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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 ANGELA PITTARD, on behalf of herself,  
12 and on behalf of all persons similarly situated,

13 Plaintiffs,

14 vs.

15 ORANGE COUNTY HOMECARE, a  
16 California limited liability corporation, doing  
business as SALUS HOMECARE and  
17 SALUS HEALTHCARE; and, Does 1 to 10,

18 Defendants.  
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CASE No. 08 CV 1398 J (WMc)

**FIRST AMENDED CLASS AND  
COLLECTIVE 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 PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203;
4. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
5. FAILURE TO PROVIDE MEAL AND REST PERIODS IN VIOLATION OF CAL. LAB. CODE § 226.7 AND 512;
6. FAILURE TO PAY COMPENSATION IN VIOLATION OF 29 U.S.C. § 201, *et seq.*;

DEMAND FOR A JURY TRIAL

1 Plaintiff Angela Pittard alleges on information and belief, except for her own acts and  
2 knowledge, the following:

3 **THE PARTIES**

4 1. Defendant ORANGE COUNTY HOMECARE, also doing business as SALUS  
5 HOMECARE and SALUS HEALTHCARE (hereinafter referred to as “SALUS” or  
6 “DEFENDANTS”), is a California limited liability corporation with offices in Los Angeles, Orange  
7 County, and San Diego.

8 2. SALUS conducted and continues to conduct substantial and regular business  
9 throughout California. DEFENDANT is an enterprise that affects commerce by engaging in the  
10 enterprise of employment of persons in domestic service in households and by regularly and  
11 recurrently receiving or transmitting interstate communications.

12 3. SALUS is a non-medical service company that provides general housekeeping  
13 assistance to senior citizens to facilitate the activities of daily living. The services provided by  
14 SALUS encompass the comprehensive assistance to the client, effectually managing all aspects of  
15 the client’s daily living needs. These services are provided by the “Caregivers” who are employed  
16 by SALUS. SALUS is able to deliver a Caregiver to the home of a client and have a case manager  
17 assigned to the client within 24 hours.

18 4. The typical services that are provided by the Caregivers to the clients are cooking and  
19 serving meals, performance of errands, home maintenance, housekeeping, mail organization,  
20 transportation, making appointments for the client, pet care, home deliveries, laundry, bathing,  
21 showering, grooming, dressing, toileting, exercising, physical therapy, ambulation, and medication  
22 reminders. As a result, the Caregivers essentially take care of every domestic need of the client.

23 5. Plaintiff Angela Pittard (“PLAINTIFF”) was employed by SALUS between July of  
24 2006 and March of 2008 in the state of California in the position of “Caregiver.”

25 6. On a weekly basis, substantially more than twenty percent (20%) of the time of  
26 PLAINTIFF was spent performing general housekeeping duties as a domestic servant, separate from  
27 assisting the client as a personal attendant and without the assistance of the client. As shown by  
28 Exhibit 1, attached hereto and incorporated by this reference herein, the PLAINTIFF was required

1 to, without the participation of the client: (a) cook breakfast, lunch and dinner; (b) run errands,  
2 which includes grocery shopping and picking up prescriptions; (c) perform homemaking, which  
3 includes laundry/washing/drying/folding; (d) clean the restroom, which includes the toilet, sink,  
4 bathtub/shower, emptying of the trash, and sweeping/mopping the floor; (e) clean the kitchen, which  
5 includes cleaning the sink, washing the dishes, wiping the counter, wiping the stove top, wiping the  
6 refrigerator, cleaning the inside of the microwave, loading the dishwasher, emptying the dishwasher,  
7 sweep/mopping the floor, and emptying the trash; (f) clean the living area, which includes  
8 vacuuming, dusting, changing bed linens, and wiping mirrors; and (g) pet care.

9           7.       PLAINTIFF performed this grueling manual labor without the assistance of the  
10 client, without taking meal or rest breaks, and pursuant to a schedule that mandated this manual  
11 labor to be performed twelve (12) hours per day, six (6) days per week, at the rate of \$10-\$12 per  
12 hour. Although PLAINTIFF does not know exactly why her rate of pay varies between \$10-\$12 per  
13 hour, this rate does not fluctuate based on the overtime work she performed. Although she worked  
14 more than eight (8) in one day, and more than forty (40) in one week, SALUS did not pay  
15 PLAINTIFF premium pay for these overtime hours worked because SALUS had initially classified  
16 her as exempt based on job title alone. PLAINTIFF'S performance of general housekeeping  
17 services was on a weekly basis comprised of more than twenty percent (20%) of her time worked,  
18 thus rendering her ineligible for exemption from overtime under the California Wage Order or the  
19 Fair Labor Standards Act. In order to avoid determining the actual amount of time PLAINTIFF  
20 performed general housekeeping services, SALUS did not allow PLAINTIFF to indicate the actual  
21 amount of time she spent performing each task listed on Exhibit #1. Instead, SALUS ordered that  
22 only a mark be placed in the box for each service performed. As a result, SALUS did not actually  
23 analyze the services performed by PLAINTIFF to ensure that the classification of PLAINTIFF as  
24 exempt was, in fact, properly based on the amount of general housekeeping services that she  
25 actually performed.

26           8.       The Defendants named in this Complaint, and as Does 1 through 10, inclusive,  
27 are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the  
28 other Defendant and each Defendant was acting within the course of scope of his, her or its authority

1 as the agent, servant and/or employee of each of the other Defendant. Consequently, all the  
2 Defendants named herein (the “DEFENDANTS”) are jointly and severally liable to the PLAINTIFF  
3 and the other members of the CALIFORNIA CLASS, for the losses sustained as a proximate result  
4 of DEFENDANTS’ conduct as herein alleged.

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6 **THE CONDUCT**

7 9. PLAINTIFF and the other Caregivers were and are employed as working members  
8 on the production side of DEFENDANTS’ business. The primary job duties of PLAINTIFF and  
9 other Caregivers were and are to perform, by manual labor, general housekeeping duties without the  
10 assistance of the client. As a result, PLAINTIFF and the other Caregivers were not and currently are  
11 not primarily involved in providing companionship services. Instead, PLAINTIFF and the other  
12 Caregivers were and currently are primarily involved in providing day to day, routine, and general,  
13 domestic household work. This work was and still is executed primarily by the performance of  
14 manual labor within a defined skill set, involving meal preparation, bed making, washing of clothes,  
15 and other general housekeeping services as outlined in Exhibit #1. Physical demands of the position  
16 include standing, sitting, walking, bending, lifting, scrubbing, gardening, moving furniture, and  
17 intensive cleaning.

18 10. As a Caregiver on the production side of the DEFENDANTS’ business, PLAINTIFF  
19 and the other members of the CALIFORNIA CLASS worked a substantial amount of overtime  
20 hours working twelve (12) hour shifts, six (6) days per week. Nevertheless, PLAINTIFF and the  
21 other members of the CALIFORNIA CLASS were never fully paid the overtime compensation to  
22 which they were entitled because DEFENDANTS denied PLAINTIFF and the other members of the  
23 CALIFORNIA CLASS overtime wages by uniformly classifying all of them as exempt based solely  
24 on job title alone. This classification was made based on job title alone, rather than on the services  
25 performed by PLAINTIFF and the other members of the CALIFORNIA CLASS, because SALUS  
26 had in place and still has in place a policy and procedure that fails to determine whether the general  
27 housekeeping services that are performed by the Caregivers exceed 20% of the overall work  
28 performed. As shown by Exhibit #1, attached hereto, DEFENDANTS instructed PLAINTIFF and

1 the other members of the CALIFORNIA CLASS not to record the amount of time spent performing  
2 all services during the day and only to designate the work performed with a mark. SALUS,  
3 therefore, through a systematic procedure of willful blindness, failed and still fails to properly  
4 determine the actual ratio of time spent performing companionship services, as compared to general  
5 housekeeping services. As a result, the classification of PLAINTIFF and each and every member of  
6 the CALIFORNIA CLASS as exempt is based on job title alone and not on the actual services that  
7 were provided by the PLAINTIFF and the members of the CALIFORNIA CLASS after being hired  
8 and placed into a particular household. Thereafter, no reevaluation or reclassification analysis  
9 regarding the propriety of the exempt status was performed by SALUS for PLAINTIFF or for any  
10 other member of the CALIFORNIA CLASS because the company's business model was and still is  
11 to classify all Caregivers as exempt based on job title alone and not on actual work performed. As a  
12 result, PLAINTIFF and the members of the CALIFORNIA CLASS were not fully compensated for  
13 hours of overtime work as required by law in excess of eight (8) hours a day, forty (40) hours a  
14 week, or for hours worked on the seventh (7<sup>th</sup>) consecutive day of a workweek.

15 11. Plaintiff Angela Pittard ("PLAINTIFF") brings this class action on behalf of  
16 herself and a California class consisting of all individuals who are or previously were employed by  
17 Defendant SALUS (hereinafter referred to as "DEFENDANTS") in a staff position as a Caregiver,  
18 or in any other similarly situated position (the "Caregivers") (the "CALIFORNIA CLASS" or  
19 "CLASS") during the Class Period. The class period applicable to this CALIFORNIA CLASS is  
20 defined as the period beginning four years prior to the filing of this Complaint and ending on the  
21 date of as determined by the Court (the "CLASS PERIOD"). As a matter of company policy and  
22 practice, DEFENDANTS have unlawfully, unfairly and deceptively classified every Caregiver as  
23 exempt based on job title alone, failed to pay the required overtime compensation and otherwise  
24 failed to comply with all labor laws with respect to these Caregivers.

25 12. Individuals in these Caregiver positions are and were employees who are entitled to  
26 regular, and overtime compensation and prompt payment of amounts that the employer owes an  
27 employee when the employee quits or is terminated, and other compensation and working  
28 conditions that are prescribed by law. Although DEFENDANTS require their employees employed

1 as Caregivers, and other similarly situated positions, to work more than forty (40) hours a week,  
2 eight (8) hours in a workday, and /or on the seventh (7<sup>th</sup>) day of a workweek, as a matter of company  
3 policy and practice, DEFENDANTS consistently and uniformly failed and still fail to implement a  
4 practice and procedure that accurately determines whether the correct overtime compensation is paid  
5 to these Caregivers as the law requires. The PLAINTIFF and known members of the CALIFORNIA  
6 CLASS currently work or previously worked in California at times during the CLASS PERIOD for  
7 DEFENDANTS and DEFENDANTS' practices and procedures are and were common throughout  
8 California at all times during the CLASS PERIOD.

9 13. In this action, PLAINTIFF, on behalf of herself and the CALIFORNIA CLASS,  
10 seeks to recover all the compensation that DEFENDANTS were required by law to provide, but  
11 failed to provide, to PLAINTIFF and all other CALIFORNIA CLASS members. PLAINTIFF also  
12 seeks penalties and all other relief available to her and other similarly situated employees under  
13 California law. PLAINTIFF also seeks declaratory relief finding that the employment practices and  
14 policies of the DEFENDANTS violate California law and injunctive relief to enjoin the  
15 DEFENDANT from continuing to engage in such employment practices.

16 14. PLAINTIFF and all members of the CALIFORNIA CLASS are and were uniformly  
17 classified and treated by DEFENDANT as exempt at the time of hire and thereafter,  
18 DEFENDANTS failed to take the proper steps to determine whether PLAINTIFF, and the other  
19 members of the similarly-situated CALIFORNIA CLASS, were properly classified under Industrial  
20 Welfare Commission Wage Order 15-2001 and Cal. Lab. Code §§ 510 *et seq.* and Section 13(a)(5)  
21 of the Fair Labor Standards Act (the "FLSA") as exempt from applicable federal and state labor  
22 laws. Under both the FLSA and California Labor Law, these employees may only be classified as  
23 exempt if the combined general housekeeping duties performed by the Caregiver do not exceed  
24 20% of the weekly working time spent by the Caregiver. Since DEFENDANTS affirmatively and  
25 wilfully failed to determine whether exempting PLAINTIFF and the members of the CALIFORNIA  
26 CLASS complied with either the FLSA or the California Labor Laws, DEFENDANTS' practices  
27 violated and continue to violate the law. As a result of this policy and practice, DEFENDANTS  
28 failed and still fail to pay overtime in accordance with applicable law.



1 Defendant (the “CALIFORNIA CLASS”). To the extent equitable tolling operates to toll claims by  
2 the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted  
3 accordingly.

4 18. DEFENDANTS, as a matter of corporate policy, practice and procedure, and in  
5 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
6 Requirements, and the applicable provisions of California law, intentionally, knowingly, and  
7 wilfully, engaged in a practice whereby DEFENDANT unfairly, unlawfully, and deceptively failed  
8 to institute a practice to ensure that the employees employed in a position as a Caregiver properly  
9 were classified as exempt from the requirements of California Labor Code §§ 510, *et seq.*

10 19. DEFENDANTS have the burden of proof that each and every employee is properly  
11 classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.* The  
12 DEFENDANTS, however, as a matter of uniform and systematic policy and procedure failed to  
13 have in place during the CALIFORNIA CLASS PERIOD and still fail to have in place a policy or  
14 practice to make any individual determination of exemption for any California Class Members so as  
15 to satisfy their burden. Rather, the DEFENDANTS’ uniform policy and practice in place at all  
16 times during the CALIFORNIA CLASS PERIOD and currently in place is to systematically classify  
17 each and every California Class Member as exempt from the requirements of the California Labor  
18 Code §§ 510, *et seq.*, based on job title alone. This common business practice applicable to each  
19 and every California Class Member can be adjudicated on a classwide basis as unlawful, unfair,  
20 and/or deceptive under the UCL as causation, damages, and reliance are not elements of this claim.

21 20. At no time before, during or after the PLAINTIFF’S employment with  
22 SALUS was any Caregiver reclassified as non-exempt from the applicable requirements of  
23 California Labor Code §§ 510, *et seq.* after each California Class Member was initially, uniformly,  
24 and systematically classified as exempt upon being hired.

25 21. Any individual declarations of any California Class Members offered at this time  
26 purporting to indicate that one or more Caregivers may have been properly classified is of no force  
27 or affect absent evidence that DEFENDANTS had a uniform system in place to satisfy  
28 DEFENDANTS’ burden that DEFENDANTS, at all times had in effect a policy and practice to

1 determine whether the California Class Members were being properly classified as exempt pursuant  
2 to Cal. Lab. Code §§ 510, *et seq.* Absent proof of such a system, DEFENDANTS' business practice  
3 is uniformly unlawful, unfair and/or deceptive under the UCL and may be so adjudicated on a  
4 classwide basis. As a result of the UCL violations, the PLAINTIFF and the California Class  
5 Members are entitled to have this unfair business practice enjoined and to cause DEFENDANTS to  
6 disgorge their ill-gotten gains into a fluid fund and to restitute these funds to the PLAINTIFF and  
7 the California Class Members according to proof.

8 22. The CALIFORNIA CLASS, numbering more than 100 members, is so numerous  
9 that joinder of all Caregivers is impracticable.

10 23. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS  
11 under California law by:

- 12 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §  
13 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place  
14 company policies, practices and procedures that uniformly classified  
15 PLAINTIFF and the members of the CALIFORNIA CLASS as exempt based  
16 on job title alone;
- 17 (b) Committing an act of unfair competition in violation of the California Unfair  
18 Competition Laws, Cal. Bus. & Prof. Code § 17200 *et seq.*, by unlawfully,  
19 unfairly, and/or deceptively having in place a company policy, practice and  
20 procedure that failed to accurately catalogue, inventory, list or otherwise  
21 determine whether the general housekeeping services performed by  
22 PLAINTIFF and the members of the CALIFORNIA CLASS exceeded 20%  
23 of the overall weekly work performed;
- 24 (c) Committing an act of unfair competition in violation of the California Unfair  
25 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by having in  
26 place a company policy, practice and procedure that failed to reclassify as  
27 non-exempt members of the CALIFORNIA CLASS whose general  
28 housekeeping services exceeded 20% of the overall weekly work performed;

- 1 (d) Violating Cal. Lab. Code §§510, *et seq.* by failing to pay the correct overtime  
2 pay to PLAINTIFF and the members of the CALIFORNIA CLASS who were  
3 improperly classified as exempt;
- 4 (e) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF  
5 and the members of the CALIFORNIA CLASS who were improperly  
6 classified as exempt with meal and rest periods;
- 7 (f) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the  
8 members of the CALIFORNIA CLASS who were improperly classified as  
9 exempt with an accurate itemized statement in writing showing the gross  
10 wages earned, the net wages earned, all applicable hourly rates in effect  
11 during the pay period and the corresponding number of hours worked at each  
12 hourly rate by the employee; and,
- 13 (f) Violating Cal. Lab. Code § 203 by failing to provide restitution of wages  
14 owed to PLAINTIFF and the members of the CALIFORNIA CLASS who  
15 were improperly classified as exempt and who have terminated their  
16 employment.

17 24. This Class Action meets the statutory prerequisites for the maintenance of a  
18 Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3) in that:

- 19 (a) The persons who comprise the CALIFORNIA CLASS exceed 100 persons  
20 and are therefore so numerous that the joinder of all such persons is  
21 impracticable and the disposition of their claims as a class will benefit the  
22 parties and the Court;
- 23 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that  
24 are raised in this Complaint are common to the CALIFORNIA CLASS will  
25 apply uniformly to every member of the CALIFORNIA CLASS;
- 26 (c) The claims of the representative PLAINTIFF are typical of the claims of each  
27 member of the CALIFORNIA CLASS. PLAINTIFF, like all other members  
28 of the CALIFORNIA CLASS, was initially classified as exempt upon hiring

1 based on job title alone and labored under DEFENDANTS' systematic  
2 procedure that failed to analyze the job functions actually performed in order  
3 to determine whether the classification was properly made. PLAINTIFF  
4 sustained economic injury as a result of DEFENDANTS' employment  
5 practices. PLAINTIFF and the members of the CALIFORNIA CLASS were  
6 and are similarly or identically harmed by the same unlawful, deceptive,  
7 unfair and pervasive pattern of misconduct engaged in by the DEFENDANT  
8 by (1) compelling all Caregivers to fill out a timesheet that is not designed to  
9 record the percentages of time spent performing general housekeeping work,  
10 (2) deceptively advising all Caregivers that they were exempt from overtime  
11 wages, and, (3) unfairly failing to pay overtime to employees who were  
12 improperly classified as exempt.

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

20 25. In addition to meeting the statutory prerequisites to a Class Action, this action  
21 is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

22 (a) Without class certification and determination of declaratory, injunctive,  
23 statutory and other legal questions within the class format, prosecution of  
24 separate actions by individual members of the CALIFORNIA CLASS will  
25 create the risk of:

26 1) Inconsistent or varying adjudications with respect to individual  
27 members of the CALIFORNIA CLASS which would establish  
28 incompatible standards of conduct for the parties opposing the

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CALIFORNIA CLASS; and/or,

2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that the DEFENDANT uniformly classified and treated the Caregivers as exempt and, thereafter, uniformly failed to take proper steps to determine whether the Caregivers were properly classified as exempt, and thereby denied these employees overtime wages as required by law;

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

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

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions

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in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS members when compared to the substantial expense and burden of individual prosecution of this litigation;

- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
  - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or,
  - B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual class members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Fed. R. Civ. Proc. 23(b)(3).

26. This Court should permit this action to be maintained as a Class Action

1 pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3) because:

- 2 (a) The questions of law and fact common to the CALIFORNIA CLASS  
3 predominate over any question affecting only individual members because  
4 the DEFENDANTS' employment practices were uniform and systematically  
5 applied with respect to the CALIFORNIA CLASS;
- 6 (b) A Class Action is superior to any other available method for the fair and  
7 efficient adjudication of the claims of the members of the CALIFORNIA  
8 CLASS because in the context of employment litigation a substantial number  
9 of individual Class members will avoid asserting their rights individually out  
10 of fear of retaliation or adverse impact on their employment;
- 11 (c) The members of the CALIFORNIA CLASS exceed 100 people and are  
12 therefore so numerous that it is impractical to bring all members of the  
13 CALIFORNIA CLASS before the Court;
- 14 (d) PLAINTIFF, and the other CALIFORNIA CLASS members, will not be able  
15 to obtain effective and economic legal redress unless the action is maintained  
16 as a Class Action;
- 17 (e) There is a community of interest in obtaining appropriate legal and equitable  
18 relief for the acts of unfair competition, statutory violations and other  
19 improprieties, and in obtaining adequate compensation for the damages and  
20 injuries which DEFENDANT's actions have inflicted upon the  
21 CALIFORNIA CLASS;
- 22 (f) There is a community of interest in ensuring that the combined assets of  
23 DEFENDANT are sufficient to adequately compensate the members of the  
24 CALIFORNIA CLASS for the injuries sustained;
- 25 (g) DEFENDANT has acted or refused to act on grounds generally applicable to  
26 the CALIFORNIA CLASS, thereby making final class-wide relief  
27 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 28 (h) The members of the CALIFORNIA CLASS are readily ascertainable from

1 the business records of DEFENDANT. The CALIFORNIA CLASS consists  
2 of all DEFENDANTS' Caregivers employed in California during the CLASS  
3 PERIOD; and,

4 (i) Class treatment provides manageable judicial treatment calculated to bring a  
5 efficient and rapid conclusion to all litigation of all wage and hour related  
6 claims arising out of the conduct of DEFENDANTS as to the members of the  
7 CALIFORNIA CLASS.

8 27. DEFENDANTS maintain records from which the Court can ascertain and  
9 identify by job title each of DEFENDANTS' employees who as have been systematically,  
10 intentionally and uniformly subjected to DEFENDANTS' corporate policy, practices and  
11 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any  
12 additional job titles of similarly situated employees when they have been identified.

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**THE CALIFORNIA LABOR SUB-CLASS**

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28. PLAINTIFF further brings the Second, Third, Fourth, and Fifth causes of action on  
behalf of a subclass which consists of all members of the CALIFORNIA CLASS who were  
employed by Defendant SALUS during the period three (3) years prior to the filing of the complaint  
and ending on the date as determined by the Court (CALIFORNIA LABOR SUB-CLASS  
PERIOD), with overtime hours who were classified by Defendant as exempt, and who performed  
work in excess of eight (8) hours in one day and/or forty (40) hours in one week and/or hours on the  
seventh (7<sup>th</sup>) consecutive day of a workweek and did not receive overtime compensation as required  
by Labor Code Section 510 and Wage Order 4-2001 (the "CALIFORNIA LABOR SUBCLASS")  
pursuant to Fed. R. Civ. Proc. 23(b)(3).

29. SALUS, as a matter of corporate policy, practice and procedure, and in violation of  
the applicable California Labor Code ("Labor Code"), and Industrial Welfare Commission ("IWC")  
Wage Order Requirements intentionally, knowingly, and wilfully, on the basis of job title alone and  
without regard to the actual overall requirements of the job, systematically classified PLAINTIFF  
and other members of the CALIFORNIA CLASS and CALIFORNIA LABOR SUBCLASS as

1 exempt from overtime wages and other labor laws in order to avoid the payment of overtime wages  
2 by misclassifying their positions as exempt from overtime wages and other labor laws. To the  
3 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUBCLASS against  
4 SALUS, the CALIFORNIA LABOR SUB-CLASS should be adjusted accordingly.

5 30. To the extent that SALUS has created a number of job levels and/or job titles for  
6 Caregivers to create the superficial appearance of a number of unique jobs, when in fact, these jobs  
7 are substantially similar, these job titles can be easily grouped together for the purpose of  
8 determining whether they are exempt from overtime wages. SALUS has uniformly misclassified  
9 these CALIFORNIA CLASS and CALIFORNIA LABOR SUBCLASS members as exempt and  
10 denied them overtime wages and other benefits to which non-exempt employees are entitled in  
11 order to unfairly cheat the competition and unlawfully profit.

12 31. SALUS maintains records from which the Court can ascertain and identify by job  
13 title each of SALUS' employees who as CALIFORNIA CLASS and CALIFORNIA LABOR  
14 SUBCLASS members have been systematically, intentionally and uniformly misclassified as  
15 exempt as a matter of DEFENDANTS' corporate policy, practices and procedures. PLAINTIFF  
16 will seek leave to amend the complaint to include these additional job titles when they have been  
17 identified.

18 32. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder  
19 of all members, which number over 100 Caregivers, is impracticable.

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

- 22 (a) Whether DEFENDANTS unlawfully failed to pay overtime compensation to  
23 members of the CALIFORNIA LABOR SUB-CLASS in violation of the  
24 California Labor Code and applicable regulations, Cal. Lab. Code §§ 201,  
25 202, 203, 226, 510 and California Wage Order 15-2001;
- 26 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are non-  
27 exempt employees entitled to overtime compensation for overtime hours  
28 worked under the overtime pay requirements of California Law;

- 1 (c) Whether DEFENDANTS' policy and practice of classifying the SUBCLASS
- 2 members as exempt from overtime compensation and failing to pay the
- 3 CALIFORNIA LABOR SUB-CLASS members overtime violate applicable
- 4 provisions of California law;
- 5 (d) Whether DEFENDANTS unlawfully failed to keep and furnish California
- 6 members with accurate records of hours worked;
- 7 (e) Whether DEFENDANTS' policy and practice of failing to pay members of
- 8 the CALIFORNIA LABOR SUB-CLASS all wages when due within the time
- 9 required by law after their employment ended violates California law;
- 10 (f) Whether DEFENDANTS unlawfully failed to provide all required meal and
- 11 rest periods to the members of the CALIFORNIA LABOR SUB-CLASS;
- 12 and,
- 13 (g) Whether DEFENDANTS unlawfully failed to tender full payment and/or
- 14 restitution of wages owed or in the manner required by California law
- 15 to the members of the CALIFORNIA LABOR SUBCLASS who have
- 16 terminated their employment; and,
- 17 (h) The proper measure of damages and penalties owed to the members of the
- 18 CALIFORNIA LABOR SUB-CLASS.

19 34. DEFENDANT, as a matter of corporate policy, practice and procedure,  
20 classified all Caregivers as non-exempt from overtime wages and other labor laws, and therefore are  
21 legally required to pay overtime as required by law and comply with all other labor laws and  
22 regulations with respect to these employees. All Caregivers, including the PLAINTIFF, performed  
23 the same primary functions and were paid by DEFENDANT according to uniform and systematic  
24 company procedures, which, as alleged herein above, failed to correctly pay overtime compensation.  
25 This business practice was uniformly applied to each and every member of the CALIFORNIA  
26 LABOR SUBCLASS, and therefore, the propriety of this conduct can be adjudicated on a classwide  
27 basis.

28 35. DEFENDANT violated the rights of the CALIFORNIA LABOR SUBCLASS

1 under California law by:

- 2 (a) Violating Cal. Lab. Code §§ 510, *et seq.* by misclassifying and thereby failing  
3 to pay PLAINTIFF and the members of the CALIFORNIA LABOR  
4 SUBCLASS the correct overtime pay for a work day longer than eight (8)  
5 hours and/or a workweek longer than forty (40) hours, and also for all hours  
6 worked on the seventh (7<sup>th</sup>) day of a workweek for which DEFENDANT is  
7 liable pursuant to Cal. Lab. Code § 1194; and
- 8 (b) Violating Cal. Lab. Code § 203, which provides that when an employee is  
9 discharged or quits from employment, the employer must pay the employee  
10 all wages due without abatement, by failing to tender full payment and/or  
11 restitution of wages owed or in the manner required by California law to the  
12 members of the CALIFORNIA LABOR SUBCLASS who have terminated  
13 their employment;
- 14 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF  
15 and the members of the CALIFORNIA LABOR CLASS who were  
16 improperly classified as exempt with meal and rest periods;
- 17 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the  
18 members of the CALIFORNIA LABOR CLASS who were improperly  
19 classified as exempt with an accurate itemized statement in writing showing  
20 the gross wages earned, the net wages earned, all applicable hourly rates in  
21 effect during the pay period and the corresponding number of hours worked  
22 at each hourly rate by the employee; and,
- 23 (e) Violating Cal. Lab. Code § 203 by failing to provide restitution of wages  
24 owed to members of the CALIFORNIA LABOR SUBCLASS who were  
25 improperly classified as exempt and who have terminated their employment.

26 36. This Class Action meets the statutory prerequisites for the maintenance of a  
27 Class Action as set forth in Fed. R. Civ. Proc. 23(b)(3), in that:

- 28 (a) The persons who comprise the CALIFORNIA LABOR SUBCLASS exceed

1 100 individuals and are therefore so numerous that the joinder of all such  
2 persons is impracticable and the disposition of their claims as a class will  
3 benefit the parties and the Court;

4 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that  
5 are raised in this Complaint are common to the CALIFORNIA LABOR  
6 SUBCLASS and will apply uniformly to every member of the CALIFORNIA  
7 LABOR SUBCLASS;

8 (c) The claims of the representative PLAINTIFF are typical of the claims of each  
9 member of the CALIFORNIA LABOR SUBCLASS. PLAINTIFF, like all  
10 other members of the CALIFORNIA LABOR SUBCLASS, performed  
11 general housekeeping duties greater than 20% of her weekly activities, and  
12 was improperly classified as exempt and denied overtime pay as a result of  
13 DEFENDANT's systematic classification practices. PLAINTIFF and all  
14 other members of the CALIFORNIA LABOR SUBCLASS sustained  
15 economic injuries arising from DEFENDANT's violations of the laws of  
16 California; and,

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

25 37. In addition to meeting the statutory prerequisites to a Class Action, this action  
26 is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(3), in that:

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

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separate actions by individual members of the CALIFORNIA LABOR SUBCLASS will create the risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUBCLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUBCLASS; or,
- 2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUBCLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA LABOR SUBCLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA SUBCLASS, making appropriate class-wide relief with respect to the SUBCLASS as a whole in that the DEFENDANTS uniformly classified and treated the Caregivers as exempt and, thereafter, uniformly failed to take proper steps to determine whether the Caregivers were properly classified as exempt, and thereby denied these employees overtime wages as required by law;

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

- 1) The interests of the members of the CALIFORNIA LABOR SUBCLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions

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will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUBCLASS members when compared to the substantial expense and burden of individual prosecution of this litigation;

- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
  - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUBCLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or,
  - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUBCLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual class members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual’s job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Fed. R. Civ. Proc. 23(b)(3).

38. This Court should permit this action to be maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(3) because:

- 1 (a) The questions of law and fact common to the CALIFORNIA LABOR  
2 SUBCLASS predominate over any question affecting only individual  
3 members;
- 4 (b) A Class Action is superior to any other available method for the fair and  
5 efficient adjudication of the claims of the members of the CALIFORNIA  
6 LABOR SUBCLASS because in the context of employment litigation a  
7 substantial number of individual Class members will avoid asserting their  
8 rights individually out of fear of retaliation or adverse impact on their  
9 employment;
- 10 (c) The members of the CALIFORNIA LABOR SUBCLASS exceed 100  
11 individuals and are therefore so numerous that it is impractical to bring all  
12 members of the CALIFORNIA LABOR SUBCLASS before the Court;
- 13 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUBCLASS members,  
14 will not be able to obtain effective and economic legal redress unless the  
15 action is maintained as a Class Action;
- 16 (e) There is a community of interest in obtaining appropriate legal and equitable  
17 relief for the acts of unfair competition, statutory violations and other  
18 improprieties, and in obtaining adequate compensation for the damages and  
19 injuries which DEFENDANT's actions have inflicted upon the  
20 CALIFORNIA LABOR SUBCLASS;
- 21 (f) There is a community of interest in ensuring that the combined assets of  
22 DEFENDANT are sufficient to adequately compensate the members of the  
23 CALIFORNIA LABOR SUBCLASS for the injuries sustained;
- 24 (g) DEFENDANT has acted or refused to act on grounds generally applicable to  
25 the CALIFORNIA LABOR SUBCLASS, thereby making final class-wide  
26 relief appropriate with respect to the CALIFORNIA LABOR SUBCLASS as  
27 a whole;
- 28 (h) The members of the CALIFORNIA LABOR SUBCLASS are readily

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ascertainable from the business records of DEFENDANTS. The CALIFORNIA LABOR SUBCLASS consists of those Caregivers with documented overtime who were subjected to the DEFENDANT’s overtime miscalculation practices; and,

(i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUBCLASS.

**JURISDICTION AND VENUE**

39. This Court has original jurisdiction over PLAINTIFF’S state law class claims pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332 in that although the majority of the CALIFORNIA CLASS is comprised of residents of California, at least one member of the CALIFORNIA CLASS is a citizen of a state other than California, there are more than 100 individuals in the CALIFORNIA CLASS and the amount in controversy in this complaint exceeds the sum or value of \$ 5,000,000.

40. This Court has jurisdiction pursuant to 28 U.S.C. §1331 over PLAINTIFF’S collective claims brought pursuant to the FLSA, 29 U.S.C. §201, *et seq.*

41. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because DEFENDANTS (i) are subject to personal jurisdiction in this District and therefore, reside in this District and/or (ii) committed the wrongful conduct against certain members of the CLASS in San Diego County, California.

**FIRST CAUSE OF ACTION**

**For Unlawful Business Practices**

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

**(By PLAINTIFF and the CALIFORNIA CLASS and against All Defendants)**

42. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 41

1 of this Complaint. This cause of action is brought on behalf of PLAINTIFF and the CALIFORNIA  
2 CLASS.

3 43. DEFENDANTS are “persons” as that term is defined under Cal. Bus. and Prof. Code  
4 § 17021.

5 44. California Business & Professions Code § 17200 *et seq.* (the “UCL”)  
6 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section  
7 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair  
8 competition as follows:

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

16 California Business & Professions Code § 17203.

17 45. Through the conduct alleged herein, DEFENDANTS have engaged in an  
18 unlawful, unfair, and/or deceptive business practice by violating California law, including but not  
19 limited to provisions of the Wage Orders, the Regulations implementing the Fair Labor Standards  
20 Act as enacted by the Secretary of Labor, the California Labor Code, the Code of Federal  
21 Regulations and the California Code of Regulations, the opinions of the Department of Labor  
22 Standards Enforcement, California Labor Code § 226, California Labor Code § 226.7, and  
23 California Labor Code § 203 by unfairly violating the public policy of the state of California to take  
24 all reasonable steps to properly classify employees as exempt or non-exempt and by deceptively  
25 telling the PLAINTIFF and the members of the CALIFORNIA CLASS that they were all exempt  
26 when DEFENDANT knew this statement to be untrue, for which this Court should issue  
27 declaratory, injunctive and other equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, as  
28 may be necessary to prevent and remedy the conduct held to constitute unfair competition.

1           46. By and through the unlawful, unfair, and/or deceptive business practices  
2 described herein, DEFENDANTS have obtained valuable property, money, and services from the  
3 PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived them of  
4 valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of  
5 DEFENDANTS so as to allow DEFENDANTS to unfairly compete. Declaratory and injunctive  
6 relief is necessary to prevent and remedy this unfair competition, and pecuniary compensation alone  
7 would not afford adequate and complete relief.

8           47. All the acts described herein as violations of, among other things, the  
9 Cal. Lab. Code, California Code of Regulations, and the Industrial Welfare Commission Wage  
10 Orders, are unlawful, are in violation of public policy, are immoral, unethical, oppressive, and  
11 unscrupulous, and are likely to deceive employees, and thereby constitute deceptive, unfair and  
12 unlawful business practices in violation of Cal. Bus. and Prof. Code § 17200 *et seq.*

13           48. PLAINTIFF, and the other members of the CALIFORNIA CLASS, are further  
14 entitled to, and do, seek a declaration that the above described business practices are deceptive  
15 unfair and/or unlawful and that an injunctive relief should be issued restraining DEFENDANT from  
16 engaging in any of these deceptive, unfair and unlawful business practices in the future.

17           49. PLAINTIFF, and the other members of the CALIFORNIA CLASS, have no  
18 plain, speedy, and/or adequate remedy at law that will end the unfair and unlawful business  
19 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur  
20 unabated. As a result of the unfair and unlawful business practices described above, PLAINTIFF,  
21 and the other members of the CALIFORNIA CLASS, have suffered and will continue to suffer  
22 irreparable harm unless DEFENDANT is restrained from continuing to engage in these unfair and  
23 unlawful business practices. In addition, DEFENDANT should be required to disgorge the unpaid  
24 moneys into a fluid fund and to make restitution to PLAINTIFF, and the other members of the  
25 CALIFORNIA CLASS.

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**SECOND CAUSE OF ACTION**

**For Failure To Pay Overtime Compensation**

**[Cal. Lab. Code §§ 204, 210, 510, 1194, 1197 and 1198]**

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against all Defendants)**

50. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 49 of this Complaint.

51. Cal. Lab. Code § 204 requires employers to pay employees for all hours worked as follows: “all wages... ..earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek or on a seventh (7<sup>th</sup>) consecutive workday of a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

52. Cal. Lab. Code § 551 states that, “Every person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.”

53. Cal. Lab. Code § 552 states that, “No employer of labor shall cause his employees to work more than six days in seven.”

54. Cal. Lab. Code § 1194 states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

55. Cal. Lab. Code § 1198 provides:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those

1 fixed by the order or under conditions of labor prohibited by the order is unlawful.

2 56. DEFENDANTS have intentionally and uniformly designated certain employees as  
3 “exempt” from receiving wages for all hours worked and from receiving certain other rights, by  
4 their job title and without regard to DEFENDANTS’ realistic expectations, the requirements of the  
5 job, and the method of payment made by DEFENDANTS, including PLAINTIFF and the other  
6 members of the CALIFORNIA LABOR SUB-CLASS who worked on the production side of the  
7 DEFENDANTS’ business enterprise. This was done in an illegal attempt to avoid payment of  
8 regular and overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial  
9 Welfare Commission requirements.

10 57. Pursuant to Wage Order 15-2001, only employees whose primary job duties meet the  
11 test of exemption as a(n) “executive,” “administrator,” “professional,” or as a “personal attendant”  
12 may be exempt from the provisions of the Wage Order that require the payment of minimum wage  
13 and overtime. The primary job duties of the PLAINTIFF and the members of the CALIFORNIA  
14 LABOR SUB-CLASS would not qualify these employees to meet any of these exemptions.

15 58. For an employee to be exempt as a bona fide “executive,” all the following criteria  
16 must be met and DEFENDANTS have the burden of proving that:

- 17 (a) The employee’s primary duty must be management of the enterprise, or of a  
18 customarily recognized department or subdivision; and,  
19 (b) The employee must customarily and regularly direct the work of at least two (2) or  
20 more other employees; and,  
21 (c) The employee must have the authority to hire and fire, or to command particularly  
22 serious attention to his or his recommendations on such actions affecting other  
23 employees; and,  
24 (d) The employee must customarily and regularly exercise discretion and independent  
25 judgment; and,  
26 (e) The employee must be primarily engaged in duties which meet the test of exemption.

27 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because they all fail  
28 to meet the requirements of being an “executive” within the meaning of Order No. 15-2001.

1 59. For an employee to be exempt as a bona fide “administrator,” all of the following  
2 criteria must be met and DEFENDANTS have the burden of proving that:

- 3 (a) The employee must perform office or non-manual work directly related to  
4 management policies or general business operation of the employer; and,
- 5 (b) The employee must customarily and regularly exercise discretion and independent  
6 judgment; and,
- 7 (c) The employee must regularly and directly assist a proprietor or an exempt  
8 administrator; or,
- 9 (d) The employee must perform, under only general supervision, work requiring special  
10 training, experience, or knowledge, or,
- 11 (e) The employee must execute special assignments and tasks under only general  
12 supervision; and,
- 13 (f) The employee must be primarily engaged in duties which meet the test of exemption.

14 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because they all  
15 fail to meet the requirements for being an “administrator” under Order No. 15-2001.

16 60. The Industrial Welfare Commission, ICW Wage Order 15-2001 also sets forth the  
17 requirements which must be complied with to place an employee in the “professional” exempt  
18 category. For an employee to be exempt as a bona fide professional, all the following criteria must  
19 be met:

- 20 (a) The employee must primarily perform work that is intellectual or creative and  
21 that requires the exercise of discretion and independent judgment.
- 22 (b) The employee must be licensed or certified by the state of California and is  
23 primarily engaged in the practice of one of the following recognized  
24 professions: law, medicine, dentistry, optometry, architecture, engineering,  
25 teaching or accounting.

26 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because they all  
27 fail to meet the requirements for being an “professional” under Order No. 15-2001.

28 61. PLAINTIFF, and other members of the CALIFORNIA LABOR SUB-CLASS, do not

1 fit the definition of an exempt executive, administrative, or professional employee because:

- 2 (a) These employees performed no managerial or
- 3 administrative (exempt) duties;
- 4 (b) Their work hours are spent performing non-exempt duties, including but not
- 5 limited to performing manual labor;
- 6 (c) They do not have the discretion or independent judgment, in that they must
- 7 follow exacting and comprehensive company-wide policies and procedures which
- 8 dictate every aspect of their work day;
- 9 (d) They do not have the authority to hire and/or fire other personnel; and,
- 10 (e) PLAINTIFF and the other members of the CALIFORNIA LABOR CLASS did
- 11 not earn a monthly salary equivalent to two (2) times the state minimum wage for
- 12 full-time employment.

13 62. PLAINTIFF, and other members of the CALIFORNIA LABOR SUB-CLASS, are  
14 not personal attendants within the meaning of Wage Order 15 because a significant amount of work,  
15 i.e. more than 20% of their weekly time, is spent performing certain general housekeeping duties  
16 without the assistance of the client. As shown by Exhibit 1, the PLAINTIFF and members of the  
17 CALIFORNIA LABOR SUBCLASS are required to, without the participation of the client: (a) cook  
18 breakfast, lunch and dinner; (b) run errands, which includes grocery shopping and picking up  
19 prescriptions; (c) perform homemaking, which includes laundry/washing/drying/folding; (d) clean  
20 the restroom, which includes the toilet, sink, bathtub/shower, emptying of the trash,  
21 sweeping/mopping the floor; (e) clean the kitchen, which includes cleaning the sink, washing the  
22 dishes, wiping the counter, wiping the stove top, wiping the refrigerator, cleaning the inside of the  
23 microwave, loading the dishwasher, emptying the dishwasher, sweep/mopping the floor, emptying  
24 the trash; (f) clean the living area, which includes vacuuming, dusting, changing bed linens, wiping  
25 mirrors; and (g) pet care.

26 63. During the class period, the PLAINTIFF, and other members of the CALIFORNIA  
27 LABOR SUBCLASS, worked more than eight (8) hours in a workday and/or forty (40) hours in a  
28 work week and/or on the seventh (7<sup>th</sup>) consecutive day of a workweek.

1           64.     At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other members  
2 of the CALIFORNIA LABOR SUBCLASS, overtime compensation for the hours they worked in  
3 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and 1198, *et*  
4 *seq.* and the Wage Order, even though PLAINTIFF, and the other members of the CALIFORNIA  
5 LABOR SUB-CLASS, worked regular hours at the private households of DEFENDANTS' clients,  
6 and did in fact work overtime hours for DEFENDANTS.

7           65.     By virtue of DEFENDANTS' unlawful failure to pay additional compensation to the  
8 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, for their overtime  
9 hours, the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, have  
10 suffered, and will continue to suffer, an economic injury in amounts which are presently unknown  
11 to them and which will be ascertained according to proof at trial.

12           66.     DEFENDANTS knew or should have known that PLAINTIFF, and the other  
13 members of the CALIFORNIA LABOR SUB-CLASS, were misclassified as exempt from wages  
14 and DEFENDANTS systematically elected, either through intentional malfeasance or gross  
15 nonfeasance, not to pay them for their labor as a matter of uniform corporate policy, practice and  
16 procedure.

17           67.     Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
18 CLASS, request recovery of regular and overtime compensation according to proof, interest,  
19 attorney's fees and costs pursuant to Cal. Lab. Code § 1194(a), as well as the assessment of any  
20 statutory penalties against DEFENDANTS, in a sum as provided by the Cal. Lab. Code and/or other  
21 statutes.

22           68.     In performing the acts and practices herein alleged in violation of labor laws and  
23 refusing to provide the requisite overtime compensation, the DEFENDANTS acted and continue to  
24 act intentionally, oppressively, and maliciously toward the PLAINTIFF, and toward the other  
25 members of the CALIFORNIA LABOR SUB-CLASS, with a conscious and utter disregard of their  
26 legal rights, or the consequences to them, and with the despicable intent of depriving them of their  
27 property and legal rights and otherwise causing them injury in order to increase corporate profits at  
28 the expense of PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS.

**THIRD CAUSE OF ACTION**

**For Failure to Pay Wages When Due**

**[ Cal. Lab. Code § 203]**

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS)**

69. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 68 of this Complaint.

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

As used in this article:

(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

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

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

72. Cal. Lab. Code § 203 provides:

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

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

4 73. PLAINTIFF and many of the CALIFORNIA LABOR SUB-CLASS members have  
5 terminated their employment and DEFENDANTS have not tendered payment of wages owed.

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

11  
12 **FOURTH CAUSE OF ACTION**

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

14 **[Cal. Lab. Code § 226]**

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS)**

16 75. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
17 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 74  
18 of this Complaint. This cause of action is brought on behalf of PLAINTIFF and the CALIFORNIA  
19 LABOR SUBCLASS.

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

- 22 (1) gross wages earned,  
23 (2) total hours worked by the employee, except for any employee whose compensation is  
24 solely based on a salary and who is exempt from payment of overtime under subdivision (a)  
25 of Section 515 or any applicable order of the Industrial Welfare Commission,  
26 (3) the number of piecerate units earned and any applicable piece rate if the employee is paid  
27 on a piece-rate basis,  
28 (4) all deductions, provided that all deductions made on written orders of the employee may

- 1 be aggregated and shown as one item,
- 2 (5) net wages earned,
- 3 (6) the inclusive dates of the period for which the employee is paid,
- 4 (7) the name of the employee and his or her social security number, except that by January 1,
- 5 2008, only the last four digits of his or her social security number or an employee
- 6 identification number other than a social security number may be shown on the itemized
- 7 statement,
- 8 (8) the name and address of the legal entity that is the employer, and
- 9 (9) all applicable hourly rates in effect during the pay period and the corresponding number
- 10 of hours worked at each hourly rate by the employee.”

11 77. At all times relevant herein, DEFENDANT violated Labor Code § 226, in that  
12 DEFENDANT failed to properly and accurately itemize the gross wages earned, the net wages  
13 earned, and all applicable hourly rates in effect during the pay period and the corresponding number  
14 of hours worked at each hourly rate by the employee.

15 78. DEFENDANT knowingly and intentionally failed to comply with Labor Code  
16 § 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR  
17 SUBCLASS. These damages include, but are not limited to, costs expended calculating the true  
18 hours worked and the amount of employment taxes which were not properly paid to state and  
19 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and the  
20 other members of the CALIFORNIA LABOR SUBCLASS may recover liquidated damages of  
21 \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in  
22 subsequent pay period pursuant to Labor Code § 226, in an amount according to proof at the time of  
23 trial (but in no event more than \$4,000.00 for PLAINTIFF and each respective member of the  
24 CALIFORNIA LABOR SUBCLASS herein) plus reasonable attorney’s fees and costs pursuant to  
25 Labor Code § 226(g).

26  
27  
28

**FIFTH CAUSE OF ACTION**

**For Failure to Provide Meal and/or Rest Periods**

**[Cal. Lab. Code §§ 226.7 and 512]**

**(By PLAINTIFF and the CALIFORNIA LABOR SUBCLASS)**

79. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS, reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 78 of this Complaint.

80. Cal. Lab. Code § 512 provides, in relevant part: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

81. Section 11 of the Order 15-2001 of the Industrial Wage Commission (the “Wage Order”) provides, in relevant part:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be

1 waived by mutual consent of the employer and the employee only if the first  
2 meal period was not waived.

3 (C) Unless the employee is relieved of all duty during a 30 minute meal period,  
4 the meal period shall be considered an "on duty" meal period and counted as  
5 time worked. An "on duty" meal period shall be permitted only when the  
6 nature of the work prevents an employee from being relieved of all duty and  
7 when by written agreement between the parties an on-the-job paid meal  
8 period is agreed to. The written agreement shall state that the employee may,  
9 in writing, revoke the agreement at any time.

10 (D) If an employer fails to provide an employee a meal period in accordance with  
11 the applicable provisions of this order, the employer shall pay the employee  
12 one (1) hour of pay at the employee's regular rate of compensation for each  
13 workday that the meal period is not provided.

14 82. Section 12 of Order 15-2001 of the Industrial Wage Commission (the "Wage  
15 Order") provides, in relevant part:

16 Rest Periods:

17 (A) Every employer shall authorize and permit all employees to take rest periods,  
18 which insofar as practicable shall be in the middle of each work period. The  
19 authorized rest period time shall be based on the total hours worked daily at  
20 the rate of ten (10) minutes net rest time per four (4) hours or major fraction  
21 thereof. However, a rest period need not be authorized for employees whose  
22 total daily work time is less than three and one-half (3 1/2) hours. Authorized  
23 rest period time shall be counted as hours worked for which there shall be no  
24 deduction from wages.

25 (B) If an employer fails to provide an employee a rest period in accordance with  
26 the applicable provisions of this Order, the employer shall pay the employee  
27 one (1) hour of pay at the employee's regular rate of compensation for each  
28 work day that the rest period is not provided.

1 83. Cal. Lab. Code § 226.7 provides:  
 2 (a) No employer shall require any employee to work during any meal or rest period  
 3 mandated by an applicable order of the Industrial Welfare Commission.  
 4 (b) If an employer fails to provide an employee a meal period or rest period in  
 5 accordance with an applicable order of the Industrial Welfare Commission, the  
 6 employer shall pay the employee one additional hour of pay at the employee's regular  
 7 rate of compensation for each work day that the meal or rest period is not provided.

8 84. DEFENDANTS have intentionally and improperly failed to provide all rest and/or  
 9 meal periods without any work or duties to PLAINTIFF and the other members of the  
 10 CALIFORNIA LABOR SUBCLASS who worked more than three and one half hours (3 ½) per day,  
 11 and by failing to do so DEFENDANTS violated the provisions of Labor Code 226.7.

12 85. Therefore, PLAINTIFF demands on behalf of herself and the members of the  
 13 CALIFORNIA LABOR SUBCLASS, one (1) hour of pay for each workday in which a rest period  
 14 was not provided for each four (4) hours of work during the period commencing on the date that is  
 15 within four years prior to the filing of this Complaint and one (1) hour of pay for each five (5) hours  
 16 of work in which a meal period was not provided.

17  
 18 **SIXTH CAUSE OF ACTION**

19 **For Failure to Pay Overtime Compensation**

20 **[ FLSA, 29 U.S.C. § 201, et seq.]**

21 **(By PLAINTIFF and the COLLECTIVE CLASS)**

22 86. PLAINTIFF, and the other members of the COLLECTIVE CLASS, reallege and  
 23 incorporate by reference, as though fully set forth herein, paragraphs 1 through 85 of this  
 24 Complaint.

25 87. PLAINTIFF also brings this lawsuit as a collective action under the Fair Labor and  
 26 Standards Act, 29 U.S.C. § 201, et seq. (the “FLSA”), on behalf of all persons who were, are, or  
 27 will be employed by DEFENDANTS as Caregivers, or in other substantially similar positions  
 28 during the period commencing three years prior to the filing of this Complaint and ending on the

1 date as the Court shall determine (the “COLLECTIVE CLASS PERIOD”), who performed work in  
2 excess of forty (40) hours in one week and did not receive overtime compensation as required by the  
3 FLSA (the “COLLECTIVE CLASS”). To the extent equitable tolling operates to toll claims by the  
4 COLLECTIVE CLASS against the DEFENDANTS, the COLLECTIVE CLASS PERIOD should  
5 be adjusted accordingly. The COLLECTIVE CLASS includes all such persons, whether or not they  
6 were paid by commission, by salary, or by part commission and part salary.

7 88. Questions of law and fact common to the COLLECTIVE CLASS as a whole, but not  
8 limited to the following, include:

- 9 a. Whether DEFENDANTS misclassified PLAINTIFF and members of the  
10 COLLECTIVE CLASS as exempt from receiving compensation for all hours  
11 worked, including federal overtime compensation;
- 12 b. Whether DEFENDANTS failed to adequately compensate the members  
13 of the COLLECTIVE CLASS for all hours worked as required by the FLSA,  
14 including the time worked through their meal periods;
- 15 c. Whether DEFENDANTS should be enjoined from continuing the practices which  
16 violate the FLSA; and,
- 17 d. Whether DEFENDANTS are liable to the COLLECTIVE CLASS.

18 89. The Sixth cause of action for the violations of the FLSA may be brought and  
19 maintained as an “opt-in” collective action pursuant to Section 16(b) of FLSA, 29 U.S.C. 216(b),  
20 for all claims asserted by the representative PLAINTIFF of the COLLECTIVE CLASS because the  
21 claims of the PLAINTIFF are similar to the claims of the members of the prospective  
22 COLLECTIVE CLASS.

23 90. PLAINTIFF and the COLLECTIVE CLASS are similarly situated,  
24 have substantially similar job requirements and pay provisions, and are subject to DEFENDANTS’  
25 common and uniform policy and practice of misclassifying their employees, failing to pay for all  
26 actual time worked and wages earned, and failing to accurately record all hours worked by these  
27 employees in violation of the FLSA and the Regulations implementing the Act as enacted by the  
28 Secretary of Labor (the “REGULATIONS”).

1 91. DEFENDANTS are engaged in communication, business, and transmission  
2 throughout the United States and are, therefore, engaged in commerce within the meaning of 29  
3 U.S.C. § 203(b).

4 92. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful  
5 violations of the FLSA.

6 93. The Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, states that an employee must  
7 be compensated for all hours worked, including all straight time compensation and overtime  
8 compensation. 29 C.F.R. §778.223 and 29 C.F.R. §778.315. This Court has concurrent jurisdiction  
9 over claims involving the Fair Labor Standards Act pursuant to 29 U.S.C. § 216.

10 94. Section 207(a) of the FLSA provides that:  
11 Except as otherwise provided in this section, no employer shall employ any of his  
12 employees who in any workweek is engaged in commerce or in the production of  
13 goods for commerce, or is employed in an enterprise engaged in commerce or in the  
14 production of goods for commerce, for a workweek longer than forty hours unless  
15 such employee receives compensation for his employment in excess of the hours  
16 above specified at a rate not less than one and one-half times the regular rate at  
17 which he is employed.

18 95. Specifically, section 207(l) of the FLSA provides that:  
19 No employer shall employ any employee in domestic service in one or more  
20 households for a workweek longer than forty hours unless such employee receives  
21 compensation for such employment in accordance with subsection (a).

22 96. The terms domestic service is defined by 29 CFR 552.3 as:  
23 [S]ervices of a household nature performed by an employee in or about a private  
24 home (permanent or temporary) of the person by whom he or she is employed. The  
25 term includes employees such as cooks, waiters, butlers, valets, maids, housekeepers,  
26 governesses, nurses, janitors, laundresses, caretakers, handymen, gardeners, footmen,  
27 grooms, and chauffeurs of automobiles for family use. It also includes babysitters  
28 employed on other than a casual basis.

1 97. Section 213(a)(15) of the FLSA provides that the overtime pay requirement does not  
2 apply to:

3 any employee employed on a casual basis in domestic service employment to provide  
4 babysitting services or any employee employed in domestic service employment to  
5 provide companionship services for individuals who (because of age or infirmity) are  
6 unable to care for themselves (as such terms are defined and delimited by regulations  
7 of the Secretary).

8 98. 29 CFR 552.6 provides that the aforementioned exemption from overtime is only  
9 applicable if general household work “is incidental, i.e., does not exceed 20 percent of the total  
10 weekly hours worked.”

11 99. PLAINTIFF and every other individual employed by DEFENDANTS as a Caregiver  
12 or in other similarly situated positions was employed in domestic services in one or more  
13 households in which the general household work performed exceeded 20 percent of the total weekly  
14 hours worked. PLAINTIFF and the other members of the COLLECTIVE CLASS, therefore, were  
15 not properly classified as exempt under section 213(a)(15) of the FLSA. As a result, pursuant to  
16 section 207 of the FLSA, PLAINTIFF and every other individual employed by DEFENDANTS as a  
17 Caregiver or in other similarly situated positions should have been paid at a rate of not less than one  
18 and one-half times the regular rate at which they were employed for all hours worked longer than  
19 forty (40) in one workweek.

20 100. DEFENDANTS have willfully engaged in a widespread pattern and practice of  
21 violating the provisions of the FLSA, as detailed above, by uniformly designating certain employees  
22 as “exempt” employees, by their job title and without regard to DEFENDANTS’ realistic  
23 expectations and actual overall requirements of the job, including PLAINTIFF and the other  
24 members of the COLLECTIVE CLASS who worked on the production side of the DEFENDANTS’  
25 business enterprise. This was done in an illegal attempt to avoid payment of overtime wages and  
26 other benefits in violation of the FLSA and Code of Federal Regulations requirements.

27 101. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the  
28 exempt status of an employee. The exempt or nonexempt status of any particular employee must be

1 determined on the basis of whether the employee’s salary and duties meet the requirements of the  
2 regulations in this part.

3 102. The exemptions of the FLSA as listed in section 13(a)(15) do not apply to  
4 PLAINTIFF and the other members of the COLLECTIVE CLASS, because their work consists of  
5 non-management, manual, and production line labor.

6 103. For an employee to be exempt as a bona fide “executive,” all the  
7 following criteria must be met and DEFENDANTS have the burden of proving that:

- 8 (a) The employee’s primary duty must be management of the enterprise, or of a  
9 customarily recognized department or subdivision;
- 10 (b) The employee must customarily and regularly direct the work of at least two (2) or  
11 more other employees;
- 12 (c) The employee must have the authority to hire and fire, or to command particularly  
13 serious attention to his or his recommendations on such actions affecting other  
14 employees; and,
- 15 (d) The employee must be primarily engaged in duties which meet the test of exemption.

16 No member of the COLLECTIVE CLASS was or is an executive because they all fail to meet the  
17 requirements of being an “executive” under section 13 of the FLSA and 29 C.F.R. 541.100.

18 104. For an employee to be exempt as a bona fide “administrator,” all of the  
19 following criteria must be met and DEFENDANTS have the burden of proving that:

- 20 (a) The employee must perform office or non-manual work directly related to  
21 management or general business operation of the employer or the employer’s  
22 customers;
- 23 (b) The employee must customarily and regularly exercise discretion and independent  
24 judgment with respect to matters of significance; and,
- 25 (c) The employee must regularly and directly assist a proprietor or an exempt  
26 administrator; or,
- 27 (d) The employee must perform under only general supervision, work requiring special  
28 training, experience, or knowledge; and,

1 (e) The employee must be primarily engaged in duties which meet the test of exemption.  
2 No member of the COLLECTIVE CLASS was or is an administrator because they all fail to meet  
3 the requirements for being an “administrator” under section 13(a) of the FLSA and 29 C.F.R.  
4 541.202. PLAINTIFF and the other members of the COLLECTIVE CLASS perform their primary,  
5 day to day duties without the requisite amount of discretion and independent judgment needed to  
6 qualify for the administrative exemption. Further, PLAINTIFF and the other members of the  
7 COLLECTIVE CLASS were not paid on a salary basis of not less than \$455 per week.

8 105. During the COLLECTIVE CLASS PERIOD, the PLAINTIFF, and other  
9 members of the COLLECTIVE CLASS, worked more than forty (40) hours in a work week and  
10 were also required to perform duties that were primarily for the benefit of the employer during meal  
11 periods.

12 106. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other members  
13 of the COLLECTIVE CLASS overtime compensation for the hours they have worked in excess of  
14 the maximum hours permissible by law as required by section 7 of the FLSA, even though  
15 PLAINTIFF and the other members of the COLLECTIVE CLASS, were regularly required to work,  
16 and did in fact work overtime hours.

17 107. At all relevant times, DEFENDANTS failed to pay PLAINTIFF, and other members  
18 of the COLLECTIVE CLASS, regular compensation for the hours they have worked, performing  
19 duties primarily for the benefit of the employer during meal periods.

20 108. For purposes of the Fair Labor Standards Act, the employment practices of  
21 DEFENDANTS were and are uniform throughout California in all respects material to the claims  
22 asserted in this Complaint.

23 109. As a result of DEFENDANTS’ failure to pay overtime compensation for hours  
24 worked, as required by the FLSA, PLAINTIFF and the members of the COLLECTIVE CLASS  
25 were damaged in an amount to be proved at trial.

26 110. PLAINTIFF, therefore, demands that she and the members of the COLLECTIVE  
27 CLASS be paid overtime compensation as required by the FLSA for every hour of overtime worked  
28 in any work week for which they were not compensated, straight wages for every hour worked

1 primarily for the benefit of DEFENDANTS during meal breaks for which they were not  
2 compensated, liquidated damages, plus interest and attorneys' fees as provided by law.

3

4

**PRAYER**

5 WHEREFOR, PLAINTIFF prays for judgment against each Defendant, jointly and severally,  
6 as follows:

7

1. On behalf of the CALIFORNIA CLASS:

8

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA  
9 CLASS as a class action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);

10

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

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12

C) An order requiring DEFENDANTS to provide an accounting of all wages and all  
13 sums unlawfully withheld from compensation due to PLAINTIFF and the other  
14 members of the CALIFORNIA CLASSES; and,

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14

D) Disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund and imposition  
15 of a constructive trust upon such assets of the DEFENDANTS for restitution of the  
16 sums incidental to DEFENDANTS' violations due to PLAINTIFF and to the other  
17 members of the CALIFORNIA CLASS.

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2. On behalf of the CALIFORNIA LABOR SUBCLASS:

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A) That the Court certify the Second, Third, Fourth, and Fifth Causes of Action asserted  
21 by the CALIFORNIA LABOR SUBCLASS as a class action pursuant to Fed. R. Civ.  
22 Proc. 23(b)(3);

22

23

B) Compensatory damages, according to proof at trial, including compensatory damages  
24 for both regular and overtime compensation due PLAINTIFF and the other members  
25 of the CALIFORNIA LABOR SUBCLASS, during the applicable CALIFORNIA  
26 CLASS PERIODS plus interest thereon at the statutory rate;

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C) One (1) hour of premium pay for each workday in which a rest period was not  
28 provided to PLAINTIFF and each member of the CALIFORNIA LABOR

28

- 1 SUBCLASS for each four (4) hours of work during the period commencing on the  
2 date that is within four years prior to the filing of this Complaint;
- 3 D) One hour of premium pay for each five (5) hours of work in which a meal period was  
4 not provided to PLAINTIFF and each member of the CALIFORNIA LABOR  
5 SUBCLASS;
- 6 E) The wages of all terminated employee from the CALIFORNIA LABOR SUBCLASS  
7 as a penalty from the due date thereof at the same rate until paid or until an action  
8 therefor is commenced, for violation of Cal. Lab. Code § 203;
- 9 F) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
10 which a violation occurs and one hundred dollars (\$100) per each member of the  
11 CALIFORNIA LABOR SUBCLASS for each violation in a subsequent pay period,  
12 not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award  
13 of costs and reasonable attorney's fees for violation of Cal. Lab. Code § 226.
- 14 3. On behalf of the COLLECTIVE CLASS:
- 15 A) That the Court certify the Sixth Cause of Action asserted by the COLLECTIVE  
16 CLASS as an opt-in class action under 29 U.S.C. § 216(b);
- 17 B) That the Court declare the rights and duties of the parties consistent with the relief  
18 sought by Plaintiffs;
- 19 C) Issue a declaratory judgment that Defendant's acts, policies, practices and procedures  
20 complained of herein violated provisions of the Fair Labor Standards Act;
- 21 D) That Defendants be enjoined from further violations of the Fair Labor Standards Act;
- 22 E) That the PLAINTIFF and the members of the COLLECTIVE CLASS recover  
23 compensatory, damages and an equal amount of liquidated damages as provided  
24 under the law and in 29 U.S.C. § 216(b).
- 25 4. On all claims:
- 26 A) An award of interest, including prejudgment interest at the legal rate.
- 27 B) An award of liquidated damages, statutory damages, including reasonable attorneys'  
28 fees and cost of suit, but only to the extent that such reasonable attorneys' fees and

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costs are recoverable pursuant to Cal. Lab. Code §1194 and 29 U.S.C. § 216(b).  
Neither this prayer nor any other allegation or prayer in this Complaint is to be construed as a request, under any circumstance, that would result in a request for attorneys' fees or costs available under Cal. Lab. Code § 218.5;

C) Such other and further relief as the Court deems just and equitable.

Dated: September 4, 2008

BLUMENTHAL & NORDREHAUG

By: s/Norman B. Blumenthal  
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**DEMAND FOR JURY TRIAL**

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

Dated: September 4, 2008

BLUMENTHAL & NORDREHAUG

By: s/Norman B. Blumenthal  
Norman B. Blumenthal  
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