

SUMMONS

(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

URBN ENCINITAS, LLC, a California limited liability company; URBN COAL FIRED, LLC, a California limited liability company; (Additional Parties Attachment Attached)

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

ALIUSKA NUNEZ, an individual, on behalf of Plaintiff, and on behalf of all persons similarly situated,

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

2/27/2025 9:34:31 PM

Clerk of the Superior Court
By C. Martinez, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Diego Superior Court

Hall of Justice Courthouse - 330 W. Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

25CU010660C

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

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

Jean-Claude Lapuyade, Esq. T: (619)599-8292 JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE:
(Fecha) February 28, 2025

Clerk, by C. Martinez, Deputy
(Secretario) C. Martinez (Adjunto)

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

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

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

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

SHORT TITLE: Aliuska Nunez v. URBN Encinitas, LLC, et al.	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff
 ☒ Defendant
 ☐ Cross-Complainant
 ☐ Cross-Defendant

URBN ST, LLC, a California limited liability company; URBN ONE PASEO, LLC, a California limited liability company; URBN LA JOLLA, LLC, a California limited liability company; and DOES 1-50, Inclusive,

JCL LAW FIRM, APC

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County of San Diego

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Clerk of the Superior Court
By C. Martinez ,Deputy Clerk

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ALIUSKA NUNEZ, an individual, on behalf of
Plaintiff, and on behalf of all persons similarly
situated,

Plaintiff,

v.

URBN ENCINITAS, LLC, a California limited
liability company; URBN COAL FIRED, LLC,
a California limited liability company; URBN
ST, LLC, a California limited liability
company; URBN ONE PASEO, LLC, a
California limited liability company; URBN LA
JOLLA, LLC, a California limited liability
company; and DOES 1-50, Inclusive,

Defendants.

Case No: 25CU010660C

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §17200 *et*
seq;
- 2) FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF CAL.
LAB. CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;

- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 9) FAILURE TO PERMIT INSPECTION OF EMPLOYEE RECORDS IN VIOLATION OF CAL. LAB. CODE § 1198.5;
- 10) FAILURE TO PROVIDE GRATUITIES IN VIOLATION OF CAL. LAB. CODE § 351.

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant URBN ENCINITAS, LLC (“Defendant URBN Encinitas”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant URBN COAL FIRED, LLC (“Defendant URBN Coal Fired”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant URBN ST, LLC (“Defendant URBN St”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

4. Defendant URBN ONE PASEO, LLC (“Defendant URBN One Paseo”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

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1 5. Defendant URBN LA JOLLA, LLC (“Defendant URBN La Jolla”) is a California
2 limited liability company that at all relevant times mentioned herein conducted and continues to
3 conduct substantial and regular business throughout California.

4 6. PLAINTIFF alleges there has existed a unity of interest and ownership between
5 DEFENDANTS such that any individuality and separateness between the entities has ceased and
6 all DEFENDANTS are referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

7 7. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
8 of DEFENDANTS at all relevant times. PLAINTIFF alleges there has existed a unity of interest
9 and ownership between Defendant URBN Encinitas, Defendant URBN Coal Fired, Defendant
10 URBN St, Defendant URBN One Paseo, and Defendant URBN La Jolla such that any individuality
11 and separateness between the entities has ceased. Defendant URBN Encinitas, Defendant URBN
12 Coal Fired, Defendant URBN St, Defendant URBN One Paseo, and Defendant URBN La Jolla are
13 therefore alter egos of each other. Adherence to the fiction of the separate existence of
14 DEFENDANTS would permit an abuse of the corporate privilege, and would promote injustice by
15 protecting DEFENDANTS from liability for the wrongful acts committed by them.

16 8. PLAINTIFF further alleges that DEFENDANTS are the alter egos of each other for
17 the following reasons:

- 18 a. On the California Secretary of State’s website (<https://businesssearch.sos.ca.gov/>)
19 Defendant URBN Encinitas, Defendant URBN Coal Fired, Defendant URBN St,
20 Defendant URBN One Paseo, and Defendant URBN La Jolla have the same entity
21 address and/or mailing address and/or Agent for Service of Process;
- 22 b. On information and belief Defendant URBN Encinitas, Defendant URBN Coal
23 Fired, Defendant URBN St, Defendant URBN One Paseo, and Defendant URBN La
24 Jolla utilize the same standardized employment forms and issue the same
25 employment policies and same pay stubs;
- 26 c. On information and belief Defendant URBN Encinitas, Defendant URBN Coal
27 Fired, Defendant URBN St, Defendant URBN One Paseo, and Defendant URBN La
28 Jolla have an executive team which supervise and manage the operations of all of
DEFENDANTS’ restaurants, supervised and managed the finances of all of

1 DEFENDANTS' restaurants, supervised and managed the marketing of all of
2 DEFENDANTS' restaurants, supervised and managed the human resources of all of
3 DEFENDANTS' restaurants, and supervised and managed the food and beverage
4 offerings at all of DEFENDANTS' restaurants.

5 9. PLAINTIFF alleges that DEFENDANTS' various separate corporate entities are
6 used by an individual or individuals, or by another corporation, to accomplish inequitable purposes,
7 including to limit liability for the unlawful acts of DEFENDANTS.

8 10. PLAINTIFF alleges that there is such a unity of interest and ownership between
9 DEFENDANTS' various corporate entities that own DEFENDANTS' restaurants and the
10 individual or individuals, or organization controlling those corporate entities that their separate
11 personalities no longer exist.

12 11. PLAINTIFF further alleges that the failure to disregard the various corporate entities
13 would promote injustice.

14 12. Defendant URBN Encinitas, Defendant URBN Coal Fired, Defendant URBN St,
15 Defendant URBN One Paseo, and Defendant URBN La Jolla were the joint employers of
16 PLAINTIFF as evidenced by the documents issued to PLAINTIFF, by the company PLAINTIFF
17 performed work for respectively, and as these entities each exerted control over the hours, wages
18 and/or working conditions of PLAINTIFF, and are therefore jointly responsible as employers for
19 the conduct alleged herein as "DEFENDANTS."

20 13. DEFENDANTS own and operate restaurants in California, including in the County
21 of San Diego, where PLAINTIFF worked.

22 14. PLAINTIFF was employed by DEFENDANTS in California from March of 2022
23 to September of 2024, as a non-exempt employee, paid on an hourly basis, and entitled to the legally
24 required meal and rest periods and payment of minimum and overtime wages due for all time
25 worked.

26 15. PLAINTIFF reserves the right to seek leave to amend this complaint to add new
27 Plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
28 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

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1 16. PLAINTIFF brings this Class Action on behalf of PLAINTIFF and a California
2 class, defined as all persons who are or previously were employed by Defendant URBN Encinitas
3 and/or Defendant URBN Coal Fired and/or Defendant URBN St and/or Defendant One Paseo
4 and/or Defendant URBN La Jolla in California and classified as non-exempt employees (the
5 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing
6 of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”). The
7 amount in controversy for the aggregate claim of the CALIFORNIA CLASS members is under five
8 million dollars (\$5,000,000.00).

9 17. PLAINTIFF brings this Class Action on behalf of PLAINTIFF and a
10 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
11 incurred during the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice
12 which failed to lawfully compensate these employees. DEFENDANTS’ uniform policy and
13 practice alleged herein was an unlawful, unfair, and deceptive business practice whereby
14 DEFENDANTS retained and continue to retain wages due to PLAINTIFF and the other members
15 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS
16 seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
17 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
18 injured by DEFENDANTS’ past and current unlawful conduct, and all other appropriate legal and
19 equitable relief.

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

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

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

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

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

23 23. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
24 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and other
25 members of the CALIFORNIA CLASS who has been economically injured by DEFENDANTS'
26 past and current unlawful conduct, and all other appropriate legal and equitable relief.

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1 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
2 CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

3 **A. Meal Period Violations**

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

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

1 and on call. DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS
2 members with legally required meal breaks is evidenced by DEFENDANTS' business records. As
3 a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF
4 and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional
5 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

6 **B. Rest Period Violations**

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

21 **C. Unreimbursed Business Expenses**

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

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

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

16 **D. Wage Statement Violations**

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

25 33. From time to time during the CLASS PERIOD, when PLAINTIFF and other
26 CALIFORNIA CLASS members missed meal and rest breaks, or were paid inaccurately for missed
27 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
28 to provide PLAINTIFF and other CALIFORNIA CLASS members with complete and accurate

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

5 34. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and the
6 CALIFORNIA CLASS members with wage statements that accurately provided the name and
7 address of the legal entity that is the employer, in violation of California Labor Code Section
8 226(a)(8).

9 35. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
10 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
11 California Labor Code Section 226.

12 36. As a result, DEFENDANTS issued PLAINTIFF and other CALIFORNIA CLASS
13 members with wage statements that violate California Lab. Code § 226(a)(1)-(9). Further,
14 DEFENDANTS' violations are knowing and intentional, and were not isolated due to an
15 unintentional payroll error due to clerical or inadvertent mistake.

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

17 37. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
18 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
19 for all hours worked.

20 38. During the CLASS PERIOD, from time-to-time DEFENDANTS required
21 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
22 work, including but not limited to, sending and receiving work-related communications, clocking
23 in and out, performing keyholder duties, and performing security sweeps. This resulted in
24 PLAINTIFF and other CALIFORNIA CLASS members having to work while off-the-clock.

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

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1 40. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
2 assignments, and employment conditions of PLAINTIFF and the other CALIFORNIA CLASS
3 members.

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

8 42. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt
9 employees, subject to the requirements of the California Labor Code.

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

15 44. DEFENDANTS knew or should have known that PLAINTIFFS' and the other
16 CALIFORNIA CLASS members' off-the-clock work was compensable under the law.

17 45. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
18 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and benefit
19 for the time spent working while off-the-clock, including but not limited to, sending and receiving
20 work-related communications, clocking in and out, performing keyholder duties, and performing
21 security sweeps. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the
22 members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable
23 law is evidenced by DEFENDANTS' business records.

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

26 46. From time to time during the CLASS PERIOD, DEFENDANTS failed and
27 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
28 members for their overtime and double time hours worked, meal and rest period premiums, and

1 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members
2 forfeited wages due to them for working overtime without compensation at the correct overtime
3 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
4 DEFENDANTS' uniform policy and practice not to pay the CALIFORNIA CLASS members at
5 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick
6 pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

7 47. State law provides that employees must be paid overtime at one-and-one-half times
8 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were
9 compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's
10 performance.

11 48. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
12 members' compensation was DEFENDANTS' non-discretionary incentive program that paid
13 PLAINTIFF and other CALIFORNIA CLASS members incentive wages based on their
14 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
15 paid on an hourly basis with bonus compensation when the employees met the various performance
16 goals set by DEFENDANTS.

17 49. However, from time to time, when calculating the regular rate of pay in those pay
18 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
19 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
20 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
21 compensation as part of the employee's "regular rate of pay" and/or calculated all hours worked
22 rather than just all non-overtime hours worked. Management and supervisors described the
23 incentive/bonus program to potential and new employees as part of the compensation package. As
24 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
25 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted in
26 a systematic underpayment of overtime and double time compensation, meal and rest period
27 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
28 members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid

1 sick time for non-exempt employees shall be calculated in the same manner as the regular rate of
2 pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the
3 employee actually works overtime in that workweek. DEFENDANTS' conduct, as articulated
4 herein, by failing to include the incentive compensation as part of the "regular rate of pay" for
5 purposes of sick pay compensation was in violation of California Labor Code Section 246, the
6 underpayment of which is recoverable under California Labor Code Sections 201, 202, 203, and/or
7 204.

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

17 **G. Unlawful Deductions**

18 51. DEFENDANTS, from time-to-time, unlawfully deducted wages from
19 PLAINTIFF'S and CALIFORNIA CLASS members' pay without explanations and without
20 authorization to do so or notice to PLAINTIFF and the CALIFORNIA CLASS members. As a
21 result, DEFENDANTS violated Labor Code Section 221.

22 **H. Timekeeping Manipulation**

23 52. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
24 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
25 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
26 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
27 and rest breaks. As a result, DEFENDANTS were able to and did in fact, unlawfully, and
28 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and

1 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
2 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
3 missed rest breaks.

4 53. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
5 time to time, forfeited time worked by working without their time being accurately recorded and
6 without compensation at the applicable pay rates.

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

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

20 **I. Unlawful Rounding Practices**

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

employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS members, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

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

J. Violations for Untimely Payment of Wages

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

59. Pursuant to California Labor Code Section 201, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to California Labor Code Section 202, if an employee quits his or her employment, "his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." PLAINTIFF and the CALIFORNIA CLASS members were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of California Labor Code Sections 201 and 202.

60. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all CALIFORNIA CLASS members whose employment ended during the CLASS PERIOD.

1 **K. Sick Pay Violations**

2 61. California Labor Code Section 246 (a)(1) mandates that “An employee who, on or
3 after July 1, 2015, works in California for the same employer for 30 or more days within a year
4 from the commencement of employment is entitled to paid sick days as specified in this section.”
5 Further, California Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
6 From time to time, DEFENDANTS failed to have a policy or practice in place to provide
7 PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick
8 leave. As of January 1, 2024, DEFENDANTS failed to adhere to the law in that they failed to
9 provide and allow employees to use at least 40 hours or five days of paid sick leave per year.

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

15 **L. Failure to Provide Personnel Files**

16 63. On October 22, 2024, PLAINTIFF caused a written request via certified mail to
17 be delivered to DEFENDANTS for PLAINTIFF’S personnel and employment records, including
18 but not limited to: (1) payroll records; (2) employment contracts; (3) itemized pay stubs; and (4)
19 PLAINTIFF’S complete employment file.

20 64. DEFENDANTS failed to provide and/or make available to PLAINTIFF their
21 personnel records, payroll records, employment contract, and entire employment file within thirty
22 (30) days of their requests stated above. In fact, as of the date of filing of this complaint,
23 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
24 DEFENDANTS violated California Labor Code Section 1198.5 by failing to respond and provide
25 PLAINTIFF with their employment file within thirty (30) days. Section 1198.5 states that
26 employees (and former employees) have the right to inspect personnel records maintained by the
27 employer “related to the employee’s performance or to any grievance concerning the employee.”
28 Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF
is now entitled to and requests injunctive relief to obtain compliance with California Labor Code

1 Section 1198.5, a statutory penalty, and an award of attorneys' fees and costs for bringing this
2 action.

3 **M. Tip Pooling**

4 65. During the CALIFORNIA CLASS period, pursuant to DEFENDANTS' company
5 policies and practices, PLAINTIFF and other CALIFORNIA CLASS Members were forced to
6 forfeit gratuities left for them by customers to DEFENDANTS' agents who provided no service
7 to the customers that resulted in the gratuity. DEFENDANTS routinely added gratuity tips and
8 service charges to its food and beverage bills. These gratuities and service charges reasonably
9 appear to be gratuities for the service staff. It is typical and customary in the hospitality industry
10 that establishments impose gratuity charges on the food and beverage bill. Thus, when customers
11 paid these charges, it is reasonable for them to have believed they were gratuities to be paid to the
12 service staff. Indeed, because many of these charges are depicted to customers, and the custom in
13 the food and beverage industry that gratuities are paid for food and beverage service, customers
14 paid these charges reasonably believing they were remitted to the service staff. However,
15 DEFENDANTS have not remitted the total proceeds of these gratuities to the non-managerial
16 employees who serve the food and beverages. Instead, DEFENDANTS have a policy and practice
17 of using a portion of these gratuities to pay managers or other non-service employees. As a result,
18 PLAINTIFF and CALIFORNIA CLASS Members have not received the total proceeds of the
19 gratuities, to which they are entitled to under California law.

20 66. DEFENDANTS are generally in the business of owning and operating a restaurant.
21 During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
22 Members were in the "chain of service" and earned gratuities based on their service for their
23 customers. However, PLAINTIFF and CALIFORNIA CLASS Members were forced to forfeit
24 portions of their gratuities, which said gratuities were kept by DEFENDANTS' employees who
25 were not in the chain of service from which the gratuity resulted. PLAINTIFF and other
26 CALIFORNIA CLASS Members contend that any gratuities kept by DEFENDANTS' non-
27 service employees were illegal and in violation of California law because PLAINTIFF and other
28

1 CALIFORNIA CLASS Members provided the service for to whom the gratuity should have been
2 paid.

3 67. California Labor Code § 351 establishes the requirements for an employer
4 regarding the payment of gratuities. Specifically, gratuities are the sole property of the employees.
5 California Labor Code § 351 expressly prohibits employers and their agents from collecting,
6 taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines the term
7 “gratuity” as including any money that has been paid or given or left for an employee by a patron
8 of a business over and above the actual amount due the business for services rendered or for
9 goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires employers
10 to keep accurate records of all gratuities they receive, directly or indirectly.

11 68. Although tip pooling is not expressly prohibited by the Labor Code, employees
12 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
13 By distributing tips to employees who were not in the “chain of service,” DEFENDANTS have
14 violated and continue to violate the legal requirements for handling pooled tips.

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

1 in furtherance of their employment with DEFENDANTS. Additionally, DEFENDANTS failed to
2 provide and/or make available to PLAINTIFF their personnel records, payroll records,
3 employment contracts, and entire employment file within (30) days of all their request on October
4 22, 2024. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and
5 double time compensation still owed to them, or any penalty wages owed to them under California
6 Labor Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed
7 the sum or value of \$75,000.

8 **CLASS ACTION ALLEGATIONS**

9 70. PLAINTIFF brings this Class Action on behalf of PLAINTIFF, and a California
10 class defined as all persons who are or previously were employed by Defendant URBN Encinitas
11 and/or Defendant URBN Coal Fired and/or Defendant URBN St and/or Defendant URBN One
12 Paseo and/or Defendant URBN La Jolla in California and classified as non-exempt employees (the
13 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing
14 of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).

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

22 72. The members of the class are so numerous that joinder of all class members is
23 impractical.

24 73. Common questions of law and fact regarding DEFENDANTS’ conduct, including
25 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
26 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
27 regular rate of compensation for missed meal and rest period premiums, failure to provide legally
28 compliant meal and rest periods, failure to reimburse for business expenses, failure to provide

1 accurate itemized wage statements, and failure to ensure they are paid at least minimum wage and
2 overtime, exist as to all members of the class and predominate over any questions affecting solely
3 any individual members of the class. Among the questions of law and fact common to the class are:

- 4 a. Whether DEFENDANTS maintained legally compliant meal period policies and
5 practices;
- 6 b. Whether DEFENDANTS maintained legally compliant rest period policies and
7 practices;
- 8 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS
9 members accurate premium payments for missed meal and rest periods;
- 10 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS
11 members accurate overtime wages;
- 12 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS
13 members at least minimum wage for all hours worked;
- 14 f. Whether DEFENDANTS failed to compensate PLAINTIFF and the CALIFORNIA
15 CLASS members for required business expenses;
- 16 g. Whether DEFENDANTS issued legally compliant wage statements;
- 17 h. Whether DEFENDANTS committed an act of unfair competition by systematically
18 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
19 CLASS for all time worked;
- 20 i. Whether DEFENDANTS committed an act of unfair competition by systematically
21 failing to record all meal and rest breaks missed by PLAINTIFF and other
22 CALIFORNIA CLASS members, even though DEFENDANTS enjoyed the benefit
23 of this work, required employees to perform this work and permits or suffers to
24 permit this work;
- 25 j. Whether DEFENDANTS committed an act of unfair competition in violation of
26 California Business and Professions Code Sections 17200, *et seq.* (the “UCL”), by
27 failing to provide the PLAINTIFF and the other members of the CALIFORNIA
28 CLASS with the legally required meal and rest periods.

1 74. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a
2 result of DEFENDANTS' conduct and actions alleged herein.

3 75. PLAINTIFFS' claims are typical of the claims of the CALIFORNIA CLASS, and
4 PLAINTIFF has the same interests as the other members of the class.

5 76. PLAINTIFF will fairly and adequately represent and protect the interests of the
6 CALIFORNIA CLASS members.

7 77. PLAINTIFF retained able class counsel with extensive experience in class action
8 litigation.

9 78. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
10 interest of the other CALIFORNIA CLASS members.

11 79. There is a strong community of interest among PLAINTIFF and the members of the
12 CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
13 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
14 sustained.

15 80. The questions of law and fact common to the CALIFORNIA CLASS members
16 predominate over any questions affecting only individual members, including legal and factual
17 issues relating to liability and damages.

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

- 25 a. Inconsistent or varying adjudications with respect to individual members of the
26 CALIFORNIA CLASS which would establish incompatible standards of conduct
27 for the parties opposing the CALIFORNIA CLASS; and/or,
28

1 2802, for which this Court should issue declaratory and other equitable relief pursuant to California
2 Business and Professions Code Section 17203 as may be necessary to prevent and remedy the
3 conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

22 90. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
23 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
24 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
25 required by California Labor Code Sections 226.7 and 512.

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

workday in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

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

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

94. All the acts described herein as violations of, among other things, the Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business practices in violation of California Business and Professions Code Sections 17200, *et seq.*

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

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

PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **Failure To Pay Minimum Wages**

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

8 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against DEFENDANTS)**

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

12 98. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
13 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
14 Welfare Commission requirements for DEFENDANTS' failure to accurately calculate and pay
15 minimum wages to PLAINTIFF and CALIFORNIA CLASS members.

16 99. Pursuant to California Labor Code Section 204, other applicable laws and
17 regulations, and public policy, an employer must timely pay its employees for all hours worked.

18 100. California Labor Code Section 1197 provides the minimum wage for employees
19 fixed by the commission is the minimum wage to be paid to employees, and the payment of a less
20 wage than the minimum so fixed is unlawful.

21 101. California Labor Code Section 1194 establishes an employee's right to recover
22 unpaid wages, including minimum wage compensation and interest thereon, together with the costs
23 of suit.

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

1 103. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing
3 a uniform policy and practice that denies accurate compensation to PLAINTIFF and the other
4 members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **Failure To Pay Overtime Compensation**

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

23 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against DEFENDANTS)**

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

27 112. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
28 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial

1 Welfare Commission requirements for DEFENDANTS' failure to pay these employees for all
2 overtime worked including work performed in excess of eight (8) hours in a workday, and/or twelve
3 (12) hours in a workday, and/or forty (40) hours in any workweek.

4 113. Pursuant to California Labor Code Section 204, other applicable laws and
5 regulations, and public policy, an employer must timely pay its employees for all hours worked.

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

10 115. California Labor Code Section 1194 establishes an employee's right to recover
11 unpaid wages, including minimum and overtime compensation and interest thereon, together with
12 the costs of suit. California Labor Code Section 1198 further states that the employment of an
13 employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

14 116. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
15 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
16 they worked, including overtime work.

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

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

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

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

14 121. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS were paid less for overtime worked than they were entitled to, constituting
16 a failure to pay all earned wages.

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

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

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

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **Failure To Provide Required Meal Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against DEFENDANTS)

131. 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.

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

133. DEFENDANTS further violated California Labor Code Sections 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS members who were not provided a rest period, in accordance with the applicable Wage Order, one

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code § 226)**

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

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

13 136. California Labor Code Section 226 provides that an employer must furnish
14 employees with an "accurate itemized" statement in writing showing:

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

h. the name and address of the legal entity that is the employer, and

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

137. When DEFENDANTS did not accurately record PLAINTIFFS' and other CALIFORNIA CLASS members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated California Labor Code Section 226 in that DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and the CALIFORNIA CLASS members with wage statements that accurately provided the name and address of the legal entity that is the employer, in violation of California Labor Code Section 226(a)(8).

138. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226(a)(1)-(9).

139. DEFENDANTS knowingly and intentionally failed to comply with California Labor Code Section 226(a)(1)-(9), causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks 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

1 pursuant to California Labor Code Section 226, in an amount according to proof at the time of trial
2 (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
3 member of the CALIFORNIA CLASS herein).

4 **SEVENTH CAUSE OF ACTION**

5 **Failure To Pay Wages When Due**

6 **(Cal. Lab. Code § 203)**

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

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

11 141. California Labor Code Section 200 provides that:

12 As used in this article:

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

17 142. California Labor Code Section 201 provides, in relevant part, that "If an employer
18 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
19 immediately."

20 143. California Labor Code Section 202 provides, in relevant part, that:
21 If an employee not having a written contract for a definite period quits his or her
employment, his or her wages shall become due and payable not later than 72 hours
22 thereafter, unless the employee has given 72 hours previous notice of his or her
intention to quit, in which case the employee is entitled to his or her wages at the time
23 of quitting. Notwithstanding any other provision of law, an employee who quits without
providing a 72-hour notice shall be entitled to receive payment by mail if he or she so
24 requests and designates a mailing address. The date of the mailing shall constitute the
date of payment for purposes of the requirement to provide payment within 72 hours
25 of the notice of quitting.

26 144. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS
27 members' employment contract.

28 145. California Labor Code Section 203 provides:

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

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

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

13 **EIGHTH CAUSE OF ACTION**

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

15 **(Cal. Lab. Code §§ 2802)**

16 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against DEFENDANTS)**

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

20 149. California Labor Code Section 2802 provides, in relevant part, that:
21 An employer shall indemnify his or her employee for all necessary expenditures or
22 losses incurred by the employee in direct consequence of the discharge of his or her
23 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.

24 150. From time to time during the CLASS PERIOD, DEFENDANTS violated California
25 Labor Code Section 2802, by failing to indemnify and reimburse PLAINTIFF and the
26 CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties
27 for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the
28 CALIFORNIA CLASS members for expenses which included, but were not limited to, the use of

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

13 151. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
14 by them and the CALIFORNIA CLASS members in the discharge of their job duties for
15 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
16 statutory rate and costs under California Labor Code Section 2802.

17 **NINTH CAUSE OF ACTION**

18 **Failure To Permit Inspection of Employee Records**

19 **(Cal. Lab. § 1198.5)**

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

21 152. 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
23 Complaint.

24 153. Labor Code § 1198.5 states that employees (and former employees) have the right
25 to inspect personnel records maintained by the employer "related to the employee's performance
26 or to any grievance concerning the employee." Employers must allow inspection or copying
27 within thirty (30) days of the request.

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1 154. On October 22, 2024, PLAINTIFF caused a written request via certified mail to
2 be delivered to DEFENDANTS for PLAINTIFF'S personnel and employment records, including
3 but not limited to: (1) payroll records; (2) employment contracts; (3) itemized pay stubs; and (4)
4 PLAINTIFF'S complete employment file.

5 155. DEFENDANTS failed to provide and/or make available to PLAINTIFF their
6 personnel records, payroll records, employment contract, and entire employment file within
7 thirty (30) days of their requests stated above. In fact, as of the date of filing of this complaint,
8 DEFENDANT has still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.

9 156. PLAINTIFF is now entitled to and requests injunctive relief to obtain compliance
10 with Cal. Lab. Code Section 1198.5, a statutory penalty, and an award of attorneys' fees and costs
11 for bringing this action.

12 **TENTH CAUSE OF ACTION**

13 **FAILURE TO PAY STATUTORY GRATUITIES**

14 **(Cal. Lab. Code § 351 et seq.)**

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

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

20 158. DEFENDANTS' conduct, as set forth above, in failing to remit to non-managerial
21 employees the total proceeds of gratuities added to customers' bills constitutes a violation of
22 California Labor Code Section 351. This violation is enforceable pursuant to the California Unfair
23 Competition Law, Cal. Bus. And Prof. Code 17200 et seq. DEFENDANTS' conduct constitutes
24 unlawful, unfair, and/or fraudulent business acts or practices, in that DEFENDANT has violated
25 California Labor Code Section 351 in not remitting to the non-managerial service employees the
26 total gratuities that were charged to customers.

27 159. As a proximate result of the aforementioned violations, PLAINTIFF and
28 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,

1 including the loss of gratuities to which they were entitled. and seek all wages earned and due,
2 interest, penalties, expenses and costs of suit.

3 **PRAYER FOR RELIEF**

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

6 1. On behalf of the CALIFORNIA CLASS:

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

17 2. On behalf of the CALIFORNIA CLASS:

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

CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of California Labor Code Section 226;

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

- e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.
- f. The amount of tips and/or gratuities owed to PLAINTIFF and the CALIFORNIA CLASS members, in accordance with California Labor Code section 351.

3. On the Ninth Cause of Action


- a. For an award of statutory damages as plead pursuant to Labor Code § 1198.5
- b. For an injunction compelling production of Plaintiff's employment records pursuant to Labor Code §1198.5.

4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including and pursuant to, but not limited to, California Labor Code Sections 218.5, 226, 246 and/or 1194.

DATED: February 27, 2025

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

DATED: February 27, 2025

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF