ATTACHMENT CV-5012

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER: 115CV286902

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint, Summons,* an *Alternative Dispute Resolution (ADR) Information Sheet,* and a copy of this *Civil Lawsuit Notice,* and you must file written proof of such service.

DEFENDANT (The person sued): **You must do each of the following to protect your rights:**

1. You must file a **written response** to the *Complaint, using the proper legal form or format,* in the Clerk's Office of the Court, within **30 days** of the date you were served with the *Summons* and *Complaint;*
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), www.scselfservice.org (Select "Civil") or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: http://www.sccsuperiorcourt.org/civil/rule1toc.htm

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Mary Arand *Department:* 9

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: FEB 09 2016 *Time:* 1:30pm in Department: 9

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ *Time:* _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

SANTA CLARA COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- **ADR can save time.** A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- **ADR can save money.** Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- **ADR provides more participation.** Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- **ADR provides more control and flexibility.** Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- **ADR can reduce stress.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Richard Schramm (SBN 151696) * Amy Carlson (SBN 213294)
Employment Rights Attorneys, LLP
1500 E. Hamilton Ave., Suite 118, Campbell, CA 95008

TELEPHONE NO.: (408) 796-7551 FAX NO.: (408) 796-7368
ATTORNEY FOR (Name): DARA McCLELLAN

FOR COURT USE ONLY

ENDORSED
FILED

2015 OCT 15 P 12:18

C. Page

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
STREET ADDRESS: 191 N. FIRST ST.
MAILING ADDRESS: 191 N. FIRST ST.
CITY AND ZIP CODE: SAN JOSE, 95113
BRANCH NAME: DOWNTOWN

CASE NAME:
Dara McClellan v. Bradley Chibos, et al.

CIVIL CASE COVER SHEET

☑ **Unlimited** (Amount demanded exceeds $25,000)
☐ **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
115CV286902

JUDGE:

DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment
☐ Wrongful termination (36)
☑ Other employment (15)

Contract
☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property
☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer
☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review
☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
☐ RICO (27)
☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
☐ Partnership and corporate governance (21)
☐ Other petition *(not specified above)* (43)

2. This case ☐ is ☑ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☐ Large number of separately represented parties
   b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☐ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. ☑ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☑ punitive
4. Number of causes of action *(specify)*:
5. This case ☑ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: October 15, 2015
Amy Carlson, Esq
(TYPE OR PRINT NAME)

R Ketche for Amy Carlson
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/ Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice–Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach–Seller Plaintiff *(not fraud or negligence)*
  - Negligent Breach of Contract/ Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment *(non-domestic relations)*
  - Sister State Judgment
  - Administrative Agency Award *(not unpaid taxes)*
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

BRADLEY CHIBOS, and DOES 1 through 100, Inclusive

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

DARA McCLELLAN

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

ENDORSED
FILED

2015 OCT 15 P 12:18

David H. Yamasaki, Chief Executive Officer / Clerk of the Superior Court
By C. Page, Deputy

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): Santa Clara County Superior Court
191 N. First Street, San Jose, CA 95113

CASE NUMBER:
(Número del Caso):
115CV286902

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):
Amy Carlson, Esq., 1500 E. Hamilton Ave., Ste. 118, Campbell, CA 95008, (408) 796-7551

DATE: October 15, 2015 *(Fecha)*
DAVID H. YAMASAKI Chief Executive Officer, Clerk Clerk, by *(Secretario)* C. Page, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión 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):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

LORI KAY STOUT, and DOES 1 through 100, Inclusive

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

DARA McCLELLAN

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

ENDORSED
FILED

2015 OCT 15 P 12:18

C. Page

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(El nombre y dirección de la corte es): Santa Clara County Superior Court
191 N. First Street, San Jose, CA 95113

CASE NUMBER:
(Número del Caso):
115CV286902

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):
Amy Carlson, Esq., 1500 E. Hamilton Ave., Ste. 118, Campbell, CA 95008, (408) 796-7551

DATE: October 15, 2015
(Fecha)

DAVID H. YAMASAKI
Chief Executive Officer, Clerk

Clerk, by *(Secretario)* C. Page , Deputy *(Adjunto)*

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

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under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
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☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify):*

4. ☐ by personal delivery on *(date):*

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

GLYN STOUT, and DOES 1 through 100, Inclusive

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

DARA McCLELLAN

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

ENDORSED
FILED

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C. Page

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(El nombre y dirección de la corte es): Santa Clara County Superior Court
191 N. First Street, San Jose, CA 95113

CASE NUMBER:
(Número del Caso): 15CV286902

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):
Amy Carlson, Esq., 1500 E. Hamilton Ave., Ste. 88, Campbell, CA 95008, (408) 796-7551

DAVID H. YAMASAKI
Chief Executive Officer, Clerk

DATE: October 15, 2015 Clerk, by C. Page, Deputy
(Fecha) *(Secretario)* *(Adjunto)*

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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):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

LUPIN HIEGHTS, INC., and DOES 1 through 100, Inclusive

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

DARA McCLELLAN

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

ENDORSED
FILED

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C. Page

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Amy Carlson, Esq., 1500 E. Hamilton Ave., Ste. 118, Campbell, CA 95008, (408) 796-7551

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DAVID H. YAMASAKI Chief Executive Officer, Clerk
Clerk, by *(Secretario)* C. Page, Deputy *(Adjunto)*

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SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

MICHAEL FJELSTAD, and DOES 1 through 100, Inclusive

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

DARA McCLELLAN

FOR COURT USE ONLY
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ENDORSED
FILED

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David H. Yamasaki, Chief Executive Officer/Clerk of the Superior Court
By C. Page, Deputy

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CHARLIE PERKINS, and DOES 1 through 100, Inclusive

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191 N. First Street, San Jose, CA 95113

CASE NUMBER:
(Número del Caso):
115CV282602

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):
Amy Carlson, Esq., 1500 E. Hamilton Ave., Ste. 118, Campbell, CA 95008, (408) 796-7551

DATE: October 15, 2015 *(Fecha)*
DAVID H. YAMASAKI
Chief Executive Officer, Clerk Clerk, by *(Secretario)* C. Page, Deputy *(Adjunto)*

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RICHARD D. SCHRAMM (SBN 151696)
AMY CARLSON (SBN 213294)
Employment Rights Attorneys, LLP
1500 E. Hamilton Ave., Suite 118
Campbell, CA 95008
Telephone: (408) 796-7551
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rschramm@eralawyers.com
acarlson@eralawyers.com

TOMAS E. MARGAIN (SBN 193555)
HUY TRAN (SBN 288196)
Justice at Work Law Group
84 West Santa Clara Street, Suite 790
San Jose, CA 95113
Telephone: (408) 317-1100
Facsimile: (408) 351-0105
Tomas@JAWLawGroup.com
Huy@JAWLawGroup.com

Attorneys for Plaintiff DARA McCLELLAN and the Proposed Class

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FILED
2015 OCT 15 P 12:19
C. Page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

UNLIMITED JURISDICTION

DARA McCLELLAN, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

BRADLEY CHIBOS, LORI KAY STOUT; GLYN STOUT, LUPIN HEIGHTS, INC., MICHAEL FJELSTAD, CHARLIE PERKINS; and DOES 1 through 100, inclusive,

Defendants.

115CV286902

Case No:

CLASS ACTION

COMPLAINT FOR:
FAILURE TO PAY OVERTIME WAGES
FAILURE TO PAY MINIMUM WAGES
FAILURE TO PROVIDE BREAKS
FAILURE TO PAY FOR EXPENSES
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
FALURE TO PAY FULL WAGES AT TERMINATION
BREACH OF WARRANTY OF HABITABILITY
VIOLATIONS OF H&S CODE §17001
VIOLATIONS OF H&S CODE §170315
VIOLATIONS OF Civil Code §3479
BREACH OF LEASE AGREEMENT
NEGLIGENCE
VIOLATION OF UCL

JURY TRIAL DEMANDED

Plaintiff DARA McCLELLAN ("Plaintiff"), on behalf of herself and all others similarly situated, complains and alleges as follows:

INTRODUCTION

1. This is a class action brought pursuant to Code of Civil Procedure section 382 against Defendants BRADLEY CHIBOS, LORI KAY STOUT; GLYN STOUT, LUPIN HEIGHTS, INC., MICHAEL FJELSTAD, CHARLIE PERKINS, (collectively "LUPIN LODGE") and DOES 1-100 (collectively "Defendants"). LUPIN LODGE owns and operates a resort hotel and restaurant in the Los Gatos Hills in Santa Clara County, i.e., the Resort. Plaintiff, a current employee and resident of LUPIN LODGE, brings this class action on behalf of herself and all other present and former LUPIN LODGE staff members who have been employed by LUPIN LODGE in its Resort facilities (the "Lodge Workers").

2. Plaintiff brings this lawsuit on behalf of the Lodge Workers to challenge the unfair and unlawful practices in which Defendants have engaged which include, but are not limited to:

a) Being required and permitted to work for certain hours under various oral and written contracts to work without compensation and in exchange only for food and lodging;

b) Being required and permitted to work without overtime wages;

c) Being required and permitted to work without a payment of minimum wages for any hours worked;

d) Not being provided any paystubs.

e) Being required to work without duty-free meal breaks and legally required rest breaks;

f) Being required to incur expenses on behalf of LUPIN LODGE without being reimbursed for such expenses;

g) Being required to live in hazardous and substandard living conditions

3. Plaintiff seeks restitution and compensation on behalf of herself and the Lodge Workers for unpaid wages, including unpaid minimum wages, overtime premiums, statutory penalties, and interest. Plaintiff also seeks declaratory and injunctive relief. Finally, Plaintiff

seeks reasonable attorneys' fees and costs pursuant to the Labor Code and Code of Civil Procedure section 1021.5.

4. Plaintiff also seeks restitution and compensation pursuant to the Private Attorneys General Act (PAGA) on behalf of the State of California and the Lodge Workers for unpaid wages, unpaid minimum wages, overtime premiums, statutory penalties, civil penalties, and interest. Plaintiff seeks reasonable attorneys' fees and costs pursuant to PAGA.

PARTIES

1. Plaintiff DARA McCLELLAN is an individual over the age of eighteen (18) and at all relevant times a resident of Santa Clara County in California. Plaintiff began working in LUPIN LODGE in approximately August 2007 and is currently employed by LUPIN LODGE and lives at the property.

2. Defendants BRADLEY CHIBOS, CHARLIE PERKINS, and MICHAEL FJELSTAD and DOES 1 to 100, (collectively "LUPIN LODGE BOARD MEMBERS") are individuals who are or were members of the Advisory Board of LUPIN LODGE during the times material to this complaint. Based on information and belief, they are members of an unincorporated association called an Advisory Board that oversees LUPIN LODGE. As plead below, LUPIN LODGE BOARD MEMBERS suffered and permitted Plaintiff and the class to work without compensation. Because defendants MICHAEL FJELSTAD and BRAD CHIBOS and CHARLIE PERKINS stepped outside their roles solely as board members and additionally exercised control over the wages, hours, and working conditions of the class members separate and apart from their authority as board members of the LUPIN LODGE these two defendants are also "employers" of the Class members.

3. Defendants LORI KAY STOUT and GLYN STOUT, husband and wife, are the proprietors of the Resort, and run the day to day operations of the Resort on behalf of LUPIN LODGE. Both LORI KAY STOUT and GLYN STOUT are "employers" of the members of the Class, in that both Defendants, as defined by the Industrial Welfare Commission Order, exercised control over the wages, hours and working conditions of such Class members.

4. Defendant LUPIN HEIGHTS, INC.is a California corporation headquartered in Los Gatos, California, Santa Clara County and is authorized to do business in, and does business in, the County of Santa Clara, State of California.

5. Plaintiff does not know the true names and capacities of Defendants sued herein as DOES 1-100 and therefore sues these Defendants by fictitious names. Plaintiff will amend this complaint to state the true names and capacities when ascertained. Plaintiff is informed and believes and on that basis alleges that each of the fictitiously-named Defendants is responsible in some manner for the occurrences alleged herein, and thereby proximately caused Plaintiff's injuries alleged herein.

6. Plaintiff is informed and believes and on that basis alleges that each of the Defendants acted in concert with each and every other Defendant, intended to, and did participate in the events, acts, practices and courses of conduct alleged herein, and proximately caused damage and injury thereby to Plaintiff and the Lodge Workers as alleged herein.

7. At all times herein mentioned, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment, except that the four individually named defendants, when acting as "employers" of the Lodge Workers, controlled such wages, hours, and working conditions outside the scope of their responsibilities as members of the LUPIN LODGE Advisory board.

8. At all times herein mentioned, each individually named Defendant was a common law employer and an "employer" as defined by the IWC Order, in that each such Defendant required or permitted Plaintiffs and the class to work without proper compensation, and controlled the wages, hours, and working conditions of these Lodge Workers.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Plaintiff's and the Lodge Workers' claims for unpaid wages because Plaintiff is a California resident and because Defendants are individuals or corporations that are qualified to do business in, and regularly conduct business in, California. This Court also has jurisdiction over Plaintiff's and the Lodge Workers' claims because no

federal question is at issue in this action. Furthermore, Plaintiff is informed and believes, and on that basis alleges, that the aggregate claims, including attorneys' fees and all other requested relief, are less than the $5 million required to establish federal jurisdiction under the Class Action Fairness Act of 2005.

10. Venue is proper in this Court because LUPIN LODGE conducts business in Santa Clara County and because Plaintiff worked in Santa Clara County and earned wages in Santa Clara County.

FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

11. LUPIN LODGE is in the hospitality business, selling memberships to persons residing both inside and outside the Resort, and providing a resort style hotel and dining room for members of the public and its own membership. While LUPIN LODGE has a membership, the Resort is run in a way that allows first time guests to become members by booking a room and paying for the lodging. LUPIN LODGE occupies a 110 acre lot in a rather remote area annexed as part of the City of Los Gatos. Because of its remote location, most workers, though not all, live at the Resort and are also provided meals at the Resort.

12. LUPIN LODGE employs Plaintiff and the putative class, covered by IWC Wage Order 5-2001, under a pay scheme where employees provide labor in exchange for no wages. Instead of wages, LUPIN LODGE provides only food, housing, and other amenities such as a space to park a trailer. This informal system was never reduced to a voluntary written agreement. By way of example, an employee may work 30 hours a week to pay off a monthly cabin rental or 15 hours a week to pay for meals provided.

13. The day to day proprietors of LUPIN LODGE are Defendants LORI KAY STOUTT and GLYN STOUT. At various times they hire, fire, discipline, supervise, schedule, and set the compensation for employees of LUPIN LODGE. Defendants CHIBOS, PERKINS, and FJELSTAD also reviewed the hiring, firing, and disciplining of Lodge Workers, approved or disapproved compensation, and determined the "status" of such workers as either employees or independent contractors.

14. In or about 2011 or early 2012, Defendants notified Plaintiff and class members that Defendants would no longer consider such workers as "employees" and therefore discontinue paying the Lodge Workers any further wages. Instead, Defendants required Plaintiff and class members to sign documents re-classifying the Lodge Workers as "independent contractors." However, Defendants both individually and corporate, continued to maintain control over the wages, hours, and working conditions of the Lodge Workers, such that Defendants remained as employers and the Lodge Workers remained as employees.

15. LUPIN LODGE BOARD MEMBERS during the statute of limitations covered by this action, were aware, discussed, and even attempted to settle wage and hour claims of employees, including Plaintiff and the putative class. By their acts, LUPIN LODGE BOARD MEMBERS were aware of and suffered and permitted Plaintiff and the class to work without any compensation (minimum wage violations) and overtime compensation. LUPIN LODGE BOARD MEMBERS also engaged in the other violations of the Labor Code identified herein, including among others, violations involving expense reimbursements, meal breaks, and rest breaks.

16. Based on the pay scheme, Plaintiff and the proposed class did not receive minimum wages for all hours worked.

17. Based on the pay scheme, Plaintiff and the proposed class did not receive overtime premium wages for all hours worked.

18. Based on the pay scheme, Plaintiff and the proposed class did not receive legal meal breaks or rest breaks, nor the premium pay accorded from the loss of such breaks.

19. Based on the pay scheme, Plaintiff and the proposed class did not receive reimbursement for expenses incurred on behalf of LUPIN LODGE.

20. LUPIN LODGE provided Plaintiff, and some putative class members, lodging that was not "adequate, decent, and sanitary according to usual and customary standards" for hospitality workers. In fact, the lodging provided lacked adequate heat, was not properly insulated; was infested with bugs and varmints (primarily rats and mice); and had at various times faulty electrical and plumbing.

CLASS ACTION ALLEGATIONS

21. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant to California Code of Civil Procedure section 382 for violations of California's Labor Code and Business & Professions Code section 17200, *et seq.* Plaintiff seeks to represent the following class of employees, defined as follows:

> All individuals who have been employed by Defendants Lupin Lodge, who were not paid for their hours worked, including overtime wages and minimum wages and who were provided housing that was not "adequate, decent, and sanitary according to usual and customary standards" for hospitality workers.

22. The exact number of class members is unknown to Plaintiff at this time. Plaintiff is informed and believes, and on that basis alleges, that at least 35 class members exist. Accordingly, the members of the class are so numerous that joinder of all members would be impracticable. The disposition of the class members' claims through this class action will benefit both the parties and the Court. The exact number and identity of the proposed class members are readily ascertainable through inspection of Defendants' records.

23. Common questions of law and fact exist as to members of the class and include, but are not limited to, the following:

(a) Whether Defendants had a policy to provide lodging, accommodations and meals in exchange for compensable labor of their workers;

(b) Whether Defendants failed to pay Plaintiff and members of the class all wages due by Defendants' acts of requiring work in exchange for only lodging, accommodations and meals;

(c) Whether the housing provided by Defendants was not "adequate, decent, and sanitary according to usual and customary standards" for hospitality workers;

(d) Whether Defendants failed to provide Plaintiff and members of the class accurate wage statements showing all hours worked and all wages due;

(e) Whether Defendants willfully failed to pay all wages due Plaintiff and members of the class upon termination;

(f) Whether Defendants engaged in unfair competition proscribed by the Business and Professions Code by engaging in the conduct described hereinabove;

(g) The scope and type of injunctive relief necessary to prevent the wage and hour violations described herein;

(h) The measure of restitution and damages to compensate Plaintiff and members of the class for the violations alleged herein;

24. Plaintiff's claims are typical of the claims of the class that Plaintiff seeks to represent. Plaintiff and members of the class were not properly paid for all hours worked as required by California law. Defendants' common course of conduct with respect to Plaintiff and members of the class has caused Plaintiff and members of the class to sustain the same or similar injuries and damages.

25. Plaintiff will fairly and adequately represent and protect the interests of the members of the class. Plaintiff is a member of the class and does not have any conflict of interest with other class members. Plaintiff has retained and is represented by competent counsel experienced in complex class action litigation, including wage and hour class actions such as the present action.

26. The nature of this action and California law make a class action the superior and appropriate procedure to afford relief for the wrongs alleged herein.

FIRSTCAUSE OF ACTION
Failure to Pay Overtime Wages
(On behalf of the Class against All Defendants)

27. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

28. Lodge Workers have worked and continue to work more than 8 hours a day and 40 hours per week.

29. California Labor Code section 510 provides that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and on-half times the regular rate of pay for an employee." (*See also* Wage Order 5-2001(3)(A)(1), Cal. Code Regs., tit. 8, § 11160(3)(A)(1)).

30. California Labor Code section 1194, subdivision (a), provides that "any employee receiving less than . . . 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 . . . overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

31. Plaintiff and class members may have agreed to work overtime hours in exchange solely for meals, lodging and accommodations, but such an agreement was never reduced to a voluntary written agreement. Moreover, such an agreement must still include the payment of overtime wages when due and owing.

32. Defendants have deprived Plaintiff and the Lodge Workers their rightfully earned overtime premium wages as a direct and proximate result of Defendants' policies and failure and refusal to pay that compensation. Plaintiff and the Lodge Workers are entitled to recover such amounts, plus interest, attorneys' fees and costs, and all other relief as hereinafter requested.

SECOND CAUSE OF ACTION
Failure to Pay Minimum Wages
(On behalf of the Class against All Defendants)

33. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

34. In lieu of actual wages, Defendants provided meals, lodging and accommodations as "compensation" for hours worked. Defendants credited Plaintiff and class members for the "value" of their hours worked against the "value" of the meals, lodging and accommodations provided by LUPIN LODGE.

35. Plaintiff and class members may have agreed to work hours in exchange solely for meals, lodging and accommodations but such an agreement was never reduced to a voluntary written agreement. Any such purported agreements were void as a matter of law, in that such agreements did not comport with the requirements that earned wages (a) be payable in money, (b) be payable in an instrument immediately convertible to money, and (c) be paid at least twice per month. Moreover, the housing provided as a substitute for earned wages had very little to no "value" as the housing was not "adequate, decent, and sanitary according to usual and customary standards" for hospitality workers.

36. California Labor Code section 1194 provides standing for Plaintiff and the class to prosecute claims for unpaid minimum wages.

37. California Labor Code section 1194.2 provides standing for Plaintiff and the class to prosecute claims for liquidated damages in an amount equal to that of the wages unlawfully left unpaid over three years.

38. Defendants have deprived Plaintiff and the Lodge Workers their rightfully earned minimum wages as a direct and proximate result of Defendants' policies and failure and refusal to pay that compensation.

39. Plaintiff and the Lodge Workers are entitled to recover such amounts, plus interest, liquidated damages pursuant to Labor Code section 1194.2, attorneys' fees and costs, and all other relief as hereinafter requested.

THIRD CAUSE OF ACTION
Failure to Provide Meal and Rest Breaks
(On behalf of the Class against All Defendants)

40. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

41. Defendants required Plaintiff and class members to work shifts greater than 5.0 hours in a single day with providing duty-free meal periods of at least one half hour. Defendants

further required Plaintiff and class members to work shifts greater than 12.0 hours in a single day without providing a second duty-free meal period of at least one half hour.

42. Defendants required Plaintiff and class members to work shifts of between two and four hours without being given an opportunity for the required rest period of at least net 10 minutes duration.

43. Plaintiff and class members may have agreed to work without duty free meal periods or without rest periods, but such an agreement was never reduced to a voluntary written agreement. Any such purported agreements were void as a matter of law, in that such agreements did not comport with the requirements for meal and rest periods.

44. Plaintiff and the class members are entitled to premium pay as wages, at the rate of one hour of premium pay for each day in which a required duty-free meal period was not provided, Plaintiff and the Lodge Workers and also entitled to premium pay as wages, at the rate of one hour of premium pay, for each day in which a required rest period was not allowed.

45. Plaintiff and the Lodge Workers are entitled to recover such premium wages pursuant to IWC Wage Order 5-2001.

FOURTH CAUSE OF ACTION
Failure to Reimburse Business Related Expenses
(On behalf of the Class against All Defendants)

46. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein, and further alleges as follows:

47. Labor Code section 2802 requires that Defendants reimburse the Lodge Workers for all expenses incurred as a result of carrying out their duties as employees. Defendants have specifically not reimbursed the Lodge Workers for business related expenses, which inter alia, have included the following: cell phone use and charges; cleaning supplies; maintenance costs for the Resort residential facilities; kitchen supplies; and vehicle related costs.

48. As a consequence of Defendants' actions, members of the class have been injured and are entitled to all available statutory penalties, costs and reasonable attorneys' fees, including

those provided in Labor Code section 2802. Such failures to reimburse business expenses have also resulted in further violations of the minimum wage requirement.

49. Plaintiff also seeks an injunction to halt such illegal conduct, and to ensure future compliance with the requirements of section 2802 and to enjoin Defendants' unlawful conduct.

FIFTH CAUSE OF ACTION
Failure to Provide Accurate Wage Statements
(On behalf of the Class against All Defendants)

50. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein, and further alleges as follows:

51. Labor Code section 226 requires that Defendants provide the Lodge Workers timely and accurate statements showing, *inter alia*, gross wages earned and total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee. Such accurate wage statements must also include Defendant employer's accurate corporate name and address.

52. Any complying wage statement must accurately report the information necessary for an employee to verify both that the employee is being properly paid in accordance with the law and the employer's deductions from wages are proper.

53. During the relevant time period, Defendants failed to issue any statements indicating the hours worked or the amount earned, or the correct name and address of the actual employer, so that Plaintiff and the Lodge Workers suffered injury as a result.

54. Defendants knew or should have known the Lodge Workers were entitled to accurate and complete wage statements. In fact, at one point, Defendants "converted" the employees to "contractors" to avoid the requirements imposed on employers who have employees. Defendants knew or should have known they were denying members of the class meal and/or rest periods. Despite this, Defendants did not supply the Lodge Workers with complete and accurate wage statements showing all hours worked and all wages earned.

55. Members of the class have been injured by Defendants' failure to either provide any wage stubs or any accounting of "offsets" or "deductions" which Defendants claimed to exist for providing housing and meals in lieu of wages.

56. As a consequence of Defendants' actions, members of the class have been injured and are entitled to all available statutory penalties, costs and reasonable attorneys' fees, including those provided in Labor Code section 226, subdivision (e). Plaintiff also seeks an injunction pursuant to Labor Code section 226, subdivision (g), to ensure compliance with the requirements of section 226 and to enjoin Defendants' unlawful conduct.

SIXTH CAUSE OF ACTION
Waiting Time Penalties
(On behalf of the Class against All Defendants)

57. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

58. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with California Labor Code sections 201, 201.5, 202 and 205.5, any wages of an employee who is discharged or who resigns, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid up to a maximum of thirty (30) days.

59. Defendants had and continue to have a consistent and uniform policy, practice and procedure of willfully failing to pay Plaintiff and members of the class at the termination of their employment all of their earned wages owed for work performed within the time periods specified in California Labor Code sections 201 and 202.

60. Certain members of the class are no longer employed by Defendants in that they were either discharged from or resigned from Defendants' employ. Defendants knew that wages were due these members of the class, but Defendants nevertheless failed to pay these members of the class all of the wages that they had earned.

61. Members of the class who left Defendants' employ and were not paid all wages due are therefore entitled to penalties pursuant to California Labor Code section 203, in the amount of each person's daily wage multiplied by thirty (30) days.

SEVENTH CAUSE OF ACTION
Breach of Implied Warranty of Habitability
(On behalf of the Class against All Defendants)

62. Plaintiff realleges and herein incorporates by reference each preceding paragraph of the complaint.

63. Plaintiff and the on-site Lodge Workers had an oral agreement with the Defendants for the occupancy of an on-site dwelling. Implied in every such agreement is a warranty of habitability for the dwelling.

64. The premises provided Plaintiff, her family, and other Lodge Workers were unfit for human occupation at the time Defendants provided housing to Plaintiff and the others at LUPIN LODGE, Santa Clara County California, in that the premises substantially failed to comply with those applicable building and health code standards that materially affect the health and safety of the Plaintiff and others.

65. Defendants were aware of the defective and dangerous conditions as alleged in this complaint and did not repair or fix such conditions.

66. The premises as it existed and exists, with its defective and dangerous conditions, had and continues to have, no rental value or a rental value substantially below that attributed by Defendants.

67. The failure of the Defendants to repair the premises constitutes a breach of the implied warranty of habitability. Plaintiff and Lodge Workers sustained damages as a proximate result of Defendants' breach of their implied warranty of habitability and their failure to repair the defective and dangerous conditions or to have them repaired within a reasonable time or at all, in the full amount of rent that each paid, while they resided in the premises.

68. Plaintiff and the others suffered discomfort and annoyance, as a direct and proximate result of each Defendants' failure to correct these defective conditions, all to their general damage in an amount to be determined at trial.

69. Each of Defendants' failures to correct these defective conditions was knowing, intentional, and willful and was done with full knowledge of the discomfort and annoyance that their failure would cause Plaintiff and the others.

70. Defendants; conduct was malicious and oppressive, and Plaintiff therefore is entitled to punitive damages in an amount to be determined at trial.

EIGHTH CAUSE OF ACTION
Violation of Employee Housing Act-Health and Safety Code §17001 *et seq*
(On behalf of the Class against All Defendants)

71. Plaintiff realleges and herein incorporates by reference each preceding paragraph of the complaint.

72. Health and Safety Code §17001 was in full force and effect, at all times material to this action. Buildings used for human habitation, and buildings accessory thereto, within employee housing shall comply with the building standards published in the State Building Standards Code relating to employee housing and with the other regulations adopted pursuant to Health and Safety Code section 17001, et seq.

73. The property located at the Lodge is employee housing within the meaning of the Employee Housing Act, Health and Safety Code section 17008(b)(1) in that (a) the property is located in a rural area; (b) the housing accommodations and property are not maintained in connection with any work or workplace; (c) the housing accommodations and property are provided by someone other than an agricultural employer; and (d) the housing accommodations or property was rented by Defendants to Lupin Lodge employees.

74. Defendants have failed to comply with health, safety and buildings codes applicable to Plaintiff home at all times material to this complaint so that the premises constituted and constitute substandard buildings as defined in Health and Safety Code section 17920.3 and

failed to meet the minimum standards prescribed for employee housing camps by Chapter 25 of the California Code of Regulations, section 600 *et seq.*

75. Defendants failed to obtain a permit from the Santa Clara County Environmental Health Department or any state, local government agency for that matter, to operate the employee housing camp.

76. The Employee Housing Act, Health and Safety Code section 17030, makes it unlawful for any person to operate a labor camp without first having obtained a permit to operate the labor camp from the appropriate enforcement agency. The Environmental Health Department of Santa Clara County has assumed enforcement responsibility over the employee housing camp pursuant to Health and Safety Code § 17050.

77. The substandard conditions of the employee housing caused by the Defendants were such that they posed an imminent peril to Plaintiff and all tenants residing in the living quarters provided by Defendants.

78. The Defendants failed to comply with Health and Safety Code §17001 as alleged above.

79. Plaintiff and the class members have sustained and continue to sustain as a direct and proximate result of defendants' acts and/or omissions set forth in this cause of action, damages and extreme and severe mental anguish, in amounts to be proven at trial.

80. Plaintiff and the class members are entitled to actual damages as result of the Defendants' and each of their unlawful acts described herein.

81. Defendants and each of them, in doing the foregoing unlawful acts, acted wantonly, willfully, maliciously, without probable cause, without regard for the rights, health and feelings of Plaintiff, and with the intent, design, and purpose to injure and oppress Plaintiff.

82. Plaintiff, accordingly, is entitled to an award of exemplary and punitive damages.

83. Plaintiff is informed and believe and thereon allege Defendants will continue to operate an illegal labor camp unless they are restrained and enjoined from doing so.

NINTH CAUSE OF ACTION
Violation of Health and Safety Code §17031.5
(On behalf of the Class against All Defendants)

84. Plaintiff realleges and herein incorporates by reference each preceding paragraph of the complaint.

85. Health and Safety Code § 17031.5 was in full force and effect, at all times material to this action. It states that no person operating employee housing shall terminate or modify a tenancy by amongst other things threatening to bring or bringing an action to evict, refusing to renew a tenancy, or in any other way intimidate, threaten restrain, coerce, blacklist or discharge and employee or tenant because of the tenant's exercise of (1) complaining in good faith, orally or in writing, to the operator, landlord, or employer about tenant ability or about any right provided under the Employee Housing Act; (2) exercising any legal right with respect to housing provided under the Employee Housing Act; (3) complaining in good faith, orally or in writing, to any applicable enforcement agency about tenant ability or about any right provided by the Employee Housing Act; or (4) bringing an action to enforce any rights provided under the Employee Housing Act or Civil Code section 1942.5.

86. The Defendants threatened and intimidated Plaintiff and other class members upon their request that they be provided a habitable living quarter. Defendants failed to comply with Health and Safety Code §17031.5 as alleged above.

87. Plaintiff and class members are entitled to actual damages as result of the Defendants', and each of their, unlawful acts described herein.

88. Defendants and each of them, in doing the foregoing unlawful acts, acted wantonly, willfully, maliciously, without probable cause, without regard for the rights, health and feelings of Plaintiffs and class members, and with the intent, design, and purpose to injure and oppress Plaintiffs and class members who are accordingly entitled to an award of exemplary and punitive damages.

TENTH CAUSE OF ACTION
Nuisance in Violation of California Civil Code §3479
(On behalf of the Class against All Defendants)

89. Plaintiff realleges and herein incorporates by reference each preceding paragraph of the complaint.

90. The condition of the premises and the surrounding structures owned and operated by the Defendants was and continues to constitute a nuisance, in violation of California Civil Code §3479, in that it is injurious to health and it is indecent or offensive to the senses so as to interfere with the comfortable enjoyment of life and property.

91. The condition of the premises and the surrounding structures owned and operated by the Defendants was and continues to constitute a public health hazard and affects at the same time the entire neighborhood and community as defined by California Civil Code § 3480.

92. Defendants were actually aware of the defective and dangerous conditions described herein, as well as the dangerous conditions of the surrounding structures owned and operated by the Defendants and did not repair them.

93. Defendants refused to desist from maintaining the premises and the surrounding structures owned and operated by the Defendants as a nuisance and, unless restrained by the Court, will continue to do so; and each and every act or omission by the Defendants is without the consent, against the will and in violation of the rights of the Plaintiff and the class members.

94. The nuisance created and maintained by the Defendants also was and constitutes a private nuisance because it was especially injurious to the Plaintiff, interfered with the Plaintiff's and class members' property rights in their tenancy and such persons' use and enjoyment of the rental property was substantially impaired by the dangerous conditions.

95. Plaintiff and class members have been specifically damaged, as a result of their exposure to unsafe, substandard and untenable housing conditions, by Defendants' maintenance of a continuing public and/or private nuisance in that class members have sustained discomfort, annoyance, aggravation, mental suffering all to their damage in an amount to be proven at trial.

96. Defendants are required by law to abate the nuisance but the Defendants have failed to do so.

97. Plaintiff and class members maintains this action for both private and public nuisance, pursuant to California Civil Code §§3491 and 3493.

98. Defendants' and each of their failures to act was both oppressive and malicious within the meaning of §3294 of the Civil Code in that it subjected class members to cruel and unjust hardship in conscious disregard of their rights and safety, thereby entitling Plaintiffs to an award of punitive damages in an amount to be proven at trial.

ELEVENTH CAUSE OF ACTION
Breach of Lease Agreement
(On behalf of the Class against All Defendants)

99. Plaintiff realleges and herein incorporates by reference each preceding paragraph of the complaint.

100. Plaintiff and class members entered into oral lease agreements with Defendants, whereby Plaintiffs agreed to rent the premises from Defendants on a month-to-month basis.

101. Plaintiffs performed all conditions, covenants, and promises required on their part to he performed in accordance with the terms and conditions of the oral lease agreement.

102. Defendants breached the written lease agreement by failing to provide a habitable premise to Plaintiffs.

103. Plaintiffs have suffered special and general, economic and non-economic damages as a legal and proximate result of the conduct of Defendants and each of them as alleged above, in an amount to be determined at trial.

104. Plaintiffs were required to move and did incur moving expenses as a further proximate result of Defendants' conduct in maintaining an uninhabitable premise as alleged in this complaint in an amount to be proven at trial.

105. Plaintiffs suffered additional general damages as a further proximate result of Defendants', and each of their, conduct as alleged in this complaint, consisting of the difference in the amount they were obligated to pay for rent under their agreement with Defendants and the

amount that they were required to pay, and in the future will be required to pay, for alternative housing, in an amount to be proven at trial.

106. Plaintiffs presented Defendants with a demand for repairs. Plaintiffs are legally entitled to possession of a habitable premises, which has been denied to them as a legal and proximate result of the conduct of Defendants as alleged above.

TWELFTH CAUSE OF ACTION
Negligence
(On behalf of the Class against All Defendants)

107. Plaintiff realleges and herein incorporates by reference each preceding paragraph of the complaint.

108. Defendants have a duty under State law to supervise its management personnel, so that such personnel do not inflict harm on Plaintiff and class members. Defendants failed to use due care and diligence in the supervision of LORI KAY STOUT and GLYN STOUT, as well as the operations of the LUPIN LODGE, so that Plaintiffs were harmed as indicated above. Defendants were thus engaged in negligent supervision.

109. Defendants have a duty under State law to remove its management personnel who are known to inflict harm on Plaintiff and class members. Defendants failed to use due care and diligence in the retention and removal of LORI KAY STOUT and GLYN STOUT, as well as their operations of the LUPIN LODGE, so that Plaintiffs were harmed as indicated above. Defendants were thus engaged in negligent retention.

110. Defendants warrant, and have a duty under State law to the Plaintiffs, to maintain residential rental property in a habitable condition. Defendants imply or express in their written or oral contracts that they will, and therefore, they have a duty to the Plaintiffs to maintain residential rental property in habitable condition.

111. Plaintiffs, as a direct and proximate result of Defendants, and each of their failure to use due care and diligence to maintain the premises in habitable condition, have suffered and continue to suffer injury, anguish and embarrassment in an amount to be proven at trial.

112. Defendants', and each of their actions are malicious and despicable, in callous and reckless disregard of the rights of Plaintiffs, and therefore, Plaintiffs are entitled to punitive damages in an amount to be proven at trial.

THIRTEENTH CAUSE OF ACTION
Unfair Competition
(On behalf of the Class against All Defendants)

113. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein, and further alleges as follows:

114. The Unfair Competition Law ("UCL"), California Business & Professions Code section 17200, *et seq.*, prohibits unfair competition in the form of any unlawful, unfair or fraudulent business acts or practices. The UCL provides that a Court may enjoin acts of unfair competition, and order restitution to affected members of the public.

115. Beginning at an exact date unknown to Plaintiff, but at least since four years prior to the filing of this suit, Defendants have committed acts of unfair competition as defined by the UCL, by engaging in the unlawful, unfair and fraudulent business practices and acts described in this Complaint, including, but not limited to:

(a) Failing to pay all wages earned, including accurate overtime and minimum wages to Plaintiff and members of the class, in violation of California Labor Code sections 510 and 1772, and Wage Order 5-2001;

(b) Failing to pay for all hours worked, including overtime and minimum wages in violation of Labor Code section 510 and 1772, and Wage Order 5-2001;

(c) Failing to maintain accurate records showing actual hours worked and wages paid, in violation of Labor Code section 1174, subdivision (d) and Wage Order 5-2001, Cal. Code Regs., tit. 8, § 11160, subdivision (6), which imposes a requirement on all employers to "keep accurate information with respect to each employee," including "[t]ime records showing when the employee begins and ends each work period" as well as "total daily hours worked" and meal periods.

(d) Failing to provide Plaintiff and members of the class with accurate wage statements showing all hours worked, the corresponding hourly rate, and wages earned, in violation of California Labor Code section 226.

(e) Failing to provide and pay premium pay for meal breaks and rest breaks.

(f) Failing to reimburse business related expenses.

(g) Failing to provide Plaintiff and certain members of the class all wages earned upon termination.

116. The violations of these laws and regulations, as well as of the fundamental California public policies protecting wages and discouraging overtime labor underlying them, serve as unlawful predicate acts and practices for purposes of Business and Professions Code section 17200, *et seq.*

117. The acts and practices described above constitute unfair, unlawful and fraudulent business practices, and unfair competition, within the meaning of Business and Professions Code section 17200 *et seq.* Among other things, the acts and practices have taken from Plaintiff and members of the class wages rightfully earned by them and promised to them, while enabling Defendants to gain an unfair competitive advantage over law-abiding employers and competitors. Plaintiff and members of the class have relied on Defendants representations that they would be paid certain wage rates for all hours worked. Had Plaintiff known that she would not have been paid the promised wages for all of the hours he worked, Plaintiff would have sought employment elsewhere.

118. Business and Professions Code section 17203 provides that a court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent Defendants from repeating their unlawful, unfair and fraudulent business acts and business practices alleged above. If Defendants are not enjoined from this conduct, they will continue to engage in these unlawful practices. Monetary compensation alone will not afford adequate and complete relief to Plaintiff and members of the class because it is impossible to determine the amount of damages that will compensate for Defendants' actions in the future if

such actions are not enjoined now. Thus, without injunctive relief, a multiplicity of actions will result from Defendants' continuing conduct.

119. As a direct and proximate result of the aforementioned acts and practices, Plaintiff and members of the class have suffered a loss of money and property, in the form of unpaid wages that are due and payable to them.

120. Business and Professions Code section 17203 provides that the Court may restore to any person in interest any money or property that may have been acquired by means of such unfair competition. Plaintiff and members of the class are entitled to restitution pursuant to Business and Professions Code section 17203 for all wages and payments unlawfully withheld from employees during the four-year period prior to the filing of this complaint.

121. Business and Professions Code section 17202 provides: "Notwithstanding Section 3369 of the Civil Code, specific or preventive relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition." Plaintiff and members of the class are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code section 17202.

122. Plaintiff requests that the Court issue a preliminary and permanent injunction requiring Defendants to advise all class members of their rights pursuant to the California Labor Code and Wage Order 16-2001, and to provide Plaintiff and members of the class all applicable benefits afforded by California's Labor Code and Wage Order 16-2001, including but not limited to (a) payment of all wages earned for all hours worked, including minimum, straight time, and overtime wages; (b) payment of all premium wages earned for improper meal and rest periods; and (c) provision of accurate wage statements.

123. Plaintiff's success in this action will enforce important rights affecting the public interest and in that regard Plaintiff sues on behalf of himself as well as others similarly situated. Plaintiff and members of the class seek and are entitled to unpaid wages, declaratory and injunctive relief, and all other equitable remedies owing to them.

124. Plaintiff herein takes upon himself enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action, the action is seeking to vindicate a

public right, and it would be against the interests of justice to penalize Plaintiff by forcing him to pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure section 1021.5 and otherwise.

FOURTEENTH CAUSE OF ACTION
Declaratory Relief
(On behalf of the Class against All Defendants)

125. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein, and further alleges as follows:

126. An actual controversy has arisen between Plaintiff and members of the class, on the one hand, and Defendants, on the other hand, as to their respective rights, remedies and obligations. Specifically, Plaintiff contends and Defendants deny, that:

(a) Defendants have failed and continue to fail to properly pay overtime wages;

(b) Defendants have failed and continue to fail to pay them the minimum wages;

(c) Defendants have failed and continue to fail to provide Plaintiff and members of the class accurate wage and hour statements showing all hours worked, the corresponding hourly rate, and wages earned;

(d) Defendants have failed and continue to fail to provide Plaintiff and class members their duty-free meal periods and rest periods;

(e) Defendants have failed and continue to fail to reimburse Plaintiff and class members their business related expenses;

(f) Defendants have failed and continue to fail to provide Plaintiff and class members with habitable dwellings;

(g) Defendants have failed and continue to fail to provide Plaintiff and class members habitable dwellings which they can occupy without threat, coercion, or retaliation.

127. Plaintiff further alleges that members of the class are entitled to recover earned wages, liquidated damages, and penalties as alleged herein.

128. Accordingly, Plaintiff seeks a declaration as to the respective rights, remedies, and obligations of the parties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for relief as follows:

1. For declaratory relief as pled or as the Court may deem proper;
2. For preliminary and permanent injunctive relief prohibiting Defendants, their officers, agents and all those acting in concert with them, from committing in the future those violations of law herein alleged;
3. For an equitable accounting to identify, locate and restore to all current and former employees the wages they are due, with interest thereon;
4. For an order awarding Plaintiff and the members of the class compensatory damages, including lost wages, earnings and other employee benefits and all other sums of money owed Plaintiff and members of the class, together with interest on these amounts, according to proof;
5. For an award of reasonable attorneys' fees as provided by applicable law;
6. For all costs of suit; and
7. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: October 14, 2015

EMPLOYMENT RIGHTS ATTORNEYS, LLP
THE LAW OFFICE OF TOMAS E. MARGAIN

By: R. Bitche for Amy Carlson
Amy Carlson

Attorneys for Plaintiff Dara McClellan and the Proposed Class

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

Respectfully submitted,

Dated: October 14, 2015

EMPLOYMENT RIGHTS ATTORNEYS, LLP
THE LAW OFFICE OF TOMAS E. MARGAIN

By: R. Kutche for Amy Carlson
Amy Carlson

Attorneys for Plaintiff Dara McClellan and the Proposed Class

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