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County of Los Angeles

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GUARNIZO, ANEYSI REYES, and JUANA VALENCIA

ROJAS, on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

20STCV17148

KENIA BARAHONA, ANA MARIA
GUARNIZO, ANEYSI REYES, and JUANA
VALENCIA ROJAS, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

THE BELVEDERE HOTEL PARTNERSHIP,
d.b.a. THE PENINSULA BEVERLY HILLS,
a California partnership; PENINSULA
BEVERLY HILLS HOTEL
MANAGEMENT, INC., a Delaware
corporation; PENINSULA BEVERLY HILLS,
INC., a Delaware corporation; PENINSULA
BEVERLY HILLS HOLDINGS, LLC, a
Delaware limited liability company; ALL
DAY SERVICE INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.:

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS
OR COMPENSATION IN LIEU THEREOF;
4. FAILURE TO PROVIDE REST PERIODS
OR COMPENSATION IN LIEU THEREOF;
5. FAILURE TO PAY DUE WAGES AT
TERMINATION;
6. WAGE STATEMENT VIOLATIONS; and
7. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *et seq.*

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

COME NOW plaintiff KENIA BARAHONA (“BARAHONA”), plaintiff ANA MARIA
GUARNIZO (“GUARNIZO”), plaintiff ANEYSI REYES (“REYES”) and plaintiff JUANA
VALENCIA ROJAS (“ROJAS” and collectively with BARAHONA, GUARNIZO and REYES,
“Plaintiffs”), on behalf of themselves and all others similarly situated, and allege as follows:

1 **GENERAL ALLEGATIONS**

2 **INTRODUCTION**

3 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, on behalf
4 of Plaintiffs and all other current and former similarly situated direct employees employed by or
5 formerly employed by THE BELVEDERE HOTEL PARTNERSHIP, doing business as THE
6 PENINSULA BEVERLY HILLS, a California partnership, and any of its respective subsidiaries
7 or affiliated companies within the State of California ("BELVEDERE"), PENINSULA
8 BEVERLY HILLS HOTEL MANAGEMENT, INC., a Delaware corporation, and any of its
9 respective subsidiaries or affiliated companies within the State of California ("PHB
10 MANAGEMENT"), PENINSULA BEVERLY HILLS, INC., a Delaware corporation, and any of
11 its respective subsidiaries or affiliated companies within the State of California ("PBH, INC."),
12 PENINSULA BEVERLY HILLS HOLDINGS, LLC, a Delaware limited liability company, and
13 any of its respective subsidiaries or affiliated companies within the State of California ("PBH
14 HOLDINGS", and collectively with BELVEDERE, PBH MANAGEMENT and PBH, INC.,
15 "PENINSULA"), and any non-exempt employees hired by any agency and placed to work at
16 PENINSULA, including ALL DAY SERVICE INC., a California corporation, and any of its
17 respective subsidiaries or affiliated companies within the State of California ("ADSI", and
18 collectively with PENINSULA and DOES 1 through 100, as further defined below,
19 "Defendants").

20 2. This Class Action is brought by Plaintiffs against Defendants on behalf of all non-
21 exempt employees of Defendants who were placed to work and/or employed by Defendants at or
22 in connection with the Peninsula Hotel, located at 9882 South Santa Monica Boulevard, Beverly
23 Hills, California, 90212 ("Peninsula Beverly Hills").

24 3. For at least four (4) years prior to the filing of this Action and continuing to the
25 present, Defendants have, at times, failed to pay overtime wages to Plaintiffs and other non-
26 exempt employees in the State of California in violation of California state wage and hour laws as
27 a result of, without limitation, Plaintiffs and similarly situated employees, at times, working over
28 eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week, and seven

1 consecutive work days in a work week without being properly compensated for hours worked in
2 excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
3 worked on the seventh consecutive work day in a work week by, among other things, Defendants'
4 occasional failure to track and pay for all minutes actually engaged, suffered, or permitted to work,
5 including at the proper overtime rate of pay.

6 4. For at least four (4) years prior to the filing of this Action and continuing to the
7 present, Defendants have, at times, failed to pay minimum wages to Plaintiffs and other non-
8 exempt employees in the State of California in violation of California state wage and hour laws as
9 a result of, among other things, Defendants, at times, failing to accurately track and/or pay for all
10 minutes actually engaged, suffered, or permitted to work, including reporting time pay.

11 5. For at least four (4) years prior to the filing of this Action and continuing to the
12 present, Defendants have, on occasion, failed to provide Plaintiffs and other similarly situated
13 employees or former employees within the State of California a thirty (30) minute uninterrupted
14 meal period for days on which the employees worked more than five (5) hours in a work day and a
15 second thirty (30) minute uninterrupted meal period for days on which employees worked in
16 excess of ten (10) hours in a work day, and failed, at times, to provide compensation for such
17 unprovided meal periods as required by California wage and hour laws.

18 6. For at least four (4) years prior to the filing of this action and continuing to the
19 present, Defendants have, on occasion, failed to provide Plaintiffs and similarly situated
20 employees or former employees within the State of California rest periods of at least ten (10)
21 minutes per four (4) hours worked or major fraction thereof and failed, at times, to provide
22 compensation for such unprovided rest periods as required by California wage and hour laws.

23 7. For at least three (3) years prior to the filing of this action and continuing to the
24 present, Defendants have failed, on occasion, to pay Plaintiffs and other similarly situated
25 employees the full amount of their wages owed to them upon termination and/or resignation as
26 required by Labor Code sections 201 and 202 as a result of their occasional failure to pay wages as
27 herein mentioned.

28 / / /

8. For at least one (1) year prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to furnish Plaintiffs and similarly situated employees within the State of California with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and other such information as required by Labor Code section 226, subdivision (a). As a result thereof, Defendants have, at times as herein mentioned, further failed to furnish employees with an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

9. Plaintiffs, on behalf of themselves and all other similarly situated employees, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 226, 226.7, 510, 512, 1194, 1194.2, 1197, *et al.*, and California Code of Regulations, Title 8, section 11070, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, penalties, other such provisions of California law, and reasonable attorneys' fees and costs.

10. Plaintiffs, on behalf of themselves and all other similarly situated employees, pursuant to California Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as all monies owed but withheld and retained by Defendants to which Plaintiffs and Class Members are entitled, as well as restitution of amounts owed.

PARTIES

A. Plaintiff

11. Plaintiff, BARAHONA, is a resident of the State of California. At all relevant times herein, Plaintiffs are informed and believe, and based thereon allege that Defendants employed BARAHONA as a non-exempt employee, with duties that included, but were not limited to, cleaning rooms and bathrooms, changing sheets, assisting guests with their needs, preparing rooms for guests and delivering items to rooms requested by guests or housekeeping staff. BARAHONA began working for Defendants in approximately December of 2015 and had

her last day of active work duty in March of 2018.

12. Plaintiff, GUARNIZO, is a resident of the State of California. At all relevant times herein, Plaintiffs are informed and believe, and based thereon allege that Defendants employed GUARNIZO as a non-exempt employee, with duties that included, but were not limited to, cleaning rooms and bathrooms, changing sheets, assisting guests with their needs, preparing rooms for guests, delivering items to rooms requested by guests or housekeeping staff, collecting laundry from guests restocking pantries and valet services. GUARNIZO began working for Defendants in approximately November of 2007 and worked for Defendants as recently as the past calendar year.

13. Plaintiff, REYES, is a resident of the State of California. At all relevant times herein, Plaintiffs are informed and believe, and based thereon allege that Defendants employed REYES as a non-exempt employee, with duties that included, but were not limited to, cleaning rooms and bathrooms, changing sheets, assisting guests with their needs, preparing rooms for guests and delivering items to rooms requested by guests or housekeeping staff. REYES began working for Defendants in approximately May of 2016 and worked through approximately March of 2018.

14. Plaintiff, ROJAS, is a resident of the State of California. At all relevant times herein, Plaintiffs are informed and believe, and based thereon allege that Defendants employed ROJAS as a non-exempt employee, with duties that included, but were not limited to, cleaning rooms and bathrooms, changing sheets, assisting guests with their needs, preparing rooms for guests and delivering items to rooms requested by guests or housekeeping staff. ROJAS began working for Defendants in approximately September of 2017 and worked through approximately January of 2020.

B. Defendants

15. Plaintiffs are informed and believe and based thereon allege that defendant BELVEDERE is, and at all times relevant hereto was, a partnership organized and existing under and by virtue of the laws of the State of California with its principal place of business in the County of Los Angeles, State of California.

/ / /

1 16. Plaintiffs are informed and believe and based thereon allege that defendant PHB
2 MANAGEMENT is, and at all times relevant hereto was, a corporation organized and existing
3 under and by virtue of the laws of the State of Delaware with its principal place of business in the
4 County of Los Angeles, State of California.

5 17. Plaintiffs are informed and believe and based thereon allege that defendant PHB,
6 INC. is, and at all times relevant hereto was, a corporation organized and existing under and by
7 virtue of the laws of the State of Delaware with its principal place of business in the County of Los
8 Angeles, State of California.

9 18. Plaintiffs are informed and believe and based thereon allege that defendant PBH
10 HOLDINGS is, and at all times relevant hereto was, a limited liability company organized and
11 existing under and by virtue of the laws of the State of Delaware with its principal place of
12 business in the County of Los Angeles, State of California.

13 19. Plaintiffs are informed and believe and based thereon allege that defendant ADSI
14 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
15 the laws of the State of California with its principal place of business in the County of Los
16 Angeles, State of California.

17 20. The true names and capacities, whether individual, corporate, associate, or
18 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
19 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
20 section 474. Plaintiffs are informed and believe and based thereon allege that each of the
21 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts
22 referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true
23 names and capacities of the defendants designated hereinafter as DOES when such identities
24 become known. Plaintiffs are informed and believe, and based thereon allege, that each defendant
25 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a
26 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
27 defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter,
28 reference is made to "Defendants," it shall include BELVEDERE, PHB MANAGEMENT, PBH,

1 INC., PBH HOLDINGS, ADSI, and any of their parent, subsidiary, or affiliated companies within
2 the State of California, as well DOES 1 through 100 identified herein.

3 **JURISDICTION**

4 21. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
5 of Civil Procedure section 410.10.

6 22. Venue is proper in Los Angeles County, California pursuant to Code of Civil
7 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the
8 causes of action complained of herein arose; the county in which the employment relationship
9 began; the county in which performance of the employment contract, or part of it, between
10 Plaintiffs and Defendants was due to be performed; the county in which the employment contract,
11 or part of it, between Plaintiffs and Defendants was actually performed; the unlawful acts alleged
12 herein have a direct effect on Plaintiffs and those similarly situated within Los Angeles County
13 and the State of California, and because Defendants employ numerous Class Members in Los
14 Angeles County and the State of California.

15 **FACTUAL BACKGROUND**

16 23. Plaintiffs and other similarly situated employees have not been paid, on occasion
17 during the relevant liability periods, wages for all time worked, including overtime wages, as a
18 result of, including but not limited to, Defendants at times failing to pay overtime wages to
19 Plaintiffs and other non-exempt employees in the State of California in violation of California
20 state wage and hour laws as a result of, without limitation, Plaintiffs and similarly situated
21 employees occasionally working over eight (8) hours per day, twelve (12) hours per day, forty
22 (40) hours per week or seven (7) consecutive work days in a work week without being properly
23 compensated for the hours worked in excess of (8) hours per day, forty (40) hours per week, or
24 seven (7) consecutive work days in a workweek at the proper overtime rate of pay. Specifically,
25 among other things, Defendants occasionally failed to track and pay for all minutes actually
26 engaged, suffered, or permitted to work, including at the proper overtime rate of pay.

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1 24. Plaintiffs and other similarly situated employees, on occasion, have not been paid
2 during the relevant liability periods, minimum wages for all regular hours worked, as a result of,
3 among other things, Defendants, occasionally, failing to accurately track and/or pay for all minutes
4 actually worked, by including, but not limited to, at times, failing to accurately track and/or pay
5 for all minutes actually engaged, suffered, or permitted to work, including reporting time pay.

6 25. Defendants failed, at times, during the relevant liability periods, to provide
7 Plaintiffs and similarly situated employees or former employees within the State of California a
8 thirty (30) minute, uninterrupted, and timely meal period for every five (5) hours of work in a
9 workday, and/or compensation for such unprovided compliant meal periods as required by
10 California wage and hour laws.

11 26. Defendants failed, at times, to provide Plaintiffs and similarly situated employees
12 or former employees within the State of California rest periods of at least ten (10) minutes per four
13 (4) hours worked or major fraction thereof and failed, at times, to provide compensation for such
14 unprovided compliant rest periods as required by California wage and hour laws.

15 27. At the time Plaintiffs' employment and the employment of other former employees
16 of Defendants ended by termination or resignation, Defendants occasionally willfully failed to pay
17 all amounts owed to the occasional failure to pay wages set out herein.

18 28. Defendants have failed, on occasion, to comply with Labor Code section 226,
19 subdivision (a) by not providing itemized wage statements accurately showing, including but not
20 limited to, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in
21 effect during the pay period and the corresponding number of hours worked at each hourly rate;
22 and other such information as required by Labor Code section 226, subdivision (a).

23 29. Plaintiffs and other similarly situated employees or former employees at all times
24 pertinent hereto were not exempt from the payment of overtime wages, minimum wages, payment
25 of premium wages for missed rest periods, waiting time penalties, wage statement penalties, and
26 other such provisions of California law, and the implementing rules and regulations of the IWC
27 California Wage Orders.

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CLASS ACTION ALLEGATIONS

30. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as a class action pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a class of all current and former non-exempt California employees directly hired by PENINSULA and any current and former non-exempt employees hired by any agency and placed to work for PENINSULA, including ADSI, placed to work at the Peninsula Beverly Hills or in connection therewith at any time commencing four (4) years preceding the filing of Plaintiffs' complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Class Members").

31. Plaintiffs reserve the right under California Rule of Court rule 3.765, subdivision (b) to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

32. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

33. The potential Class Members as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined yet, Plaintiffs are informed and believe that there are at least eighty (80) Class Members employed by Defendants within the State of California, which may be increased during the relevant periods by employee turnover. Plaintiffs allege Defendants' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

B. Commonality

34. There are questions of law and fact common to Class Members. These common questions include, but are not limited to:

- (a) Did Defendants violate Labor Code sections 510, 1194, and 1197 by their occasional failure to adequately track, and therefore adequately pay, wages

1 for all minutes Class Members were suffered, engaged or permitted to
2 work?

3 (b) Did Defendants violate Labor Code sections 510 and 1194 by their
4 occasional payment of overtime pay at a lower rate of pay than one-and-a-
5 half (1.5) or two (2) times the regular rate of pay, as applicable?

6 (c) Are Class Members entitled to liquidated damages under Labor Code
7 section 1194.2 for Defendants' occasional failure to pay minimum wages
8 for all hours worked?

9 (d) Did Defendants violate Labor Code section 512 by occasionally not
10 providing Class Members with compliant meal periods?

11 (e) Did Defendants violate Labor Code section 226.7 by occasionally failing to
12 provide Class Members with premium wages for non-compliant meal
13 periods?

14 (f) Did Defendants violate applicable Wage Orders by occasionally not
15 providing Class Members with compliant rest periods?

16 (g) Did Defendants violate Labor Code section 226.7 by occasionally failing to
17 provide Class Members with premium wages for non-compliant rest
18 periods?

19 (h) Did Defendants violate Labor Code sections 201 and 202 by occasionally
20 failing to pay Class Members upon termination or resignation all wages
21 earned?

22 (i) Are Defendants liable to Class Members for waiting time penalties under
23 Labor Code section 203?

24 (j) Did Defendants violate Labor Code section 226, subdivision (a) by not
25 furnishing Class Members on occasion with accurate wage statements?

26 (k) Did Defendants violate the Unfair Competition Law, Business and
27 Professions Code section 17200, *et seq.*, by their unlawful practices as
28 alleged herein?

1 (l) Are Class Members entitled to restitution of wages under Business and
2 Professions Code section 17203?

3 (m) Are Class Members entitled to costs and attorneys' fees?

4 (n) Are Class Members entitled to interest?

5 **C. Typicality**

6 35. The claims of Plaintiffs herein alleged are typical of those claims which could be
7 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
8 by each Class Member in separate actions. Plaintiffs and Class Members sustained injuries and
9 damages arising out of and caused by Defendants' common course of conduct in violation of laws
10 and regulations that have the force and effect of law and statutes as alleged herein.

11 **D. Adequacy of Representation**

12 36. Plaintiffs will fairly and adequately represent and protect the interest of Class
13 Members. Counsel who represents Plaintiffs is competent and experienced in litigating wage and
14 hour class actions.

15 **E. Superiority of Class Action**

16 37. A class action is superior to other available means for the fair and efficient
17 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
18 questions of law and fact common to Class Members predominate over any questions affecting
19 only individual Class Members. Class Members, as further described therein, have been damaged
20 and are entitled to recovery by reason of Defendants' occasional illegal policy and/or practices,
21 including, without limitation, occasionally failing to pay overtime wages and minimum wages; at
22 times failing to provide meal and rest breaks or compensation in lieu thereof; at times failing to
23 provide accurate wage statements; and occasionally failing to pay all wages due upon termination
24 and/or resignation.

25 38. Class action treatment will allow those similarly situated to litigate their claims in a
26 manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are
27 unaware of any difficulties that are likely to be encountered in the management of this action that
28 would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

(Failure to Pay Overtime Wages – Against All Defendants)

39. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

40. At all times relevant to this Complaint, Labor Code section 510 was in effect and provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

41. At all times relevant to this Complaint, Labor Code section 510 further provided that “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay.”

42. At all times mentioned, Plaintiffs and Class Members, on occasion, worked for Defendants during shifts that consisted of more than eight (8) hours in a workday, more than twelve (12) hours in a workday, and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a result of, among other things, Defendants occasionally failed to track and pay for all minutes actually engaged, suffered, or permitted to work, including at the proper overtime rate of pay.

43. Accordingly, by occasionally requiring Plaintiffs and Class Members to work greater than eight (8) hours per workday, twelve (12) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays without properly compensating overtime wages at the proper overtime rate of pay, Defendants at times willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and applicable IWC Wage Orders, and California law.

44. As a result of the occasional unlawful acts of Defendants, Plaintiffs and Class Members have at times been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees and

costs, pursuant to Labor Code section 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

45. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

46. At all relevant times, Plaintiffs and Class Members were employees of Defendants covered by Labor Code section 1197 and applicable Wage Orders.

47. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiffs and Class Members were entitled to receive minimum wages for all hours worked or otherwise under Defendants' control.

48. Defendants, at times, failed to pay Plaintiffs and Class Members minimum wages for all minutes worked as a result of, including but not limited to, Defendants, occasionally, failing to accurately track and/or pay for all minutes actually engaged, suffered, or permitted to work, including reporting time pay.

49. As a result of Defendants' occasional unlawful conduct, Plaintiffs and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all minutes worked or otherwise due.

50. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated damages, reasonable attorneys' fees and costs of suit.

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

51. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

52. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall employ an employee for a work period of more than five (5) hours without a timely meal

1 break of not less than thirty (30) minutes in which the employee is relieved of all of his or her
2 duties. Furthermore, no employer shall employ an employee for a work period of more than ten
3 (10) hours per day without providing the employee with a second timely meal period of not less
4 than thirty (30) minutes in which the employee is relieved of all of his or her duties.

5 53. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
6 with a meal period as provided in the applicable Wage Order of the Industrial Welfare
7 Commission, the employer shall pay the employee one (1) additional hour of pay at the
8 employee's regular rate of compensation for each workday that the meal period is not provided.

9 54. Plaintiffs and Class Members were, at times, during the relevant time period, not
10 provided with compliant meal periods as contemplated under the law.

11 55. By their occasional failure to provide Plaintiffs and Class Members with the meal
12 periods contemplated by Labor Code section 512, among other California authorities, and
13 occasional failure to provide compensation for such unprovided meal periods, as alleged above,
14 Defendants willfully violated the provisions of Labor Code section 512 and applicable Wage
15 Orders.

16 56. As a result of Defendants' occasional unlawful conduct, Plaintiffs and Class
17 Members have at times suffered damages in an amount, subject to proof, to the extent they were
18 not paid additional pay owed for missed, untimely, interrupted and/or incomplete meal periods.

19 57. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid
20 additional pay for missed meal periods, in amounts to be determined at trial, and are entitled to
21 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under
22 Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil
23 Code section 3287.

24 **FOURTH CAUSE OF ACTION**

25 **(Failure to Provide Rest Periods – Against All Defendants)**

26 58. Plaintiffs reallege and incorporate by reference all of the allegations contained in
27 the preceding paragraphs of this Complaint as though fully set forth hereat.

28 / / /

59. California law and applicable Wage Orders require that employers “authorize and permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be provided thirty (30) minutes of paid rest period.

60. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

61. By their occasional failure to provide Plaintiffs and Class Members with the rest periods contemplated by California law, and occasional failure to provide compensation for such unprovided rest periods, as alleged above, Defendants at times willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

62. As a result of Defendants' occasional unlawful conduct, Plaintiffs and Class Members have at times suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for missed rest periods.

63. Pursuant to Labor Code section 226.7, Code of Civil Procedure section 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover the full amount of their premium pay for unprovided rest periods, interest and penalties thereon, and costs of suit.

FIFTH CAUSE OF ACTION

(Failure to Pay All Wages Due Upon Termination – Against All Defendants)

64. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

65. At all relevant times, Plaintiffs and Class Members were employees of Defendants covered by Labor Code sections 201 and 202.

/ / /

1 66. Pursuant to Labor Code sections 201 and 202, Plaintiffs and Class Members were
2 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
3 Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge
4 immediately upon termination. Employees who resigned were entitled to payment of all wages
5 earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they
6 gave 72 hours' previous notice, they were entitled to payment of all wages earned and unpaid at
7 the time of resignation.

8 67. Plaintiffs are informed and believe, and based thereon allege, that Defendants, due
9 to the occasional failure to provide wages as mentioned above, at times failed to pay Plaintiffs and
10 Class Members all wages earned and unpaid, including overtime wages and minimum wages,
11 prior to resignation or termination in accordance with Labor Code sections 201 or 202.

12 68. Defendants' occasional failure to pay Plaintiffs and Class Members all wages
13 earned prior to termination in accordance with Labor Code sections 201 and 202 was willful.
14 Defendants had the ability to pay all wages earned by Plaintiffs and Class Members at the time of
15 termination in accordance with Labor Code sections 201 and 202, but intentionally adopted
16 policies or practices incompatible with the requirements of Labor Code sections 201 and 202.

17 69. Pursuant to Labor Code section 203, Plaintiffs and Class Members are entitled to
18 waiting time penalties from the date their earned and unpaid wages were due, upon termination,
19 until paid, up to a maximum of thirty (30) days.

20 70. As a result of Defendants' occasional unlawful conduct, Plaintiffs and Class
21 Members have suffered damages in an amount subject to proof, to the extent they were not paid all
22 waiting time penalties owed under Labor Code section 203.

23 71. Pursuant to Labor Code sections 203, 218, 218.5, 218.6, Code of Civil Procedure
24 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled
25 to recover waiting time penalties under Labor Code section 203, reasonable attorneys' fees on
26 their unpaid wages, and costs of suit.

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SIXTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements – Against All Defendants)

72. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

73. At all relevant times, Plaintiffs and Class Members were employees of Defendants covered by Labor Code section 226.

74. Pursuant to Labor Code section 226, subdivision (a), Plaintiffs and Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement that accurately reflects, among other things, gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

75. Plaintiffs are informed and believe, and based thereon allege, that at all relevant times, Defendants, due to the occasional failure to pay due wages for the reasons described herein, also failed, at times, to issue wage statements that accurately set out amounts due to, among other things, gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

76. Thus, Defendants occasionally failed to provide Plaintiffs and Class Members accurate itemized wage statements in accordance with Labor Code section 226, subdivision (a).

77. Defendants' occasional failure to provide Plaintiffs and Class Members with accurate wage statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiffs and Class Members with accurate wage statements, but willfully provided wage statements that Defendants knew were not accurate.

78. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have suffered injury. The absence of accurate information on their wage statements has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and mathematical computations to determine the amount of wages owed; causes difficulty and expense in

attempting to reconstruct time and pay records; and led to submission of inaccurate information about wages and amounts deducted from wages to state and federal governmental agencies.

79. Pursuant to Labor Code section 226, subdivision (e), Plaintiffs and Class Members are entitled to recover \$50 for the initial pay period during the period in which violation of Labor Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent pay period, not to exceed an aggregate \$4,000.00 per employee.

80. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil Procedure section 1032, Civil Code section 3287, Plaintiffs and Class Members are entitled to recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable attorneys' fees, and costs of suit.

SEVENTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

81. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

82. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business and Professions Code section 17200. Due to their unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to compensate employees in accordance with the Labor Code.

83. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and Class Members have suffered injury in fact and lost money or property. Plaintiffs and Class Members have been, on occasion, deprived of overtime compensation; minimum wage compensation; provision of meal breaks or compensation in lieu thereof; provision of rest breaks or compensation in lieu thereof; provision of all wages upon termination or resignation; and accurate wage statements, among other things.

84. Pursuant to Business and Professions Code section 17203, Plaintiffs and Class Members are entitled to restitution of all wages and other monies owed to them under the Labor Code, including interest thereon, in which they had a property interest and which Defendants

1 nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of
2 the money owed to Plaintiffs and Class Members is necessary to prevent Defendants from
3 becoming unjustly enriched by their failure to comply with the Labor Code.

4 85. Plaintiffs and Class Members are entitled to costs of suit under Code of Civil
5 Procedure section 1032 and interest under Civil Code section 3287.

6 **DEMAND FOR JURY TRIAL**

7 86. Plaintiffs demand a trial by jury on all causes of action contained herein.

8 **PRAYER**

9 WHEREFORE, on behalf of themselves and all others similarly situated, Plaintiffs pray for
10 judgment against Defendants as follows:

- 11 A. An order certifying this case as a Class Action;
- 12 B. An Order appointing Plaintiffs as class representatives and appointing Plaintiffs'
13 counsel as class counsel;
- 14 C. Damages for all wages earned and owed, including minimum and overtime wages
15 under Labor Code sections 510, 1194, 1197 and 1199;
- 16 D. Liquidated damages pursuant to Labor Code sections 1194.2;
- 17 E. Damages for unpaid premium wages from missed meal and rest periods under,
18 among other Labor Code sections, 512 and 226.7;
- 19 F. Penalties for inaccurate wage statements under Labor Code section 226,
20 subdivision (e);
- 21 G. Waiting time penalties under Labor Code section 203;
- 22 H. Preliminary and permanent injunctions prohibiting Defendants from further
23 violating the California Labor Code and requiring the establishment of appropriate
24 and effective means to prevent future violations;
- 25 I. Restitution of wages and benefits due which were acquired by means of any unfair
26 business practice, according to proof;
- 27 J. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 28 K. For attorneys' fees in prosecuting this action;

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- L. For costs of suit incurred herein; and
- M. For such other and further relief as the Court deems just and proper.

Dated: April 30, 2020

BIBIYAN LAW GROUP, P.C.

BY: 
DAVID D. BIBIYAN

Attorneys for Plaintiffs KENIA BARAHONA, ANA MARIA GUARNIZO, ANEYSI REYES and JUANA VALENCIA ROJAS, on behalf of themselves and all others similarly situated.