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KAREN HARTSTEIN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KAREN HARTSTEIN, in her representative capacity and on behalf of herself and all others similarly situated,

Plaintiff,

vs.

HYATT CORPORATION, a Delaware corporation doing business in California; and DOES 1 through 100, inclusive.

Defendants.

Case No. 2:20-CV-04874-DSF-JPR

FIRST AMENDED CLASS ACTION COMPLAINT FOR:

1. Failure to Pay All Wages Upon Discharge or Layoff;
2. Failure to Pay Overtime;
3. Waiting Time Penalties;
4. Failure to Furnish Accurate, Itemized Wage Statements;
5. Unfair and Unlawful Business Practices; and
6. Enforcement Action Under the Private Attorneys General Act, California Labor Code Section 2698, et seq.

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff KAREN HARTSTEIN ("Plaintiff"), an individual on her behalf and on behalf of all other persons similarly situated, and hereby alleges as follows:

INTRODUCTION

Our nation has been assailed by the Coronavirus ("COVID-19") pandemic. As if a deadly virus infecting millions worldwide was not sufficiently unnerving, the pandemic has also had a crushing impact on our economy. At the start of the pandemic, 26.5 million Americans (including 3.4 million Californians) were rendered unemployed as America's unemployment skyrocketed to over 20%. Businesses are laying off employees in droves. Laid-off employees unable to find new jobs in a devastated economy are struggling to survive. Every dollar counts. Yet, in the midst of this nightmare, one publicly traded conglomerate - Defendant Hyatt Corporation ("Hyatt") - has decided to victimize the very employees that for decades have served it faithfully and fueled the brand's success.

Throughout March of 2020, Hyatt laid off thousands of employees statewide with little or no notice. Though Hyatt has publicly referred to this layoff as a "furlough/temporary layoff," it did not provide a specific (or even general) return date, acknowledged that it would be *months* before employees could be rehired, and made no assurances that any specific employees would in fact be rehired. Hyatt's thousands of employees were thus left in the dark hoping that one day, many months from then, perhaps Hyatt might ask them to return.

In California, when an employer lays off its employees, it must *immediately* pay out all earned wages, including all vested vacation time. In the words of the California Supreme Court, "[t]he public policy in favor of full and prompt payment of an employee's earned wages is fundamental and well established: Delay of payment or loss of wages results in deprivation of the necessities of life, suffering inability to meet just obligations to others, and, in many cases may make the wage-earner a charge upon the public." Smith v. Superior Court, 39 Cal.4th 77 (2006). "[B]ecause of the economic position of the average worker and, in particular, his dependence on wages for the necessities of life for himself and his family, it is essential to the public welfare that he receive his pay when it is due." Id.

Over many years of dedicated service, Hyatt employees have earned and accrued millions of dollars in vacation time, which they need now more than ever. Rather than pay out all vested vacation to its former employees when they were laid off, as it was bound to do by California law, Hyatt instead held its former employees' hard-earned accrued wages in its coffers. Hyatt's misleading description of this massive reduction in force as a "furlough/temporary layoff" does not relieve it of its obligation to comply with California law. In addition to failing to immediately pay out vested vacation wages upon laying off employees, Hyatt fails to pay employees other vested benefits, considered wages in California jurisprudence, upon termination of their employment as detailed below. Hyatt has shown a callous disregard for its employees, violated California law and its own policies, and is subject to damages, penalties, and attorneys' fees as a result.

JURISDICTION AND VENUE

1. This action was originally brought in the Superior Court of the State of California for the County of Los Angeles pursuant to California Code of Civil Procedure section 382.

2. This Court has asserted jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. section 1332(d).

3. Venue is proper in this judicial district because many of the potential class members reside and Defendants maintain facilities and transact business in the County of Los Angeles; and Defendants' illegal payroll policies and practices, which are the subject of this action were applied, at least in part, in the County of Los Angeles.

Plaintiff

4. Plaintiff is a resident of the State of California and was an employee of

Defendants.

5. Plaintiff, on behalf of herself and all other current and former similarly situated employees of Defendants in the State of California at any time during the four (4) years preceding the filing of this action, and continuing while this action is pending, brings this class action to recover, among other things, unpaid wages earned and due upon termination, including without limitation vested vacation time and vested bonuses; unpaid overtime wages; waiting time penalties; wage statement penalties; interest; and attorneys' fees and costs.

6. Plaintiff brings the sixth claim, an enforcement action under the California Labor Code Private Attorneys General Act, on her behalf and on behalf of similarly situated aggrieved employees.

Defendants

7. Plaintiff is informed and believes, and thereon alleges, that Hyatt owns and manages hotels and resorts throughout California.

8. Plaintiff is informed and believes, and thereon alleges, that Hyatt is, and all times relevant herein was, a Delaware corporation authorized to do business in the State of California and does conduct business in the State of California. Specifically, upon information and belief, Hyatt owns and/or manages hotels and conducts business in the County of Los Angeles and throughout the State of California.

9. The true names and capacities of DOES 1 through 100, inclusive, are unknown to Plaintiff at this time, and Plaintiff therefore sues such DOE Defendants under fictitious names. Plaintiff is informed and believes and thereon alleges that each Defendant designated as DOE is in some manner responsible for the occurrences alleged herein, and that Plaintiff and Plaintiff Class members' injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE Defendants. Plaintiff will seek leave of court to amend this Complaint and to allege the true names and capacities of such DOE Defendants when ascertained. Defendants Hyatt and DOES 1 through 100, inclusive, are hereafter collectively referred to as "Defendants."

10. At all relevant times herein, Defendants were the joint employers of Plaintiff and Plaintiff Class members. Plaintiff is informed and believes, and thereon alleges, that at all times material to this Complaint, Defendants were the alter egos, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each Defendant was completely dominated by his, her, or its co-Defendant and each was the alter ego of the other.

11. At all relevant times herein, Plaintiff and Plaintiff Class members were employed by Defendants. In perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of their common policies and practices of not paying Plaintiff and Plaintiff Class members all wages earned and due upon discharge or resignation, failing to pay overtime wages at the proper rate, and failing to provide accurate itemized statements for each pay period, in violation of the California Labor Code ("Labor Code") and the California Business and Professions Code.

12. Plaintiff is informed and believes, and thereon alleges, that each and every one of the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

13. As a direct and proximate result of the unlawful actions of Defendants, Plaintiff and Plaintiff Class members have suffered, and continue to suffer, from loss of earnings in amounts as yet ascertained, but subject to proof at trial, and within the jurisdiction of this Court.

GENERAL ALLEGATIONS

14. Plaintiff is informed and believes, and thereon alleges, that at all times

herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

15. Plaintiff is informed and believes, and thereon alleges, that commencing no later than March of 2020, Defendants instituted so-called "temporary" layoffs of Plaintiff and the Plaintiff Class members during which they failed to provide a specific return to work date, and notified Plaintiff and the Plaintiff Class members that it could take at least eight (8) to twelve (12) weeks for Hyatt to return to normal business operations; carefully noting, however, that it could not commit to this timeline and that Plaintiff and the Plaintiff Class members should not rely on this timeline. Defendants provided no assurance that Plaintiff and the Plaintiff Class members would ever be rehired, and indeed many were not.

16. Plaintiff is informed and believes, and thereon alleges, that on March 2, 2020, Hyatt withdrew its previously announced 2020 financial outlook and earnings statement due to anticipated reservation cancellations and travel restrictions in North America due to the COVID-19 outbreak. Although the virus had not yet significantly impacted business in the United States, Hyatt specifically cited the impact on its business in China as a basis for the need to change its financial outlook.

17. Plaintiff is informed and believes, and thereon alleges, that at the time they instituted "temporary" layoffs of Plaintiff and the Plaintiff Class members, Defendants were aware that on March 4, 2020, Governor of California Gavin Newsom declared a state of emergency due to the spread of COVID-19.

18. Plaintiff is informed and believes, and thereon alleges, that at the time they instituted "temporary" layoffs of Plaintiff and the Plaintiff Class members, Defendants were aware that on March 11, 2020, the World Health Organization had declared COVID-19 to be a pandemic.

19. Plaintiff is informed and believes, and thereon alleges, that at the time

they instituted "temporary" layoffs of Plaintiff and the Plaintiff Class members, Defendants were aware that on March 13, 2020, President Donald J. Trump had declared that the COVID-19 outbreak in the United States constituted a national emergency.

20. Plaintiff is informed and believes, and thereon alleges, that at the time they instituted "temporary" layoffs of Plaintiff and the Plaintiff Class members, Defendants were aware that on March 19, 2020, Governor of California Gavin Newsom had issued Executive Order N-33-20 in which all residents of the State of California were ordered to heed public health directives requiring individuals to stay at home or at their place of residence.

21. Plaintiff is informed and believes, and thereon alleges, that at the time they instituted "temporary" layoffs of Plaintiff and the Plaintiff Class members, Defendants knew that the COVID-19 pandemic had had a catastrophic impact on its business, as travel had essentially ground to a stop.

22. Plaintiff is informed and believes, and thereon alleges, that at the time they instituted "temporary" layoffs of Plaintiff and the Plaintiff Class members, Defendants were aware that experts in the United States hotel industry estimated that it would be years before hotels would recover and achieve the occupancy rates that they had prior to the COVID-19 pandemic.

23. Plaintiff is informed and believes, and thereon alleges, that at the time they instituted "temporary" layoffs of Plaintiff and the Plaintiff Class members, Defendants were aware that fifty percent of the travel industry's workforce could lose their jobs by the end of April 2020.

24. Plaintiff is informed and believes, and thereon alleges, that at the time they instituted "temporary" layoffs of Plaintiff and the Plaintiff Class members, Defendants knew that they would not rehire all individuals that they had "temporarily" laid off.

25. Plaintiff is informed and believes, and thereon alleges, that Defendants

failed to immediately pay wages for vested vacation time and floating holidays at the time that they instituted "temporary" layoffs of Plaintiff and the Plaintiff Class members.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants failed to pay employees other vested benefits upon termination of their employment.

27. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Plaintiff and the Plaintiff Class members earned and accrued non-discretionary bonuses that Defendants failed to pay at the time of termination of their employment.

28. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants provided full-time employees with twelve (12) complimentary hotel rooms at any Hyatt hotel world-wide, as a non-discretionary bonus and as compensation for completing each year of employment. This compensation for labor was communicated to full-time employees upon hire.

29. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants provided part-time employees with six (6) complimentary hotel rooms at any Hyatt hotel world-wide, contingent upon working one full year, as a non-discretionary bonus and as compensation for completing each year of employment. This compensation for labor was communicated to part-time employees upon hire.

30. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants added the value of complimentary hotel rooms to their employees' taxable income under certain circumstances.

31. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants required that Plaintiff and Plaintiff Class members use all twelve (12) or all six (6) of their complimentary hotel rooms in each calendar year, or forfeit said complimentary hotel rooms.

32. Plaintiff is informed and believes, and thereon alleges, that Defendants

knew or should have known that Plaintiff and the Plaintiff Class members were entitled to receive certain wages for overtime compensation and that they were not receiving accurate wages for overtime compensation.

33. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants failed to include the non-discretionary hotel room bonuses in the calculation of the regular rate of pay used to calculate the overtime rate for the payment of overtime wages.

34. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew or should have known that Plaintiff and the Plaintiff Class members were entitled to receive all wages owed to them upon discharge or resignation, including all vested vacation wages, floating holiday wages, vested bonuses, and unpaid overtime wages.

35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that at the time they laid-off employees without a specific return date within the normal pay period they were required to immediately pay all wages due pursuant to California Labor Code sections 201 and 227.3.

36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that at the time employees were discharged or quit they were required to immediately pay all wages due pursuant to California Labor Code sections 201 and 227.3.

37. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants had the financial ability to pay all wages owed upon discharge or termination, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the Plaintiff Class members that they were not owed wages, in order to increase Defendants' profits.

38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and the Plaintiff Class members were entitled to receive complete and accurate wage statements in accordance with

California law, but, in fact, they did not receive complete and accurate wage statements from Defendants. The deficiencies include, *inter alia*, the failure to state all applicable overtime hourly rates and bonuses paid to Plaintiff and the Plaintiff Class members.

CLASS ACTION ALLEGATIONS

39. Plaintiff brings this action on her own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

40. The proposed class is defined as follows:

Class: All individuals who were employed by Defendants in the State of California at any time during the period from April 24, 2016 to final judgment (the "Relevant Period") and who fall within the definition of one or all of the following Subclasses:

Subclass 1: All members of the Class whose employment was terminated (including, without limitation, temporarily laid off, laid off, or "furloughed") and who were not paid for vested vacation time and/or floating holidays immediately upon cessation of their employment within the Relevant Period.

Subclass 2: All members of the Class whose employment was terminated (including, without limitation, temporarily laid off, laid off, or "furloughed") and who were not paid for vested non-discretionary hotel room bonuses immediately upon cessation of their employment within the Relevant Period.

Subclass 3: All members of the Class who are or were hourly-paid and/or non-exempt and who earned non-discretionary hotel room bonuses during the Relevant Period.

41. There is a well-defined community of interest in the litigation and the proposed class is easily ascertainable:

A. The potential class is sufficiently numerous. Joinder of all Plaintiff Class members individually would be impractical. The precise number of Plaintiff

Class members is unknown at this time; however, the class is estimated to be greater than 7,031 individuals and the identity of the class members is ascertainable through Defendants' records.

B. This action involves common questions of law and fact to the Plaintiff Class because the action focuses on 1) whether Defendants' policy of failing to immediately pay out vested vacation time and floating holidays upon termination (including temporary layoffs, layoffs, and "furloughs") of their employees constitutes a violation of California labor law; 2) whether Defendants' policy of failing to immediately pay out vested non-discretionary hotel room bonuses upon termination (including temporary layoffs, layoffs, and "furloughs") of their employees constitutes a violation of California labor law; and 3) whether Defendants' policy of failing to include non-discretionary hotel room bonuses in the regular rate of pay for purposes of calculating the overtime rate of pay constitutes a violation of California labor law.

C. Plaintiff's claims are typical of the claims of the members of the Plaintiff Class, and Plaintiff and all members of the Plaintiff Class sustained injuries and damages arising out of Defendants' common course of conduct in violation of law as complained of herein. The injuries and damages of each member of the Plaintiff Class were caused directly by Defendants' wrongful conduct in violation of law as alleged herein. The claims of Plaintiff are typical of the class because Defendants subjected all members of the Plaintiff Class to the identical violations of the Labor Code and the California Business and Professions Code which prohibits unfair business practices arising from such violations.

D. Plaintiff will fairly and adequately protect the interests of members of the Plaintiff Class. Plaintiff resides in California, was an employee of Defendants for the entirety of the Relevant Period and is an adequate representative of the Plaintiff Class as she has no interests which are adverse to the interests of absent Plaintiff Class members. Plaintiff has retained highly competent and experienced class action attorneys to represent her interests and that of the Plaintiff Class members. No conflict of interest exists between Plaintiff and the Plaintiff Class because all questions of law and fact regarding the liability of Defendants are common to the Plaintiff Class and predominate over any individual issues that may exist, such that by prevailing on her own claim, Plaintiff necessarily will establish Defendants' liability to all Plaintiff Class members. Plaintiff and her counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Plaintiff Class members and are determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for the class.

E. A class action is superior to other available means for the fair and efficient adjudication of this controversy since individual joinder of all members of the Plaintiff Class is impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, as the amount of damages suffered by each individual would make it difficult or impossible for individual members of the Plaintiff Class to redress the wrongs done to them, an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments. Plaintiff and Plaintiff Class members envision no unusual difficulty in the management of this action as a class action.

42. Class certification of the First through Fifth Claims is appropriate pursuant to Rule 23(b)(3) because the aforementioned questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' common and uniform policies and practices have unlawfully denied Plaintiff and the other class

members of payment of their wages in a timely manner upon termination of their employment, have denied them of overtime wages for all overtime hours worked, have denied them of accurate wage statements in compliance with the California Labor Code, and amount to unfair competition under California Business and Professions Code Sections 17200 et seq. The damages suffered by individual class members are relatively small compared to the expense and burden of individual prosecution of this litigation. For this reason, as well as the fact that class members currently employed by Defendants may fear direct or indirect retaliation from Defendants for prosecuting an action against Defendants, the class members' interests in individually controlling the prosecution of this action is minimal. In addition, a class action in this forum is desirable as it will eliminate the risk of inconsistent rulings regarding the legality of Defendants' policies, practices, and procedures. Managing this case as a class action will not present difficulties as this action involves common questions of law and fact common to the class that, once resolved, will leave only questions of the amount of damages owed to Plaintiff and the Plaintiff class members, which can be calculated using expert testimony and Defendants' payroll records.

43. Once class certification is granted, Plaintiff will send notice to all members of the Class consistent with the requirements of Rule 23(c)(2) of the Federal Rules of Civil Procedure. Specifically, Plaintiff will submit a proposed notice to the Court for its approval, stating (i) the nature of this action, (ii) the definition of the certified class, (iii) the class claims, issues, and/or defenses, (iv) that a class member may enter an appearance through an attorney if he or she so desires, (v) that the Court will exclude from the class any member who requests exclusion, (vi) the time and manner for requesting exclusion, and (vii) the binding effect of a class judgment on class members under Rule 23(c)(3).

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ALLEGATIONS PERTAINING TO
THE PRIVATE ATTORNEYS GENERAL ACT

44. During the Relevant Period, Defendants discharged employees, including Plaintiff, without contemporaneously paying all earned wages and providing accurate wage statements in contravention of the Labor Code.

45. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

46. Plaintiff is informed and believes, and thereon alleges, that she and other aggrieved employees were not paid all wages earned at the time of their discharge.

47. Plaintiff is informed and believes, and thereon alleges, that she and other aggrieved employees were not paid all overtime wages owed to them.

48. Plaintiff is informed and believes, and thereon alleges, that she and other aggrieved employees were not provided accurate wage statements which, among other things, accurately set forth their gross wages.

49. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that failing to pay all earned wages upon discharge, failing to pay all overtime wages owed, and failing to provide accurate wage statements was unlawful.

50. At all times set forth herein, the Labor Code Private Attorneys General Act of 2004 ("PAGA") was applicable to Plaintiff's employment by Defendants.

51. At all times set forth herein, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the California Labor and Workforce Development Agency ("LWDA") for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other

current or former employees pursuant to procedures outlined in Labor Code section 2699.3.

52. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

53. Plaintiff was employed by Defendants and the alleged violations were committed against her during her time of employment and she is therefore an aggrieved employee. Plaintiff and other employees are "aggrieved employees" as defined by Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

54. Pursuant to Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

A. The aggrieved employee shall give written notice by certified mail (hereinafter "Employee's Notice") to the LWDA and the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

B. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

55. On April 23, 2020 Plaintiff provided notice by electronic submission to

the LWDA and by certified mail to Defendants regarding the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, pursuant to Labor Code section 2699.3. Plaintiff did not receive a response from the LWDA within sixty-five (65) days of the date of that submission. Plaintiff thus satisfied the administrative prerequisites under Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of the Labor Code set forth therein.

56. On October 30, 2020, Plaintiff provided an amended notice by electronic submission to the LWDA and by certified mail to Defendants regarding additional violations of the Labor Code as a result of Defendants' failure to pay vested bonuses upon termination of Plaintiff and the other aggrieved employees' employment and failure to include vested bonuses in the regular rate of pay for purposes of calculating the overtime rate of pay. Therefore, the administrative prerequisites under Labor Code section 2699.3(a) will have been satisfied for these violations of the Labor Code on January 3, 2021 if no response from the LWDA is received by that date.

<u>FIRST CLAIM</u>

FAILURE TO PAY WAGES UPON DISCHARGE OR LAYOFF

[Cal. Labor Code §§ 201, 202, 203, 218, 218.5, 218.6, 227.3]

(Against All Defendants)

57. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

58. Pursuant to Labor Code section 201, Defendants are required to pay all earned and unpaid wages to an employee who is discharged from his or her employment (which under California law includes an alleged "furlough" without a specific return date or a return date that is not within the normal pay period). California Labor Code section 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

59. California Labor Code section 227.3 establishes that where an employer policy provides for paid vacations, all vested vacation shall be paid to the employee as wages at his or her final rate of pay immediately upon termination of the employment relationship. Labor Code section 218 authorizes employees to bring a civil action for the recovery of any wages due and owing.

60. California Labor Code section 200 defines "wages" to include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. Pursuant to Labor Code section 200, bonuses are included within the definition of "wages."

61. Plaintiff and members of Subclasses 1 and 2 earned wages in the form of vested vacation time, floating holidays, and/or non-discretionary hotel room bonuses throughout their tenure as employees of Defendants, pursuant to Defendants' own employment policies. Yet upon termination of the employment relationship, Defendants did not pay Plaintiff and members of Subclasses 1 and 2 said wages.

62. Defendants failed to include non-discretionary hotel room bonuses in the regular rate of pay for purposes of overtime compensation for Plaintiff and members of Subclass 3 who earned non-discretionary hotel room bonuses throughout their tenure as employees of Defendants. Upon termination of the employment relationship, Defendants failed to pay this outstanding overtime compensation to Plaintiff and members of Subclass 3.

63. Defendants are liable to Plaintiff and Plaintiff Class members for all unpaid wages earned during their employment with Defendants in an amount subject to proof at trial.

64. Pursuant to Labor Code section 218.5, Plaintiff and members of the Plaintiff Class request an award of reasonable attorneys' fees and costs.

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SECOND CLAIM

FAILURE TO PAY OVERTIME WAGES

[Cal. Labor Code §§ 510, 1198]

(Against All Defendants)

65. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

66. California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at the proper rate of overtime compensation. The applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and members of Subclass 3 at the rate of time-and-one-half the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek, and at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

67. During the relevant time period, Plaintiff and the members of Subclass 3 worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

68. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and members of Subclass 3, including failing to properly calculate the overtime rate. During the relevant time period, Defendants failed to include non-discretionary bonuses to calculate the regular rate of pay used to calculate the overtime rate for the payment of overtime wages.

69. Defendants' failure to pay Plaintiff and the members of Subclass 3 the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

70. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

<u>THIRD CLAIM</u>

WAITING TIME PENALTIES

[Cal. Labor Code §§ 201 and 203]

(Against All Defendants)

71. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

72. As set forth above, Defendants are, and were during the Relevant Period, required to pay all earned and unpaid wages, including vested vacation pay, vested floating holiday pay, and vested bonuses, to any employee who is discharged (which under California law includes an alleged "furlough" without a specific return date or a return date that is not within the normal pay period). Labor Code section 201 mandates that if an employer discharges an employee, the employee's wages, including vacation pay, floating holidays, and bonuses, that are accrued and unpaid at the time of discharge, are immediately due and payable.

73. As set forth above, Defendants are, and were during the Relevant Period, required to include all non-discretionary bonuses in the calculation of the regular rate of pay used to calculate the overtime rate for the payment of overtime wages, but Defendants failed to do so.

74. Labor Code section 203 provides that if an employer willfully fails to pay, in accordance with Labor Code section 201, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

75. During the Relevant Period, Defendants willfully failed to pay accrued wages, including vacation pay, bonuses, and overtime compensation, to Plaintiff and Plaintiff Class members in accordance with Labor Code section 201.

76. As a result, Plaintiff and Plaintiff Class members are entitled to all available statutory penalties, including the waiting time penalties provided in Labor Code section 203, together with interest thereon, as well as other available remedies.

<u>FOURTH CLAIM</u>

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

[Cal. Labor Code § 226]

(Against All Defendants)

77. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

78. During the Relevant Period, Defendants failed to provide Plaintiff and Plaintiff Class members with timely, accurate, and itemized wage statements in writing in violation of Labor Code section 226. Plaintiff and Plaintiff Class members were injured by Defendants' intentional and willful violations of California Labor Code 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statement pursuant to California Labor Code section 226(a). Because Defendants issued wage statements that did not set forth vested vacation pay, vested floating holiday pay, vested bonuses, nor the accurate overtime rate of pay, Plaintiff and Plaintiff Class members were unable to determine the total amount of compensation they were owed, and were unable to verify they were paid the proper amount. In order to determine how much Plaintiff and Plaintiff Class members should have been paid, Plaintiff and Plaintiff Class members would have had to engage in discovery and mathematical computations in order to reconstruct the missing information.

79. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and Plaintiff Class members have been damaged in an amount according to proof at trial, plus interest thereon. Additionally, Plaintiff and Plaintiff Class members are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to Labor Code sections 226(e) and 226.3, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in section 226(e), as well as other available remedies.

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FIFTH CLAIM

UNFAIR AND UNLAWFUL BUSINESS PRACTICES

[Cal. Bus. & Prof. Code §§ 17200 et. seq.]

(Against All Defendants)

80. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

81. Each and every one of Defendants' acts and omissions in violation of the Labor Code as alleged herein, including without limitation Defendants' failure and refusal to pay wages, Defendants' failure and refusal to pay all wages due to discharged employees, and Defendants' failure and refusal to furnish accurate itemized wage statements, constitute unfair and unlawful business practices under California Business and Professions Code sections 17200 et seq.

82. Defendants' violations of California wage and hour laws constitute a business practice because Defendants' aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff and Plaintiff Class members.

83. Defendants have avoided payment of wages and other benefits as required by the Labor Code, including failure to pay vested vacation time, vested holiday pay, and vested non-discretionary hotel room bonuses. Further, Defendants have failed to record, report, and pay the correct sums of assessment to the state authorities under the Labor Code and other applicable regulations.

84. As a result of Defendants' unfair and unlawful business practices, Defendants have reaped unfair and illegal profits during the relevant period at the expense of Plaintiff, Plaintiff Class members, and members of the public. Defendants should be made to disgorge its ill-gotten gains and to restore them to Plaintiff and Plaintiff Class members.

85. Defendants' unfair and unlawful business practices entitle Plaintiff and Plaintiff Class members to seek preliminary and permanent injunctive relief, including

but not limited to orders that Defendants account for, disgorge, and restore to Plaintiff and Plaintiff Class members the wages and other compensation unlawfully withheld from them, including vested non-discretionary hotel room bonuses. Plaintiff and Plaintiff Class members are entitled to restitution of all monies to be disgorged from Defendants in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court, as well as attorney's fees and costs.

SIXTH CLAIM

ENFORCEMENT ACTION PURSUANT TO THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Labor Code §§ 2698, et seq.)

(Against All Defendants)

86. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

87. PAGA permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5.

88. Defendants' conduct, as alleged herein, violates numerous sections of the Labor Code, including, but not limited to, the following:

A. Violation of Labor Code section 201 for failure to pay all wages at time of discharge from employment;

B. Violation of Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiff and other aggrieved employees;

C. Violation of Labor Code section 227.3 for failure to pay all vested vacation time at the time of discharge from employment; and

D. Violation of Labor Code sections 510 and 1198 for failure to pay all overtime wages owed to Plaintiff and other aggrieved employees.

89. Defendants' conduct has caused injury and damage to their statutorily protected rights to Plaintiff and all employees discharged from their employment with Defendants during the relevant period ("Aggrieved Employees").

90. Plaintiff provided written notice to the LWDA of these claims.

91. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for Plaintiff, all other Aggrieved Employees, and the State of California against Defendants, in addition to other remedies, for violations of Labor Code sections set forth herein. Further, and as authorized by the aforementioned statutes, Plaintiff seeks recovery of her attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other persons similarly situated, respectfully prays for relief against Defendants and Does 1 through 100, inclusive, and each of them, as follows:

As to Claims One through Five:

1. For compensatory damages in an amount to be ascertained at trial;

2. For restitution of all monies due to Plaintiff and Plaintiff Class members, as well as disgorged profits from Defendants' unfair and unlawful business practices in an amount to be ascertained at trial;

3. For preliminary and permanent injunctive relief enjoining Defendants from violating the relevant provisions of the Labor Code and from engaging in the unlawful business practices complained of herein;

6. For waiting time penalties pursuant to Labor Code section 203 in an amount to be ascertained at trial;

7. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the Labor Code section 226(e);

8. For interest on the unpaid wages at 10% per annum pursuant to Labor Code section 218.6, California Civil Code sections 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;

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9. For reasonable attorneys' fees and costs pursuant to Labor Code section 218.5, California Civil Code section 1021.5, and any other applicable provisions providing for attorneys' fees and costs;

10. For declaratory relief;

11. For an order requiring and certifying the First, Second, Third, Fourth, and Fifth Claims as a class action;

12. For an order appointing Plaintiff as class representative, and Plaintiff's counsel as class counsel; and

13. For such further relief that the Court may deem just and proper.

As to the Sixth Claim:

14. That the Court declare, adjudge and decree that Defendants violated the following Labor Code sections as to Plaintiff and aggrieved employees: 201 and 203 by failing to pay all wages owed upon termination; 226(a) by failing to provide accurate wage statements; 227.3 for failure to pay all vested vacation time at the time of discharge from employment; 510 and 1198 for failure to pay all overtime wages owed to Plaintiff and other aggrieved employees.

15. For civil penalties pursuant to Labor Code sections 2699(a) and/or 2699 (f) and (g), plus costs and attorneys' fees, for violations of Labor Code sections 201, 203, 226(a), 510, and 1198; and

16. For such other and further relief as the Court may deem equitable and appropriate.

DATED: December 1, 2020 Respectfully Submitted,

BLACKSTONE LAW

By: /s/ Jonathan M. Genish
Jonathan M. Genish, Esq.
Attorneys for Plaintiff,
KAREN T. HARTSTEIN

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: December 1, 2020

BLACKSTONE LAW

By: /s/ Jonathan M. Genish
Jonathan M. Genish, Esq.
Attorneys for Plaintiff,
KAREN T. HARTSTEIN