime at one-and-one-half times
27 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
28

1 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
2 employee's performance.

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

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

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

1 matter of company policy, practice, and procedure, intentionally and knowingly failed to
2 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
3 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
4 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
5 an 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 DEFENDANTS, the
7 CLASS PERIOD should be adjusted accordingly.

8 **G. Unlawful Deductions**

9 38. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
10 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
11 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
12 DEFENDANTS violated Labor Code § 221.

13 **H. Timekeeping Manipulation**

14 39. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
15 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
16 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
17 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
18 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
19 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and
20 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
21 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
22 missed rest breaks.

23 40. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
24 time-to-time, forfeited time worked by working without their time being accurately recorded and
25 without compensation at the applicable pay rates.

26 41. The mutability of the timekeeping system also allowed DEFENDANTS to alter
27 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
28 timekeeping system so as to create the appearance that PLAINTIFF and other members of the

1 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
2 were not at all times provided an off-duty meal break. This practice is a direct result of
3 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
4 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

5 42. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
6 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
7 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and
8 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
9 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
10 records.

11 **I. Unlawful Rounding Practices**

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

24 44. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
25 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
26 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
27 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
28

1 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
2 receiving an off-duty meal break.

3 **J. Violations for Untimely Payment of Wages**

4 45. Pursuant to California Labor Code section 204, PLAINTIFF and the
5 CALIFORNIA CLASS members were entitled to timely payment of wages during their
6 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
7 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
8 meal period premium wages, and rest period premium wages within permissible time period.

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

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

20 **K. Sick Pay Violations**

21 48. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
22 July 1, 2015, works in California for the same employer for 30 or more days within a year from
23 the commencement of employment is entitled to paid sick days as specified in this section.”
24 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
25 From time to time, DEFENDANT failed to have a policy or practice in place that provided
26 PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick
27 leave.

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1 49. California Labor Code Section 246(i) requires an employer to furnish its
2 employees with written wage statements setting forth the amount of paid sick leave available.
3 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
4 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
5 forth the amount of paid sick leave available.

6 **L. Failure to Provide Personnel Files**

7 50. On June 26, 2023, PLAINTIFF caused a written request via certified mail to be
8 delivered to DEFENDANTS for PLAINTIFF'S personnel and employment records, including but
9 not limited to: (1) payroll records; (2) employment contracts; (3) itemized pay stubs; and (4)
10 PLAINTIFF'S complete employment file.

11 51. DEFENDANTS failed to provide and/or make available to PLAINTIFF her
12 personnel records, payroll records, employment contract, and entire employment file within thirty
13 (30) days of her request stated above. In fact, as of the date of filing of this complaint,
14 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
15 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
16 PLAINTIFF with her employment file. Section 1198.5 states that employees (and former
17 employees) have the right to inspect personnel records maintained by the employer "related to the
18 employee's performance or to any grievance concerning the employee." Employers must allow
19 inspection or copying within thirty (30) days of the request. PLAINTIFF is now entitled to and
20 requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a statutory
21 penalty, and an award of attorneys' fees and costs for bringing this action.

22 52. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
23 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
24 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
25 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
26 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
27 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
28 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the

1 rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during
2 what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and
3 rest breaks without additional compensation and in accordance with DEFENDANTS' strict
4 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
5 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed
6 to reimburse PLAINTIFF for required business expenses related to the personal expenses
7 incurred for the use of her personal cell phone and purchase of work uniforms, on behalf of and
8 in furtherance of her employment with DEFENDANTS. Further, failed to provide and/or make
9 available to PLAINTIFF his personnel records, payroll records, employment contracts, and entire
10 employment file within (30) days of all her request on June 26, 2023. To date, DEFENDANTS
11 have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed
12 to her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy
13 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

14 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **FIRST CAUSE OF ACTION**

14 **Unlawful Business Practices**

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

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

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

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

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

26 Any person who engages, has engaged, or proposes to engage in unfair competition may
27 be enjoined in any court of competent jurisdiction. The court may make such orders or
28 judgments, including the appointment of a receiver, as may be necessary to prevent the
use or employment by any person of any practice which constitutes unfair competition, as
defined in this chapter, or as may be necessary to restore to any person in interest any

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

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

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

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

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

1 73. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
2 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
3 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
4 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

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

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

8 86. DEFENDANTS' 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 denies accurate compensation to PLAINTIFF
11 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

26 112. DEFENDANTS further violated California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
28 Members who were not provided a meal period, in accordance with the applicable Wage Order,

1 one additional hour of compensation at each employee's regular rate of pay for each workday that
2 a meal period was not provided.

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

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

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

7 **SIXTH CAUSE OF ACTION**

8 **Failure To Provide Accurate Itemized Statements**

9 **(Cal. Lab. Code § 226)**

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

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

14 119. Cal. Labor Code § 226 provides that an employer must furnish employees with an
15 "accurate itemized" statement in writing showing:

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

1 employee identification number other than social security number may be shown
2 on the itemized statement,

3 h. the name and address of the legal entity that is the employer, and

4 i. all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

6 120. When DEFENDANTS did not accurately record PLAINTIFF'S and other
7 CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed
8 meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated
9 Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFFS and other
10 CALIFORNIA CLASS Members with complete and accurate wage statements which failed to
11 show, among other things, all deductions, the accurate gross wages earned, net wages earned, the
12 total hours worked and all applicable hourly rates in effect during the pay period and the
13 corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty
14 payments or missed meal and rest periods.

15 121. Further, from time to time, DEFENDANTS issued wage statements that failed to
16 provide the accurate name and address of the legal entity that employed PLAINTIFF and other
17 CALIFORNIA CLASS Members, in violation of Cal. Lab. Code § 226(a)(8).

18 122. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
19 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
20 requirements of California Labor Code Section 226.

21 123. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
22 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
23 CLASS. These damages include, but are not limited to, costs expended calculating the correct
24 wages for all missed meal and rest breaks and the amount of employment taxes which were not
25 properly paid to state and federal tax authorities. These damages are difficult to estimate.
26 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
27 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
28 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period

1 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
2 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
3 of the CALIFORNIA CLASS herein).

4 **SEVENTH CAUSE OF ACTION**

5 **Failure To Pay Wages When Due**

6 **(Cal. Lab. Code § 203)**

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

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

11 125. Cal. Lab. Code § 200 provides that:

12 As used in this article:

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

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

22 127. Cal. Lab. Code § 202 provides, in relevant part, that:

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

29 128. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS
Members' employment contract.

30 129. Cal. Lab. Code § 203 provides:

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

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

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

14 **EIGHTH CAUSE OF ACTION**

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

16 **(Cal. Lab. Code §§ 2802)**

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

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

21 133. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

27 134. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
28 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
members for expenses which included, but were not limited to, the use of their personal cell
phones, all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and

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

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

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PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

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

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violation of Cal. Lab. Code § 226.


- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys’ fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or § 1194.

DATED: August 24, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O Zakay, Esq.


Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: August 24, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O Zakay, Esq.

Attorney for PLAINTIFF