

**SUMMONS  
(CITACION JUDICIAL)**

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

JELD-WEN, INC., a Delaware corporation; and DOES 1-50, Inclusive,

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**05/09/2023** at 12:22:36 PM  
Clerk of the Superior Court  
By Armando Villasenor, Deputy Clerk

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CINDY CASTRO, 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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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/](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://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 Diego Superior Court - Hall of Justice Courthouse  
330 West Broadway  
San Diego, CA 92101

CASE NUMBER: 37-2023-00019629-CU-0E-CTL  
(Número del Caso)

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

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

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: 05/10/2023  
(Fecha)

Clerk, by                      *A Villasenor*                     , Deputy  
(Secretario) A. Villasenor (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
  
3.  on behalf of (specify):  
 under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

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3 Jackland K. Hom (State Bar #327243)  
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19 Attorneys for PLAINTIFF

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **IN AND FOR THE COUNTY OF SAN DIEGO**

22 CINDY CASTRO, an individual, on behalf of  
23 herself, and on behalf of all persons similarly  
24 situated,

25 Plaintiff,

26 v.

27 JELD-WEN, INC., a Delaware corporation; and  
28 DOES 1-50, Inclusive,

Defendants.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**05/09/2023** at 12:22:36 PM  
Clerk of the Superior Court  
By Armando Villasenor, Deputy Clerk

Case No: 37-2023-00019629-CU-OE-CTL

**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;
- 9) UNPAID SICK PAY IN VIOLATION OF CAL. LAB. CODE § 246.

**DEMAND FOR A JURY TRIAL**

PLAINTIFF CINDY CASTRO (“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 JELD-WEN, INC. (“DEFENDANT” and/or “DEFENDANTS”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANTS operate a windows and doors manufacturing business in the state of California, including in the county of San Diego, where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANTS in California from April of 2012 to October of 2021 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. Further, DEFENDANTS from time to time  
22 required PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless  
23 communication devices in order to receive and respond to work-related communications during  
24 what was supposed to be their off-duty meal breaks. DEFENDANTS' failure to provide  
25 PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is  
26 evidenced by DEFENDANTS' business records. As a result of their rigorous work schedules and  
27 DEFENDANTS' inadequate staffing, PLAINTIFF and other members of the CALIFORNIA  
28

1 CLASS therefore forfeit meal breaks without additional compensation and in accordance with  
2 DEFENDANTS' strict corporate policy and practice.

3 **B. Rest Period Violations**

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

21 **C. Unreimbursed Business Expenses**

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



1 her employee for all necessary expenditures or losses incurred by the employee in direct  
2 consequence of the discharge of his or her duties, or of his or her obedience to the directions of  
3 the employer, even though unlawful, unless the employee, at the time of obeying the directions,  
4 believed them to be unlawful.”

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

17 **D. Wage Statement Violations**

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

26 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
27 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for  
28 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS

1 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and  
2 accurate wage statements which failed to show, among other things, all deductions, the total hours  
3 worked and all applicable hourly rates in effect during the pay period and the corresponding  
4 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed  
5 meal and rest periods.

6 22. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide  
7 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with  
8 Cal. Lab. Code § 226.

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

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

14 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and  
15 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS  
16 for all hours worked.

17 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required  
18 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift  
19 work, including but not limited to, time spent undergoing Covid-19 health screenings which  
20 included temperature checks and answering health questionnaires, receiving and responding to  
21 work-related communications, and assisting DEFENDANTS with work-related tasks. This  
22 resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while  
23 off-the-clock.

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

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

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

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

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

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

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

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

23           33. From time to time during the CLASS PERIOD, DEFENDANTS failed and  
24 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS  
25 Members for their overtime and double time hours worked, meal and rest period premiums, and  
26 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members  
27 forfeited wages due to them for working overtime without compensation at the correct overtime  
28 and double time rates, meal and rest period premiums, and redeemed sick pay rates.

1 DEFENDANTS’ uniform policy and practice not to pay the CALIFORNIA CLASS Members at  
2 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick  
3 pay in accordance with applicable law is evidenced by DEFENDANTS’ business records.

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

8 35. The second component of PLAINTIFF’S and other CALIFORNIA CLASS  
9 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid  
10 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their  
11 performance for DEFENDANTS. The non-discretionary bonus program provided all employees  
12 paid on an hourly basis with bonus compensation when the employees met the various  
13 performance goals set by DEFENDANTS.

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

1 articulated herein, by failing to include the incentive compensation as part of the “regular rate of  
2 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the  
3 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

4 37. In violation of the applicable sections of the California Labor Code and the  
5 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a  
6 matter of company policy, practice, and procedure, intentionally and knowingly failed to  
7 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate  
8 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed  
9 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain  
10 an unfair advantage over competitors who complied with the law. To the extent equitable tolling  
11 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the  
12 CLASS PERIOD should be adjusted accordingly.

13 **G. Unlawful Deductions**

14 38. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF  
15 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do  
16 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,  
17 DEFENDANTS violated Labor Code § 221.

18 **H. Timekeeping Manipulation**

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

28 ///

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

4           41. The mutability of the timekeeping system also allowed DEFENDANTS to alter  
5 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'  
6 timekeeping system so as to create the appearance that PLAINTIFF and other members of the  
7 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees  
8 were not at all times provided an off-duty meal break. This practice is a direct result of  
9 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)  
10 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

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

17       **I. Unlawful Rounding Practices**

18           43. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in  
19 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other  
20 CALIFORNIA CLASS Members for the actual time these employees worked each day,  
21 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding  
22 policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being  
23 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did  
24 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping  
25 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying  
26 these employees for all their time worked, including the applicable overtime compensation for  
27 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from  
28

1 time to time, forfeited compensation for their time worked by working without their time being  
2 accurately recorded and without compensation at the applicable overtime rates.

3 44. Further, the mutability of DEFENDANTS' timekeeping system and unlawful  
4 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'  
5 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful  
6 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to  
7 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without  
8 receiving an off-duty meal break.

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

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

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

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

5 **CLASS ACTION ALLEGATIONS**

6 47. PLAINTIFF brings this Class Action on behalf of herself, and a California class  
7 defined as all persons who are or previously were employed by DEFENDANT in California and  
8 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period  
9 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined  
10 by the Court (the “CLASS PERIOD”).

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

17 49. The members of the class are so numerous that joinder of all class members is  
18 impractical.

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

28 ///



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

25 51. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as  
26 a result of DEFENDANTS’ conduct and actions alleged herein.

27 52. PLAINTIFF’S claims are typical of the claims of the CALIFORNIA CLASS, and  
28 PLAINTIFF has the same interests as the other members of the class.

1           53. PLAINTIFF will fairly and adequately represent and protect the interests of the  
2 CALIFORNIA CLASS Members.

3           54. PLAINTIFF retained able class counsel with extensive experience in class action  
4 litigation.

5           55. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the  
6 interest of the other CALIFORNIA CLASS Members.

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

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

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

- 22           a. Inconsistent or varying adjudications with respect to individual members of the  
23 CALIFORNIA CLASS which would establish incompatible standards of conduct  
24 for the parties opposing the CALIFORNIA CLASS; and/or,  
25           b. Adjudication with respect to individual members of the CALIFORNIA CLASS  
26 which would as a practical matter be dispositive of the interests of the other  
27 members not party to the adjudication or substantially impair or impeded their  
28 ability to protect their interests.



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

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

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

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

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

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

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

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

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

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

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

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

3 **SECOND CAUSE OF ACTION**

4 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

26 80. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
28

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

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

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

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

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

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

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

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

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

18 **THIRD CAUSE OF ACTION**

19 **Failure To Pay Overtime Compensation**

20 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

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

22 88. 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 89. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim  
26 for DEFENDANTS' willful and intentional violations of the California Labor Code and the  
27 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees  
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1 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,  
2 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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

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

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

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

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

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

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

27           101. DEFENDANTS knew or should have known that PLAINTIFF and the other  
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

1 DEFENDANTS systematically elected, either through intentional malfeasance or gross  
2 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and  
3 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay  
4 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for  
5 their overtime worked.

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **Failure To Provide Required Meal Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

5 104. 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.

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code § 226)**

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

10 112. 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.

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

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

6 114. 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.

15 115. In addition to the foregoing, DEFENDANTS failed to provide itemized wage  
16 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the  
17 requirements of California Labor Code Section 226.

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

1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code § 203)**

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

5 117. 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.

8 118. Cal. Lab. Code § 200 provides that:

9 As used in this article:

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

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

19 120. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

31 122. Cal. Lab. Code § 203 provides:

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

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

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

14 **NINTH CAUSE OF ACTION**

15 **UNPAID SICK PAY**

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

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

18 129. 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.

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

25 131. From time-to-time, during the PLAINTIFF and other members of the  
26 CALIFORNIA CLASS were compensated at an hourly rate plus either non-discretionary incentive  
27 pay. As a matter of law, the non-discretionary incentive compensation received by PLAINTIFF  
28 and other members of the CALIFORNIA CLASS must be included in the “regular rate of pay.”

1           132. From time-to-time during the CLASS PERIOD, in those pay periods where  
2 PLAINTIFF and other members of the CALIFORNIA CLASS earned hourly compensation and  
3 either non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to  
4 properly calculate the regular rate of pay for purposes of compensating paid sick time by omitting  
5 non-discretionary incentive pay from the regular rate of pay.

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

20           134. Cal. Lab. Code § 246(i) provides that:

21           An employer shall provide an employee with written notice that sets forth the  
22 amount of paid sick leave available, or paid time off leave an employer provides in  
23 lieu of sick leave, for use on either the employee's itemized wage statement  
24 described in Section 226 or in a separate writing provided on the designated pay  
25 date with the employee's payment of wages. If an employer provides unlimited paid  
26 sick leave or unlimited paid time off to an employee, the employer may satisfy this  
27 section by indicating on the notice or the employee's itemized wage statement  
28 "unlimited."

26           135. From time to time, DEFENDANT failed to furnish PLAINTIFF and other  
27 members of the CALIFORNIA CLASS with written wage statements setting forth the amount of  
28 paid sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.* As a result,

1 PLAINTIFF and other members of the CALIFORNIA CLASS are entitled to seek and recover  
2 statutory costs.

3 **PRAYER FOR RELIEF**

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

6 1. On behalf of the CALIFORNIA CLASS:

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

17 2. On behalf of the CALIFORNIA CLASS:

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and  
19 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action  
20 pursuant to Cal. Code of Civ. Proc. § 382;
- 21 b. Compensatory damages, according to proof at trial, including compensatory  
22 damages for overtime compensation due to PLAINTIFF and the other members of  
23 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest  
24 thereon at the statutory rate;
- 25 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
26 the applicable IWC Wage Order;
- 27 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
28 which a violation occurs and one hundred dollars (\$100) per each member of the

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CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226

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


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: May 9, 2023

**ZAKAY LAW GROUP, APLC**


By:   
\_\_\_\_\_  
Shani O. Zakay, Esq.  
Attorney for PLAINTIFFS

**DEMAND FOR A JURY TRIAL**

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

DATED: May 9, 2023

**ZAKAY LAW GROUP, APLC**

By:   
\_\_\_\_\_  
Shani O. Zakay, Esq.  
Attorney for PLAINTIFFS