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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF MERCED

11 UNLIMITED JURISDICTION
 12

13 RITA HARRISON & BRIANNA CORONA,
 on behalf of themselves, all others similarly
 14 situated, and the general public,

15 *Plaintiff,*

16 vs.

17 AMIHR, LLC, a California Limited Liability
 Company; LQ MANAGEMENT, LLC, a
 18 Texas Limited Liability Company;
 WYNDHAM HOTELS & RESORTS, INC., a
 19 New Jersey corporation; WYNDHAM
 HOTEL MANAGEMENT, INC., a Delaware
 20 corporation; and DOES 1 through 50,
 inclusive,

21 *Defendants.*
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Case No. 20CV-02413

CLASS AND REPRESENTATIVE ACTION

COMPLAINT

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
7. Civil Penalties (Lab. Code §§ 2698 *et seq.*);

JURY TRIAL DEMANDED

COMES NOW, Plaintiffs RITA HARRISON & BRIANNA CORONA (“Plaintiffs”), on behalf of themselves, all others similarly situated, and the general public, complain and allege as follows:

INTRODUCTION

1. Plaintiff brings this class and representative action against Defendant AMIHR, LLC a California Limited Liability Company; LQ MANAGEMENT, LLC, a Texas Limited Liability Company; WYNDHAM HOTELS & RESORTS, INC., a New Jersey corporation; and DOES 1 through 50, inclusive (collectively referred to as “Defendants”) for alleged violations of the Labor Code and Business and Professions Code. As set forth below, Plaintiff alleges that Defendants have

- (1) failed to provide them and all other aggrieved employees with meal periods;
- (2) failed to provide them with rest periods;
- (3) failed to pay them premium wages for missed meal and/or rest periods;
- (4) failed to pay them premium wages for missed meal and/or rest periods at the regular rate of pay;
- (5) failed to pay them at least minimum wage for all hours worked;
- (6) failed to pay them overtime wages at the correct rate;
- (7) failed to pay them double time wages at the correct rate;
- (8) failed to pay them overtime and/or double time wages by failing to include all applicable remuneration in calculating the regular rate of pay;
- (9) failed to provide them with accurate written wage statements; and
- (10) failed to pay them all of their final wages following separation of employment.

Based on these alleged Labor Code violations, Plaintiffs now bring this class action to recover unpaid wages, restitution and related relief on behalf of themselves and all others similarly situated, and the general public.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction to hear this case because the monetary damages and restitution sought by Plaintiffs from Defendants conduct exceeds the minimal

jurisdiction of the Superior Court of the State of California.

3. Venue is proper in the County of Merced pursuant to Code of Civil Procedure sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices, transacts business and/or has an agent therein.

PARTIES

4. Plaintiff RITA HARRISON is, and at all relevant times mentioned herein, an individual residing in the State of California.

5. Plaintiff BRIANNA CORONA is, and at all relevant times mentioned herein, an individual residing in the State of California.

6. Plaintiff is informed and believes, and thereupon alleges that Defendant AMIHR, LLC, is, and at all relevant times mentioned herein, a California corporation doing business in the State of California.

7. Plaintiffs are informed and believe, and thereupon allege that Defendant LQ MANAGEMENT, LLC, is, and at all relevant times mentioned herein, a Texas Limited Liability Company doing business in the State of California.

8. Plaintiffs are informed and believe, and thereupon allege that Defendant WYNDHAM HOTELS & RESORTS, INC., is, and at all relevant times mentioned herein, a New Jersey corporation doing business in the State of California.

9. Plaintiffs are ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiffs will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiffs are informed and believes, and thereupon alleges that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of them. Plaintiffs will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

10. Plaintiffs are informed and believe, and thereupon allege that, at all relevant times

mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, principals or co-participants of some or all of the other defendants, and in doing the things alleged herein, were acting within the course and scope of such relationship and with the full knowledge, consent and ratification by such other defendants.

11. Plaintiffs are informed and believe, and thereupon allege that, at all relevant times mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and conspired with one another, and aided and abetted one another to accomplish the occurrences, acts and omissions alleged herein.

CLASS ALLEGATIONS

12. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable classes defined below and because Plaintiffs are unaware of any difficulties likely to be encountered in managing this case as a class action.

13. **Relevant Time Period:** The relevant time period is defined as the time period beginning four years prior to the filing of this action until judgment is entered.

Hourly Employee Class: All defendant's hourly non-exempt employees, whether hired directly or through a third party such as a staffing agency in hourly or non-exempt positions in California during the **Relevant Time Period**.

Meal Period Sub-Class: All **Hourly Employee Class** members who worked in a shift in excess of five hours during the **Relevant Time Period**.

Rest Period Sub-Class: All **Hourly Employee Class** members who worked a shift of at least three and one-half (3.5) hours during the **Relevant Time Period**.

Wage Statement Penalties Sub-Class: All **Hourly Employee Class** members employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.

Waiting Time Penalties Sub-Class: All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.

UCL Class: All **Hourly Employee Class** members employed by Defendants in California during the **Relevant Time Period**.

14. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiffs reserve the right to amend or modify the class definitions with greater specificity, by further division into sub-

1 classes and/or by limitation to particular issues.

2 15. **Numerosity**: The class members are so numerous that the individual joinder of each
3 individual class member is impractical. While Plaintiffs do not currently know the exact number of
4 class members, Plaintiffs are informed and believe, and thereupon allege that the actual number
5 exceeds the minimum required for numerosity under California law.

6 16. **Commonality and Predominance**: Common questions of law and fact exist as to
7 all class members and predominate over any questions which affect only individual class members.
8 These common questions include, but are not limited to:

- 9 A. Whether Defendants maintained a policy or practice of failing to provide
10 employees with their meal periods;
- 11 B. Whether Defendants maintained a policy or practice of failing to provide
12 employees with their rest periods;
- 13 C. Whether Defendants failed to pay premium wages to class members when
14 they have not been provided with required meal and/or rest periods;
- 15 D. Whether Defendants failed to pay minimum and/or overtime wages to class
16 members as a result of policies that fail to provide meal periods in accordance
17 with California law;
- 18 E. Whether Defendants failed to pay minimum and/or overtime wages to class
19 members for all time worked;
- 20 F. Whether Defendants failed to pay overtime wages to class members as a
21 result of incorrectly calculating their regular rates of pay;
- 22 G. Whether Defendants failed to provide class members with accurate written
23 wage statements as a result of providing them with written wage statements
24 with inaccurate entries for, among other things, amounts of gross and net
25 wages, and total hours worked;
- 26 H. Whether Defendants applied policies or practices that result in late and/or
27 incomplete final wage payments;
- 28 I. Whether Defendants are liable to class members for waiting time penalties

1 under Labor Code section 203;

2 J. Whether class members are entitled to restitution of money or property that
3 Defendants may have acquired from them through unfair competition;

4 17. **Typicality:** Plaintiffs' claims are typical of the other class members' claims.
5 Plaintiffs are informed and believe and thereupon allege that Defendants have a policy or practice of
6 failing to comply with the Labor Code and Business and Professions Code as alleged in this
7 Complaint.

8 18. **Adequacy of Class Representative:** Plaintiffs are adequate class representatives in
9 that they have no interests that are adverse to, or otherwise conflict with, the interests of absent class
10 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiffs will fairly
11 and adequately represent and protect the interests of the other class members.

12 19. **Adequacy of Class Counsel:** Plaintiffs' counsel are adequate class counsel in that
13 they have no known conflicts of interest with Plaintiffs or absent class members, are experienced in
14 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on
15 behalf of Plaintiffs and absent class members.

16 20. **Superiority:** A class action is vastly superior to other available means for fair and
17 efficient adjudication of the class members' claims and would be beneficial to the parties and the
18 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
19 and efficiently prosecute their common claims in a single forum without the unnecessary
20 duplication of effort and expense that numerous individual actions would entail. In addition, the
21 monetary amounts due to many individual class members are likely to be relatively small and would
22 thus make it difficult, if not impossible, for individual class members to both seek and obtain relief.
23 Moreover, a class action will serve an important public interest by permitting class members to
24 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the
25 potential for inconsistent or contradictory judgments inherent in individual litigation.

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GENERAL ALLEGATIONS

21. Plaintiffs worked for Defendants as non-exempt, hourly employees and both separated from the company in June 2019.

Meal Periods

22. Plaintiffs allege that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of requiring Plaintiffs and the aggrieved employees to sign invalid on-duty meal period waivers as a necessary precondition of employment. Consequently, Plaintiffs and the aggrieved employees at no point were ever able to exercise their legal right to take a meal period. Defendants required Plaintiffs and the aggrieved employees to be on duty and working at all times during their scheduled shifts. Defendants made it clear that should Plaintiffs and the aggrieved employees leave their post at the front desk that it would be considered job abandonment and would result in adverse employment actions up to and including termination.

23. Plaintiff alleges that, at relevant times during the applicable limitations period, due to Defendants above-mentioned policy or practice, Plaintiffs and the aggrieved employees did not receive their full thirty (30) minutes uninterrupted meal periods that they were entitled under California law.

Missed Rest Periods

24. Plaintiffs and the aggrieved employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift; (2) Defendants policy that employees be on duty and working at all times during their scheduled shifts; and (3) Defendants failure to advise employees of their legal right to take rest periods.

25. Specifically, Plaintiffs and the aggrieved employees were regularly not provided rest periods of at least 10 minutes for every four hours worked due to the fact that they were never advised of their legal right to do so. Defendants maintained a policy and practice that required employees to be on duty and working for the entirety of their shifts. At no point did Plaintiffs and the aggrieved employees ever take a legally compliant duty free rest period.

1 26. As a result of Defendants' policy, Plaintiffs and the aggrieved employees were
2 regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4)
3 hours worked due to Defendants' failure to advise them of their right to do so.

4 **Regular Rate of Pay**

5 27. The regular rate of pay under California law includes all remuneration for
6 employment paid to, on behalf of, the employee. This requirement includes, but is not limited, to,
7 meal and rest period premiums.

8 28. During the applicable limitations period, Defendants violated the rights of Plaintiffs
9 and the aggrieved employees under the above-referenced Labor Code sections by failing to pay
10 them premium wages for all time spent working through meal and rest periods in violation of
11 Labor Code §§ 510, 1194, and 1198 as a result of not correctly calculating their regular rate of pay
12 to include all applicable remuneration, including, but not limited to, meal and rest break premiums.

13 **Wage Statements**

14 29. Plaintiffs and the aggrieved employees were not provided with accurate wage
15 statements as mandated by law pursuant to Labor Code section 226.

16 30. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
17 earned" were not accurately reflected in that: all hours worked, including meal and rest break
18 premiums, were not included.

19 31. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours
20 worked by the employee" were not accurately reflected in that: all hours worked, including meal
21 and rest break premiums, were not included.

22 32. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages
23 earned" were not accurately reflected in that: all hours worked, including meal and rest break
24 premiums, were not included.

25 33. Defendants failed to comply with Labor Code section 226(a)(9) as "all applicable
26 hourly rates in effect during the pay period and the corresponding number of hours worked at each
27 hourly rate by the employee" were not accurately reflected in that: all hours worked, including meal
28 and rest break premiums, were not included.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 004, 223, 226.7, 512 and 1198)

(Plaintiffs and Meal Period Sub-Class)

34. Plaintiffs incorporate by reference the preceding paragraphs of the Complaint as if fully alleged herein.

35. At all relevant times, Plaintiffs and the **Meal Period Sub-Class** members have been non-exempt employees of Defendant entitled to the full meal period protections of both the Labor Code and the applicable Industrial Welfare Commission Wage Order.

36. Labor Code section 512 and Section 11 of the applicable Industrial Welfare Commission Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

37. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work during required meal periods and require employers to pay non-exempt employees an hour of premium wages on each workday that the employee is not provided with the required meal period.

38. Compensation for missed meal periods constitutes wages within the meaning of Labor Code section 200.

39. Labor Code section 1198 makes it unlawful to employ a person under conditions that violate the applicable Wage Order.

40. Section 11 of the applicable Wage Order states:

“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 employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that

1 the employee may, in writing, revoke the agreement at any time.”

2 41. At all relevant times, Plaintiffs were not subject to a valid on-duty meal period
3 agreement. Plaintiffs are informed and believe that, at all relevant times, **Meal Period Sub-Class**
4 members were not subject to valid on-duty meal period agreements with Defendants.

5 42. Plaintiffs allege that, at all relevant times during the applicable limitations period,
6 Defendants maintained a policy or practice of not providing Plaintiffs and members of the **Meal**
7 **Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for
8 each five (5) hour work period, as required by Labor Code section 512 and the applicable Wage
9 Order.

10 43. Plaintiffs allege that, at all relevant times during the applicable limitations period,
11 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
12 **Class** members when they worked five (5) hours without clocking out for any meal period.

13 44. Plaintiffs allege that, at all relevant times during the applicable limitations period,
14 Defendants maintained a policy or practice of not providing Plaintiffs and members of the **Meal**
15 **Period Sub-Class** with a second meal period when they worked shifts of ten or more hours and
16 failed to pay them premium wages as required by Labor Code 512 and the applicable Wage Order.

17 45. At all relevant times, Defendants failed to pay Plaintiffs and the **Meal Period Sub-**
18 **Class** members additional premium wages, and/or were not paid premium wages at the employees’
19 regular rates of pay when required meal periods were not provided.

20 46. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiffs, on behalf of
21 themselves and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages,
22 interest thereon, and costs of suit.

23 47. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
24 substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves
25 and the **Meal Period Sub-Class** members, seek to recover reasonable attorneys’ fees.

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SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Lab. Code §§ 204, 223, 226.7 and 1198)

(Plaintiffs and Rest Period Sub-Class)

48. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

49. At all relevant times, Plaintiffs and the **Rest Period Sub-Class** members have been non-exempt employees of Defendants entitled to the full rest period protections of both the Labor Code and the applicable Wage Order.

50. Section 12 of the applicable Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest periods at a rate of no less than ten minutes of net rest time for each four hour work period, or major fraction thereof, that must be in the middle of each work period insofar as practicable.

51. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit employers from requiring employees to work during required rest periods and require employers to pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each workday that the employee is not provided with the required rest period(s).

52. Compensation for missed rest periods constitutes wages within the meaning of Labor Code section 200.

53. Labor Code section 1198 makes it unlawful to employ a person under conditions that violate the Wage Order.

54. Plaintiffs allege that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class** with net rest period of at least ten minutes for each four hour work period, or major fraction thereof, as required by the applicable Wage Order.

55. At all relevant times, Defendants failed to pay Plaintiffs and the **Rest Period Sub-Class** members additional premium wages when required rest periods were not provided.

56. Specifically, Defendants' written policies do not provide that employees may take a

1 rest period for each four hours worked, or major fraction thereof, and that rest periods should be
2 taken in the middle of each work period insofar as practicable.

3 57. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiffs, on behalf of
4 themselves and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest
5 thereon, and costs of suit.

6 58. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
7 substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves
8 and **Rest Period Sub-Class** members, seek to recover reasonable attorneys' fees.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

11 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

12 **(Plaintiffs and Hourly Employee Class)**

13 59. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged
14 herein.

15 60. At all relevant times, Plaintiffs and **Hourly Employee Class** members are or have
16 been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
17 applicable Wage Order.

18 61. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
19 which an employee is subject to the control of the employer, and includes all the time the employee
20 is suffered or permitted to work, whether or not required to do so."

21 62. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
22 employees at least the minimum wage set forth therein for all hours worked, which consist of all
23 hours that an employer has actual or constructive knowledge that employees are working.

24 63. Labor Code section 1194 invalidates any agreement between an employer and an
25 employee to work for less than the minimum or overtime wage required under the applicable Wage
26 Order.

27 64. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
28 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in

1 addition to the underlying unpaid minimum wages and interest thereon.

2 65. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
3 than the minimum wage required under the applicable Wage Order for all hours worked during a
4 payroll period.

5 66. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
6 person acting either individually or as an officer, agent or employee of another person, to pay an
7 employee, or cause an employee to be paid, less than the applicable minimum wage.

8 67. Labor Code section 1198 makes it unlawful for employers to employ employees
9 under conditions that violate the applicable Wage Order.

10 68. Labor Code section 204 requires employers to pay non-exempt employees their
11 earned wages for the normal work period at least twice during each calendar month on days the
12 employer designates in advance and to pay non-exempt employees their earned wages for labor
13 performed in excess of the normal work period by no later than the next regular payday.

14 69. Labor Code section 223 makes it unlawful for employers to pay their employees
15 lower wages than required by contract or statute while purporting to pay them legal wages.

16 70. Labor Code section 510 and Section 3 of the applicable Wage Order require
17 employees to pay non-exempt employees overtime wages of no less than one and one-half times
18 their respective regular rates of pay for all hours worked in excess of eight hours in one workday, all
19 hours worked in excess of forty hours in one workweek, and/or for the first eight hours worked on
20 the seventh consecutive day of one workweek.

21 71. Labor Code section 510 and Section 3 of the applicable Wage Order also require
22 employers to pay non-exempt employees overtime wages of no less than two times their respective
23 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
24 worked in excess of eight hours on a seventh consecutive workday during the workweek.

25 72. Plaintiffs are informed and believe that, at all relevant times, Defendants have
26 applied centrally devised policies and practices to Plaintiffs and **Hourly Employee Class** members
27 with respect to working conditions and compensation arrangements.

28 73. At all relevant times, Defendants failed to pay hourly wages to Plaintiffs and **Hourly**

1 **Employee Class** members for all time worked, including but not limited to, overtime hours and
2 meal/rest break premiums at statutory and/or agreed rates.

3 74. Section 9 of the applicable Wage Order states:

4 “When uniforms are required by the employer to be worn by the employee as a
5 condition of employment, such uniforms shall be provided and maintained by the
6 employer. The term ‘uniform’ includes wearing apparel and accessories of
7 distinctive design or color.”

8 75. If the employer does not choose to maintain employees’ uniforms itself where it is
9 required to do so, the Division of Labor Standards Enforcement (“DLSE”) takes the position that
10 the employer may pay each affected employee a weekly maintenance allowance of an hour’s pay at
11 the state minimum wage rate in lieu of maintaining the uniforms, assuming that an hour is a realistic
12 estimate of the time involved in maintaining the uniform.

13 76. At all relevant times during the applicable limitations period, and in violation of the
14 above-referenced sections of the Labor Code and the applicable Wage Order, Defendants failed to
15 compensate Plaintiffs with minimum and/or overtime wages for all hours they worked as a result of
16 its failure to maintain employee uniforms and/or pay him a weekly maintenance allowance.

17 77. Plaintiffs are informed and believe that, at all relevant times, and in violation of the
18 above-referenced sections of the Labor Code and the applicable Wage Order, Defendants failed to
19 compensate **Hourly Employee Class** members with minimum and/or overtime wages for all hours
20 they worked as a result of its failures to maintain employee uniforms and/or pay them a weekly
21 maintenance allowance.

22 78. As a result of Defendants’ unlawful conduct, Plaintiffs and **Hourly Employee Class**
23 members have suffered damages in an amount, subject to proof, to the extent they were not paid the
24 full amount of wages earned during each pay period during the applicable limitations period,
25 including overtime wages.

26 79. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiffs,
27 on behalf of themselves and **Hourly Employee Class** members, seek to recover unpaid straight
28 time and overtime wages, interest thereon and costs of suit.

80. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the

substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Plaintiffs and Wage Statement Penalties Sub-Class)

81. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

82. Labor Code section 226(a) states:

“An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, ‘copy’ includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.”

83. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize the “detachable part of the check” provision and the “accurate itemized statement in writing” provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee retains the right to elect to receive a written paper stub or record and that those who are provided with electronic wage statements retain the ability to easily access the information and convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion

1 Letter July 6, 2006).

2 84. Plaintiffs are informed and believe that, at all relevant times during the applicable
3 limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**
4 members with written wage statements as described above.

5 85. Plaintiffs are informed and believe that Defendants' failure to provide them and
6 **Wage Statement Penalties Sub-Class** members with accurate written wage statements were
7 intentional in that Defendants have the ability to provide them with accurate wage statements but
8 have intentionally provided them with written wage statements that Defendants have known do not
9 comply with Labor Code section 226(a).

10 86. Plaintiffs and **Wage Statement Penalties Sub-Class** members have suffered
11 injuries, in that Defendants have violated their legal rights to receive accurate wage statements and
12 have misled them about their actual rates of pay and wages earned. In addition, inaccurate
13 information on their wage statements have prevented immediate challenges to Defendants' unlawful
14 pay practices, has required discovery and mathematical computations to determine the amount of
15 wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records,
16 and/or has led to the submission of inaccurate information about wages and deductions to federal
17 and state government agencies.

18 87. Pursuant to Labor Code section 226(e), Plaintiffs, on behalf of themselves and **Wage**
19 **Statement Penalties Sub-Class** members, seek the greater of actual damages or \$50.00 for the
20 initial pay period in which a violation of Labor Code section 226(a) occurred, and \$100.00 for each
21 subsequent pay period in which a violation of Labor Code section 226(a) occurred, not to exceed an
22 aggregate penalty of \$4000.00 per class member, as well as awards of reasonable attorneys' fees
23 and costs.

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FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL FINAL WAGES

(Lab. Code §§ 201-203)

(Plaintiffs and Waiting Time Penalties Sub-Class)

88. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

89. At all relevant times, Plaintiffs and **Waiting Time Penalties Sub-Class** members have been entitled, upon the end of their employment with Defendants, to timely payment of all wages earned and unpaid before termination or resignation.

90. At all relevant times, pursuant to Labor Code section 201, employees who have been discharged have been entitled to payment of all final wages immediately upon termination.

91. At all relevant times, pursuant to Labor Code section 202, employees who have resigned after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of all final wages at the time of resignation.

92. At all relevant times, pursuant to Labor Code section 202, employees who have resigned after giving less than seventy-two (72) hours' notice of resignation have been entitled to payment of all final wages within seventy-two (72) hours of giving notice of resignation.

93. During the applicable limitations period, Defendants failed to pay Plaintiffs all of their final wages in accordance with the Labor Code by failing to timely pay them all of their final wages.

94. Plaintiffs are informed and believes that, at all relevant time during the applicable limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class** members all of their final wages in accordance with the Labor Code.

95. Plaintiffs are informed and believes that, at all relevant times during the applicable limitations period, Defendants have maintained a policy or practice of paying **Waiting Time Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code sections 201 or 202 by failing to timely pay them all final wages.

96. Plaintiffs are informed and believe and thereupon allege that Defendants' failure to

1 timely pay all final wages to them and **Waiting Time Penalties Sub-Class** members have been
2 willful in that Defendants have the ability to pay final wages in accordance with Labor Code
3 sections 201 and/or 202 but have intentionally adopted policies or practices that are incompatible
4 with those requirements.

5 97. Pursuant to Labor Code sections 203 and 218.6, Plaintiffs, on behalf of themselves
6 and **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that
7 their final wages have first become due until paid, up to a maximum of thirty days, and interest
8 thereon.

9 98. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
10 and/or the common fund doctrine, Plaintiffs, on behalf of themselves and **Waiting Time Penalties**
11 **Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

12 **SIXTH CAUSE OF ACTION**

13 **UNFAIR COMPETITION**

14 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

15 **(Plaintiffs and UCL Class)**

16 99. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged
17 herein.

18 100. Business and Professions Code section 17200 defines "unfair competition" to
19 include any unlawful business practice.

20 101. Business and Professions Code section 17203-17204 allow a person who has lost
21 money or property as a result of unfair competition to bring a class action in accordance with Code
22 of Civil Procedure section 382 to recover money or property that may have been acquired from
23 similarly situated persons by means of unfair competition.

24 102. California law requires employers to pay hourly, non-exempt employees for all hours
25 they are permitted or suffered to work, including hours that the employer knows or reasonable
26 should know that employees have worked.

27 103. Plaintiffs and the **UCL Class** members re-allege and incorporate the FIRST,
28 SECOND, and THIRD causes of action herein.

1 104. Plaintiffs lost money or property as a result of the aforementioned unfair
2 competition.

3 105. Defendants have or may have acquired money by means of unfair competition.

4 106. Plaintiffs are informed and believe and thereupon allege that by committing the
5 Labor Code violations described in this Complaint, Defendants violated Labor Code sections 215,
6 216, 225, 226.6, 354, 408, 553, 1175, and 1199, which make it a misdemeanor to commit the Labor
7 Code violations alleged herein.

8 107. Defendants have committed criminal conduct through their policies and practices of,
9 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-
10 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
11 work period of five or more hours, provide non-exempt employees with uninterrupted, duty-free
12 rest periods of at least 10 minutes for each work period of four hours, and by failing to pay non-
13 exempt employees for all hours worked.

14 108. At all relevant times, Plaintiffs and **UCL Class** members have been non-exempt
15 employees and entitled to the full protections of both the Labor Code and the applicable Wage
16 Order.

17 109. Defendants' unlawful conduct as alleged in this Complaint amounts to and
18 constitutes unfair competition within the meaning of Business and Professions Code section 17200
19 *et seq.* Business and Professions Code sections 17200 *et seq.* protects against unfair competition
20 and allows a person who has suffered an injury-in-fact and has lost money or property as a result of
21 an unfair, unlawful or fraudulent business practice to seek restitution on his own behalf and on
22 behalf of similarly situated persons in a class action proceeding.

23 110. As a result of Defendants' violations of the Labor Code during the applicable
24 limitations period, Plaintiffs have suffered an injury-in-fact and has lost money or property in the
25 form of earned wages. Specifically, Plaintiffs have lost money or property as a result of
26 Defendants' conduct.

27 111. Plaintiffs are informed and believe that other similarly situated persons have been
28 subject to the same unlawful policies or practices of Defendants.

1 112. Due to the unfair and unlawful business practices in violation of the Labor Code,
2 Defendants have gained a competitive advantage over other comparable companies doing business
3 in the State of California that comply with their legal obligations.

4 113. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
5 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act
6 violates or is considered unlawful under any other state or federal law.

7 114. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiffs
8 request the issuance of temporary, preliminary and permanent injunctive relief enjoining
9 Defendants, and each of them, and their agents and employees, from further violations of the Labor
10 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek
11 an order permanently enjoining Defendants, and each of them, and their respective agents and
12 employees, from further violations of the Labor Code and applicable Industrial Welfare
13 Commission Wage Orders.

14 115. Pursuant to Business and Professions Code section 17203, Plaintiffs, on behalf of
15 themselves and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
16 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
17 and unfair business practices.

18 116. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
19 and/or the common fund doctrine, Plaintiffs and **UCL Class** members are entitled to recover
20 reasonable attorneys' fees in connection with their unfair competition claims.

21 117. Pursuant to Business and Professions Code section 17203, Plaintiffs, on behalf of
22 themselves and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
23 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
24 and unfair business practices.

25 118. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
26 and/or the common fund doctrine, Plaintiffs and **UCL Class** members are entitled to recover
27 reasonable attorneys' fees in connection with their unfair competition claims.

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SEVENTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698 *et seq.*)

119. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

120. During the applicable limitations period, Defendants have violated Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, and 1198.

121. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of herself and other current and former employees, to bring a representative civil action to recover civil penalties pursuant to the procedures set forth in Labor Code section 2699.3 that may, but need not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

122. Plaintiffs, former employees against whom Defendants committed one or more of the alleged Labor Code violations during the applicable limitations period, are aggrieved employees within the meaning of Labor Code section 2699(c).

123. Plaintiffs have complied with the procedures for bringing suit specified in Labor Code section 2699.3.

124. Pursuant to Labor Code sections 2699(a) and (f), Plaintiffs seek the following civil penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, and 1198:

- A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 1194, and 1198, \$100 for each employee per pay period for each initial violation and \$200 for each employee per pay period for each subsequent violation (penalties set by Labor Code section 2699(f)(2));
- B. For violations of Labor Code section 203, a penalty in an amount not exceeding thirty days pay as waiting time (penalties set by Labor Code section 256);
- C. For violations of Labor Code section 204, \$100 for each employee for each initial violation that was neither willful nor intentional, \$200 for each

1 employee, plus 25% of the amount unlawfully withheld from each employee,
2 for each initial violation that was either willful or intentional, and \$200 for
3 each employee, plus 25% of the amount unlawfully withheld from each
4 employee, for each subsequent violation, regardless of whether the
5 subsequent violation was either willful or intentional (penalties set by Labor
6 Code section 210);

7 D. For violations of Labor Code section 223, \$100 for each employee for each
8 initial violation that was neither willful nor intentional, \$200 for each
9 employee, plus 25% of the amount unlawfully withheld from each employee,
10 for each initial violation that was either willful or intentional, and \$200 for
11 each employee, plus 25% of the amount unlawfully withheld from each
12 employee, for each subsequent violation, regardless of whether the
13 subsequent violation was either willful or intentional (penalties set by Labor
14 Code section 225.5);

15 E. For violations of Labor Code section 226(a), if this action is deemed to be an
16 initial citation, \$250 for each employee for each violation. Alternatively, if
17 an initial citation or its equivalent occurred before the filing of this action,
18 \$1,000 for each employee for each violation (penalties set by Labor Code
19 section 226.3);

20 F. For violation of Labor Code sections 510 and 512, \$50 for each employee for
21 each initial pay period for which the employee was underpaid, and \$100 for
22 each employee for each subsequent pay period for which the employee was
23 underpaid (penalties set by Labor Code section 558);

24 G. For violations of Labor Code section 1197, \$100 for each aggrieved
25 employee for each initial violation of Labor Code section 1197 that was
26 intentional, and \$250 for each aggrieved employee per pay period for each
27 subsequent violation of Labor Code section 1197, regardless of whether the
28 initial violation was intentional (penalties set by Labor Code section 1197.1);

H. Pursuant to Labor Code section 2699(g), Plaintiffs seek award of reasonable attorneys' fees and costs in connection with her claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly situated, and the general public, pray for relief and judgment against Defendants as follows:

- (1) An order that the action be certified as a class action;
- (2) An order that Plaintiffs be appointed class representatives;
- (3) An order that counsel for Plaintiffs be appointed class counsel;
- (4) Unpaid wages;
- (5) Actual damages;
- (6) Liquidated damages;
- (7) Restitution;
- (8) Declaratory relief;
- (9) Pre-judgment interest;
- (10) Statutory penalties;
- (11) Civil Penalties
- (12) Costs of suit;
- (13) Reasonable attorneys' fees; and
- (14) Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves, all other similarly situated, and the general public, hereby demand a jury trial on all issues so triable.

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This e-copy is the official court record (GC68150)

1 Dated: August 21, 2020

SETAREH LAW GROUP

DocuSigned by:

Shaun Setareh

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SHAUN SETAREH

THOMAS SEGAL

FARRAH GRANT

Attorneys for Plaintiffs

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