

**SUMMONS**  
**(CITACION JUDICIAL)**

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

EMPLOYBRIDGE HOLDING COMPANY., a Delaware Corporation;  
and DOES 1 through 50, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**

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

GRISELDA DURAN, an individual, on behalf of herself and on behalf of  
all persons similarly situated,

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ELECTRONICALLY FILED**

7/9/2020

**Kern County Superior Court**  
**By Candice Rocha, Deputy**

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):

Kern Superior Court  
1415 Truxtun Avenue  
Bakersfield, CA 93301

CASE NUMBER:  
(Número del Caso): **BCV-20-101583**

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Shani O. Zakay, Esq. (SBN 277924); T: 619-255-9047; F: 858-404-9203

Zakay Law Group, APLC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

Candice Rocha

DATE:  
(Fecha) 7/9/2020

TAMARAH HARBER-PICKENS

Clerk, by \_\_\_\_\_, Deputy  
(Secretaria) (Adjunto)

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

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

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

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

[SEAL]



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FAX: (619) 599-8291

7 ATTORNEYS FOR PLAINTIFF

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF KERN**

10 GRISELDA DURAN, an individual, on behalf of  
11 herself and on behalf of all persons similarly  
situated,

12 Plaintiff,

13 vs.

14 EMPLOYBRIDGE HOLDING COMPANY., a  
15 Delaware Corporation; and DOES 1 through 50,  
16 inclusive,

17 Defendants.

Case No. BCV-20-101583

**REPRESENTATIVE ACTION**  
**COMPLAINT FOR:**

1) VIOLATIONS OF THE PRIVATE  
ATTORNEY GENERAL ACT  
PURSUANT TO LABOR CODE  
SECTIONS 2698, et seq.

**DEMAND FOR JURY TRIAL**

1 Plaintiff GRISELDA DURAN (“PLAINTIFF”), on behalf of the people of the State of  
2 California and as “aggrieved employees” acting as a private attorney general under the Labor Code  
3 Private Attorney General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information and  
4 belief, except for her own acts and knowledge which are based on personal knowledge, the following:

5 **INTRODUCTION**

6 1. PLAINTIFF brings this action against EMPLOYBRIDGE HOLDING COMPANY  
7 (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA civil penalties for herself, and  
8 on behalf of all current and former aggrieved employees that worked for DEFENDANTS. PLAINTIFF  
9 does **not seek to recover anything other than penalties as permitted by California Labor Code §**  
10 **2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does not  
11 seek underlying general and/or special damages for those violations in this action, but simply the civil  
12 penalties permitted by California Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning  
13 her right to pursue her individual claims for, *inter alia*, Defendant’s alleged wage violations, and/or  
14 general or special damages arising from those violations, and she fully intends to, at a future date,  
15 pursue claims for those individual claims and damages.

16 2. California has enacted the PAGA to permit an individual to bring an action on behalf of  
17 herself and on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this  
18 action.

19 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANTS’  
20 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any  
21 other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be  
22 construed as attempting to obtain any relief that would not be available in a PAGA-only action.

23 **THE PARTIES**

24 4. Defendant EMPLOYBRIDGE HOLDING COMPANY (“DEFENDANT”) is a Delaware  
25 corporation and at all relevant times mentioned herein conducted and continues to conduct substantial  
26 and regular business throughout the State of California.

27 5. DEFENDANT owns and operates various staffing agencies throughout the United States.  
28 Defendant staffs many companies in California. Generally, DEFENDANT assigns employees it hires

1 to work for its clients.

2 6. PLAINTIFF was employed by DEFENDANT in California from April 2018 to August  
3 2019 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly  
4 basis, and entitled bonuses, and to the legally required meal and rest periods and payment of minimum  
5 and overtime wages due for all time worked. From August 2018 to August 2019 Plaintiff worked  
6 directly for DEFENDANT and was not assigned to any of DEFENDANT's clients.

7 7. PLAINTIFF, and such persons that may be added from time to time who satisfy the  
8 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring  
9 this Representative Action on behalf of the State of California with respect to herself and all individuals  
10 who are or previously were employed by DEFENDANT as sales persons in California (the  
11 "AGGRIEVED EMPLOYEES") during the time period of April 6, 2016 until the present (the "PAGA  
12 PERIOD").

13 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently or  
14 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action  
15 pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of California  
16 Labor Code §§ 201 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, & 2802  
17 and the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED  
18 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

19 9. The true names and capacities, whether individual, corporate, subsidiary, partnership,  
20 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to  
21 PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc.  
22 Code § 474. PLAINTIFF will seek leave to amend this Second Amended Complaint to allege the true  
23 names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is  
24 informed and believes, and based upon that information and belief alleges, that the Defendants named  
25 in this Second Amended Complaint, including DOES 1 through 50, inclusive, are responsible in some  
26 manner for one or more of the events and happenings that proximately caused the injuries and damages  
27 hereinafter alleged.

28 10. The agents, servants and/or employees of the Defendants and each of them acting on

1 behalf of the Defendants acted within the course and scope of his, her or its authority as the agent,  
2 servant and/or employee of the Defendants, and personally participated in the conduct alleged herein  
3 on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each  
4 Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally  
5 liable to PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate  
6 result of the conduct of the Defendants' agents, servants and/or employees.

### 7 **THE CONDUCT**

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

22 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED  
23 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were  
24 not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES  
25 were required to perform work as ordered by DEFENDANT for more than five (5) hours during some  
26 shifts without receiving a meal break. Further, DEFENDANT from time to time failed to provide  
27 PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays  
28 in which these employees were required by DEFENDANT to work ten (10) hours of work.

1 PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional  
2 compensation and in accordance with DEFENDANT's strict corporate policy and practice.  
3 DEFENDANT failed to maintain adequate staffing levels while increasing the production levels for  
4 each employee at the busy work sites they provided services for.

5 13. During the PAGA PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members  
6 were also required from time to time to work in excess of four (4) hours without being provided ten  
7 (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten  
8 (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and  
9 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)  
10 hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some  
11 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA  
12 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their  
13 rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time  
14 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

15 14. During the PAGA PERIOD, DEFENDANTS failed and continue to fail to accurately  
16 calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their overtime worked.  
17 DEFENDANT unlawfully and unilaterally failed to accurately calculate wages for overtime worked by  
18 PLAINTIFF and other AGGRIEVED EMPLOYEES in order to avoid paying these employees the  
19 correct overtime compensation. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES  
20 forfeited wages due them for working overtime without compensation at the correct overtime rates.  
21 DEFENDANT's uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct  
22 overtime rate for all overtime worked in accordance with applicable law is evidenced by  
23 DEFENDANT's business records.

24 15. State law provides that employees must be paid overtime at one-and-one-half times their  
25 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an  
26 hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

27 16. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'  
28 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and

1 other CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANT.  
2 The non-discretionary incentive program provided all employees paid on an hourly basis with incentive  
3 compensation when the employees met the various performance goals set by DEFENDANT. However,  
4 when calculating the regular rate of pay in order to pay overtime to PLAINTIFF and other  
5 AGGRIEVED EMPLOYEES, DEFENDANTS failed to include the incentive compensation as part of  
6 the employees' "regular rate of pay" for purposes of calculating overtime pay. Management and  
7 supervisors described the incentive program to potential and new employees as part of the  
8 compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and  
9 other AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to do so  
10 has resulted in a systematic underpayment of overtime compensation to PLAINTIFF and other  
11 AGGRIEVED EMPLOYEES by DEFENDANT.

12 17. In violation of the applicable sections of the California Labor Code and the requirements  
13 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company  
14 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the  
15 other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime worked. This uniform  
16 policy and practice of DEFENDANT is intended to purposefully avoid the payment of the correct  
17 overtime compensation as required by California law which allowed DEFENDANT to illegally profit  
18 and gain an unfair advantage over competitors who complied with the law. To the extent equitable  
19 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA  
20 PERIOD should be adjusted accordingly.

21 18. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay  
22 PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these employees  
23 worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to  
24 pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, meaning the time during  
25 which an employee was subject to the control of an employer, including all the time the employee was  
26 permitted or suffered to permit this work. DEFENDANT required these employees to work off the  
27 clock without paying them for all the time they were under DEFENDANT's control. As such,  
28 DEFENDANT knew or should have known that PLAINTIFF and the other AGGRIEVED

1 EMPLOYEES were under compensated for all time worked. As a result, PLAINTIFF and other  
2 AGGRIEVED EMPLOYEES forfeited time worked by working without their time being accurately  
3 recorded and without compensation at the applicable minimum wage and overtime wage rates. To the  
4 extent that the time worked off the clock did not qualify for overtime premium payment, DEFENDANT  
5 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,  
6 1197, and 1197.1.

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

17 20. In the course of their employment PLAINTIFF and other AGGRIEVED EMPLOYEES  
18 as a business expense, were required by DEFENDANT to use their own personal cellular phones as a  
19 result of and in furtherance of their job duties as employees for DEFENDANT but were not reimbursed  
20 or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones  
21 for DEFENDANT's benefit. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were  
22 required by DEFENDANT to use their personal cell phones for work related issues. As a result, in the  
23 course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES  
24 incurred unreimbursed business expenses which included, but were not limited to, costs related to the  
25 use of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

26 21. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other  
27 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,  
28 among other things, the correct wages paid. Cal. Lab. Code § 226 provides that every employer shall

1 furnish each of his or her employees with an accurate itemized wage statement in writing showing,  
2 among other things, gross wages earned and all applicable hourly rates in effect during the pay period  
3 and the corresponding amount of time worked at each hourly rate. Aside, from the violations listed  
4 above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that  
5 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time  
6 to time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements which  
7 violated Cal. Lab. Code § 226.

8           22. In violation of the applicable sections of the California Labor Code and the requirements  
9 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company  
10 policy, practice and procedure, intentionally, knowingly and systematically failed to compensate  
11 PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest periods. This  
12 uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment for all  
13 time worked as required by California law which allows DEFENDANT to illegally profit and gain an  
14 unfair advantage over competitors who complied with the law. To the extent equitable tolling operates  
15 to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should  
16 be adjusted accordingly.

17           23. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required  
18 off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor Code and  
19 failed to pay her all minimum and overtime wages due to her. DEFENDANT did not have a policy or  
20 practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also failed to  
21 compensate PLAINTIFF for her missed meal and rest breaks. The nature of the work performed by the  
22 PLAINTIFF did not prevent her from being relieved of all of her duties for the legally required off-  
23 duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally  
24 required meal periods is evidenced by DEFENDANT's business records. As a result of DEFENDANT  
25 not accurately recording all missed meal and rest periods and/or minimum and overtime wages due, the  
26 wage statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,  
27 Labor Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of her wages due  
28 to her and DEFENDANT has failed to pay any penalty wages owed to her under California Labor Code

1 Section 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value  
2 of \$75,000.

3 **JURISDICTION AND VENUE**

4 24. This Court has jurisdiction over this Action pursuant to California Code of Civil  
5 Procedure, Section 410.10.

6 25. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections  
7 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained  
8 offices and facilities in this County and/or conducts substantial business in this County, and (ii)  
9 committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.

10  
11 **FIRST CAUSE OF ACTION**

12 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

13 **[Cal. Lab. Code §§ 2698 et seq.]**

14 **(Alleged by PLAINTIFF against all Defendants)**

15 26. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein,  
16 the prior paragraphs of this Second Amended Complaint.

17 27. PAGA is a mechanism by which the State of California itself can enforce state labor laws  
18 through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law  
19 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law  
20 enforcement action designed to protect the public and not to benefit private parties. The purpose of  
21 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as  
22 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature  
23 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys  
24 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,  
25 PAGA claims cannot be subject to arbitration.

26 28. PLAINTIFF, and such persons that may be added from time to time who satisfy the  
27 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring  
28 this Representative Action on behalf of the State of California with respect to herself and all individuals

1 who are or previously were employed by DEFENDANT as sales persons in California during the time  
2 period of April 6, 2019 until the present (the "AGGRIEVED EMPLOYEES").

3 29. On May 1, 2020, PLAINTIFF gave written notice by certified mail to the Labor and  
4 Workforce Development Agency (the "Agency") and the employer of the specific provisions of  
5 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached  
6 hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add  
7 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF  
8 may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of  
9 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

10 30. The policies, acts and practices heretofore described were and are an unlawful business  
11 act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES  
12 minimum wages and overtime wages, (b) failed to provide PLAINTIFFS and other GGRIEVED  
13 EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate itemized wage  
14 statements, and (d) failed to timely pay wages, all in violation of the applicable Labor Code sections  
15 listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201 202, 203, 204, 210, 226,  
16 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, & 2802, and the applicable Industrial Wage Order(s),  
17 and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks  
18 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the  
19 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other  
20 AGGRIEVED EMPLOYEES.

21 31. Some or all of the conduct and violations alleged herein occurred during the PAGA  
22 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF  
23 during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other  
24 AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See  
25 also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an  
26 “aggrieved employee”—a person affected by **at least one** Labor Code violation committed by an  
27 employer—to **pursue penalties for all the Labor Code violations committed by that employer.**”],  
28 Emphasis added, reh'g denied (June 13, 2018).)

1 **PRAYER FOR RELIEF**

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

- 4 1. On behalf of the State of California and with respect to all AGGRIEVED  
5 EMPLOYEES:
- 6 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys  
7 General Act of 2004; and
  - 8 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the  
9 law.
- 10

11 Dated: July 8, 2020

Respectfully Submitted,  
ZAKAY LAW GROUP, A.P.C.

12  
13 By:   
14 Shani O. Zakay  
15 Attorneys for Plaintiff

16  
17  
18 **DEMAND FOR JURY TRIAL**

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

20  
21 Dated: July 8, 2020

Respectfully Submitted,  
ZAKAY LAW GROUP, A.P.C.

22  
23 By:   
24 Shani O. Zakay  
25 Attorneys for Plaintiff

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**EXHIBIT 1**



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

[shani@zakaylaw.com](mailto:shani@zakaylaw.com)

April 30, 2020

Labor & Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
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***Via Online Submission***

**EMPLOYBRIDGE HOLDING COMPANY**  
c/o CORPORATE CREATIONS NETWORK INC.

4640 Admiralty Way, 5<sup>th</sup> Floor  
Marina del Rey, CA 90292

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802 and Applicable Industrial Welfare Commission Wage Orders, California Code or regulations, Title 8 Section 1 1070(14) (Failure to Provide Seating) and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents GRISELDA DURAN (“Plaintiff”) and other aggrieved employees in an action against EMPLOYBRIDGE HOLDING COMPANY, (“Defendant”). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from April 2018 to August 2019. From August 2018 to August 2019 Plaintiff worked directly for Defendant and was not assigned to any of Defendant’s clients. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay.

As a consequence, Plaintiff contends that Defendant failed to fully compensate her, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802 and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and 2698 *et seq.*

A copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii)

details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,



Shani O. Zakay  
Attorney at Law

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Attorneys for Plaintiff

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF KERN**

11 GRISELDA DURAN, an individual, on behalf  
12 of herself and on behalf of all persons similarly  
13 situated,

14  
15 Plaintiff,

16 vs.

17 EMPLOYBRIDGE HOLDING COMPANY.,  
18 a Delaware Corporation; and DOES 1 through  
19 50, inclusive,

20  
21 Defendants.

Case No:

**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 REIMURSE EXMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
- 9) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, *et seq*.

**DEMAND FOR A JURY TRIAL**

1 Plaintiff GRISELDA DURAN (“PLAINTIFF”), an individual, on behalf of herself and all other  
2 similarly situated current and former employees, alleges on information and belief, except for her  
3 own acts and knowledge which are based on personal knowledge, the following:

4  
5 **THE PARTIES**

6 1. Defendant EMPLOYBRIDGE HOLDING COMPANY (“DEFENDANT”) is a  
7 corporation that at all relevant times mentioned herein conducted and continues to conduct  
8 substantial business in the state of California.

9 2. DEFENDANT owns and operates various staffing agencies throughout the United  
10 States. Defendant staffs many companies in California. Generally, DEFENDANT assigns  
11 employees it hires to work for its clients.

12 3. PLAINTIFF was employed by DEFENDANT in California from April 2018 to  
13 August 2019 and was at all times classified by DEFENDANT as a non-exempt employee, paid  
14 on an hourly basis, and entitled bonuses, and to the legally required meal and rest periods and  
15 payment of minimum and overtime wages due for all time worked. From August 2018 to August  
16 2019 Plaintiff worked directly for DEFENDANT and was not assigned to any of  
17 DEFENDANT’s clients.

18 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,  
19 defined as all individuals who are or previously were employed by DEFENDANT in California  
20 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time between  
21 April 6, 2016 and on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”).  
22 The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under  
23 five million dollars (\$5,000,000.00).

24 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA  
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
26 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice  
27 which failed to lawfully compensate these employees. DEFENDANT’s uniform policy and  
28 practice alleged herein was an unlawful, unfair and deceptive business practice whereby  
DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of



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

11 9. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA  
12 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks  
13 and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA  
14 CLASS Members were required to perform work as ordered by DEFENDANT for more than five  
15 (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time  
16 to time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-  
17 duty meal period for some workdays in which these employees were required by DEFENDANT  
18 to work ten (10) hours of work. PLAINTIFF and other members of the CALIFORNIA CLASS  
19 therefore forfeited meal breaks without additional compensation and in accordance with  
20 DEFENDANT's strict corporate policy and practice. DEFENDANT failed to maintain adequate  
21 staffing levels while increasing the production levels for each employee at the busy work sites  
22 they provided services for.

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

1 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more  
2 from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not  
3 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,  
4 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their  
5 proper rest periods by DEFENDANT and DEFENDANT's managers.

6 11. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed and continue  
7 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA  
8 CLASS for their overtime worked. DEFENDANT unlawfully and unilaterally failed to accurately  
9 calculate wages for overtime worked by PLAINTIFF and other members of the CALIFORNIA  
10 CLASS in order to avoid paying these employees the correct overtime compensation. As a result,  
11 PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for  
12 working overtime without compensation at the correct overtime rates. DEFENDANT's uniform  
13 policy and practice to not pay the members of the CALIFORNIA CLASS the correct overtime  
14 rate for all overtime worked in accordance with applicable law is evidenced by DEFENDANT's  
15 business records.

16 12. State law provides that employees must be paid overtime at one-and-one-half times  
17 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were  
18 compensated at an hourly rate plus incentive pay that was tied to specific elements of an  
19 employee's performance.

20 13. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
21 Members' compensation was DEFENDANT's non-discretionary incentive program that paid  
22 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their  
23 performance for DEFENDANT. The non-discretionary incentive program provided all employees  
24 paid on an hourly basis with incentive compensation when the employees met the various  
25 performance goals set by DEFENDANT. However, when calculating the regular rate of pay in  
26 order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,  
27 DEFENDANTS failed to include the incentive compensation as part of the employees' "regular  
28 rate of pay" for purposes of calculating overtime pay. Management and supervisors described the

1 incentive program to potential and new employees as part of the compensation package. As a  
2 matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA  
3 CLASS Members must be included in the “regular rate of pay.” The failure to do so has resulted  
4 in a systematic underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA  
5 CLASS Members by DEFENDANT.

6 14. In violation of the applicable sections of the California Labor Code and the  
7 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
8 matter of company policy, practice and procedure, intentionally and knowingly failed to  
9 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate  
10 of pay for all overtime worked. This uniform policy and practice of DEFENDANT is intended to  
11 purposefully avoid the payment of the correct overtime compensation as required by California  
12 law which allowed DEFENDANT to illegally profit and gain an unfair advantage over  
13 competitors who complied with the law. To the extent equitable tolling operates to toll claims by  
14 the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should  
15 be adjusted accordingly.

16 15. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately  
17 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of  
18 time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,  
19 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all  
20 time worked, meaning the time during which an employee was subject to the control of an  
21 employer, including all the time the employee was permitted or suffered to permit this work.  
22 DEFENDANT required these employees to work off the clock without paying them for all the  
23 time they were under DEFENDANT’s control. As such, DEFENDANT knew or should have  
24 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under  
25 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS  
26 Members forfeited time worked by working without their time being accurately recorded and  
27 without compensation at the applicable minimum wage and overtime wage rates. To the extent  
28 that the time worked off the clock did not qualify for overtime premium payment, DEFENDANT

1 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§  
2 1194, 1197, and 1197.1.

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

14 17. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS  
15 Members as a business expense, were required by DEFENDANT to use their own personal  
16 cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANT  
17 but were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of  
18 their personal cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other  
19 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell  
20 phones for work related issues. As a result, in the course of their employment with  
21 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred  
22 unreimbursed business expenses which included, but were not limited to, costs related to the use  
23 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

24 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other  
25 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed  
26 to show, among other things, the correct wages paid. Cal. Lab. Code § 226 provides that every  
27 employer shall furnish each of his or her employees with an accurate itemized wage statement in  
28 writing showing, among other things, gross wages earned and all applicable hourly rates in effect

1 during the pay period and the corresponding amount of time worked at each hourly rate. Aside,  
2 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF  
3 an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*  
4 As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of the  
5 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

6 19. In violation of the applicable sections of the California Labor Code and the  
7 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
8 matter of company policy, practice and procedure, intentionally, knowingly and systematically  
9 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for  
10 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to  
11 purposefully avoid the payment for all time worked as required by California law which allows  
12 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied  
13 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS  
14 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

15 20. By reason of this uniform conduct applicable to PLAINTIFF and all  
16 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in  
17 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the  
18 "UCL"), by engaging in a company-wide policy and procedure which failed to accurately  
19 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA  
20 CLASS Members. The proper recording of these employees' missed meal and rest breaks is the  
21 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation  
22 to meet this burden, DEFENDANT failed to properly calculate and/or pay all required  
23 compensation for work performed by the members of the CALIFORNIA CLASS and violated the  
24 California Labor Code and regulations promulgated thereunder as herein alleged.

25 21. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally  
26 required off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor  
27 Code and failed to pay her all minimum and overtime wages due to her. DEFENDANT did not  
28 have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and

1 also failed to compensate PLAINTIFF for her missed meal and rest breaks. The nature of the work  
2 performed by the PLAINTIFF did not prevent her from being relieved of all of her duties for the  
3 legally required off-duty meal periods. As a result, DEFENDANT's failure to provide  
4 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business  
5 records. As a result of DEFENDANT not accurately recording all missed meal and rest periods  
6 and/or minimum and overtime wages due, the wage statements issued to PLAINTIFF by  
7 DEFENDANT violated California law, and in particular, Labor Code Section 226(a). To date,  
8 DEFENDANT has yet to pay PLAINTIFF all of her wages due to her and DEFENDANT has  
9 failed to pay any penalty wages owed to her under California Labor Code Section 203. The  
10 amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

### 11 **JURISDICTION AND VENUE**

12 22. 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 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
17 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times  
18 maintained offices and facilities in this County and/or conduct substantial business in this County,  
19 and (ii) committed the wrongful conduct herein alleged in this County against members of the  
20 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

### 21 **THE CALIFORNIA CLASS**

22 24. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
23 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class  
24 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
25 individuals who are or previously were employed by DEFENDANT in California and classified  
26 as non-exempt employees (the "CALIFORNIA CLASS") at any time between April 6, 2016 and  
27 on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in  
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1 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million  
2 dollars (\$5,000,000.00).

3 25. On April 6, 2020, due to the impact of the COVID-19 pandemic on California's  
4 judicial branch, the Judicial Council of California issued Emergency Rule Number 9 which states  
5 that, "Notwithstanding any other law, the statutes of limitation for civil causes of action are tolled  
6 from April 6, 2020, until 90 days after the Governor declare that the state of emergency related  
7 COVID-19 pandemic is lifted."

8 26. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
9 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
10 accordingly.

11 27. DEFENDANT, as a matter of company policy, practice and procedure, and in  
12 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
13 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
14 willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal  
15 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though  
16 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and  
17 permits or suffers to permit this work.

18 28. DEFENDANT has the legal burden to establish that each and every CALIFORNIA  
19 CLASS Member was paid accurately for all meal and rest breaks missed as required by California  
20 laws. The DEFENDANT, however, as a matter of uniform and systematic policy and procedure  
21 failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place  
22 a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as  
23 required by law. This common business practice is applicable to each and every CALIFORNIA  
24 CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive  
25 under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages,  
26 and reliance are not elements of this claim.

27 29. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA  
28 CLASS Members is impracticable.

1           30.     DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
2 California law by:

- 3           a.     Committing an act of unfair competition in violation of Cal. Bus. & Prof. Code §§  
4                 17200, et seq. (the "UCL"), by unlawfully, unfairly and/or deceptively having in  
5                 place company policies, practices and procedures that uniformly and  
6                 systematically failed to record and pay PLAINTIFF and the other members of the  
7                 CALIFORNIA CLASS for all time worked, including minimum wages owed and  
8                 overtime wages owed for work performed by these employees;
- 9           b.     Committing an act of unfair competition in violation of the UCL, by failing to  
10                provide the PLAINTIFF and the other members of the CALIFORNIA CLASS  
11                with the legally required meal and rest periods;
- 12           c.     Committing an act of unfair competition in violation of the UCL by failing to pay  
13                the PLAINTIFF and the other members of the CALIFORNIA CLASS the correct  
14                rate of overtime;
- 15           d.     Committing an act of unfair competition in violation of the California Unfair  
16                Competition Laws, Cal. Bus. & Prof. Code §§ 17200 et seq., by violating Cal. Lab.  
17                Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS  
18                members with necessary expenses incurred in the discharge of their job duties.

19           31.     This Class Action meets the statutory prerequisites for the maintenance of a Class  
20 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 21           a.     The persons who comprise the CALIFORNIA CLASS are so numerous that the  
22                joinder of all such persons is impracticable and the disposition of their claims as a  
23                class will benefit the parties and the Court;
- 24           b.     Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
25                raised in this Complaint are common to the CALIFORNIA CLASS will apply  
26                uniformly to every member of the CALIFORNIA CLASS;
- 27           c.     The claims of the representative PLAINTIFF are typical of the claims of each  
28                member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members

1 of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on  
2 an hourly basis who was subjected to the DEFENDANT's deceptive practice and  
3 policy which failed to provide the legally required meal and rest periods to the  
4 CALIFORNIA CLASS and thereby systematically underpaid compensation to  
5 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury  
6 as a result of DEFENDANT's employment practices. PLAINTIFF and the  
7 members of the CALIFORNIA CLASS were and are similarly or identically  
8 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
9 misconduct engaged in by DEFENDANT; and,

- 10 d. The representative PLAINTIFF will fairly and adequately represent and protect  
11 the interest of the CALIFORNIA CLASS, and has retained counsel who are  
12 competent and experienced in Class Action litigation. There are no material  
13 conflicts between the claims of the representative PLAINTIFF and the members  
14 of the CALIFORNIA CLASS that would make class certification inappropriate.  
15 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all  
16 CALIFORNIA CLASS Members.

17 32. In addition to meeting the statutory prerequisites to a Class Action, this action is  
18 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 19 a. Without class certification and determination of declaratory, injunctive, statutory  
20 and other legal questions within the class format, prosecution of separate actions  
21 by individual members of the CALIFORNIA CLASS will create the risk of:
- 22 i. Inconsistent or varying adjudications with respect to individual members  
23 of the CALIFORNIA CLASS which would establish incompatible  
24 standards of conduct for the parties opposing the CALIFORNIA CLASS;  
25 and/or;
  - 26 ii. Adjudication with respect to individual members of the CALIFORNIA  
27 CLASS which would as a practical matter be dispositive of interests of the  
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other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take proper steps to determine whether the CALIFORNIA CLASS Members were properly classified as independent contractors, and thereby denied these employees wages and payments for business expenses and the employer's share of payroll taxes and mandatory insurance as required by law.

i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANS' policies and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual

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CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

iii. In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

33. The Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members

1 because the DEFENDANT's employment practices are uniform and  
2 systematically applied with respect to the CALIFORNIA CLASS;

3 b. A Class Action is superior to any other available method for the fair and efficient  
4 adjudication of the claims of the members of the CALIFORNIA CLASS because  
5 in the context of employment litigation a substantial number of individual  
6 CALIFORNIA CLASS Members will avoid asserting their rights individually out  
7 of fear of retaliation or adverse impact on their employment;

8 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical  
9 to bring all members of the CALIFORNIA CLASS before the Court;

10 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to  
11 obtain effective and economic legal redress unless the action is maintained as a  
12 Class Action;

13 e. There is a community of interest in obtaining appropriate legal and equitable relief  
14 for the acts of unfair competition, statutory violations and other improprieties, and  
15 in obtaining adequate compensation for the damages and injuries which  
16 DEFENDANT'S' actions have inflicted upon the CALIFORNIA CLASS;

17 f. There is a community of interest in ensuring that the combined assets of  
18 DEFENDANT are sufficient to adequately compensate the members of the  
19 CALIFORNIA CLASS for the injuries sustained;

20 g. DEFENDANT have acted or refused to act on grounds generally applicable to the  
21 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with  
22 respect to the CALIFORNIA CLASS as a whole;

23 h. The members of the CALIFORNIA CLASS are readily ascertainable from the  
24 business records of DEFENDANT; and,

25 i. 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  
27 arising out of the conduct of DEFENDANT as to the members of the  
28 CALIFORNIA CLASS.



1 intentionally and uniformly subjected to DEFENDANT's company policy, practices and  
2 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any  
3 additional job titles of similarly situated employees when they have been identified.

4 38. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
5 CALIFORNIA LABOR SUB-CLASS Members is impracticable

6 39. Common questions of law and fact exist as to members of the CALIFORNIA  
7 LABOR SUB-CLASS, including, but not limited, to the following:

- 8 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay  
9 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for  
10 missed meal and rest breaks in violation of the California Labor Code and  
11 California regulations and the applicable California Wage Order;
- 12 b. Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime  
13 wages due to members of the CALIFORNIA LABOR SUB-CLASS in violation  
14 of the California Labor Code and California regulations and the applicable  
15 California Wage Order;
- 16 c. Whether DEFENDANT failed to provide the PLAINTIFF and the other members  
17 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage  
18 statements;
- 19 d. Whether DEFENDANT has engaged in unfair competition by the above listed  
20 conduct;
- 21 e. The proper measure of damages and penalties owed to the members of the  
22 CALIFORNIA LABOR SUB-CLASS; and,
- 23 f. Whether DEFENDANT's conduct was willful.

24 40. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
25 under California law by:

- 26 a. Violating Cal. Lab. Code §§ 510, et seq., by failing to correctly pay the  
27 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all  
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1 wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal.  
2 Lab. Code § 1194;

3 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 et seq., by failing to accurately  
4 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS  
5 the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal.  
6 Lab. Code §§ 1194 and 1197;

7 c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the  
8 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized  
9 statement in writing showing the corresponding correct amount of wages earned  
10 by the employee;

11 d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and  
12 the other members of the CALIFORNIA LABOR SUB-CLASS with all legally  
13 required off-duty, uninterrupted thirty (30) minute meal breaks and the legally  
14 required off-duty rest breaks;

15 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the  
16 CALIFORNIA CLASS members with necessary expenses incurred in the  
17 discharge of their job duties; and,

18 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an  
19 employee is discharged or quits from employment, the employer must pay the  
20 employee all wages due without abatement, by failing to tender full payment  
21 and/or restitution of wages owed or in the manner required by California law to  
22 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated  
23 their employment

24 41. This Class Action meets the statutory prerequisites for the maintenance of a Class  
25 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

26 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so  
27 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members  
28

1 is impracticable and the disposition of their claims as a class will benefit the parties  
2 and the Court;

3 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
4 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS  
5 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-  
6 CLASS;

7 c. The claims of the representative PLAINTIFF are typical of the claims of each  
8 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the  
9 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt  
10 employee paid on an hourly basis who was subjected to the DEFENDANT's  
11 practice and policy which failed to pay the correct amount of wages due to the  
12 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as  
13 a result of DEFENDANT's employment practices. PLAINTIFF and the members  
14 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically  
15 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
16 misconduct engaged in by DEFENDANT; and,

17 d. The representative PLAINTIFF will fairly and adequately represent and protect  
18 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel  
19 who are competent and experienced in Class Action litigation. There are no  
20 material conflicts between the claims of the representative PLAINTIFF and the  
21 members of the CALIFORNIA LABOR SUB-CLASS that would make class  
22 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS  
23 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS  
24 Members.

25 42. In addition to meeting the statutory prerequisites to a Class Action, this action is  
26 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

27 a. Without class certification and determination of declaratory, injunctive, statutory  
28 and other legal questions within the class format, prosecution of separate actions

1 by individual members of the CALIFORNIA LABOR SUB-CLASS will create  
2 the risk of:

3 i. Inconsistent or varying adjudications with respect to individual members  
4 of the CALIFORNIA LABOR SUB-CLASS which would establish  
5 incompatible standards of conduct for the parties opposing the  
6 CALIFORNIA LABOR SUB-CLASS; or

7 ii. Adjudication with respect to individual members of the CALIFORNIA  
8 LABOR SUB-CLASS which would as a practical matter be dispositive of  
9 interests of the other members not party to the adjudication or substantially  
10 impair or impede their ability to protect their interests.

11 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
12 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
13 SUB-CLASS, making appropriate class-wide relief with respect to the  
14 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly  
15 fails to pay all wages due. Including the correct wages for all time worked by the  
16 members of the CALIFORNIA LABOR SUB-CLASS as required by law;

17 c. Common questions of law and fact predominate as to the members of the  
18 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations  
19 of California Law as listed above, and predominate over any question affecting  
20 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class  
21 Action is superior to other available methods for the fair and efficient adjudication  
22 of the controversy, including consideration of:

23 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS  
24 in individually controlling the prosecution or defense of separate actions in  
25 that the substantial expense of individual actions will be avoided to recover  
26 the relatively small amount of economic losses sustained by the individual  
27 CALIFORNIA LABOR SUB-CLASS Members when compared to the  
28 substantial expense and burden of individual prosecution of this litigation;

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ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

iii. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

43. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;

- 1 b. A Class Action is superior to any other available method for the fair and efficient  
2 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-  
3 CLASS because in the context of employment litigation a substantial number of  
4 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting  
5 their rights individually out of fear of retaliation or adverse impact on their  
6 employment;
- 7 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that  
8 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS  
9 before the Court;
- 10 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will  
11 not be able to obtain effective and economic legal redress unless the action is  
12 maintained as a Class Action;
- 13 e. There is a community of interest in obtaining appropriate legal and equitable relief  
14 for the acts of unfair competition, statutory violations and other improprieties, and  
15 in obtaining adequate compensation for the damages and injuries which  
16 DEFENDANT’S’ actions have inflicted upon the CALIFORNIA LABOR SUB-  
17 CLASS;
- 18 f. There is a community of interest in ensuring that the combined assets of  
19 DEFENDANT are sufficient to adequately compensate the members of the  
20 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 21 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
22 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief  
23 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 24 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily  
25 ascertainable from the business records of DEFENDANT. The CALIFORNIA  
26 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who  
27 worked for DEFENDANT in California at any time during the CALIFORNIA  
28 LABOR SUB-CLASS PERIOD; and

1 i. Class treatment provides manageable judicial treatment calculated to bring an  
2 efficient and rapid conclusion to all litigation of all wage and hour related claims  
3 arising out of the conduct of DEFENDANT.

4 **FIRST CAUSE OF ACTION**

5 **UNLAWFUL BUSINESS PRACTICES**

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

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

8 44. 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 45. DEFENDANT are “persons” as that term is defined under Cal. Bus. And Prof.  
12 Code § 17021.

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

17 Any person who engages, has engaged, or proposes to engage in unfair competition  
18 may be enjoined in any court of competent jurisdiction. The court may make such  
19 orders or judgments, including the appointment of a receiver, as may be necessary  
20 to prevent the use or employment by any person of any practice which constitutes  
21 unfair competition, as defined in this chapter, or as may be necessary to restore to  
22 any person in interest any money or property, real or personal, which may have  
23 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §  
24 17203).

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

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

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

14           50. By the conduct alleged herein, DEFENDANT’s practices were also unlawful,  
15 unfair and deceptive in that DEFENDANT’s employment practices caused PLAINTIFF and the  
16 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
17 DEFENDANT.

18           51. By the conduct alleged herein, DEFENDANT’s practices were also unlawful,  
19 unfair and deceptive in that DEFENDANT’s uniform policies, practices and procedures failed to  
20 provide all legally required meal breaks to PLAINTIFF and the other members of the  
21 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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1           53.     PLAINTIFF further demands on behalf of herself and each member of the  
2 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty  
3 paid rest period was not timely provided as required by law.

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

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

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

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

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

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

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**  
5 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

6 (Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL  
7 Defendants)

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

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

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

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

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

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

27 65. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
28 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result  
of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF

1 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage  
2 pay.

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PAY OVERTIME COMPENSATION**  
18 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

19 (Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all Defendants)

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

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

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

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

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

9           78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and  
10 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for  
11 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

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

26           81. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the  
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive  
28 full compensation for overtime worked.

          82. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from  
the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF

1 and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and  
2 the other members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid  
3 collective bargaining agreement that would preclude the causes of action contained herein this  
4 Complaint. Rather, PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA  
5 LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-waiveable  
6 rights provided by the State of California.

7 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the  
8 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime  
9 worked that they are entitled to, constituting a failure to pay all earned wages.

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

17 85. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
18 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
19 for the true amount of time they worked, PLAINTIFF and the other members of the  
20 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic  
21 injury in amounts which are presently unknown to them and which will be ascertained according  
22 to proof at trial.

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



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

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

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

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**FIFTH CAUSE OF ACTION**

**FAILURE TO PROVIDE REQUIRED REST PERIODS  
(Cal. Lab. Code §§ 226.7 & 512)**

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

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

94. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT’S managers.

95. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a rest 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 rest period was not provided.

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

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**SIXTH CAUSE OF ACTION**

**FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS  
(Cal. Lab. Code § 226)**

*(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all Defendants)*

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

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

- a. Gross wages earned;
- b. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- c. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- d. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- e. Net wages earned;
- f. The inclusive dates of the period for which the employee is paid;
- g. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.



1           103. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by  
2 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
3 members for required expenses incurred in the discharge of their job duties for DEFENDANT’s  
4 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-  
5 CLASS members for expenses which included, but were not limited to, costs related to using their  
6 personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically,  
7 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use  
8 their personal cell phones to respond to work related issues. DEFENDANT’s uniform policy,  
9 practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-  
10 CLASS members for expenses resulting from using their personal cellular phones for  
11 DEFENDANT within the course and scope of their employment for DEFENDANT. These  
12 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by  
13 DEFENDANT’s conduct to assert any waiver of this expectation. Although these expenses were  
14 necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS  
15 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA  
16 LABOR SUB-CLASS members for these expenses as an employer is required to do under the  
17 laws and regulations of California.

18           104. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred  
19 by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties  
20 for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the  
21 statutory rate and costs under Cal. Lab. Code § 2802.

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**EIGHTH CAUSE OF ACTION**  
**FAILURE TO PAY WAGES WHEN DUE**  
**(Cal. Lab. Code §§201, 202, 203)**

*(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)*

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

106. Cal. Lab. Code § 200 provides that:

As used in this article: (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

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

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

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

109. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

110. 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

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

3 111. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS  
4 Members terminated and DEFENDANT have not tendered payment of all wages owed as required  
5 by law.

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

12 **NINTH CAUSE OF ACTION**

13 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

14 **[Cal. Lab. Code §§ 2698 et seq.]**

15 **(Alleged by PLAINTIFF against all Defendants)**

16 113. PLAINTIFF realleges and incorporate by this reference, as though fully set forth  
17 herein, the prior paragraphs of this Complaint.

18 114. PAGA is a mechanism by which the State of California itself can enforce state  
19 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the  
20 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is  
21 fundamentally a law enforcement action designed to protect the public and not to benefit private  
22 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means  
23 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting  
24 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved  
25 employees, acting as private attorneys general to recover civil penalties for Labor Code violations  
26 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

27 115. PLAINTIFF, and such persons that may be added from time to time who satisfy  
28 the requirements and exhaust the administrative procedures under the Private Attorney General

1 Act, bring this Representative Action on behalf of the State of California with respect to herself  
2 and all individuals who are or previously were employed by DEFENDANT as sales persons in  
3 California during the time period of \_\_\_\_\_ until the present (the "AGGRIEVED  
4 EMPLOYEES").

5 116. On \_\_\_\_\_, PLAINTIFF gave written notice by certified mail to the Labor  
6 and Workforce Development Agency (the "Agency") and the employer of the specific  
7 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See  
8 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting  
9 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,  
10 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under  
11 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all  
12 AGGRIEVED EMPLOYEES as herein defined.

13 117. The policies, acts and practices heretofore described were and are an unlawful  
14 business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED  
15 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other  
16 GGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate  
17 itemized wage statements, and (d) failed to timely pay wages, all in violation of the applicable  
18 Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§  
19 201 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, & 2802 and the  
20 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of  
21 such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor  
22 Code Private Attorney General Act of 2004 as the representative of the State of California for the  
23 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

24 118. Some or all of the conduct and violations alleged herein occurred during the PAGA  
25 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect  
26 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that  
27 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30  
28 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.  
5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by **at least one** Labor

1 Code violation committed by an employer—to pursue penalties for all the Labor Code  
2 violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

3  
4 **PRAYER FOR RELIEF**

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

7 1. On behalf of the CALIFORNIA CLASS:

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

15 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

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

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- an award of costs for violation of Cal. Lab. Code § 226; and
  - e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-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 expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUB-CLASS incurred in the course of their job duties, plus interest, and costs of suit.
3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and
4. 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 § 226, § 1198 and/or § 2802.

DATED: April \_\_, 2020

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

Shani O. Zakay  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: April \_\_, 2020

**ZAKAY LAW GROUP, APLC**

By: \_\_\_\_\_  
Shani O. Zakay  
Attorney for PLAINTIFF

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# **EXHIBIT 1**