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Superior Court of California
County of Los Angeles

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LOS ANGELES SUPERIOR COURT

NOV 10 2020

S. DREW

Attorneys for Plaintiffs Narciso Chan Sosa and Antonio Leiria,
on behalf of themselves and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

NARCISO CHAN SOSA and ANTONIO
LEIRIA, on behalf of themselves and others
similarly situated,

Plaintiffs,

v.

LANGHAM HOTELS PACIFIC
CORPORATION, a Delaware corporation;
PACIFIC LANGHAM SERVICES
CORPORATION, a Delaware corporation;
GREAT EAGLE HOLDINGS, a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: 20STCV36405

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Liability under Labor Code § 226.7
4. Rest Break Liability under Labor Code § 226.7
5. Failure to Provide Reporting-Time Pay
6. Failure to Provide Accurate Itemized Employee Wage Statements
7. Failure to Pay All Wages Owed Timely and upon Separation of Employment
8. Violation of Labor Code § 1174(d)
9. Violation of Business & Professions Code §§ 17200, et seq.
10. Penalties Pursuant to Labor Code § 2699

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiffs Narciso Chan Sosa (“Plaintiff Sosa”) and Antonio Leiria (“Plaintiff Leiria”),
2 individuals, (together, “Plaintiffs”), on behalf of themselves, the State of California, and all others
3 similarly situated, allege and complain of defendants Langham Hotels Pacific Corporation, a
4 Delaware corporation; Pacific Langham Services Corporation, a Delaware corporation; Great
5 Eagle Holdings, a California corporation; and DOES 1 through 100 (collectively, “Defendants”),
6 and each of them, as follows:

7 **I. INTRODUCTION**

8 1. This is a class action pursuant to California Code of Civil Procedure section 382
9 on behalf of Plaintiffs and the following class: *All current and former hourly paid or non-exempt*
10 *employees who worked for Langham Hotels Pacific Corporation, Pacific Langham Services*
11 *Corporation, Great Eagle Holdings, and/or their predecessor or merged entities, within the State*
12 *of California from four years prior to the filing of the Complaint and continuing to the present*
13 (the “Class” or “Class Members”).

14 2. Throughout the time period involved in this case, Defendants willfully maintained
15 a consistent policy of failing to pay all wages, including minimum wages, for all hours worked;
16 failing to pay all overtime wages; failing to provide timely duty-free meal periods; failing to
17 authorize and permit duty-free rest breaks; failing to provide reporting-time pay; failing to
18 maintain and provide accurate itemized wage statements; and failing to pay all wages owed
19 timely and upon separation of employment. Defendants’ illegal conduct has also given rise to
20 derivative claims for unfair business practices and violation of the Private Attorneys General Act
21 of 2004 (“PAGA”).

22 3. Plaintiffs, on behalf of themselves and all other similarly situated employees,
23 pursuant to California Business & Professions Code sections 17200 through 17208, also seek all
24 monies owed but withheld and retained by Defendants to which Plaintiffs and Class Members
25 are entitled. Plaintiffs seek an order by the Court awarding restitution, injunctive relief, and all
26 other legal and equitable relief allowed, plus interest, attorneys’ fees and costs.

27 4. Plaintiffs, on behalf of themselves and all other similarly situated aggrieved
28 employees (the “Aggrieved Employees”), also bring this representative action against

Defendants to recover wages and penalties owed pursuant to Labor Code section 2699. Plaintiffs were compelled to retain the services of counsel to file this action to protect their interests and those of Aggrieved Employees and have thereby incurred attorneys' fees and costs, which they are entitled to recover under Labor Code section 2699.

5. For purposes of the allegations set forth herein, Class Members, along with Aggrieved Employees comprising the PAGA representative action, are collectively referred to as "Employees" except as otherwise specified.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, section 10 of the California Constitution and California Code of Civil Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

7. This Court has personal jurisdiction over Defendants because each has caused injuries in Los Angeles County and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code sections 17200, *et seq.* Defendants also transact business throughout California and have obtained the benefits of the laws of the United States and the State of California and are therefore subject to the personal jurisdiction of this Court.

8. Venue as to each defendant is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Defendants operate within California and do business within Los Angeles County. The unlawful acts alleged herein have a direct effect on Plaintiffs and Employees within the State of California and Los Angeles County.

9. This case should be classified as complex according to California Rules of Court, Rule 3.400, and assigned to a complex litigation judge and department because it is a class action; will involve substantial documentary evidence and a large number of witnesses; is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to

1 resolve; and would require substantial post judgment judicial supervision.

2 **III. PARTIES**

3 10. Plaintiff Narciso Chan Sosa is a resident of Hawthorne, California. Plaintiff
4 Antonio Leiria is a resident of Bellflower, California. At all relevant times herein, Defendants
5 employed Plaintiff Sosa as a non-exempt, hourly paid server at The Terrace Restaurant of The
6 Langham Huntington, Pasadena, one of Defendants' locations, from March 18, 2007, until his
7 separation on March 15, 2020, in Pasadena, California and subjected him to the same
8 employment policies and practices that affected Employees. At all relevant times herein,
9 Defendants employed Plaintiff Leiria as a non-exempt, hourly paid bartender at The Langham
10 Huntington, Pasadena from May 19, 2008, until his separation on February 28, 2020, and
11 subjected him to the same employment policies and practices that affected Employees.

12 11. Plaintiffs are informed and believe, and based thereon allege, that Defendant
13 Langham Hotels Pacific Corporation is a Delaware corporation.

14 12. Plaintiffs are informed and believe, and based thereon allege, that Defendant
15 Pacific Langham Services Corporation is a Delaware corporation.

16 13. Plaintiffs are informed and believe, and based thereon allege, that Defendant
17 Great Eagle Holdings is a California corporation.

18 14. Plaintiffs are informed and believe, and based thereon allege, that Defendants do
19 business in the State of California and, at all times hereinafter mentioned, were and are employers
20 as defined in and subject to the Labor Code and Industrial Welfare Commission ("IWC") Wage
21 Orders, whose employees are engaged throughout this county and the State of California. During
22 the relevant period, Defendants employed Plaintiffs and Employees within the State of
23 California.

24 15. The true names and capacities, whether individual, corporate, associate, or
25 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown
26 to Plaintiffs, who therefore sue defendants by such fictitious names under Code of Civil
27 Procedure section 474. Plaintiffs are informed and believe and based thereon allege that each of
28 the defendants designated herein as DOE is legally responsible in some manner for the unlawful

1 acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the
2 true names and capacities of the defendants designated hereinafter as DOES when such identities
3 become known.

4 16. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
5 include DOES 1 through 100 identified herein.

6 17. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
7 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
8 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
9 Defendant are legally attributable to other Defendants. Plaintiffs are further informed and believe
10 and based thereon allege that Defendants are joint employers in that they employed Plaintiffs and
11 Employees at the same time and were operating as a joint enterprise and single entity at all
12 relevant time periods.

13 18. California courts have recognized that the definition of “employer” for purposes
14 of enforcement of the California Labor Code goes beyond the concept of traditional employment
15 to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
16 California’s labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who
17 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
18 person to work or exercises control over the wages, hours, or working conditions of any person
19 may be liable for violations of the California Labor Code as to that person.

20 19. California law also permits and recognizes the piercing of a corporate veil
21 between sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App.
22 4th 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 512. The single enterprise
23 rule applies where “there are two or more personalities, there is but one enterprise; and that this
24 enterprise has been so handled that it should respond, as a whole, for the debts of certain
25 component elements of it.” *Hasso, supra*, 227 Cal. App. 4th at 155; *Greenspan, supra*, 191 Cal.
26 App. 4th at 512.

27 20. At all times throughout their employment, Plaintiffs and Employees were
28 regularly and consistently subject to the common policies and practices utilized by Defendants.

21. Accordingly, all Defendants engaged, suffered, and permitted Plaintiffs and Employees to perform services from which they benefitted. Moreover, the aforementioned entities had the right to exercise control over the wages, hours, and/or working conditions over Plaintiffs and Employees at all relevant times herein, so as to be considered joint employers.

IV. FACTUAL BACKGROUND

Defendants Systematically Violated State Wage and Hour Laws

22. Defendants employ hundreds of individuals in the State of California. Defendants own and operate a chain of hotels and resorts around the world, including within the State of California. Plaintiff Sosa worked for Defendants as a non-exempt, hourly paid server until his separation on March 15, 2020, in Pasadena, California. Plaintiff Leiria worked for Defendants as a non-exempt, hourly paid bartender until his separation on February 28, 2020, in Pasadena, California.

23. Plaintiffs and Employees are nonexempt employees pursuant to the applicable IWC Wage Order. This action seeks recovery for wages and compensation due and owing to Plaintiffs and Employees under California laws for the maximum period allowed to the present, as set out herein.

24. Labor Code section 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

25. During the relevant period, Defendants have had a consistent policy of failing to pay overtime wages to Plaintiffs and Employees for all overtime hours worked they worked. The work times of Plaintiffs and Employees have been, and continue to be, greater than eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants did not pay Plaintiffs and Employees wages for, *inter alia*, hours that were worked off the clock, Plaintiffs and

1 Employees were deprived wages at overtime premium amounts attributable to overtime hours.

2 26. By their common policy of requiring Plaintiffs and Employees to work in excess
3 of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
4 them at the applicable overtime rate of pay, Defendants willfully violated the provisions of Labor
5 Code sections 510 and 1198, as well as IWC Wage Order No. 5-2001.

6 27. Throughout the applicable period of time, Defendants did not pay and continue
7 not to pay Plaintiffs and Employees at least the California minimum wage for all hours worked,
8 violating Labor Code section 1194. Pursuant to Labor Code section 1194.2, Plaintiffs and Class
9 Members are entitled to recover liquidated damages (double damages) for Defendants' failure to
10 pay minimum wages.

11 28. Defendants regularly failed to provide Plaintiffs and Employees with timely duty-
12 free meal periods. Labor Code sections 226.7, 512, and IWC Wage Order No. 5-2001 require
13 employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal
14 period within the first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53
15 Cal. 4th 1004, 1042 ("Accordingly, first meal periods must start after no more than five hours.").
16 Moreover, an employee who works more than ten (10) hours per day is entitled to receive a
17 second thirty (30) minute uninterrupted and duty-free meal period.

18 29. Defendants regularly denied Plaintiffs and Employees meal periods that comply
19 with Labor Code sections 226.7, 512, and IWC Wage Order No. 5-2001. By way of example, on
20 numerous occasions, first meal breaks were not timely provided in that Plaintiffs and Employees
21 would have to work over five (5) hours without receiving a meal break. In addition, meal breaks
22 were often less than thirty (30) minutes because Plaintiffs and Employees were asked by
23 Defendants and expected to work during meal periods. Plaintiffs and Employees thus suffered
24 late, short, interrupted, and/or missed meal breaks. Also, despite working shifts that exceeded ten
25 hours, Plaintiffs and Employees were consistently deprived of second meal breaks altogether.

26 30. Defendants were also obligated but failed to provide Plaintiffs and Employees
27 with net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major fraction
28 thereof worked as required by IWC Wage Order No. 5-2001. Defendants regularly failed to

1 provide Plaintiffs and Employees with timely duty-free rest breaks.

2 31. In addition to failing to authorize and permit compliant meal and rest periods,
3 Plaintiffs and Employees were not compensated with one (1) hour's worth of pay at their regular
4 rate of compensation when they were not provided with compliant meal and rest periods in
5 accordance with Labor Code section 226.7(b).

6 32. Plaintiffs and Employees regularly reported to work at their scheduled times, but
7 would sometimes be sent home by Defendants. Defendants did not pay Plaintiffs or Employees
8 reporting-time pay in those instances. On such days, an employee must be paid for at least half
9 of the hours scheduled to work, but in no case less than two (2) hours at the employee's regular
10 rate of pay; this is called reporting-time pay. *See, e.g.,* Section 5 (A) and (B) of Wage Order 5-
11 2001.

12 33. Labor Code section 203 provides "if an employer willfully fails to pay...any
13 wages of an employee who is discharged or who quits, the wages of the employee shall continue
14 as a penalty..." for up to 30 days. Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal. App. 4th
15 487, 492.

16 34. Due to Defendants' non-compliant policies described herein, Plaintiffs and
17 Employees whose employment with Defendants concluded were not compensated for, *inter alia*,
18 all straight-time and overtime hours worked, and were not paid all meal and rest break premiums
19 owed. Thus, Defendants have failed to pay Plaintiffs and Employees all wages owed, whose sums
20 were certain, at the time of termination or within seventy-two (72) hours of their resignation and
21 have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code section
22 203.

23 35. Labor Code section 204 expressly requires that "[a]ll wages...earned by any
24 person in any employment are due and payable twice during each calendar month, on days
25 designated in advance by the employer as the regular paydays." Pursuant to Labor Code section
26 204(d), these requirements are "deemed satisfied by the payment of wages for weekly, biweekly
27 or semimonthly payroll if the wages are paid not more than seven calendar days following the
28 close of the payroll period." Due to Defendants' failure to pay Plaintiffs and Employees for all

1 straight-time and overtime hours worked, Defendants failed to timely pay Plaintiffs and
2 Employees within seven (7) days of the close of the payroll period in accordance with Labor
3 Code section 204 on a regular and consistent basis.

4 36. Through Labor Code section 210 and the PAGA, and to the extent permitted by
5 law, Plaintiffs and Aggrieved Employees are entitled to recover civil penalties for violations of
6 Labor Code section 204.

7 37. Plaintiffs and Employees were not furnished with accurate itemized wage
8 statements that accurately showed their gross wages earned, net wages earned, premium
9 payments for meal and rest breaks, reporting-time pay, all applicable hourly rates and
10 corresponding number of hours worked at each hourly rate in effect during their pay periods, and
11 other information required by Labor Code section 226(a).

12 38. During the relevant period, Defendants have knowingly and intentionally failed
13 to provide Plaintiffs and Employees with the above-described writing through actions alleged
14 herein in violation of Labor Code section 226. Plaintiffs and Employees have been injured by
15 Defendants' intentional violation of Labor Code section 226(a) because they were denied both
16 their legal right to receive, and their protected interest in receiving, accurate itemized wage
17 statements.

18 39. In addition, because Defendants failed to provide the accurate and mandated
19 information on the itemized wage statements, Plaintiffs and Employees have been prevented by
20 Defendants from determining, *inter alia*, if all hours worked were paid and the extent of the
21 underpayment. Plaintiffs have had to file this lawsuit and will be required to conduct discovery
22 and perform computations in order to analyze whether, and to what extent, Plaintiffs and
23 Employees suffered underpayment, thereby causing Plaintiffs to incur expenses and time lost.
24 Thus, Plaintiffs and Class Members are owed the amounts provided for in Labor Code section
25 226(e).

26 40. Further, for the violations described above, Plaintiffs and Aggrieved Employees
27 may also recover civil penalties pursuant to Labor Code section 226.3 and the PAGA for
28 Defendants' violations of Labor Code section 226(a).

41. Additionally, Plaintiffs and Employees have been denied their legal right and protected interest in having available at a central location at the plant or establishment where they are employed, accurate and complete payroll records showing the hours worked daily by, and the wages paid to, Employees at those respective locations pursuant to Labor Code section 1174. Pursuant to Labor Code section 1174.5 and the PAGA, Plaintiffs and Aggrieved Employees may also recover civil penalties for violation of Labor Code section 1174(d).

42. Based on the foregoing, Defendants have also engaged in unlawful and unfair business practices in violation of California's Business and Professions Code sections 17200, *et seq.*, thereby entitling Plaintiffs and Class Members to restitution, disgorgement of profits, and/or other equitable remedies.

V. CLASS ACTION ALLEGATIONS

43. 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 proposed class comprised of and defined as follows:

All current and former hourly paid or non-exempt employees who worked for Langham Hotels Pacific Corporation, Pacific Langham Services Corporation, Great Eagle Holdings, and/or their predecessor or merged entities, within the State of California from four years prior to the filing of the Complaint and continuing to the present (again, "Class" or "Class Members").

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

45. 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 Class is easily ascertainable.

A. Numerosity

46. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is not practicable. While the precise number of Class Members has not been determined at this time, Plaintiffs are informed and believe that there are over five hundred (500) Class Members employed by Defendants within the State of California at any given time.

Accounting for employee turnover during the relevant periods necessarily increases this number substantially.

47. Plaintiffs allege Defendants' employment records would provide information as to the number and location of all Class Members.

B. Commonality

48. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants had a corporate policy and/or practice of failing to pay Class Members for all hours worked in violation of California law;
- c. Whether Defendants failed to pay at least the minimum wage to Class Members for all hours worked;
- d. Whether Defendants required Class Members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Class Members;
- e. Whether Defendants deprived Class Members of legally compliant meal and rest periods;
- f. Whether Defendants required Class Members to work during meal and/or rest periods without compensation;
- g. Whether Defendants had a corporate policy and/or practice of failing to pay Class Members premium payments for noncompliant (short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;
- h. Whether Defendants failed to pay Class Members reporting-time pay;
- i. Whether Defendants failed to timely pay all wages due to Class Members during their employment;

- j. Whether Defendants failed to pay all wages due to Class Members within the required time upon their discharge or resignation;
- k. Whether Defendants complied with wage reporting as required by the California Labor Code, including, *inter alia*, section 226;
- l. Whether Defendants kept complete and accurate payroll records as required by the Labor Code, including, *inter alia*, section 1174(d);
- m. Whether Defendants' conduct was willful or reckless;
- n. Whether Defendants engaged in unfair business practices in violation of the Unfair Competition Law, Business and Professions Code sections 17200, *et seq.*;
- o. Whether Class Members are entitled to compensatory damages pursuant to the California Labor Code;
- p. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law;
- q. Whether Class Members are entitled to attorneys' fees and costs; and
- r. Whether Class Members are entitled to interest.

C. Typicality

49. The claims of Plaintiffs are typical of the claims of the Class. Plaintiffs and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes, as alleged herein.

D. Adequacy of Representation

50. Plaintiffs will fairly and adequately represent and protect the interest of the Class. Counsel who represent Plaintiffs and Class Members are competent and experienced in litigating wage and hour class actions, and have the financial resources to litigate the claims at issue.

E. Superiority of Class Action

51. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and

1 questions of law and fact common to the Class predominate over any questions affecting only
2 individual members of the Class. Each member of the Class has been damaged and is entitled to
3 recovery by reason of Defendants' illegal policy and/or practice of failing to properly pay
4 minimum wages and/or overtime for all hours worked, failing to provide timely duty-free meal
5 periods and/or pay premiums owed thereon, failing to authorize and permit duty-free rest breaks
6 and/or pay premiums owed thereon, failing to maintain and provide accurate itemized wage
7 statements, failing to pay reporting-time pay, failing to pay all wages owed in a timely manner,
8 failing to pay all wages due upon termination and/or resignation, and engaging in unfair business
9 practices.

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

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

16 **Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1, and IWC Wage Order No. 5-2001**

17 **[On Behalf of Plaintiffs and the Class against All Defendants]**

18 53. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
19 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
20 fully alleged herein.

21 54. Throughout the period of time applicable to this cause of action, Defendants did
22 not pay and continue to not pay Plaintiffs and Class Members at least the California minimum
23 wage for all hours worked, thereby violating Labor Code section 1194 and IWC Wage Order No.
24 5-2001.

25 55. Defendants' failure to pay Plaintiffs and Class Members the minimum wage as
26 required is unlawful and violates Labor Code sections 1194, 1194.2, 1197, and 1197.1. As a
27 result, Plaintiffs and Class Members are entitled to recover the unpaid balance of their minimum
28 wage compensation, as well as interest, costs, and attorney's fees and liquidated damages in an

amount equal to the wages unlawfully unpaid and interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Cal. Labor Code §§ 510 and 1198 and IWC Wage Order No. 5-2001

[On Behalf of Plaintiffs and the Class against All Defendants]

56. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

57. At all times relevant to this Complaint, Labor Code section 510(a) was in effect and provided: “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.”

58. Pursuant to Section 3 of IWC Wage Order No. 5-2001, an employee shall not be employed more than eight (8) hours in any workday and/or more than forty (40) hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over eight (8) hours in any workday and/or more than forty (40) hours in any workweek. Further, an employer must compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

59. At all times mentioned, Plaintiffs and the Class regularly worked shifts that consisted of more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek and were not paid proper overtime wages for all overtime hours worked as a result of, but not limited to, Defendants’ failure to pay for work performed off the clock, including, *inter alia*, pre- and post- shift and during meal periods.

60. Accordingly, by requiring Plaintiffs and the Class to work in excess of eight (8) hours per day and/or forty (40) hours per week without properly compensating them overtime wages, as described above, Defendants willfully violated the provisions of Labor Code section

1 1194.

2 61. As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been
3 deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of
4 such amounts, plus interest and penalties thereon, costs, and attorneys' fees.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PROVIDE MEAL PERIODS**

7 **Cal. Labor Code §§ 226.7, 512, and IWC Wage Order No. 5-2001**

8 **[On Behalf of Plaintiffs and the Class against All Defendants]**

9 62. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
10 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
11 fully alleged herein.

12 63. Labor Code section 226.7 provides "an employer shall not require an employee
13 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
14 applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")."
15 Similarly, Labor Code section 512 and IWC Wage Order No. 5-2001 require employers to
16 provide employees with thirty (30) minute uninterrupted and duty-free meal periods within the
17 first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1042
18 ("Accordingly, first meal periods must start after no more than five hours.") Moreover, an
19 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
20 minute uninterrupted and duty-free meal period.

21 64. Despite these legal requirements, Defendants regularly failed to provide both first
22 and second meal periods that comply with Labor Code sections 512, 226.7, and IWC Wage Order
23 No. 5-2001. Plaintiffs and Class Members were not provided timely and duty-free thirty (30)
24 minute meal periods. Plaintiffs and Class Members often experienced untimely and interrupted
25 meal periods, and sometimes missed meal breaks altogether. Specifically, Plaintiffs and Class
26 Members did not always receive timely duty-free meal periods in that first meals would be taken
27 after the fifth hour of work, meal periods were interrupted, or, on occasion, the demands of
28 employee job duties were such that they were prevented from taking a meal period altogether.

1 Having been thus subjected to late, short, interrupted, and missed meal periods, Plaintiffs and
2 Class Members did not receive their statutorily mandated meal periods.

3 65. To the extent Defendants claim that Plaintiffs and Class Members waived their
4 rights to second meal periods for shifts worked in excess of ten (10) hours, the waivers are not
5 applicable to those frequent occasions when Plaintiffs and Class Members worked shifts in
6 excess of twelve (12) hours a day and/or to the extent the waivers are ineffective on-duty meal
7 period agreements where the nature of the work does not prevent them from being relieved of all
8 duties.

9 66. Under Labor Code section 226.7 and IWC Wage Order No. 5-2001, each of
10 Plaintiffs and Class Members is entitled to be paid one (1) hour of additional wages for each day
11 he or she was not provided with all required meal periods. Defendants regularly failed to pay
12 Plaintiffs and Class Members the additional wages to which they were entitled for non-compliant
13 meal periods.

14 67. As a result, Defendants are liable to Plaintiffs and each Class Member for one (1)
15 hour of additional wages for each workday a compliant meal period was not provided.

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

18 **Cal. Labor Code § 226.7 and IWC Wage Order No. 5-2001**

19 **[On Behalf of Plaintiffs and the Class against All Defendants]**

20 68. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
21 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
22 fully alleged herein.

23 69. Under Wage Order No. 5-2001, section 12, an employer must authorize and
24 permit all employees to take ten (10) minute duty free rest periods for every major fraction of
25 four hours worked. Labor Code section 226.7 provides “an employer shall not require an
26 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
27 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”
28

1 70. Defendants are required by California law to authorize and permit breaks of ten
2 (10) uninterrupted minutes for each four hours of work or major fraction thereof (i.e., more than
3 two hours). That is, the required number of rest breaks is equal to the number of work hours
4 divided by four, and if the work time is not evenly divisible by four, any remainder of two hours
5 or less is rounded down and that which exceeds two hours is rounded up. For example, if a Class
6 Member's work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the
7 work time is nine hours, the employee is still entitled to only two rest breaks. (There is an
8 exception: if the shift is under three and one-half hours, no rest break is required.) Each failure
9 to authorize rest breaks as so required is itself a violation of California's rest break laws.

10 71. Despite these legal requirements, Defendants failed to authorize and permit
11 Plaintiffs and Class Members to take timely, duty-free rest breaks. Plaintiffs and Class Members
12 were subject to policies/practices that prevented them from taking legally compliant rest periods.
13 Defendants did not relieve Plaintiffs and Class Members of all duties during their rest breaks and
14 regularly required them to be available to continue working – or, in fact, interrupted them –
15 during their rest breaks. Notwithstanding any formal written policy to the contrary, Defendants'
16 actual custom and business practice was to undermine any formal policy of permitting rest breaks
17 by pressuring Class Members to perform their duties in a way that omitted breaks, including, but
18 not limited to, scheduling a heavy workload that made taking breaks extremely difficult,
19 maintaining an informal anti-rest break policy enforced through ridicule or reprimand, and
20 exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging
21 the skipping of legally protected breaks. Here, as a companywide practice and in fact, Defendants
22 did not offer Plaintiffs and Class Members the opportunity to receive compliant off-duty rest
23 periods and, thus, "the court may not conclude employees voluntarily chose to skip...breaks."
24 *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal. App. 4th 388, 410 ("[i]f an employer
25 fails to provide legally compliant meal or rest breaks, the court may not conclude employees
26 voluntarily chose to skip those breaks."); accord *Brinker*, 53 Cal. 4th at 1033 ("No issue of
27 waiver ever arises for a rest break that was required by law but never authorized; if a break is not
28 authorized, an employee has no opportunity to decline to take it.")

72. Defendants retained control over Plaintiffs and Class Members during their rest periods. *See, Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.”). In *Augustus*, the court expressly rejected the employer’s assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained “that employers [must] relinquish any control over how employees spend their break time, and relieve their employees of all duties.” *Id.* at 273. During breaks employers must relieve employees of all duties and relinquish control over how employees spend their time.

73. Plaintiffs and Class Members were not compensated with one (1) hour’s worth of pay at their regular rate of compensation when they were not provided with a compliant rest break in accordance with Labor Code section 226.7(b).

74. As a result, Defendants are liable to Plaintiffs and Class Members for one (1) hour of additional of pay at their regular rates of compensation for each work day when a compliant rest break was not provided, in a sum to be proven at trial.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REPORTING-TIME PAY

IWC Wage Order No. 5-2001

[On Behalf of Plaintiffs and the Class against All Defendants]

75. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

76. Plaintiffs and Class Members regularly reported to work at their scheduled times, but would sometimes be sent home by Defendants. On such days, Plaintiffs and Class Members must be paid for at least half of the hours scheduled to work, but in no case less than two (2) hours at the their regular rates of pay; this is called reporting-time pay. *See, e.g.,* Section 5(A) and (B) of Wage Order 5-2001.

77. Defendants did not provide Plaintiffs and Class Members reporting-time pay, in a sum to be proven at trial.

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **Cal. Labor Code §§ 226 and 226.3**

4 **[On Behalf of Plaintiffs and the Class against All Defendants]**

5 78. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs as though fully set forth
7 herein.

8 79. Labor Code section 226(a) requires employers, semi-monthly or at the time or each
9 payment of wages, to furnish employees an accurate itemized statement in writing showing:

- 10 (1) gross wages earned;
- 11 (2) total hours worked by the employee;
- 12 (3) the number of piece-rate units earned and any applicable piece rate if the
13 employee is paid on a piece rate;
- 14 (4) all deductions, provided that all deductions made on written orders of the
15 employee may be aggregated and shown as one item;
- 16 (5) net wages earned;
- 17 (6) the inclusive dates of the period for which the employee is paid;
- 18 (7) the name of the employee and only the last four digits of his or her social
19 security number or an employee identification number other than a social
20 security number;
- 21 (8) the name and address of the legal entity that is the employer...; and
- 22 (9) all applicable hourly rates in effect during the pay period and the corresponding
23 number of hours worked at each hourly rate by the employee....

24 80. During the relevant time period, due to Defendants' failure to, *inter alia*, provide
25 Plaintiffs and Class Members with lawful meal periods and rest breaks (and pay missed meal and
26 rest break premiums thereon), along with the failure to pay minimum and overtime wages, the
27 wage statements issued by Defendants, at a minimum, do not indicate the correct amount of gross
28 wages earned, the correct total hours worked, the correct net wages earned, or the applicable

1 and/or correct hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate in violation of Labor Code section 226(a)(1), (2), (5), and (9).

3 81. An employee suffering injury as a result of a knowing and intentional failure by
4 an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all
5 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and
6 one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not
7 exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award
8 of costs and reasonable attorneys' fees.

9 82. The absence of accurate information on their wage statements has delayed timely
10 challenge to Defendants' unlawful pay practices, requires discovery and mathematical
11 computations to determine the amount of wages owed, causes difficulty and expense in
12 attempting to reconstruct time and pay records, and led to submission of inaccurate information
13 about wages and amounts deducted from wages to state and federal governmental agencies.
14 Plaintiffs would not have had to engage in these efforts and incur these costs had Defendants
15 provided accurate wage statements. This also delayed Plaintiffs' ability to demand and recover
16 the underpayment of wages from Defendants.

17 83. Thus, Plaintiffs and Class Members have been injured by Defendants' intentional
18 violation of Labor Code section 226(a) because they were denied both their legal right to receive,
19 and their protected interest in receiving, accurate itemized wage statements.

20 84. Plaintiffs and Class Members are thus entitled to recover from Defendants the
21 greater of their actual damages caused by Defendants' failure to comply with Labor Code section
22 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per employee
23 pursuant to Labor Code section 226(e), and/or any other allowable penalties including those
24 pursuant to Labor Code section 226.3.

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1 in any employment between the 16th and the last day, inclusive, of any calendar month, other
2 than those wages due upon termination of an employee, are due and payable between the 1st and
3 10th day of the following month. Section 204 also requires that all wages earned for labor in
4 excess of the normal work period shall be paid no later than the payday for the next regular
5 payroll period.

6 90. The requirements of Labor Code section 204 shall be deemed satisfied by the
7 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
8 than seven calendar days following the close of the payroll period when the wages were earned.

9 91. During the relevant time period, Defendants failed to pay Plaintiffs and Class
10 Members all wages due to them within any time period specified by Labor Code section 204
11 including, but not limited to, unpaid minimum and overtime wages, along with unpaid meal and
12 rest break premiums.

13 92. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each
14 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210
15 imposes upon Defendants for each subsequent violation, or any willful or intentional violation,
16 of failure to pay the wages of each employee a penalty of \$200.00, plus 25% of the amount
17 unlawfully withheld.

18 93. Pursuant to Labor Code sections 218.5 and 218.6, along with California Civil
19 Code sections 3287(b) and 3289, Plaintiffs request that the Court award reasonable attorneys'
20 fees and the costs incurred by them in this action, along with pre-judgment interest on all amounts
21 recovered herein, as well as any statutory penalties Defendants may owe under the California
22 Labor Code and/or any other statute.

23 **EIGHTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 1174(d)**

25 **[On Behalf of Plaintiffs and the Class against All Defendants]**

26 94. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
27 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
28 fully alleged herein.

1 95. Pursuant to Labor Code section 1174(d), an employer shall keep, at a central
2 location in the state or at the plants or establishments at which employees are employed, payroll
3 records showing the hours worked daily by and the wages paid to employees employed at the
4 respective plants or establishments. These records shall be kept in accordance with rules
5 established for this purpose by the commission, but in any case shall be kept on file for not less
6 than three (3) years.

7 96. Defendants have intentionally and willfully failed to keep accurate and complete
8 payroll records showing the hours worked daily and the wages paid, to Plaintiffs and Class
9 Members.

10 97. As a result of Defendants' violation of Labor Code section 1174(d), Plaintiffs
11 and Class Members have suffered injury and damage to their statutorily protected rights.

12 98. More specifically, Plaintiffs and Class Members have been injured by
13 Defendants' intentional and willful violation of Labor Code section 1174(d) because they were
14 denied both their legal right and protected interest in having available, accurate, and complete
15 payroll records pursuant to Labor Code section 1174(d).

16 **NINTH CAUSE OF ACTION**

17 **UNFAIR COMPETITION LAW VIOLATIONS**

18 **Cal. Business & Professions Code §§ 17200, *et seq.***

19 **[On Behalf of Plaintiffs and the Class against All Defendants]**

20 99. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
21 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
22 fully set forth herein.

23 100. The Unfair Competition Law ("UCL"), California Business & Professions Code
24 sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business
25 & Professions Code section 17204 allows "any person who has suffered injury in fact and has
26 lost money or property" to prosecute a civil action for violation of the UCL. Such a person may
27 bring such an action on behalf of himself or herself and others similarly situated who are affected
28 by the unlawful, unfair, or fraudulent business practice.

1 101. The statute of limitations for a claim under the UCL is four years. Accordingly,
2 the actionable period for this cause of action is four years prior to the filing of this Complaint
3 through the present, and on-going until the violations are corrected, and/or the Class is certified.

4 102. Labor Code section 90.5(a) states that it is the public policy of California to
5 vigorously enforce minimum labor standards in order to ensure employees are not required to
6 work under substandard and unlawful conditions, and to protect employers who comply with the
7 law from those who attempt to gain competitive advantage at the expense of their workers by
8 failing to comply with minimum labor standards.

9 103. A violation of Business and Professions Code sections 17200, *et seq.* may be
10 predicated upon the violation of any state or federal law. Defendants' policies and practices have
11 violated state law in at least the following respects:

12 (a) Requiring Plaintiffs and Class Members to work without paying them minimum
13 wage for all hours worked in violation of Labor Code sections 1194, 1194.2, 1197, and IWC
14 Wage Order No. 5-2001;

15 (b) Requiring Plaintiffs and Class Members to work overtime without paying them
16 proper compensation in violation of Labor Code sections 510, 1198, and IWC Wage Order No.
17 5-2001;

18 (c) Failing to provide Plaintiffs and Class Members timely duty-free meal periods
19 and to authorize and permit duty-free rest breaks for Plaintiffs and Class Members in violation
20 of Labor Code sections 226.7, 512, and IWC Wage Order No. 5-2001;

21 (d) Failing to pay Plaintiffs and Class Members reporting-time pay, in violation of
22 Section 5(A) and (B) of Wage Order 5-2001;

23 (e) Failing to timely pay all wages to Plaintiffs and Class Members during their
24 employment and upon separation of employment, in violation of Labor Code sections 201, 202,
25 203, 204, and 210; and

26 (f) Failing to maintain and provide Plaintiffs and Class Members with accurate
27 itemized wage statements, in violation of Labor Code section 226.
28

1 Thus, Defendants engaged in unlawful competition in violation of section 17200, *et seq.*
2 of the California Business & Professions Code by violating sections 201, 202, 203, 204, 210,
3 226, 226.7, 510, 512, 1194, 1194.2, and 1197 of the Labor Code and IWC Wage Order No. 5-
4 2001.

5 104. As a direct and proximate result of Defendants' unlawful business practices,
6 Plaintiffs and Class Members have suffered economic injuries because Defendants' conduct has
7 damaged Plaintiffs and Class Members by wrongfully denying them all wages, including
8 minimum and overtime wages, failing to pay all meal and rest breaks premiums owed, and failing
9 to provide reporting-time pay, along with the corresponding interest, in a timely manner and upon
10 separation, and while supplying them inaccurate and misleading wage statements. Such conduct
11 is substantially injurious to Plaintiffs and Class Members.

12 105. Additionally, Defendants intentionally avoided paying Plaintiffs and Class
13 Members' wages and monies, thereby creating for Defendants an artificially lower cost of doing
14 business in order to undercut their competitors and establish a greater foothold in the
15 marketplace. Through their actions alleged herein, Defendants have engaged in unfair
16 competition within the meaning of section 17200 of the California Business & Professions Code.

17 106. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and
18 practices. Plaintiffs and Class Members are entitled to monetary relief pursuant to the California
19 Business & Professions Code sections 17203 and 17208 from at least four years prior to the filing
20 of this Complaint through the date of such restitution, at rates specified by law. Defendants
21 should be required to disgorge all the profits and gains they have reaped and restore such profits
22 and gains to Plaintiffs and Class Members, from whom they were unlawfully taken.

23 107. Defendants' course of conduct, acts, and practices in violation of the California
24 laws mentioned above constitute independent violations of section 17200, *et seq.* of the
25 California Business & Professions Code.

26 108. Plaintiffs and Class Members are entitled to enforce all applicable penalty
27 provisions of the Labor Code pursuant to California Business & Professions Code section 17202.

28 ///

109. Plaintiffs have assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of themselves and Class Members previously or presently employed by Defendants in California. Plaintiffs' success in this action will enforce important rights affecting the public interest. Plaintiffs will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiffs is appropriate pursuant to Code of Civil Procedure section 1021.5.

TENTH CAUSE OF ACTION

PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

Cal. Labor Code §§ 2698, *et seq.*

[On Behalf of Plaintiffs and Aggrieved Employees against All Defendants]

110. Plaintiffs, on behalf of themselves and Aggrieved Employees, re-allege and incorporate by reference all of the allegations contained in the previous paragraphs of this Complaint as though fully set forth herein.

111. Plaintiffs, on behalf of themselves and Aggrieved Employees, bring this representative action against Defendants to recover wages and penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698, *et seq.*

112. Based on the above allegations incorporated by reference, Defendants have violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198, as well as IWC Wage Order No. 5-2001.

113. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code section 2699 because of Defendants' violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198, as well as IWC Wage Order No. 5-2001.

114. Under Labor Code sections 2699(a), (f), and 2699.5, for each such violation, Plaintiffs and Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

\$100.00 for the initial violation per employee per pay period; and

\$200.00 for each subsequent violation per employee per pay period.

1 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
2 Development Agency (“LWDA”) and twenty-five percent (25%) to the affected employees.
3 These penalties may be stacked separately for each of Defendants’ violations of the California
4 Labor Code.

5 115. Defendants failed to provide Plaintiffs and Aggrieved Employees with accurate
6 itemized wage statements in compliance with Labor Code section 226(a). Plaintiff seeks separate
7 PAGA penalties for Defendants’ violations of Labor Code section 226(a) and (e). *Lopez v. Friant*
8 & Assocs., LLC (2017) 15 Cal. App. 5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec.
9 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after
10 *Friant* that “[t]o the extent the Court’s Order [granting summary judgment to *Home Depot*] was
11 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative
12 claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be read to grant
13 summary judgment on Plaintiffs’ claim for PAGA penalties based on violation of section
14 226(a).”]). For violations of Labor Code section 226(a), Plaintiffs seek the default penalty
15 provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny employer
16 who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of
17 two hundred fifty dollars (\$250) per employee per violation in an initial violation and one
18 thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the
19 employer fails to provide the employee a wage deduction statement or fails to keep the required
20 records in subdivision (a) of Section 226.” Accordingly, through PAGA and to the extent
21 permitted by law Plaintiffs and Aggrieved Employees are entitled to recover penalties for
22 violations of Labor Code section 226.3 and seek default PAGA penalties for each of Defendants’
23 numerous violations of Labor Code section 226(a).

24 116. Labor Code section 210 provides that “[i]n addition to, an entirely independent
25 and apart from, any other penalty provided in this article, every person who fails to pay the wages
26 of each employee as provided in Sections...204...shall be subject to a civil penalty as follows:
27 (1) [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee;
28 (2) [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars

1 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
2 withheld.” As a result of the faulty compensation policies and practices, Plaintiffs and Aggrieved
3 Employees are also entitled to recover penalties under Labor Code section 210 through PAGA.

4 117. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
5 liquidated damages, in the amount of: “(1) [f]or any initial violation that is intentionally
6 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for
7 which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific
8 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
9 which the employee is underpaid regardless of whether the initial violation is intentionally
10 committed.” Accordingly, through PAGA and to the extent permitted by law, Plaintiffs and
11 Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

12 118. Plaintiffs have fully and completely exhausted their administrative remedies
13 under PAGA prior to proceeding with the PAGA claim. On July 30, 2020, Plaintiffs gave written
14 notice to the LWDA and by certified mail to Defendants of the specific code provisions alleged
15 to have been violated and paid the required filing fee. Plaintiffs have not received notice from
16 the LWDA of its intent to investigate the alleged violations within sixty-five (65) calendar days
17 of the postmark date of the aforesaid letter.

18 119. Plaintiffs, as personal representatives of the general public, will and do seek to
19 recover any and all penalties for each and every violation shown to exist or to have occurred
20 during the one year period before Plaintiffs filed notice with the LWDA of their intent to bring
21 an action, in an amount according to proof, as to those penalties that are otherwise only available
22 to public agency enforcement actions. Funds recovered will be distributed in accordance with the
23 PAGA, with 75% of the penalties recovered being reimbursed to the State of California and the
24 LWDA.

25 120. Plaintiffs were compelled to retain the services of counsel to file this action to
26 protect their interests and those of Aggrieved Employees, and to assess and collect the wages and
27 penalties owed by Defendants. Plaintiffs have thereby incurred attorneys’ fees and costs, which
28 they are entitled to recover under Labor Code section 2699(g)(1).

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiffs pray for the following relief:

- 3 1. For an order certifying this action as a class action;
- 4 2. For compensatory damages in the amount of the unpaid minimum wage and
5 overtime compensation for work performed by Plaintiffs and Class Members, as may be proven;
- 6 3. For liquidated damages in the amount equal to the unpaid minimum wage and
7 interest thereon, as may be proven;
- 8 4. For compensatory damages in the amount of the hourly wage made by Plaintiffs
9 and Class Members for each noncompliant meal period for which premium pay was not paid, as
10 may be proven;
- 11 5. For compensatory damages in the amount of the hourly wage made by Plaintiffs
12 and Class Members for each day of noncompliant rest breaks for which premium pay was not
13 paid, as may be proven;
- 14 6. For penalties pursuant to Labor Code section 203 for Plaintiffs and Class
15 Members who quit or were fired in an amount equal to their daily wage multiplied by thirty (30)
16 days, as may be proven;
- 17 7. For actual damages and/or penalties pursuant to Labor Code section 226(e) for
18 Plaintiffs and Class Members, as may be proven;
- 19 8. For compensatory damages in the amount of the unpaid reporting-time pay due to
20 Plaintiffs and Class Members, as may be proven;
- 21 9. For restitution for unfair competition pursuant to the California Business &
22 Professions Code sections 17200, *et seq.*, including disgorgement of profits, as may be proven;
- 23 10. For a civil penalty in the amount of \$100.00 for the initial violation and \$200.00
24 for each subsequent violation as specified in section 2699(f)(2) of the Labor Code in the
25 representative action brought on behalf of Plaintiffs and Aggrieved Employees pursuant to the
26 Private Attorneys General Act of 2004;
- 27 11. For all civil penalties available under section 210 of the Labor Code and the
28 Private Attorneys General Act of 2004;

12. For all civil penalties available under section 226.3 of the Labor Code and the Private Attorneys General Act of 2004;

13. For all civil penalties available under section 1174.5 of the Labor Code and the Private Attorneys General Act of 2004;

14. For all civil penalties available under section 1197.1 of the Labor Code and the Private Attorneys General Act of 2004;

15. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this complaint;

16. For an award of pre-judgment and post-judgment interest;

17. For an award providing for the payment of the costs of this suit;

18. For an award of attorneys' fees, to the extent provided by law; and

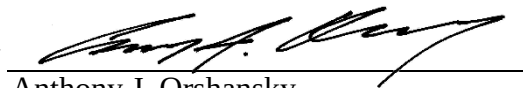
19. For such other and further relief as the Court may deem proper and just.

Respectfully submitted,

DATED: November 4, 2020

COUNSELONE, PC

By



Anthony J. Orshansky
Justin Kachadoorian
Attorneys for Plaintiffs, putative Class
Members, and Aggrieved Employees

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DATED: November 4, 2020

COUNSELONE, PC


Anthony J. Orshansky

Justin Kachadoorian

Attorneys for Plaintiffs, putative Class Members, and Aggrieved Employees

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 9301 Wilshire Boulevard, Suite 650,
Beverly Hills, California 90210, lanie@counselonegroup.com.

5 On November 10, 2020, I served the document(s) described as: **FIRST AMENDED**
6 **CLASS AND REPRESENTATIVE ACTION COMPLAINT** to the entities and/or
individuals listed below.

7 Sabrina L. Shadi, Esq.

Attorneys for Defendant

sshadi@bakerlaw.com

8 Joseph S. Persoff, Esq.

9 jpersoff@bakerlaw.com

BAKER & HOSTETLER LLP

10 11601 Wilshire Boulevard, Suite 1400

11 Los Angeles, CA 90025-0509

12 ☐ (BY MAIL) I am "readily familiar" with the firm's practice for collection and
13 processing correspondence for mailing. Under that practice it would be deposited
14 with the U.S. Postal Service on that same day with postage thereon fully prepaid at
Beverly Hills, California in the ordinary course of business. I am aware that on
15 motion of the party served, service is presumed invalid if postal cancellation date or
postage meter date is more than one day after date of deposit for mailing in affidavit.

16 ☐ (PERSONAL) I caused _____ to personally serve the
addressee(s).

17 ☒ (BY ELECTRONIC SERVICE) Based on CRC Emergency Rule 12, I caused the
18 documents to be sent to the persons listed above by email through One Legal. I did
not receive, within a reasonable time after the transmission, any electronic message or
19 other indication that the transmission was unsuccessful.

20 Executed on November 10, 2020, in Los Angeles, California.

21 ☒ (STATE) I declare under penalty of perjury under the laws of the State of
22 California that the above is true and correct.

23 
24 Lanie Lim