

SUMMONS (CITACION JUDICIAL)

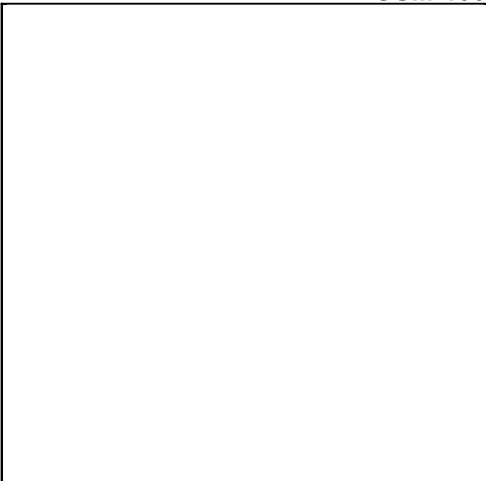
**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

SATER FOOTHILL GROUP, INC., a California corporation; SATER FOOTHILL LLC, a California limited liability company; SATER OIL GROUP, INC., a California corporation; SATER OIL INTERNATIONAL, LLC, a California limited liability company; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ANGELICA FLORES, 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):

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

CASE NUMBER:
(Número del Caso) 23STCV05016

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

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

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (858) 599-8291
JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

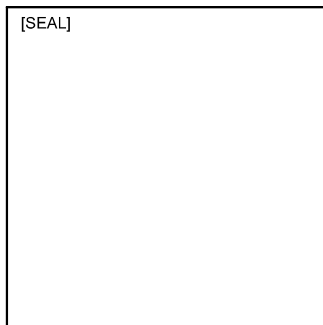
DATE:

(Fecha)

Clerk, by _____, Deputy
(Secretario) (Adjunto)

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

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



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of *(specify)*:

3. on behalf of *(specify)*:
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other *(specify)*:
4. by personal delivery on *(date)*:

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: David Cunningham III

ZAKAY LAW GROUP, APLC

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San Diego, CA 92121
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Jean-Claude Lapuyade (State Bar #248676)
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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ANGELICA FLORES, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Plaintiff,

v.

SATER FOOTHILL GROUP, INC., a California corporation; SATER FOOTHILL LLC, a California limited liability company; SATER OIL GROUP, INC., a California corporation; SATER OIL INTERNATIONAL, LLC, a California limited liability company; and DOES 1-50, Inclusive,

Defendants.

Case No: **23STCV05016**

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) FAILURE TO PROVIDE SICK PAY AND FAILURE TO PROVIDE PAID SICK LEAVE BALANCE IN VIOLATION OF CAL. LAB. CODE §§ 246, *et seq.*

DEMAND FOR A JURY TRIAL

PLAINTIFF ANGELICA FLORES (“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 SATER FOOTHILL GROUP, INC. (“Defendant Sater Foothill Group”) is a California corporation at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant SATER FOOTHILL LLC (“Defendant Sater Foothill”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant SATER OIL GROUP, INC. (“Defendant Sater Oil Group”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

4. Defendant SATER OIL INTERNATIONAL, LLC (“Defendant Sater Oil International”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

5. Defendant Sater Foothill Group, Defendant Sater Foothill, Defendant Sater Oil Group, and Defendant Sater Oil International were the joint employers of PLAINTIFF as

1 evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed
2 work for respectively and are therefore jointly responsible as employers for the conduct alleged
3 herein as “DEFENDANTS” and/or “DEFENDANT.”

4 6. DEFENDANTS own, operate, and/or manage gas stations and convenience stores
5 throughout the state of California, including in the county of Los Angeles, where PLAINTIFF
6 worked.

7 7. PLAINTIFF was employed by DEFENDANTS in California from August of 2021
8 to April of 2022 as a non-exempt employee, paid in part an hourly basis and non discretionary
9 bonuses, and entitled to the legally required meal and rest periods and payment of minimum and
10 overtime wages due for all time worked.

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

19 9. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
20 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
21 the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice which failed to
22 lawfully compensate these employees. DEFENDANTS’ uniform policy and practice alleged
23 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS retained
24 and continue to retain wages due PLAINTIFF and the other members of the CALIFORNIA
25 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
26 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and
27 the other members of the CALIFORNIA CLASS who have been economically injured by
28

1 DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable
2 relief.

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

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

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

26 13. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
27 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
28 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any

1 employee a wage less than the minimum fixed by California state law, and as such, are subject to
2 civil penalties for each underpaid employee.

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

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

11 **JURISDICTION AND VENUE**

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

16 17. Venue is proper in this Court pursuant to California Code of Civil Procedure,
17 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ
18 the CALIFORNIA CLASS across California, including in this County, and committed the
19 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

20 **THE CONDUCT**

21 18. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
23 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
24 failed to provide legally compliant meal and rest periods, failed to accurately compensate
25 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
26 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
27 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
28 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,

1 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal and rest
2 premiums at the regular rate of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS
3 Members redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFF and other
4 CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and
5 the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,
6 among other things, all applicable hourly rates in effect during the pay periods and the
7 corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and
8 practices are intended to purposefully avoid the accurate and full payment for all time worked as
9 required by California law which allows DEFENDANTS to illegally profit and gain an unfair
10 advantage over competitors who comply with the law. To the extent equitable tolling operates to
11 toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should
12 be adjusted accordingly.

13 **A. Meal Period Violations**

14 19. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
15 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
16 meaning the time during which an employee is subject to the control of an employer, including
17 all the time the employee is suffered or permitted to work. From time to time during the CLASS
18 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
19 without paying them for all the time they were under DEFENDANTS' control. Specifically,
20 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
21 be PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
22 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
23 Members forfeited minimum wage and overtime compensation by regularly working without their
24 time being accurately recorded and without compensation at the applicable minimum wage and
25 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
26 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
27 records.

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

19 **B. Rest Period Violations**

20 21. From time to time during the CLASS PERIOD, PLAINTIFF and other
21 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
22 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
23 DEFENDANTS' inadequate staffing. Further, for the same reasons, these employees were denied
24 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
25 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
26 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
27 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
28 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA

1 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.
2 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
3 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS'
4 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
5 time denied their proper rest periods by DEFENDANT and DEFENDANTS' managers.

6 **C. Unreimbursed Business Expenses**

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

18 23. In the course of their employment, DEFENDANTS required PLAINTIFF and
19 other CALIFORNIA CLASS Members to incur personal expenses for the maintenance of their
20 uniforms as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
21 CALIFORNIA CLASS Members were required to maintain and clean their own uniforms in
22 order to perform work related tasks. However, DEFENDANTS unlawfully failed to reimburse
23 PLAINTIFF and other CALIFORNIA CLASS Members for the maintenance and cleaning of
24 their uniforms. As a result, in the course of their employment with DEFENDANTS, the
25 PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business
26 expenses that included, but were not limited to, costs related to the maintenance and cleaning of
27 their uniforms, all on behalf of and for the benefit of DEFENDANT.

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1 **D. Wage Statement Violations**

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

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

18 26. Further, from time to time, DEFENDANTS included Meal Premium hours into the
19 computation of total hours worked for purposes of Cal. Lab. Code §226(a)(2), notwithstanding
20 the fact Meal Premium hours are not considered hours worked. DEFENDANTS' inclusion of
21 Meal Premium hours into the total hours worked in itemized wage statements issued to
22 PLAINTIFFS and other CALIFORNIA CLASS Members violates Cal. Lab. Code §226(a)(2).

23 27. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
24 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
25 Cal. Lab. Code § 226.

26 28. As a result, DEFENDANTS issued PLAINTIFF and other members of the
27 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
28

1 DEFENDANTS' violations are knowing and intentional, were not isolated due to an unintentional
2 payroll error due to clerical or inadvertent mistake.

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

4 29. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
5 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
6 for all hours worked.

7 30. During the CLASS PERIOD, from time-to-time DEFENDANTS required
8 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
9 work, including but not limited to, time spent unlocking gas tanks, unlocking markets, turning
10 on/off electronic machines, locking up, cleaning, and taking out the trash. This resulted in
11 PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-
12 clock.

13 31. DEFENDANTS directed and directly benefited from the undercompensated off-
14 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

15 32. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
16 assignments, and employment conditions of PLAINTIFF and the other members of the
17 CALIFORNIA CLASS.

18 33. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
19 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
20 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
21 wages earned and owed for all the work they performed.

22 34. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
23 exempt employees, subject to the requirements of the California Labor Code.

24 35. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
25 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
26 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
27 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
28

1 eight (8) hours per day, DEFENDANTS’ policies and practices also deprived them of overtime
2 pay.

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

5 37. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
6 forfeited wages due to them for all hours worked at DEFENDANTS’ direction, control, and
7 benefit for the time spent working while off-the-clock, including but not limited to, time spent
8 unlocking gas tanks, unlocking markets, turning on/off electronic machines, locking up, cleaning,
9 and taking out the trash. DEFENDANTS’ uniform policy and practice to not pay PLAINTIFF
10 and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with
11 applicable law is evidenced by DEFENDANTS’ business records.

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

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

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

27 40. The second component of PLAINTIFF’S and other CALIFORNIA CLASS
28 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid

1 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
2 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
3 paid on an hourly basis with bonus compensation when the employees met the various
4 performance goals set by DEFENDANTS.

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

23 42. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
25 matter of company policy, practice, and procedure, intentionally and knowingly failed to
26 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
27 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
28 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain

1 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
2 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the
3 CLASS PERIOD should be adjusted accordingly.

4 **G. Sick Pay Violations**

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

12 44. California Labor Code Section 246(i) requires an employer to furnish its
13 employees with written wage statements setting forth the amount of paid sick leave available.
14 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
15 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
16 forth the amount of paid sick leave available.

17 **H. Suitable Seating Violations**

18 45. PLAINTIFF further alleges that the station counters in DEFENDANTS stores
19 provide ample space at work stations to allow for the presence and use of a stool or seat by
20 DEFENDANTS’ employees’ during the performance of their work duties. DEFENDANTS’
21 employees’ working at DEFENDANTS’ facilities spend a very substantial portion, and, in many
22 workdays, the vast majority of their working time behind a counter. The nature of the position
23 can reasonably be accomplished while using a seat/stool.

24 46. In violation of the applicable sections of the California Labor Code and the
25 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
26 DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly
27 and systematically failed to provide PLAINTIFF and the other CALIFORNIA CLASS members
28 suitable seating when the nature of these employees’ work reasonably permitted sitting.

1 47. DEFENDANT knew or should have known that PLAINTIFF and other
2 CALIFORNIA CLASS members were entitled to suitable seating and/or were entitled to sit
3 when it did not interfere with the performance of their duties, and that DEFENDANTS did not
4 provide suitable seating and/or did not allow them to sit when it did not interfere with the
5 performance of their duties. By reason of this conduct applicable to PLAINTIFF and all
6 CALIFORNIA CLASS members, DEFENDANTS violated California Labor Code Section 1198
7 and Wage Order 4-2001, Section 14 by failing to provide suitable seats.

8 **I. Unlawful Deductions**

9 48. 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 **J. Timekeeping Manipulation**

14 49. 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 50. 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 51. 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 52. 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 **K. Unlawful Rounding Practices**

12 53. 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 54. 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 55. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
4 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
5 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
6 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
7 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
8 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
9 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
10 rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during
11 what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and
12 rest breaks without additional compensation and in accordance with DEFENDANTS' strict
13 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
14 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed
15 to reimburse PLAINTIFF for required business expenses related to the personal expenses
16 incurred for the maintenance and cleaning of her uniform, on behalf of and in furtherance of her
17 employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF
18 the minimum, overtime and double time compensation still owed to her or any penalty wages
19 owed to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually
20 does not exceed the sum or value of \$75,000.

21 **L. Violations for Untimely Payment of Wages**

22 56. Pursuant to California Labor Code section 204, PLAINTIFF and the
23 CALIFORNIA CLASS members were entitled to timely payment of wages during their
24 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
25 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
26 meal period premium wages, and rest period premium wages within permissible time period.

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CLASS ACTION ALLEGATIONS

1
2 57. PLAINTIFF brings this Class Action on behalf of herself, and a California class
3 defined as all persons who are or previously were employed by Defendant Sater Foothill Group
4 and/or Defendant Sater Foothill and/or Defendant Sater Oil Group and/or Defendant Sater Oil
5 International in California and classified as non-exempt employees (the “CALIFORNIA
6 CLASS”) at any time during the period beginning four (4) years prior to the filing of this
7 Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).

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

14 59. The members of the class are so numerous that joinder of all class members is
15 impractical.

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

- 25 a. Whether DEFENDANT maintained legally compliant meal period policies and
- 26 practices;
- 27 b. Whether DEFENDANT maintained legally compliant rest period policies and
- 28 practices;

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

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

23 62. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
24 PLAINTIFF has the same interests as the other members of the class.

25 63. PLAINTIFF will fairly and adequately represent and protect the interests of the
26 CALIFORNIA CLASS Members.

27 64. PLAINTIFF retained able class counsel with extensive experience in class action
28 litigation.

1 65. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
2 interest of the other CALIFORNIA CLASS Members.

3 66. There is a strong community of interest among PLAINTIFF and the members of
4 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
5 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
6 sustained.

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

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

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

25 69. Class treatment provides manageable judicial treatment calculated to bring an
26 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
27 the conduct of DEFENDANT.

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

5 70. 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 71. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 73. By the conduct alleged herein, DEFENDANTS have engaged and continue to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
25 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
26 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
27 constitute unfair competition, including restitution of wages wrongfully withheld.

28 74. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and
unfair in that these practices violated public policy, were immoral, unethical, oppressive
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

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

12 76. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
13 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
14 other members of the CALIFORNIA CLASS to be underpaid during their employment with
15 DEFENDANTS.

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

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

25 79. PLAINTIFF further demands on behalf of herself and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
27 not timely provided as required by law.
28

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

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

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

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

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

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1 **SECOND CAUSE OF ACTION**

2 **Failure To Pay Minimum Wages**

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

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

5 84. 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 85. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
9 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
10 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate
11 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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

24 90. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
25 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
26 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
27 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

28

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

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

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

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

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

25 96. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
27 and provide them with the requisite compensation, DEFENDANTS acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the

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

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

23 99. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
24 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees
26 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
27 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.
28

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

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

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

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

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

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

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

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

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

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

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

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

1 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
2 their overtime worked.

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

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

21 **FOURTH CAUSE OF ACTION**

22 **Failure To Provide Required Meal Periods**

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

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

25 114. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and
26 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
27 Complaint.
28

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

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

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

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1 **FIFTH CAUSE OF ACTION**

2 **Failure To Provide Required Rest Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

5 118. 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.

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

22 120. 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 rest 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 rest period was not provided.

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

4 **SIXTH CAUSE OF ACTION**

5 **Failure To Provide Accurate Itemized Statements**

6 **(Cal. Lab. Code § 226)**

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

8 122. 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.

11 123. Cal. Labor Code § 226 provides that an employer must furnish employees with an
 12 “accurate itemized” statement in writing showing:

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

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

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

12 125. Further, from time to time, DEFENDANTS included Meal Premium hours into the
13 computation of total hours worked for purposes of Cal. Lab. Code §226(a)(2), notwithstanding
14 the fact that Meal Premium hours are not considered hours worked. DEFENDANTS' inclusion
15 of Meal Premium hours into the total hours worked in itemized wage statements issued to
16 PLAINTIFFS and other CALIFORNIA CLASS Members violates Cal. Lab. Code §226(a)(2)

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

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

1 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
2 of the CALIFORNIA CLASS herein).

3 **SEVENTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code § 203)**

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

7 128. 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.

10 129. Cal. Lab. Code § 200 provides that:

11 As used in this article:

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

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

21 131. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

133. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with
Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
quits, the wages of the employee shall continue as a penalty from the due date thereof at

1 the same rate until paid or until an action therefor is commenced; but the wages shall not
2 continue for more than 30 days.

3 134. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
4 terminated, and DEFENDANTS have not tendered payment of wages to these employees who
5 missed meal and rest breaks, as required by law.

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

11 **EIGHTH CAUSE OF ACTION**

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

13 **(Cal. Lab. Code §§ 2802)**

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

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

18 137. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

24 138. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
25 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
26 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
27 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
28 members for expenses which included, but were not limited to, personal expenses incurred for
the maintenance and cleaning of their uniforms, all on behalf of and for the benefit of
DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were
required by DEFENDANTS to clean and maintain their uniforms to execute their essential job

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

10 139. 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 **FAILURE TO PROVIDE SICK PAY AND FAILURE TO PROVIDE PAID SICK LEAVE**
16 **BALANCE**

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

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

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

22 141. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
23 July 1, 2015, works in California for the same employer for 30 or more days within a year from
24 the commencement of employment is entitled to paid sick days as specified in this section.”

25 142. Further, Cal. Labor Code Sections 246 (b)-(d) provide:

26 (b)(1) An employee shall accrue paid sick days at the rate of not less than one hour
27 per every 30 hours worked, beginning at the commencement of employment or the
28 operative date of this article, whichever is later, subject to the use and accrual
limitations set forth in this section.

1 (2) An employee who is exempt from overtime requirements as an
2 administrative, executive, or professional employee under a wage order of
3 the Industrial Welfare Commission is deemed to work 40 hours per
4 workweek for the purposes of this section, unless the employee's normal
workweek is less than 40 hours, in which case the employee shall accrue
paid sick days based upon that normal workweek.

5 (3) An employer may use a different accrual method, other than providing
6 one hour per every 30 hours worked, provided that the accrual is on a regular
7 basis so that an employee has no less than 24 hours of accrued sick leave or
paid time off by the 120th calendar day of employment or each calendar
year, or in each 12-month period.

8 (4) An employer may satisfy the accrual requirements of this section by
9 providing not less than 24 hours or three days of paid sick leave that is
10 available to the employee to use by the completion of the employee's 120th
calendar day of employment.

11 (c) An employee shall be entitled to use accrued paid sick days beginning on the
12 90th day of employment, after which day the employee may use paid sick days as
they are accrued.

13 (d) Accrued paid sick days shall carry over to the following year of employment.
14 However, an employer may limit an employee's use of accrued paid sick days to
15 24 hours or three days in each year of employment, calendar year, or 12-month
16 period. This section shall be satisfied and no accrual or carryover is required if the
full amount of leave is received at the beginning of each year of employment,
calendar year, or 12-month period. The term "full amount of leave" means three
days or 24 hours.

17 143. From time to time, DEFENDANT failed to have a policy or practice that provided
18 PLAINTIFF and other members of the CALIFORNIA CLASS with paid sick days and/or sick pay.

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

23 145. From time-to-time, during the PLAINTIFF and other members of the
24 CALIFORNIA CLASS were compensated at an hourly rate plus either non-discretionary incentive
25 pay. As a matter of law, the incentive compensation and/or piece-rate compensation received by
26 PLAINTIFF and other members of the CALIFORNIA CLASS must be included in the "regular
27 rate of pay."
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1 146. 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.

6 147. 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.

20 148. 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."

29 149. From time to time, DEFENDANT failed to furnish PLAINTIFF and other members
30 of the CALIFORNIA CLASS with written wage statements setting forth the amount of paid sick

1 leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.* As a result, PLAINTIFF
2 and other members of the CALIFORNIA CLASS are entitled to seek and recover 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: March 7, 2023

JCL LAW FIRM, APC

By: 

Jean-Claude Lanuyade, Esq.
Attorney for PLAINTIFFS

DEMAND FOR A JURY TRIAL

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

DATED: March 7, 2023

JCL LAW FIRM, APC

By: 

Jean-Claude Lanuyade, Esq.
Attorney for PLAINTIFF