

**SUMMONS  
(CITACION JUDICIAL)**

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

BH-SD OPCO, LLC, dba ALVARADO PARKWAY INSTITUTE BEHAVIORAL HEALTH SYSTEMS, a Delaware Limited Liability Company; BH-SD DD OPCO, LLC dba ALVARADO PARKWAY INSTITUTE BEHAVIORAL HEALTH SYSTEMS, a Delaware Limited Liability Company; and DOES 1-50, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**

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

KIMBERLEE CALIFANO, an individual(s), on behalf of herself and on behalf of all persons similarly situated,

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**02/04/2022 at 12:14:17 PM**

Clerk of the Superior Court  
By Melissa Valdez, Deputy Clerk

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](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 Courthouse  
330 W Broadway  
San Diego, CA 92101

CASE NUMBER:  
(Número del Caso): 37-2022-00004654-CU-0E-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291  
JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 02/07/2022  
(Fecha)

Clerk, by \_\_\_\_\_  
(Secretario)

*M. Valdez*  
M. Valdez

\_\_\_\_\_, Deputy  
(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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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO**

KIMBERLEE CALIFANO, an individual(s),  
on behalf of herself and on behalf of all  
persons similarly situated,

Plaintiff,

v.

BH-SD OPCO, LLC, dba ALVARADO  
PARKWAY INSTITUTE BEHAVIORAL  
HEALTH SYSTEMS, a Delaware Limited  
Liability Company; BH-SD DD OPCO, LLC  
dba ALVARADO PARKWAY INSTITUTE  
BEHAVIORAL HEALTH SYSTEMS, a  
Delaware Limited Liability Company; and  
DOES 1-50, Inclusive,

Defendants.

Case No: 37-2022-00004654 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 CALIFORNIA LABOR  
CODE §2802.

**DEMAND FOR A JURY TRIAL**

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

**THE PARTIES**

12 1. Defendant BH-SD OPCO, LLC dba ALVARADO PARKWAY INSTITUTE  
13 BEHAVIORAL HEALTH SYSTEMS (“Defendant BH-SD OPCO”) is a Delaware limited  
14 liability company that at all relevant times mentioned herein conducted and continues to conduct  
15 substantial and regular business in the state of California, county of San Diego.

16 2. Defendant BH-SD DD OPCO, LLC dba ALVARADO PARKWAY INSTITUTE  
17 BEHAVIORAL HEALTH SYSTEMS (“Defendant BH-SD DD OPCO”) is a Delaware limited  
18 liability company that at all relevant times mentioned herein conducted and continues to conduct  
19 substantial and regular business in the state of California, county of San Diego.

20 3. Defendant BH-SD OPCO and Defendant BH-SD DD OPCO were the joint  
21 employers of PLAINTIFF as evidenced by the contracts signed and by the company the  
22 PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers  
23 for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or  
24 “DEFENDANT.”

25 4. DEFENDANTS operate behavioral mental health centers in the State of  
26 California, county of San Diego, where PLAINTIFF worked.

27 5. The true names and capacities, whether individual, corporate, subsidiary,  
28 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently  
unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant

1 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the  
2 true names and capacities of Does 1 through 50, inclusive, when they are ascertained.  
3 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that  
4 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter  
5 collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one  
6 or more of the events and happenings that proximately caused the injuries and damages  
7 hereinafter alleged.

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

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

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

27 9. PLAINTIFF has been employed by DEFENDANT in California since December  
28 2005 and was at all times classified by DEFENDANT 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.



1 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of  
2 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

3 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
4 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and  
5 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities  
6 in this County and/or conducts substantial business in this County, and (ii) committed the  
7 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

8 **THE CONDUCT**

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

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1     **A. Meal Period Violations**

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

18           18. From time-to-time during the CLASS PERIOD, as a result of their rigorous work  
19 requirements and DEFENDANTS’ inadequate staffing practices, PLAINTIFF and other  
20 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-  
21 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and  
22 other CALIFORNIA CLASS Members were required from time to time to perform work as  
23 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a  
24 meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and  
25 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which  
26 these employees were required by DEFENDANTS to work ten (10) hours of work from time to  
27 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS  
28 Members does not qualify for a limited and narrowly construed “on-duty” meal period exception.

1 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS  
2 Members were, from time to time, required to remain on duty and on call. Further, from time to  
3 time, PLAINTIFF and other CALIFORNIA CLASS Members were required to remain on duty,  
4 on call, and/or on the premises, and/or to carry cordless communication devices and respond to  
5 communications received on said devices during what was supposed to be their off-duty meal  
6 periods. PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks  
7 without additional compensation and in accordance with DEFENDANTS' strict corporate policy  
8 and practice.

9 **B. Rest Period Violations**

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

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1     **C. Reporting Time Violations**

2           20.     The applicable Wage Order requires that on each workday that an employee  
3 reports for work, as scheduled, but is not put to work or is furnished less than half of the  
4 employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or  
5 scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at  
6 the employee’s regular rate of pay, which shall not be less than the minimum wage. The  
7 applicable Wage Order denominates this as “Reporting Time Pay.”

8           21.     Specifically, DEFENDANTS required PLAINTIFF and other CALIFORNIA  
9 CLASS Members to be on-call outside of their regularly scheduled shifts. From time-to-time,  
10 over the course of their employment, PLAINTIFF and other CALIFORNIA CLASS Members,  
11 reported to work by being on-call as required by DEFENDANTS. On these days, PLAINTIFF  
12 and other CALIFORNIA CLASS Members were not put to work and/or were not furnished with  
13 work for less than half of their scheduled shift. When PLAINTIFF and other CALIFORNIA  
14 CLASS Members report to work, as scheduled, but are furnished less than half of their scheduled  
15 day’s work, PLAINTIFF and other CALIFORNIA CLASS Members are not compensated with  
16 Reporting Time pay, as required by the applicable Wage Order, in that they are not paid a  
17 minimum of two hours or for half of their scheduled day’s work, not to exceed four hours.

18     **D. Unlawful Rounding Violations**

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

1 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 23. Further, the mutability of DEFENDANTS' timekeeping system and unlawful  
4 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time  
5 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding  
6 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work  
7 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an  
8 off-duty meal break. Additionally, DEFENDANTS' unlawful rounding policy and practice  
9 caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by  
10 DEFENDANTS for more than ten (10) hours during a shift without receiving a second off-duty  
11 meal break.

12 **E. Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and**  
13 **Sick Pay**

14 24. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and  
15 continue 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 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages  
18 due them for working overtime without compensation at the correct overtime and double time  
19 rates, meal and rest period premiums, and sick pay rates. DEFENDANTS' uniform policy and  
20 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and  
21 double time worked, meal and rest period premiums, and sick pay in accordance with applicable  
22 law is evidenced by DEFENDANTS' business records.

23 25. 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 non-discretionary, monthly on-call pay.

26 26. The second component of PLAINTIFF'S and other CALIFORNIA CLASS  
27 members' compensation was, including but not limited to, DEFENDANTS' non-discretionary  
28 monthly on-call pay that paid PLAINTIFF and other CLASS MEMBERS wages based on their

1 being “on-call” for DEFENDANTS. The payment of monthly compensation was required to be  
2 calculated into PLAINTIFF’s and other CALIFORNIA CLASS Members’ regular rate of pay.

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

20 28. In violation of the applicable sections of the California Labor Code and the  
21 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a  
22 matter of company policy, practice and procedure, intentionally and knowingly failed to  
23 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate  
24 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay. This  
25 uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of  
26 the correct overtime and double time compensation, meal and rest period premiums, and sick pay  
27 as required by California law which allowed DEFENDANTS to illegally profit and gain an unfair  
28 advantage over competitors who complied with the law. To the extent equitable tolling operates

1 to toll claims by the CALIFORNIA CLASS members against DEFENDANTS, the CLASS  
2 PERIOD should be adjusted accordingly

3 **F. Unreimbursed Business Expenses**

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

15 30. In the course of their employment, DEFENDANTS required PLAINTIFF and  
16 other CALIFORNIA CLASS Members to use their personal cellular phone and vehicle to  
17 complete tasks as a result of and in furtherance of their job duties as employees for DEFENDANT.  
18 But for the use of their own personal cellular phones and personal vehicles, PLAINTIFF and the  
19 CALIFORNIA CLASS Members could not complete their essential job duties, including but not  
20 limited to, sending and receiving work-related communications from DEFENDANTS and picking  
21 up items from office and medical supply retailers for DEFENDANTS. However, DEFENDANTS  
22 unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their  
23 use of their personal cellular phones and personal vehicles. As a result, in the course of their  
24 employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members  
25 incurred unreimbursed business expenses, but were not limited to, costs related to the use of their  
26 personal cellular phones and personal vehicles, all on behalf of and for the benefit of  
27 DEFENDANT.

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1 **G. Wage Statement Violations**

2 31. California Labor Code Section 226 requires an employer to furnish its employees  
3 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,  
4 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net  
5 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name  
6 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 32. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
11 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed  
12 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed  
13 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate  
14 wage statements which failed to show, among other things, all applicable hourly rates in effect  
15 during the pay period and the corresponding amount of time worked at each hourly rate. Further,  
16 from time to time, DEFENDANTS failed to issue wage statements that provided the accurate  
17 name and address of the legal entity that is the employer of PLAINTIFF and other CALIFORNIA  
18 CLASS Members.

19 33. In addition to the violations described above, DEFENDANTS, from time to time,  
20 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements  
21 that comply with Cal. Lab. Code § 226.

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

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1 **H. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

2 35. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and  
3 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA  
4 CLASS for all hours worked.

5 36. During the CLASS PERIOD, from time-to-time DEFENDANTS required  
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work during a  
7 scheduled meal break while off the clock or be on-call outside of their scheduled shifts. This  
8 resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while  
9 off-the-clock.

10 37. DEFENDANTS directed and directly benefited from the uncompensated off-the-  
11 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

12 38. DEFENDANTS controlled the work schedules, duties, protocols, applications,  
13 assignments, and employment conditions of PLAINTIFF and the other members of the  
14 CALIFORNIA CLASS.

15 39. DEFENDANTS were able to track the amount of time PLAINTIFF and the other  
16 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to  
17 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
18 wages earned and owed for all the work they performed, including during meal periods while off-  
19 the-clock and while on-call outside of their scheduled shifts.

20 40. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-  
21 exempt employees, subject to the requirements of the California Labor Code.

22 41. DEFENDANTS' policies and practices deprived PLAINTIFF and the other  
23 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages  
24 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the  
25 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)  
26 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

27 42. DEFENDANTS knew or should have known that PLAINTIFF and the other  
28 members of the CALIFORNIA CLASS' off-the-clock work was compensable under the law.

1           43. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
2 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit  
3 for the time working while clocked out for meal periods and while on-call outside of their  
4 scheduled shifts. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the  
5 members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable  
6 law is evidenced by DEFENDANTS' business records.

7           **I. Unlawful Deductions**

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

12           **J. CLASS ACTION ALLEGATIONS**

13           45. PLAINTIFF brings the First through Eighth Causes of Action as a class action  
14 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or  
15 previously were employed by Defendant BH-SD OPCO and/or Defendant BH-SD DD OPCO in  
16 California and classified as non-exempt employees ("CALIFORNIA CLASS") during the period  
17 beginning four years prior to the filing of the Complaint and ending on a date determined by the  
18 Court ("CLASS PERIOD").

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

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

27           48. Common questions of law and fact regarding DEFENDANTS' conduct, including  
28 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to

1 accurately calculate the regular rate of pay for overtime compensation, failure to accurately  
2 calculate the regular rate of compensation for missed meal and rest period premiums, failure to  
3 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure  
4 to provide accurate itemized wage statements, and failure to ensure they are paid at least minimum  
5 wage and overtime, exist as to all members of the class and predominate over any questions  
6 affecting solely any individual members of the class. Among the questions of law and fact  
7 common to the class are:

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



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

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

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

8 50. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has  
9 the same interests as the other members of the class.

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

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

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

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

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

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

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

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

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

13 **FIRST CAUSE OF ACTION**

14 **Unlawful Business Practices**

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

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

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

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

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

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

1           been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §  
2           17203).

3           61.    By the conduct alleged herein, DEFENDANT has engaged and continues to  
4           engage in a business practice which violates California law, including but not limited to, the  
5           applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
6           including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,  
7           1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to  
8           Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
9           constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

22          64.    By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
23          unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the  
24          other members of the CALIFORNIA CLASS to be underpaid during their employment with  
25          DEFENDANT.

26          65.    By the conduct alleged herein, DEFENDANT's practices were also unfair and  
27          deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
28          legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members  
as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

25           71.     PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
26 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,  
27 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
28 engaging in any unlawful and unfair business practices in the future.

1           72.     PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
2 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
3 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a  
4 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other  
5 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal  
6 and economic harm unless DEFENDANT is restrained from continuing to engage in these  
7 unlawful and unfair business practices.

8                                     **SECOND CAUSE OF ACTION**

9                                     **Failure To Pay Minimum Wages**

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

11                                    **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

15           74.     PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim  
16 for DEFENDANT’S willful and intentional violations of the California Labor Code and the  
17 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate  
18 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

21           76.     Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
22 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than  
23 the minimum so fixed is unlawful.

24           77.     Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,  
25 including minimum wage compensation and interest thereon, together with the costs of suit.

26           78.     DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the  
27 other members of the CALIFORNIA CLASS without regard to the correct amount of time they  
28 worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and

1 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the  
2 CALIFORNIA CLASS.

3 79. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,  
4 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
5 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF  
6 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

7 80. In committing these violations of the California Labor Code, DEFENDANT  
8 inaccurately calculated the amount of time worked and consequently underpaid the actual time  
9 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted  
10 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of  
11 the California Labor Code, the Industrial Welfare Commission requirements and other applicable  
12 laws and regulations.

13 81. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,  
14 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
15 minimum wage compensation for their time worked for DEFENDANT.

16 82. During the CLASS PERIOD, PLAINTIFF and the other members of the  
17 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a  
18 failure to pay all earned wages.

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

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

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

3 85. 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, DEFENDANT acted and continues to act  
6 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the  
7 CALIFORNIA CLASS with a conscious 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 86. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore  
12 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the  
13 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the  
14 California Labor Code and/or other applicable statutes. To the extent minimum wage  
15 compensation is determined to be owed to the CALIFORNIA CLASS Members who have  
16 terminated their employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or  
17 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.  
18 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS  
19 Members. DEFENDANT'S conduct as alleged herein was willful, intentional and not in good  
20 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and  
21 recover statutory costs.

22 **THIRD CAUSE OF ACTION**

23 **Failure To Pay Overtime Compensation**

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

25 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

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

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

16           92.       During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members  
17 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time  
18 they worked, including overtime work.

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

26           94.       In committing these violations of the California Labor Code, DEFENDANT  
27 inaccurately recorded overtime worked and consequently underpaid the overtime worked by  
28 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal



1 attempt to avoid the payment of all earned wages, and other benefits in violation of the California  
2 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and  
3 regulations.

4 95. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
5 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full  
6 compensation for overtime worked.

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

15 97. During the CLASS PERIOD, PLAINTIFF and the other members of the  
16 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,  
17 constituting a failure to pay all earned wages.

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

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

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

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

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

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**FOURTH CAUSE OF ACTION**

**Failure To Provide Required Meal Periods**

**(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

1 106. 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 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

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

8 107. 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.

11 108. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were  
12 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.  
13 Further, these employees were denied their first rest periods of at least ten (10) minutes for some  
14 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)  
15 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and  
16 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.  
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, PLAINTIFF and other  
19 CALIFORNIA CLASS Members were periodically denied their proper rest periods by  
20 DEFENDANT and DEFENDANT's managers. As a result, DEFENDANT's failure to provide  
21 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest  
22 periods is evidenced by DEFENDANT's business records.

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

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1 110. 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)**

8 111. 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.

11 112. 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. total hours worked by the employee, except for any employee whose compensation  
15 is solely based on a salary and who is exempt from payment of overtime  
16 under subdivision (a) of Section 515 or any applicable order of the Industrial  
17 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           113. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA  
4 CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest  
5 period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide  
6 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage  
7 statements which failed to show, among other things, the total hours worked and all applicable  
8 hourly rates in effect during the pay period and the corresponding amount of time worked at each  
9 hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. Further,  
10 from time to time, DEFENDANTS failed to issue wage statements that provided the accurate  
11 name and address of the legal entity that is the employer of PLAINTIFF and other CALIFORNIA  
12 CLASS Members.

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

16           115. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code  
17 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA  
18 CLASS. These damages include, but are not limited to, costs expended calculating the correct  
19 wages for all missed meal and rest breaks and the amount of employment taxes which were not  
20 properly paid to state and federal tax authorities. These damages are difficult to estimate.  
21 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover  
22 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation  
23 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period  
24 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no  
25 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member  
26 of the CALIFORNIA CLASS herein).

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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)**

5 116. 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.

8 117. 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.

16 118. 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."

19 119. 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.

29 120. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS  
30 Members' employment contract.

31 121. 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.

1 122. The employment of PLAINTIFF and many CALIFORNIA CLASS Members  
2 terminated, and DEFENDANT has not tendered payment of wages to these employees who were  
3 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as  
4 required by law.

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

10 **EIGHTH CAUSE OF ACTION**

11 **Failure To Reimburse Employees For Required Expenses**

12 **(Cal. Lab. Code §§ 2802)**

13 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

17 125. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

22 126. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.  
23 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the  
24 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for  
25 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of  
26 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to  
27 using their personal cell phones and personal vehicles all on behalf of and for the benefit of  
28 DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were  
required by DEFENDANTS to use their personal cell phones and personal vehicles to execute  
their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice



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

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

14 **PRAYER FOR RELIEF**

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

17  
18 1. On behalf of the CALIFORNIA CLASS:

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

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2. On behalf of the CALIFORNIA CLASS:

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

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.

DATED: February 4, 2022

**JCL LAW FIRM, APC**

By:  \_\_\_\_\_

Jean-Claude Lapuyade  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: February 4, 2022

**JCL LAW FIRM, APC**



By: \_\_\_\_\_

Jean-Claude Lapuyade  
Attorney for PLAINTIFF