

1 **STANSBURY BROWN LAW**
2 Daniel J. Brown (SBN 307604)
3 dbrown@stansburybrownlaw.com
4 2610 ½ Abbot Kinney Blvd.
5 Venice, California 90291
6 Tel: (323) 207-5925

E-FILED
1/28/2021 2:23 PM
Superior Court of California
County of Fresno
By: J. Nelson, Deputy

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

ELADIA OSORNIO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

DHAKA HOTELIERS, LLC, a California
limited liability company; and DOES 1
through 100,

Defendants.

Case No.: 20CECG02397

Amended As a Matter of Right Pursuant
to Labor Code Section 2699.3(a)(2)(C)

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

- (1) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, 1198);**
- (3) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7 AND 512);
- (4) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7 AND 516);
- (5) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (6) **WAGE STATEMENT VIOLATIONS**
(LABOR CODE § 226 *et seq.*);
- (7) **WAITING TIME PENALTIES**
(LABOR CODE §§ 201-203);
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Eladia Osornio (hereinafter "Plaintiff") on behalf of herself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 ("Complaint") against Dhaka Hoteliers, LLC, a California limited liability company; and DOES
4 1 to 100, inclusive (collectively "Defendants"), and on information and belief alleges as follows:

5 JURISDICTION

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12,
9 1194, 1194.2, 1197, 1198, 2802, and 2698 *et seq.*; and Industrial Welfare Commission Wage
10 Order 5 ("Wage Order 5"), in addition to seeking declaratory relief and restitution. This
11 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants' violations of the California Labor Code because the amount in
13 controversy exceeds this Court's jurisdictional minimum.

14 VENUE

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in the County of Fresno. Defendants own, maintain offices, transact business, have an
18 agent or agents within the County of Fresno, and/or otherwise are found within the County of
19 Fresno, and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 PARTIES

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802,
28 California Business and Professions Code § 17200 *et seq.* ("Unfair Competition Law"), and Wage

1 Order 5, which sets employment standards for the Public Housekeeping Industry.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
3 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
4 continue to do) business by employing Plaintiff and other, similarly-situated non-exempt
5 employees within Fresno in the state of California and do business in Fresno in the State of
6 California as operators of hotels and motels.

7 5. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
11 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
12 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
13 and proximately caused Plaintiff and the Classes (as defined below) to be subject to the unlawful
14 employment practices, wrongs, injuries and damages complained of herein.

15 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
16 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

17 7. At all times herein mentioned, each of said Defendants participated in the doing
18 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
19 Defendants, and each of them, were the agents, servants, and employees of each and every one of
20 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
21 were acting within the course and scope of said agency and employment. Defendants, and each
22 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
23 omissions complained of herein.

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
28 members of the Classes.

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9. Plaintiff was employed by Defendants as a non-exempt employee in the position of “Housekeeping Maid.” Plaintiff worked at Defendants’ facilities from approximately August 23, 2019, until her wrongful termination on or around October 14, 2019. Throughout Plaintiff’s employment she was almost always required to completely clean 24 different hotel rooms per shift. On average she was only provided approximately 20 minutes to clean each room. This is despite Plaintiff regularly having to wait 5 to 10 minutes for the hotel guests to leave the room, so she could clean it.

Off-The-Clock/Rounding

10. Plaintiff was instructed by Defendants to clock in and clock out manually on a physical timesheet in the office at the facility. Defendants engaged in the systemic unlawful practice of utilizing a rounding mechanism that is not neutral and even-handed, and/or only compensates putative class members for scheduled time as opposed to time actually worked. This timekeeping practice resulted in a systemic underpayment to Plaintiff and the putative class members. For example, Plaintiff personally had her time rounded down on no less than eight separate occasions between September 6, 2019, and October 14, 2019, as evidenced by Plaintiff's time records and wage statements. In addition, Plaintiff and the putative class were instructed by Defendants to falsify their time sheets and indicate that they finished their workdays at a predesignated time. On those occasions where Plaintiff and the putative class did not complete their duties (i.e. completely clean a designated number of hotel rooms) before the predesignated time as set by Defendants, they would be made to work off-the-clock until they completed their work assignments. Plaintiff lodged numerous complaints to Defendants about these unlawful timekeeping practices but each time she complained she was simply told that if she didn't like it she could leave the company. All of the above mentioned off-the-clock work was either unrecorded or incorrectly recorded and wholly uncompensated by Defendants.

Meal Period Violations

11. Plaintiff was not provided all required meal periods due to Defendants' meal period policies/practices which fail to provide a timely duty-free and uninterrupted first meal

1 period (before the end of the fifth hour of work). Plaintiff and the putative class would frequently
2 have their meal periods interrupted with work related duties that would arise. Plaintiff rarely, if
3 ever, had the ability to exercise the use of the full thirty minutes for her meal period due to
4 constant pressure from Defendants to return to work. Furthermore, as Defendants did not pay
5 Plaintiff and other non-exempt employees for time spent working after the time period provided
6 in their predesignated shift schedules, Plaintiff and other non-exempt employees would regularly
7 have to cut their meal periods short so they could finish their daily tasks before their shifts ended.
8 Additionally, Plaintiff was not permitted to leave the premises during her meal periods. Plaintiff
9 and other non-exempt employees were instructed that all meals must be taken in the kitchen on
10 the premises and were required by Defendants to fraudulently write that they exercised their full
11 meal periods.

12 12. Defendants also failed to compensate Plaintiff and other non-exempt employees
13 with the required meal period premium for each workday in which they experienced a meal period
14 violation as mandated by Labor Code § 226.7. On information and belief, Defendants failed to
15 maintain any mechanism for the payment of meal period premium payments pursuant to Labor
16 Code section 226.7, when Defendants failed to provide their non-exempt employees with a legally
17 complaint meal period.

18 **Rest Period Violations**

19 13. Plaintiff was not authorized and permitted to take all legally compliant rest
20 periods. Rather, Defendants would routinely require Plaintiff and other non-exempt employees
21 to work through their rest periods. Defendants maintained a systematic practice/policy of not
22 permitting Plaintiff and other non-exempt employees to take any rest periods during their shifts.
23 Furthermore, to the extent Plaintiff and other non-exempt employees had time to take a rest
24 period, they were still required to remain on premise during their rest periods and as such, the rest
25 periods were not “duty-free” as required by California law.

26 14. Defendants also failed to compensate Plaintiff and other non-exempt employees
27 with the required rest period premium for each workday in which they experienced a rest period
28 violation as mandated by Labor Code § 226.7. On information and belief, Defendants failed to

1 maintain any mechanism for the payment of rest period premium payments pursuant to Labor
2 Code section 226.7, when Defendants failed to provide their non-exempt employees with a legally
3 complaint rest period.

4 **Minimum Wage Violations**

5 15. Plaintiff was paid an hourly wage of \$11.00. The Minimum Wage in California
6 for the year 2019 was \$12.00 per hour for employers who employ 25 or more employees. Upon
7 information and belief, Defendant employs more than 25 individuals. Accordingly, Defendants
8 failed to pay Plaintiff the legal minimum wage in California throughout the entirety of her
9 employment with Defendants.

10 **Reimbursement Violations**

11 16. Plaintiff was made to incur necessary business expenses for the benefit of
12 Defendant and was at no point provided any reimbursement for these expenses. Specifically,
13 Plaintiff was made to purchase her own cleaning supplies including mops, brooms, gloves,
14 brushes, and cleaning chemicals. Defendants did not provide any reimbursement to Plaintiff for
15 these necessary business expenses.

16 **Wage Statement Violations**

17 17. As a result of Defendants' failure to pay all minimum and overtime wages, meal
18 and rest period premium wages, failure to accurately record total hours worked, and failure to
19 reimburse for necessary business expenses, Defendants maintained inaccurate payroll records,
20 and issued inaccurate and facially deficient wage statements.

21 **Waiting Time Penalties**

22 18. As a further result of Defendants' failure to pay all minimum and overtime wages,
23 meal and rest period premium wages, failure to accurately record the gross hours worked, failure
24 to accurately record total hours worked, and failure to reimburse for necessary business expenses,
25 Defendants failed to pay all wages owed to Plaintiff upon her separation of employment from
26 Defendants.

27 **CLASS ACTION ALLEGATIONS**

28 19. **Class Definitions:** Plaintiff brings this action on behalf of herself and the

1 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 2 a. The Minimum Wage Class consists of all of Defendants' current and former non-
3 exempt California employees who: (i) were paid lower than the legal minimum
4 hourly wage; and/or (ii) were not paid for all hours worked during the four years
5 immediately preceding the filing of the Complaint through the present;
- 6 b. The Overtime Class consists of all Defendants' current and former non-exempt
7 California employees who: (i) worked more than eight hours per day and/or forty
8 hours per week ; and/or (ii) were paid less than one and one half times their regular
9 rate of pay for hours worked over eight hours per day and/or forty hours per week,
10 during the four years immediately preceding the filing of the Complaint through
11 the present;
- 12 c. The Meal Period Class consists of all Defendants' current and former non-exempt
13 California employees who worked at least one shift in excess of 5.0 hours, during
14 the four years immediately preceding the filing of the Complaint through the
15 present;
- 16 d. The Rest Period Class consists of all of Defendants' current and former non-
17 exempt employees in California who worked at least one shift in excess of 3.5
18 hours, during the four years immediately preceding the filing of the Complaint
19 through the present;
- 20 e. The Employee Expense Class consists of all Defendants' current and former non-
21 exempt employees in California who were not reimbursed for the purchase and
22 use of tools and supplies necessary for the performance of their duties;
- 23 f. The Wage Statement Class consists of all members of the Overtime Class,
24 Minimum Wage Class, Meal Period Class, and/or Rest Period Class, who received
25 a wage statement, during the one year immediately preceding the filing of the
26 Complaint through the present; and
- 27 g. The Waiting Time Penalty Class consists of members of the Overtime Class,
28 Minimum Wage Class, Meal Period Class, and/or Rest Period Class, who

separated their employment with Defendants during the three years immediately preceding the filing of the Complaint through the present.

20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes and Subclasses are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

21. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants failed to pay an overtime rate of pay for all overtime hours worked for the members of the Overtime Class;
- ii. Whether Defendants paid the Minimum Wage Class all legally required minimum hourly wages;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants provided all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants provided reimbursements for necessary business-related expenditures made by members of the Employee Expense Class pursuant to Labor Code § 2802;
- vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- vii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Penalty Class at the time of their separation of employment were lawful.

22. **Predominance of Common Questions:** Common questions of law and fact

1 predominate over questions that affect only individual members of the Classes. The common
2 questions of law set forth above are numerous and substantial and stem from Defendants' policies
3 and/or practices applicable to each individual class member, such as Defendants' uniform
4 payment of overtime wages for overtime hours worked, payment of the legal minimum hourly
5 wage, Defendants' meal and rest period policies/practices, and Defendants' policies/practices
6 with regards to reimbursement of employee expenses. As such, the common questions
7 predominate over individual questions concerning each individual class member's showing as to
8 their eligibility for recovery or as to the amount of their damages.

9 23. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
10 Plaintiff was employed by Defendants as a non-exempt employee in California during the
11 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
12 herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime wages, was
13 not paid all minimum wages, was not provided all required meal and rest periods, did not receive
14 meal and rest period premium wages in lieu of missed or non-compliant meal and rest periods,
15 did not receive reimbursements for necessary business expenditures, did not receive all final
16 wages owed upon her separation of employment from Defendants, and was not provided with
17 accurate itemized wage statements.

18 24. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
19 to represent fairly and adequately the interests of the members of the Classes. Moreover,
20 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
21 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-
22 hour class actions in state and federal courts in the past and are committed to vigorously
23 prosecuting this action on behalf of the members of the Classes.

24 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
25 an important public interest in establishing minimum working conditions and standards in
26 California. These laws and labor standards protect the average working employee from
27 exploitation by employers who have the responsibility to follow the laws and who may seek to
28 take advantage of superior economic and bargaining power in setting onerous terms and

1 conditions of employment. The nature of this action and the format of laws available to Plaintiff
2 and members of the Classes make the class action format a particularly efficient and appropriate
3 procedure to redress the violations alleged herein. If each employee were required to file an
4 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
5 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
6 their vastly superior financial and legal resources. Moreover, requiring each member of the
7 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
8 employees who would be disinclined to file an action against their former and/or current employer
9 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
10 employment. Further, the prosecution of separate actions by the individual class members, even
11 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
12 with respect to the individual class members against Defendants herein; and which would
13 establish potentially incompatible standards of conduct for Defendants; and/or legal
14 determinations with respect to individual class members which would, as a practical matter, be
15 dispositive of the interest of the other class members not parties to adjudications or which would
16 substantially impair or impede the ability of the class members to protect their interests. Further,
17 the claims of the individual members of the Class are not sufficiently large to warrant vigorous
18 individual prosecution considering all of the concomitant costs and expenses attending thereto.
19 As such, the Classes identified above are maintainable as a Class under § 382 of the Code of Civil
20 Procedure.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY ALL MINIMUM WAGES**

23 **(AGAINST ALL DEFENDANTS)**

24 26. Plaintiff re-alleges and incorporates by reference all previous paragraphs

25 27. Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
26 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
27 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
28 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with

1 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
2 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
3 their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum
4 Wage Class for all hours actually worked including, but not limited to, all hours they were subject
5 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
6 and Wage Order 5.

7 28. California Labor Code § 1198 makes unlawful the employment of an employee
8 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
9 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
10 those employees the balance of the unpaid wages as well as liquidated damages in an amount
11 equal to the wages due and interest thereon.

12 29. As a direct and proximate result of Defendants' unlawful conduct as alleged
13 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
14 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
15 entitled to recover economic and statutory damages and penalties and other appropriate relief as
16 a result of Defendants' violations of the California Labor Code and Wage Order 5.

17 30. Defendants' practice and uniform administration of corporate policy regarding
18 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
19 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
20 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
21 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
22 Civil Procedure § 1021.5.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY ALL OVERTIME WAGES**

25 **(AGAINST ALL DEFENDANTS)**

26 31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 32. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
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1 and 1198, which provide that non-exempt employees are entitled to all overtime wages and
2 compensation for hours worked, and provide a private right of action for the failure to pay all
3 overtime compensation for overtime work performed.

4 33. At all times relevant herein, Defendants were required to properly compensate
5 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
6 hours worked pursuant to California Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3
7 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular
8 rate of pay” for work in excess of eight hours per workday and/or in excess of forty hours of work
9 in the workweek. Wage Order 5, § 3 also requires an employer to pay an employee double the
10 employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work
11 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants
12 caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the
13 Overtime Pay Class at one and one half times their regular rate of pay for such hours.

14 34. Defendants’ policy/practice of requiring overtime work and not paying at the
15 proper overtime rates for said work violates California Labor Code §§ 204, 210, 216, 510, 558,
16 1194, and 1198; and Wage Order 5.

17 35. The foregoing policies/practices alleged herein are unlawful and create entitlement
18 to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid
19 amount of overtime wages, including interest thereon, statutory penalties, civil penalties,
20 attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558,
21 1194, and 1198; and Code of Civil Procedure § 1021.5.

22 **THIRD CAUSE OF ACTION**

23 **MEAL PERIOD VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

25 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 failed in their affirmative obligation to provide all of their non-exempt employees in California,
28 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods

1 in accordance with the mandates of the California Labor Code and Wage Order 5, § 11. Despite
2 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
3 of the Meal Period Class at their respective regular rates of pay, in accordance with California
4 Labor Code §§ 204, 210, 226.7, and 512.

5 38. As a result, Defendants are responsible for paying premium compensation for meal
6 period violations pursuant to Labor Code §§ 226.7, 512, and 558, and Wage Order 5, including
7 interest thereon, statutory penalties, civil penalties, and costs of suit.

8 **FOURTH CAUSE OF ACTION**
9 **REST PERIOD VIOLATIONS**
10 **(AGAINST ALL DEFENDANTS)**

11 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 40. Wage 4, § 12 and California Labor Code §§ 226.7 and 516 establish the right of
13 employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes
14 net rest time for each four (4) hour period worked, or major fraction thereof.

15 41. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
16 of the Rest Period Class to take all required rest periods.

17 42. The foregoing violations create an entitlement to recovery by Plaintiff and
18 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
19 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
20 according to California Labor Code §§ 226.7, 516, 558, Wage Order 4, California Code of Civil
21 Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

22 **FIFTH CAUSE OF ACTION**
23 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
24 **(AGAINST ALL DEFENDANTS)**

25 43. Plaintiff re-alleges and incorporates by references all previous paragraphs

26 44. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
27 states that "an employer shall indemnify his or her employees for all necessary expenditures or
28 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of

1 his or her obedience to the directions of the employer...”

2 45. Due to Defendants’ unlawful policy and practice of requiring employees to use
3 their personal cellular phones in the performance of their job duties and requiring employees to
4 incur uniform related expenses at their own cost, Defendants have violated Labor Code § 2802.

5 46. Plaintiff and members of the Employee Expense Class are entitled to attorneys’
6 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

7 47. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
8 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
9 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
10 from the date on which they incurred the initial necessary expenditure.

11 **SIXTH CAUSE OF ACTION**

12 **WAGE STATEMENT VIOLATIONS**

13 **(AGAINST ALL DEFENDANTS)**

14 48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 49. Plaintiff is informed and believes, and based thereon alleges that, Defendants
16 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
17 and members of the Wage Statement Class with accurate and complete wage statements as
18 described herein, in violation of Labor Code § 226.

19 50. Defendants’ failure to furnish Plaintiff and members of the Wage Statement Class
20 with complete and accurate itemized wage statements resulted in actual injury, as said failures led
21 to, among other things, the non-payment of all their overtime wages, minimum wages,
22 reimbursements, as well as meal and rest period premium wages and deprived them of the
23 information necessary to identify the discrepancies in Defendants’ reported data.

24 51. Defendants additionally furnished Plaintiff facially inaccurate wage statements by
25 failing to accurately record her total hours worked.

26 52. Defendants’ failure creates an entitlement to recovery by Plaintiff and members of
27 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
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Code § 226, including statutory penalties, civil penalties, reasonable attorney's fees, and costs of suit according to California Labor Code §§ 226 and 226.3 and 2698 *et seq.*

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

54. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

55. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Penalty Class all final wages due to them at their separation from employment, including, unpaid overtime wages, unpaid minimum wages, meal and rest period premium wages, and reimbursements for business expenses.

56. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Penalty Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

57. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Penalty Class their earned wages upon separation from employment results in a continued payment of wages up to thirty days from the time the wages were due.

58. Therefore, Plaintiff and members of the Waiting Time Penalty Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

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1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

4 59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 60. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code § 17200
7 et seq., by failing to properly pay overtime wages, minimum wages, provide all required meal
8 and rest periods, or pay premium payments in lieu thereof, reimburse employees for necessary
9 business expenses, and failing to pay all final wages owed to employees upon their separation
10 from employment with Defendants.

11 61. Defendants' utilization of these unfair and/or unlawful business practices deprived
12 Plaintiff and continues to deprive members of the Classes of compensation to which they are
13 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
14 over Defendants' competitors who have been and/or are currently employing workers and
15 attempting to do so in honest compliance with applicable wage and hour laws.

16 62. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
17 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
18 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
19 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

20 63. The acts complained of herein occurred within the last four years immediately
21 preceding the filing of the Complaint in this action.

22 64. Plaintiff was compelled to retain the services of counsel to file this court action to
23 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf
24 of Defendants' current non-exempt employees, and to enforce important rights affecting the
25 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
26 which he is entitled to recover under Code of Civil Procedure § 1021.5.

27 **NINTH CAUSE OF ACTION**

28 **PRIVATE ATTORNEYS GENERAL ACT**

(AGAINST ALL DEFENDANTS)

65. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

66. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 et seq., acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§

226.7, 512, 558, and 1198;

- d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- h. Failing to pay non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

67. On August 14, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 66 (a)-(i). Now that sixty-five days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

68. Plaintiff was compelled to retain the services of counsel to file this court action to

1 protect his interests and the interests of other similarly aggrieved employees, and to assess and
2 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and
3 costs, which he is entitled to receive under California Labor Code § 2699(g).

4 **PRAYER**

5 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
6 this suit is brought against Defendants, as follows:

- 7 1. For an order certifying the proposed Classes;
- 8 2. For an order appointing Plaintiff as representative of the Classes;
- 9 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 10 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
11 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
12 1197;
- 13 5. Upon the Second Cause of Action, for compensatory, consequential, general and
14 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 15 6. Upon the Third Cause of Action, for compensatory, consequential, general and
16 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 17 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
18 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 19 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
20 special damages according to proof pursuant to Labor Code § 2802;
- 21 9. Upon the Sixth Cause of Action for statutory penalties pursuant to Labor Code §
22 226;
- 23 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
24 to Labor Code § 203;
- 25 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
26 Class of all money and/or property unlawfully acquired by Defendants by means of any acts or
27 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
28 *seq.*;

1 12. Upon the Ninth Cause of Action, (1) \$100.00 for each initial violation for each
2 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
3 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
4 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
5 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
6 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
7 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
8 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
9 each initial violation and \$200 for each subsequent violation per employee per pay period for the
10 violations of the Labor Code Sections cited in Labor Code § 2699.5;

11 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
12 Code § 218.6 and Civil Code §§ 3287 and 3289;

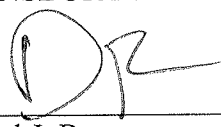
13 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
14 §§ 226, 1194 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

16
17 Dated: January 28, 2021

Respectfully submitted,
STANSBURY BROWN LAW

18
19 By: _____


Daniel J. Brown
Attorneys for Plaintiff

20
21
22 **DEMAND FOR JURY TRIAL**

23 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

24
25 Dated: January 28, 2021

Respectfully submitted,
STANSBURY BROWN LAW

26
27 By: _____


Daniel J. Brown
Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

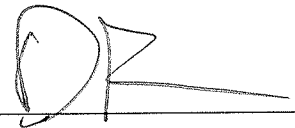
I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On January 28, 2021 I served the document listed below on the parties in this action as follows:

- **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

- X (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- ☐ (BY EMAIL) I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 28, 2021 at Venice, California.



Daniel J. Brown

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SERVICE LIST

Defendant Dhaka Hoteliers, LLC
c/o Asad Zaman – Agent for Process
2570 South East Ave.
Fresno, CA 93706