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19 Attorneys for Plaintiff BRIA WARE

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

21 **IN AND FOR THE COUNTY OF ALAMEDA**

22 BRIA WARE, an individual, on behalf of
23 herself, and on behalf of all persons similarly
24 situated,

25 Plaintiffs,

26 vs.

27 SHAKE SHACK ENTERPRISES, LLC, a New
28 York Limited Liability Company; and DOES 1
through 50, Inclusive;

Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

11/08/2021 at 08:52:28 AM

By: Xian-xii Bowie, Deputy Clerk

Case No. 21CV002063

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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 REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN



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- VIOLETION OF CAL. LAB. CODE § 2802;
- 7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203;
- 9. FAILURE TO PROVIDE REPORTING TIME PAY IN VIOLATION OF WAGE ORDER NO. 5;
- 10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.]

DEMAND FOR JURY TRIAL

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

THE PARTIES

1. Defendant SHAKE SHACK ENTERPRISES, LLC (“DEFENDANT” and/or “DEFENDANTS”) is a New York limited liability company that at all relevant owned and operated numerous Shake Shack restaurants, throughout California, including in the City of Oakland and County of Alameda.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

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

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

13 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
14 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
15 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
16 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
17 for each underpaid employee.

18 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee from May
19 2021 to July 2021, paid on an hourly basis, and entitled to the legally required meal and rest periods
20 and payment of minimum wages, reporting time pay, and overtime wages due for all time worked.

21 7. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
22 DEFENDANTS' current and former non-exempt California employees (the "CALIFORNIA CLASS")
23 at any time during the period beginning July 1, 2019 and ending on a date determined by the Court (the
24 "CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
25 Members is under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend the
26 following class definitions before the Court determines whether class certification is appropriate, or
27 thereafter upon leave of Court:
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1 8. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
2 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
3 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which
4 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
5 periods or an additional hour of pay at the regular rate of compensation in lieu thereof in violation of
6 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
7 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in
8 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, (3) failed to
9 reimburse PLAINTIFF and the CALIFORNIA CLASS for required expenses in violation of California
10 Labor Code Section 2802, (4) failed to provide accurate itemized wage statements in violation of
11 California Labor Code Sections 226 and 226.3, and (5) failed to pay reporting time wages in violation
12 of the applicable Industrial Welfare Commission Wage Order.

13 9. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair and
14 deceptive business practices whereby DEFENDANTS retained and continues to retain wages due
15 PLAINTIFF and the other members of the CALIFORNIA CLASS.

16 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
17 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other
18 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS's past
19 and current unlawful conduct, and all other appropriate legal and equitable relief.

20 **JURISDICTION AND VENUE**

21 11. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is
23 brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
24 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

25 12. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
26 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, and DEFENDANTS
27 (i) currently maintain and at all relevant times, maintained offices and facilities in this County and/or
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1 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged
2 in this County against members of the CALIFORNIA CLASS.

3 **THE CONDUCT**

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

20 **A. Meal Period Violations**

21 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
22 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning
23 the time during which an employee is subject to the control of an employer, including all the time the
24 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
25 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying
26 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
27 PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing, DEFENDANTS
28 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-



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

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

23 **B. Rest Period Violations**

24 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
25 CLASS members were also required from time to time to work in excess of four (4) hours without
26 being provided ten (10) minute rest periods as a result of their rigorous work schedule, being required
27 to carry, remain responsive and to respond to work calls on company issued cordless communication
28 devices throughout their shifts, and DEFENDANTS' inadequate staffing. Further, for the same reasons

1 these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
2 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10)
3 minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
4 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
5 more from time to time. When they were provided with rest breaks, PLAINTIFF and other
6 CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or on call.
7 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages
8 in lieu thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing,
9 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their proper
10 rest periods by DEFENDANTS and DEFENDANTS' managers.

11 **C. Reporting Time Violations**

12 17. The applicable Wage Order requires that on each workday that an employee reports for
13 work, as scheduled, but is not put to work or is furnished less than half of the employee's usual or
14 scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no
15 event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay,
16 which shall not be less than the minimum wage. The applicable Wage Order denominates this as
17 "Reporting Time Pay."

18 18. Specifically, DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS
19 Members to report to work when assigned to their various shifts. From time-to-time, over the course of
20 their employment, PLAINTIFF and other CALIFORNIA CLASS Members, reported to work as
21 required by DEFENDANTS. On these days, PLAINTIFF and other CALIFORNIA CLASS Members
22 were not put to work and/or were not furnished with work for less than half of their scheduled shift.
23 When PLAINTIFF and other CALIFORNIA CLASS Members report to work, as scheduled, but are
24 furnished less than half of their scheduled day's work, PLAINTIFF and other CALIFORNIA CLASS
25 Members are not compensated with Reporting Time pay, as required by the applicable Wage Order, in
26 that they are not paid a minimum of two hours or for half of their scheduled day's work, not to exceed
27 four hours.

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1 **D. Unreimbursed Business Expenses**

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

12 20. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
13 CLASS Members were required by DEFENDANTS to use their own vehicles and own personal cellular
14 phones as a result of and in furtherance of their job duties as employees for DEFENDANTS. But for
15 the use of their own vehicle and personal cell phones, PLAINTIFF and the members of the
16 CALIFORNIA CLASS could not complete their essential job duties. Notwithstanding,
17 DEFENDANTS did not reimburse or indemnify PLAINTIFF or other CALIFORNIA CLASS
18 Members for the cost associated with the use of their own vehicle and personal cellular phones for
19 DEFENDANTS' benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were
20 required by DEFENDANT to use their personal cell phones for work related issues including checking
21 emails for sales reports. Furthermore, PLAINTIFF and other CALIFORNIA CLASS Members were
22 required to drive their own car during work hours to get food and supplies, without being reimbursed
23 for mileage. As a result, in the course of their employment with DEFENDANTS, PLAINTIFF and the
24 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
25 were not limited to, costs related to the use of their personal cellular phones, all on behalf of and for
26 the benefit of DEFENDANTS.

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1 **E. Wage Statement Violations**

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

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

17 23. In addition to the violations described above, DEFENDANTS, from time to time, failed
18 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
19 with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other members of
20 the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
21 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
22 payroll error due to clerical or inadvertent mistake.

23 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

24 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to
25 fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all hours
26 worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other members
27 of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding, from time-to-time
28 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS necessary



1 wages for attending for performing work at DEFENDANTS' direction, request and benefit, while off-
2 the clock.

3 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
4 and other members of the CALIFORNIA CLASS to perform post-shift work, including but not limited
5 to, studying/training off the clock due to DEFENDANT changing her 50/50 working/training schedule
6 to an 80/20 working/training schedule. This resulted in PLAINTIFF and other members of the
7 CALIFORNIA CLASS to have to study from home while off-the-clock.

8 26. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
9 work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

13 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other members
14 of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or
15 pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for
16 all the work they performed, including off-the-clock work.

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

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

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

26 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited
27 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent
28 studying/training while off-the-clock. DEFENDANTS' uniform policy and practice to not pay

1 PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance
2 with applicable law is evidenced by DEFENDANTS' business records.

3 **G. Regular Rate Violation – Overtime, Meal and Rest Premiums**

4 33. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to
5 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for their
6 overtime hours worked, meal and rest period premiums. As a result, PLAINTIFF and the other
7 CALIFORNIA CLASS members forfeited wages due to them for working overtime without
8 compensation at the correct overtime, meal and rest period premium rates. DEFENDANTS' uniform
9 policy and practice to not pay the CALIFORNIA CLASS members the correct overtime rate for all
10 overtime worked, meal and rest period premiums in accordance with applicable law is evidenced by
11 DEFENDANTS' business records.

12 34. State law provides that employees must be paid overtime at one-and-one-half times their
13 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at
14 an hourly rate plus bonuses that were tied to remaining an employee for a pre-determined period of
15 time.

16 35. DEFENDANTS' non-discretionary retention program provided the CALIFORNIA
17 CLASS, including PLAINTIFF, with non-discretionary bonus compensation when the employee
18 remained with the company for a pre-determined period of time. However, when calculating the regular
19 rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA CLASS worked overtime
20 entitled to meal and rest period premiums, and earned non-discretionary bonus compensation,
21 DEFENDANT failed to accurately include the non-discretionary bonus compensation as part of the
22 employees' "regular rate of pay."

23 36. In other instances, when calculating the regular rate of pay, in those pay periods where
24 PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned this non-discretionary bonus,
25 DEFENDANT failed to (1) accurately include the non-discretionary bonus compensation into the
26 regular rate of pay and/or (2) calculated all hours worked rather than just all non-overtime hours worked
27 into the regular rate of pay in violation of *Alvarado v. Dart* (2018) 4 Cal.5th 542.

28 33. As a matter of law, the bonus compensation received by PLAINTIFFS and other

1 CALIFORNIA CLASS members must be included and correctly calculated into the “regular rate of pay”
2 for purposes of overtime compensation, meal and rest period premiums. DEFENDANTS’ failure to do
3 so has resulted in DEFENDANTS’ systematic underpayment of overtime compensation, meal and rest
4 period premiums, to PLAINTIFF and other CALIFORNIA CLASS members. In violation of the
5 applicable sections of the California Labor Code and the requirements of the Industrial Welfare
6 Commission (“IWC”) Wage Order, DEFENDANTS as a matter of company policy, practice and
7 procedure, intentionally and knowingly failed to compensate PLAINTIFF and the other members of the
8 CALIFORNIA CLASS at the correct rate of pay for all overtime worked, meal and rest period
9 premiums. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
10 payment of the correct overtime, meal and rest period premiums compensation as required by California
11 law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors
12 who complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
13 CLASS members against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly

14 **H. CLASS ACTION ALLEGATIONS**

15 34. PLAINTIFF brings the First through Ninth Causes of Action as a class action pursuant to
16 California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS’ current and former non-
17 exempt California employees (“CALIFORNIA CLASS”) during the period beginning July 1, 2019 and
18 ending on a date determined by the Court (“CLASS PERIOD”).

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

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

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

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

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



1 PLAINTEIFF and other CALIFORNIA CLASS Members, even though
2 DEFENDANTS enjoyed the benefit of this work, required employees to
3 perform this work and permits or suffers to permit this work;

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

8 38. PLAINTEIFF is a member of the CALIFORNIA CLASS and suffered damages as a result
9 of DEFENDANTS' conduct and actions alleged herein.

10 39. PLAINTEIFF's claims are typical of the claims of the class, and PLAINTEIFF has the same
11 interests as the other members of the class.

12 40. PLAINTEIFF will fairly and adequately represent and protect the interests of the
13 CALIFORNIA CLASS Members.

14 41. PLAINTEIFF retained able class counsel with extensive experience in class action
15 litigation.

16 42. Further, PLAINTEIFF's interests are coincident with, and not antagonistic to, the interests
17 of the other CALIFORNIA CLASS Members.

18 43. There is a strong community of interest among PLAINTEIFF and the members of the
19 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient
20 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

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

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

1 statutory and other legal questions within the class format, prosecution of separate actions by individual
2 members of the CALIFORNIA CLASS will create the risk of:

3 a. Inconsistent or varying adjudications with respect to individual members of the
4 CALIFORNIA CLASS which would establish incompatible standards of conduct for the
5 parties opposing the CALIFORNIA CLASS; and/or,

6 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
7 which would as a practical matter be dispositive of the interests of the other members not
8 party to the adjudication or substantially impair or impeded their ability to protect their
9 interests.

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

13 **FIRST CAUSE OF ACTION**

14 **For Unlawful Business Practices**

15 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

19 48. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
20 17021.

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

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

1 this chapter, or as may be necessary to restore to any person in interest any
2 money or property, real or personal, which may have been acquired by
3 means of such unfair competition.

4 Cal. Bus. & Prof. Code § 17203.

5 50. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
6 CLASS Members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
7 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
8 “UCL”), by engaging and continuing to engage in business practices which violates California law,
9 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
10 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194,
11 1197, 1197.1, 1198, & 2802 for which this Court should issue declaratory and other equitable relief
12 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
13 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

19 52. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent
20 in that DEFENDANTS’ uniform policy and practice failed to, *inter alia*, provide the legally mandated
21 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
22 overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic
23 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
24 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
25 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
26 restitution of wages wrongfully withheld.

27 53. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
28 deceptive in that DEFENDANTS’ employment practices caused PLAINTIFF and the other members of

1 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

2 54. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
3 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*,
4 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
5 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
6 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
7 Labor Code.

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

12 56. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA
13 CLASS Member, one (1) hour of pay for each workday in which an off duty paid rest period was not
14 timely provided as required by law.

15 57. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
16 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
17 calculated overtime and missed meal and rest periods premiums.

18 58. By and through the unlawful and unfair business practices described herein,
19 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other
20 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has
21 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
22 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
23 compete against competitors who comply with the law.

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

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

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

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

10 68. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were
11 required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked
12 or were not accurately compensated for all overtime hours worked.

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

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

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

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

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

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

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

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

28 77. In performing the acts and practices herein alleged in violation of California labor laws,

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

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

17 **THIRD CAUSE OF ACTION**

18 **For Failure to Pay Minimum Wages**

19 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

20 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

23 80. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
24 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
25 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
26 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS Members during the
27 CLASS PERIOD.

28 81. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,



1 an employer must timely pay its employees for all hours worked.

2 82. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
3 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
4 minimum so fixed is unlawful.

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

7 84. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
8 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
9 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
10 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
11 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
12 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
13 of the CALIFORNIA CLASS.

14 85. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
15 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
16 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
17 of the CALIFORNIA CLASS in regard to minimum wage pay.

18 86. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
19 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
20 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid
21 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
22 Industrial Welfare Commission requirements and other applicable laws and regulations.

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

26 88. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA
27 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned
28 wages.

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

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

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

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

1 **FOURTH CAUSE OF ACTION**

2 **For Failure to Provide Required Meal Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

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

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

1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Provide Required Rest Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

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

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

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1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Reimburse Employees for Required Expenses**

3 **[Cal. Lab. Code § 2802]**

4 **(By PLAINTIFF Against All Defendants)**

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

7 99. Cal. Lab. Code § 2802 provides, in relevant part, that:

8 An employer shall indemnify his or her employee for all necessary
9 expenditures or losses incurred by the employee in direct consequence of
10 the discharge of his or her duties, or of his or her obedience to the directions
11 of the employer, even though unlawful, unless the employee, at the time of
12 obeying the directions, believed them to be unlawful.

13 100. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code
14 § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA
15 CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit.
16 DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for
17 expenses which included, but were not limited to, costs related to using their personal vehicle and
18 personal cellular phone all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF
19 and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal
20 vehicle and personal cell phones to execute their essential job duties on behalf of DEFENDANTS.
21 DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the
22 members of the CALIFORNIA CLASS for expenses resulting from using their personal vehicle and
23 personal cellular phones for DEFENDANTS within the course and scope of their employment for
24 DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS
25 are estopped by DEFENDANTS' conduct to assert any waiver of their expectation. Although these
26 expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA
27 CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the
28 CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and

1 regulations of California.

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

6 **SEVENTH CAUSE OF ACTION**

7 **For Failure to Provide Accurate Itemized Statements**

8 **[Cal. Lab. Code §§ 226 and 226.2]**

9 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

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



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- 8. The name and address of the legal entity that is the employer, and
- 9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

104. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross wages earned; (4) the correct name and address of the legal entity that is the employer; and (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of California Labor Code Section 226(a).

105. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN DUE

(Cal Lab. Code §§201, 202, 203)

((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))

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

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

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

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

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

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

23 110. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members'
24 employment contract.

25 111. Cal. Lab. Code § 203 provides:

26 If an employer willfully fails to pay, without abatement or reduction,
27 in accordance with Sections 201, 201.5, 202, and 205.5, any wages
28 of an employee who is discharged or who quits, the wages of the

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

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

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

12 **NINTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REPORTING TIME WAGES**

14 **[Violation of 8 Cal. Code Reg. § 11050(5)]**

15 **(By PLAINTIFF and the CALIFORNIA CLASS Against All DEFENDANTS)**

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

18 115. Section 5 of Wage Order No. 5 at 8 CCR §11050 provides in pertinent part:

19 **5. Reporting Time Pay**

20 (A) Each workday an employee is required to report for work and does
21 report, but is not put to work or is furnished less than half said employee's
22 usual or scheduled day's work, the employee shall be paid for half the
23 usual or scheduled day's work, but in no event for less than two (2) hours
24 nor more than four (4) hours, at the employee's regular rate of pay, which
25 shall not be less than the minimum wage.

26 (B) If an employee is required to report for work a second time in any
27 one workday and is furnished less than two (2) hours of work on the
28 second reporting, said employee shall be paid for two (2) hours at the

1 employee's regular rate of pay, which shall not be less than the minimum
2 wage.

3 116. Specifically, DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS
4 Members to report to work when assigned to their various shifts. From time-to-time, over the course
5 of their employment, PLAINTIFF and other CALIFORNIA CLASS Members reported to work as
6 required by DEFENDANTS. On these days, PLAINTIFF and other CALIFORNIA CLASS Members
7 were not put to work and/or were not furnished with work for less than half of their scheduled shifts.
8 When PLAINTIFF and other CALIFORNIA CLASS Members report to work, as scheduled, but is
9 furnished less than half of their scheduled day's work, PLAINTIFF and other CALIFORNIA CLASS
10 Members are not compensated with Reporting Time pay, as required by the applicable Wage Order,
11 in that they are not paid a minimum of two hours or for half of their scheduled day's work, not to
12 exceed four hours.

13 117. As a proximate result of the aforementioned violations, PLAINTIFF and other
14 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and
15 seek all wages earned and due, interest and penalties.

16 **TENTH CAUSE OF ACTION**

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

18 **(Cal. Lab. Code §§2698 et seq.)**

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

20 118. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the
21 prior paragraphs of this Complaint.

22 119. PAGA is a mechanism by which the State of California itself can enforce state labor laws
23 through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law
24 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
25 enforcement action designed to protect the public and not to benefit private parties. The purpose of
26 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
27 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
28 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys



1 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,
2 PAGA claims cannot be subject to arbitration.

3 120. PLAINTIFF, and such persons that may be added from time to time who satisfy the
4 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
5 this Representative Action on behalf of the State of California with respect to themselves and all
6 individuals who are or previously were employed by DEFENDANT and classified as non-exempt
7 employees in California during the time period of August 19, 2020 until the present (the "AGGRIEVED
8 EMPLOYEES").

9 121. On August 19, 2021, PLAINTIFF gave written notice by certified mail to the Labor and
10 Workforce Development Agency (the "Agency") and the employer of the specific provisions of
11 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
12 hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these
13 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now
14 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State
15 of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

16 122. The policies, acts and practices heretofore described were and are an unlawful business
17 act or practice because DEFENDANTS (a) failed to properly record and pay PLAINTIFF and the other
18 AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime hours in violation of
19 the Wage Order, (b) failed to provide accurate itemized wage statements, (c) failed to provide mandatory
20 meal breaks and rest breaks, (d) failed to pay meal and rest break premiums at the correct rate, and (e)
21 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
22 §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226,
23 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199,
24 2802, 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as
25 a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
26 Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal
27 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

3 1. On behalf of the CALIFORNIA CLASS:

4 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as
5 a class action pursuant to Cal. Code of Civ. Proc. § 382;

6 B) An order temporarily, preliminarily and permanently enjoining and restraining
7 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

8 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
9 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

10 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for
11 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other
12 members of the CALIFORNIA CLASS.

13 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth,
14 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ.
15 Proc. § 382;

16 1. Compensatory damages, according to proof at trial, including compensatory
17 damages for minimum wage compensation, overtime compensation, reporting time
18 wages, and unreimbursed business expenses due PLAINTIFF and the other members of
19 the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus
20 interest thereon at the statutory rate;

21 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
22 which a violation occurs and one hundred dollars (\$100) per each member of the
23 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an
24 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation
25 of Cal. Lab. Code § 226;

26 3. Meal and rest period compensation pursuant to California Labor Code Section
27 226.7, 512 and the applicable IWC Wage Order;



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4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and

5. The wages of all terminated employees 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.

2. 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

3. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

Dated: November 8, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: November 8, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

EXHIBIT 1



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August 19, 2021

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

SHAKE SHACK ENTERPRISES, LLC

c/o United Corporate Services, Inc.

608 University Avenue

Sacramento, CA 95825

Via Certified Mail with Return Receipt No. 7021 0350 0000 8465 2755

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

This office represents BRIA WARE (“Plaintiff”) and other aggrieved employees in a proposed class and representative action against SHAKE SHACK ENTERPRISES, LLC (“Defendant”). This office intends to file the enclosed Class Action 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 May of 2021 to July of 2021. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during her employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, failed to reimburse for required business expenses, and failed to accurately pay for all hours worked.

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 California-compliant meal and rest breaks and 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, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint for the class action 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.

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

Enclosure (1)

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Attorneys for Plaintiff BRIA WARE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

BRIA WARE, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Plaintiffs,

vs.

SHAKE SHACK ENTERPRISES, LLC, a New York Limited Liability Company; and DOES 1 through 50, Inclusive;

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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;

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- 6. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203;
- 9. FAILURE TO PROVIDE REPORTING TIME PAY IN VIOLATION OF WAGE ORDER NO. 5.

DEMAND FOR JURY TRIAL

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

THE PARTIES

1. Defendant SHAKE SHACK ENTERPRISES, LLC (“DEFENDANT” and/or “DEFENDANTS”) is a New York limited liability company that at all relevant owned and operated numerous Shake Shack restaurants, throughout California, including in the City of Oakland and County of Alameda.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

///

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

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

13 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
14 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
15 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
16 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
17 for each underpaid employee.

18 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee from May of
19 2021 to July of 2021, paid on an hourly basis, and entitled to the legally required meal and rest periods
20 and payment of minimum wages, reporting time pay, and overtime wages due for all time worked.

21 7. PLAINTIFF brings this Class Action on behalf of herself and on behalf of all of
22 DEFENDANTS' current and former non-exempt California employees (the "CALIFORNIA CLASS")
23 at any time during the period beginning four years from the date of the filing of this Complaint and
24 ending on a date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
25 aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).
26 PLAINTIFF reserves the right to amend the following class definitions before the Court determines
27 whether class certification is appropriate, or thereafter upon leave of Court:
28

1 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged
2 in this County against members of the CALIFORNIA CLASS.

3 **THE CONDUCT**

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

20 **A. Meal Period Violations**

21 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
22 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning
23 the time during which an employee is subject to the control of an employer, including all the time the
24 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
25 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying
26 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
27 PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing, DEFENDANTS
28 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-

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

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

23 **B. Rest Period Violations**

24 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
25 CLASS members were also required from time to time to work in excess of four (4) hours without
26 being provided ten (10) minute rest periods as a result of their rigorous work schedule, being required
27 to carry, remain responsive and to respond to work calls on company issued cordless communication
28 devices throughout their shifts, and DEFENDANTS' inadequate staffing. Further, for the same reasons

1 these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
2 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10)
3 minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
4 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
5 more from time to time. When they were provided with rest breaks, PLAINTIFF and other
6 CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or on call.
7 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages
8 in lieu thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing,
9 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their proper
10 rest periods by DEFENDANTS and DEFENDANTS' managers.

11 **C. Reporting Time Violations**

12 17. The applicable Wage Order requires that on each workday that an employee reports for
13 work, as scheduled, but is not put to work or is furnished less than half of the employee's usual or
14 scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no
15 event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay,
16 which shall not be less than the minimum wage. The applicable Wage Order denominates this as
17 "Reporting Time Pay."

18 18. Specifically, DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS
19 Members to report to work when assigned to their various shifts. From time-to-time, over the course of
20 their employment, PLAINTIFF and other CALIFORNIA CLASS Members, reported to work as
21 required by DEFENDANTS. On these days, PLAINTIFF and other CALIFORNIA CLASS Members
22 were not put to work and/or were not furnished with work for less than half of their scheduled shift.
23 When PLAINTIFF and other CALIFORNIA CLASS Members report to work, as scheduled, but are
24 furnished less than half of their scheduled day's work, PLAINTIFF and other CALIFORNIA CLASS
25 Members are not compensated with Reporting Time pay, as required by the applicable Wage Order, in
26 that they are not paid a minimum of two hours or for half of their scheduled day's work, not to exceed
27 four hours.

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1 **D. Unreimbursed Business Expenses**

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

12 20. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
13 CLASS Members were required by DEFENDANTS to use their own vehicles and own personal cellular
14 phones as a result of and in furtherance of their job duties as employees for DEFENDANTS. But for
15 the use of their own vehicle and personal cell phones, PLAINTIFF and the members of the
16 CALIFORNIA CLASS could not complete their essential job duties. Notwithstanding,
17 DEFENDANTS did not reimburse or indemnify PLAINTIFF or other CALIFORNIA CLASS
18 Members for the cost associated with the use of their own vehicle and personal cellular phones for
19 DEFENDANTS' benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were
20 required by DEFENDANT to use their personal cell phones for work related issues including checking
21 emails for sales reports. Furthermore, PLAINTIFF and other CALIFORNIA CLASS Members were
22 required to drive their own car during work hours to get food and supplies, without being reimbursed
23 for mileage. As a result, in the course of their employment with DEFENDANTS, PLAINTIFF and the
24 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
25 were not limited to, costs related to the use of their personal cellular phones, all on behalf of and for
26 the benefit of DEFENDANTS.

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1 **E. Wage Statement Violations**

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

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

17 23. In addition to the violations described above, DEFENDANTS, from time to time, failed
18 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
19 with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other members of
20 the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
21 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
22 payroll error due to clerical or inadvertent mistake.

23 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

24 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to
25 fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all hours
26 worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other members
27 of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding, from time-to-time
28 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS necessary

1 wages for attending for performing work at DEFENDANTS' direction, request and benefit, while off-
2 the clock.

3 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
4 and other members of the CALIFORNIA CLASS to perform post-shift work, including but not limited
5 to, studying/training off the clock due to DEFENDANT changing her 50/50 working/training schedule
6 to an 80/20 working/training schedule. This resulted in PLAINTIFF and other members of the
7 CALIFORNIA CLASS to have to study from home while off-the-clock.

8 26. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
9 work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

13 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other members
14 of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or
15 pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for
16 all the work they performed, including off-the-clock work.

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

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

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

26 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited
27 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent
28 studying/training while off-the-clock. DEFENDANTS' uniform policy and practice to not pay

1 PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance
2 with applicable law is evidenced by DEFENDANTS' business records.

3 **G. Regular Rate Violation – Overtime, Meal and Rest Premiums**

4 33. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to
5 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for their
6 overtime hours worked, meal and rest period premiums. As a result, PLAINTIFF and the other
7 CALIFORNIA CLASS members forfeited wages due to them for working overtime without
8 compensation at the correct overtime, meal and rest period premium rates. DEFENDANTS' uniform
9 policy and practice to not pay the CALIFORNIA CLASS members the correct overtime rate for all
10 overtime worked, meal and rest period premiums in accordance with applicable law is evidenced by
11 DEFENDANTS' business records.

12 34. State law provides that employees must be paid overtime at one-and-one-half times their
13 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at
14 an hourly rate plus bonuses that were tied to remaining an employee for a pre-determined period of
15 time.

16 35. DEFENDANTS' non-discretionary retention program provided the CALIFORNIA
17 CLASS, including PLAINTIFF, with non-discretionary bonus compensation when the employee
18 remained with the company for a pre-determined period of time. However, when calculating the regular
19 rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA CLASS worked overtime
20 entitled to meal and rest period premiums, and earned non-discretionary bonus compensation,
21 DEFENDANT failed to accurately include the non-discretionary bonus compensation as part of the
22 employees' "regular rate of pay."

23 36. In other instances, when calculating the regular rate of pay, in those pay periods where
24 PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned this non-discretionary bonus,
25 DEFENDANT failed to (1) accurately include the non-discretionary bonus compensation into the
26 regular rate of pay and/or (2) calculated all hours worked rather than just all non-overtime hours worked
27 into the regular rate of pay in violation of *Alvarado v. Dart* (2018) 4 Cal.5th 542.

28 33. As a matter of law, the bonus compensation received by PLAINTIFFS and other

1 CALIFORNIA CLASS members must be included and correctly calculated into the “regular rate of pay”
2 for purposes of overtime compensation, meal and rest period premiums. DEFENDANTS’ failure to do
3 so has resulted in DEFENDANTS’ systematic underpayment of overtime compensation, meal and rest
4 period premiums, to PLAINTIFF and other CALIFORNIA CLASS members. In violation of the
5 applicable sections of the California Labor Code and the requirements of the Industrial Welfare
6 Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and
7 procedure, intentionally and knowingly failed to compensate PLAINTIFF and the other members of the
8 CALIFORNIA CLASS at the correct rate of pay for all overtime worked, meal and rest period
9 premiums. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
10 payment of the correct overtime, meal and rest period premiums compensation as required by California
11 law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors
12 who complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
13 CLASS members against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly

14 **H. CLASS ACTION ALLEGATIONS**

15 34. PLAINTIFF brings the First through Ninth Causes of Action as a class action pursuant to
16 California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS’ current and former non-
17 exempt California employees (“CALIFORNIA CLASS”) during the period beginning four years prior
18 to the filing of the Complaint and ending on a date determined by the Court (“CLASS PERIOD”).

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

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

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

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

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

1 PLAINTEIFF and other CALIFORNIA CLASS Members, even though
2 DEFENDANTS enjoyed the benefit of this work, required employees to
3 perform this work and permits or suffers to permit this work;

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

8 38. PLAINTEIFF is a member of the CALIFORNIA CLASS and suffered damages as a result
9 of DEFENDANTS' conduct and actions alleged herein.

10 39. PLAINTEIFF's claims are typical of the claims of the class, and PLAINTEIFF has the same
11 interests as the other members of the class.

12 40. PLAINTEIFF will fairly and adequately represent and protect the interests of the
13 CALIFORNIA CLASS Members.

14 41. PLAINTEIFF retained able class counsel with extensive experience in class action
15 litigation.

16 42. Further, PLAINTEIFF's interests are coincident with, and not antagonistic to, the interests
17 of the other CALIFORNIA CLASS Members.

18 43. There is a strong community of interest among PLAINTEIFF and the members of the
19 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient
20 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

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

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

1 statutory and other legal questions within the class format, prosecution of separate actions by individual
2 members of the CALIFORNIA CLASS will create the risk of:

3 a. Inconsistent or varying adjudications with respect to individual members of the
4 CALIFORNIA CLASS which would establish incompatible standards of conduct for the
5 parties opposing the CALIFORNIA CLASS; and/or,

6 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
7 which would as a practical matter be dispositive of the interests of the other members not
8 party to the adjudication or substantially impair or impeded their ability to protect their
9 interests.

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

13 **FIRST CAUSE OF ACTION**

14 **For Unlawful Business Practices**

15 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

19 48. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
20 17021.

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

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

1 Cal. Bus. & Prof. Code § 17203.

2 50. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
3 CLASS Members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
4 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
5 “UCL”), by engaging and continuing to engage in business practices which violates California law,
6 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
7 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194,
8 1197, 1197.1, 1198, & 2802 for which this Court should issue declaratory and other equitable relief
9 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
10 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

27 54. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
28 deceptive in that DEFENDANTS’ uniform policies, practices and procedures failed to, *inter alia*,

1 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
2 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
3 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
4 Labor Code.

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

9 56. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA
10 CLASS Member, one (1) hour of pay for each workday in which an off duty paid rest period was not
11 timely provided as required by law.

12 57. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
13 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
14 calculated overtime and missed meal and rest periods premiums.

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

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

26 60. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
27 seek such relief as may be necessary to restore to them the money and property which DEFENDANTS
28 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been

1 deprived, by means of the above described unlawful and unfair business practices, including earned but
2 unpaid wages for all overtime worked.

3 61. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
4 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
5 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and
6 unfair business practices in the future.

7 62. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
8 and/or adequate remedy at law that will end the unlawful and unfair business practices of
9 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result
10 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
11 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
12 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair
13 business practices.

14 **SECOND CAUSE OF ACTION**

15 **For Failure to Pay Overtime Compensation**

16 **[Cal. Lab. Code §§ 510, *et seq.*]**

17 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

20 64. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period
21 beginning four years prior to the filing of the Complaint and the present (“CLASS PERIOD”) bring a
22 claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the
23 Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees for
24 all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve
25 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

28 66. Cal. Lab. Code § 510 further provides that employees in California shall not be employed

1 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they
2 receive additional compensation beyond their regular wages in amounts specified by law.

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

7 68. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were
8 required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked
9 or were not accurately compensated for all overtime hours worked.

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

17 70. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
18 calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid
19 the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS.
20 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
21 in violation of the California Labor Code, the Industrial Welfare Commission requirements and other
22 applicable laws and regulations.

23 71. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
24 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
25 all overtime worked.

26 72. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the
27 overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other
28 members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the

1 CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude
2 the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings this Action on
3 behalf of herself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-
4 negotiable, non-waivable rights provided by the State of California.

5 73. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA
6 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned
7 wages.

8 74. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
9 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum
10 hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF
11 and the other members of the CALIFORNIA CLASS were required to work, and did in fact work,
12 overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime
13 rate as evidenced by DEFENDANTS' business records and witnessed by employees.

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

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

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

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

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

14 **THIRD CAUSE OF ACTION**

15 **For Failure to Pay Minimum Wages**

16 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

17 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

20 80. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
21 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
22 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
23 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS Members during the
24 CLASS PERIOD.

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

27 82. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
28 commission is the minimum wage to be paid to employees, and the payment of a less wage than the

1 minimum so fixed in unlawful.

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

4 84. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
5 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
6 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
7 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
8 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
9 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
10 of the CALIFORNIA CLASS.

11 85. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
12 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
13 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
14 of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

26 89. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
27 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
28 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to

1 suffer an economic injury in amounts which are presently unknown to them and which will be
2 ascertained according to proof at trial.

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

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **For Failure to Provide Required Meal Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

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

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

1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Provide Required Rest Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

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

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

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1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Reimburse Employees for Required Expenses**

3 **[Cal. Lab. Code § 2802]**

4 **(By PLAINTIFF Against All Defendants)**

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

7 99. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

11 100. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code
12 § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA
13 CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit.
14 DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for
15 expenses which included, but were not limited to, costs related to using their personal vehicle and
16 personal cellular phone all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF
17 and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal
18 vehicle and personal cell phones to execute their essential job duties on behalf of DEFENDANTS.
19 DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the
20 members of the CALIFORNIA CLASS for expenses resulting from using their personal vehicle and
21 personal cellular phones for DEFENDANTS within the course and scope of their employment for
22 DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS
23 are estopped by DEFENDANTS' conduct to assert any waiver of their expectation. Although these
24 expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA
25 CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the
26 CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and
27 regulations of California.

28 101. PLAINTIFF therefore demands reimbursement on behalf of the members of the

1 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on behalf
2 of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with interest at the statutory
3 rate and costs under Cal. Lab. Code § 2802.

4 **SEVENTH CAUSE OF ACTION**

5 **For Failure to Provide Accurate Itemized Statements**

6 **[Cal. Lab. Code §§ 226 and 226.2]**

7 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

8 102. 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 Complaint.

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

- 12 1. Gross wages earned;
- 13 2. Total hours worked by the employee, except for any employee
14 whose compensation is solely based on a salary and who is exempt from
15 payment of overtime under subdivision (a) of Section 515 or any applicable
16 order of the Industrial Welfare Commission;
- 17 3. The number of piece-rate units earned and any applicable piece rate
18 if the employee is paid on a piece-rate basis;
- 19 4. All deductions, provided that all deductions made on written orders
20 of the employee may be aggregated and shown as one item;
- 21 5. Net wages earned;
- 22 6. The inclusive dates of the period for which the employee is paid,
- 23 7. The name of the employee and his or her social security number,
24 except that by January 1, 2008, only the last four digits of his or her social
25 security number or an employee identification number other than a social
26 security number may be shown on the itemized statement,
- 27 8. The name and address of the legal entity that is the employer, and
- 28 9. All applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee.

2 104. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the
3 other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
4 to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3)
5 gross wages earned; (4) the correct name and address of the legal entity that is the employer; and (5)
6 all applicable hourly rates in effect during the pay period and the corresponding number of hours
7 worked at each hourly rate by the employee in violation of California Labor Code Section 226(a).

8 105. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §
9 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA
10 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for
11 the overtime worked and the amount of employment taxes which were not properly paid to state and
12 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other
13 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)
14 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
15 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and
16 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
17 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
18 member of the CALIFORNIA CLASS herein.

19 **EIGHTH CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES WHEN DUE**

21 **(Cal Lab. Code §§201, 202, 203)**

22 **((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))**

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

25 107. Cal. Lab. Code § 200 provides that:

26 As used in this article:(a) "Wages" includes all amounts for labor
27 performed by employees of every description, whether the amount
28 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

1 under contract, subcontract, partnership, station plan, or other
2 agreement if the labor to be paid for is performed personally by the
3 person demanding payment.

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

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

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

18 110. There was no definite term in PLAINTIFF’s or any CALIFORNIA CLASS Members’
19 employment contract.

20 111. Cal. Lab. Code § 203 provides:

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

27 112. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated
28 and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest
breaks, as required by law.

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

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1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REPORTING TIME WAGES**

3 **[Violation of 8 Cal. Code Reg. § 11050(5)]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS Against All DEFENDANTS)**

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

7 115. Section 5 of Wage Order No. 5 at 8 CCR §11050 provides in pertinent part:

8 **5. Reporting Time Pay**

9 (A) Each workday an employee is required to report for work and does
10 report, but is not put to work or is furnished less than half said employee's
11 usual or scheduled day's work, the employee shall be paid for half the
12 usual or scheduled day's work, but in no event for less than two (2) hours
13 nor more than four (4) hours, at the employee's regular rate of pay, which
14 shall not be less than the minimum wage.

15 (B) If an employee is required to report for work a second time in any
16 one workday and is furnished less than two (2) hours of work on the
17 second reporting, said employee shall be paid for two (2) hours at the
18 employee's regular rate of pay, which shall not be less than the minimum
19 wage.

20 116. Specifically, DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS
21 Members to report to work when assigned to their various shifts. From time-to-time, over the course
22 of their employment, PLAINTIFF and other CALIFORNIA CLASS Members reported to work as
23 required by DEFENDANTS. On these days, PLAINTIFF and other CALIFORNIA CLASS Members
24 were not put to work and/or were not furnished with work for less than half of their scheduled shifts.
25 When PLAINTIFF and other CALIFORNIA CLASS Members report to work, as scheduled, but is
26 furnished less than half of their scheduled day's work, PLAINTIFF and other CALIFORNIA CLASS
27 Members are not compensated with Reporting Time pay, as required by the applicable Wage Order,
28 in that they are not paid a minimum of two hours or for half of their scheduled day's work, not to
exceed four hours.

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

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

3 1. On behalf of the CALIFORNIA CLASS:

4 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as
5 a class action pursuant to Cal. Code of Civ. Proc. § 382;

6 B) An order temporarily, preliminarily and permanently enjoining and restraining
7 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

8 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
9 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

10 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for
11 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other
12 members of the CALIFORNIA CLASS.

13 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth,
14 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ.
15 Proc. § 382;

16 1. Compensatory damages, according to proof at trial, including compensatory
17 damages for minimum wage compensation, overtime compensation, reporting time
18 wages, and unreimbursed business expenses due PLAINTIFF and the other members of
19 the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus
20 interest thereon at the statutory rate;

21 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
22 which a violation occurs and one hundred dollars (\$100) per each member of the
23 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an
24 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation
25 of Cal. Lab. Code § 226;

26 3. Meal and rest period compensation pursuant to California Labor Code Section
27 226.7, 512 and the applicable IWC Wage Order;

1 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
2 1197; and

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

6 2. On all claims:


7 A) An award of interest, including prejudgment interest at the legal rate;

8 B) Such other and further relief as the Court deems just and equitable; and,

9 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
10 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

11
12 Dated: August 19, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.


13
14 By: 
15 Jean-Claude Lapuyade
16 Attorneys for PLAINTIFF

17 **DEMAND FOR JURY TRIAL**

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

19
20 Dated: August 19, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

21
22 By: 
23 Jean-Claude Lapuyade
24 Attorneys for PLAINTIFF

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

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shake shack enterprises, LLC
 c/o United Corp Services, Inc.
 608 University Ave.
 Sacramento



9590 9402 6744 1060 3006 49

2. Article Number (Transfer from service label)

7021 0350 0000 8465 2755

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Saciono*

- Agent
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B. Received by (Printed Name)

AT 1-19-75

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D. Is delivery address different from item 1? Yes
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