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Superior Court of California
County of Los Angeles

AUG 02 2021

Sherri R. Carter, Executive Officer/Clerk of Court

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF LOS ANGELES

BY FAX

15 MUSHARROF HUSSAIN, individually,
16 and on behalf of other members of the
17 general public similarly situated,

18 Plaintiff,

19 vs.

20 WILSHIRE HM, LLC, a Delaware limited
21 liability company; SANTA MONICA
22 PROPER JV, LLC, a Delaware limited
23 liability company; PROPER
24 HOSPITALITY, LLC, a Delaware limited
25 liability company; and DOES 1 through 10,
26 inclusive,

27 Defendants.

Case No.: 20STCV37515

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code §§ 551, 552, and 558 (Failure to Provide One Day of Rest in Seven);

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- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Musharrof Hussain, individually and on behalf of all other members of the
2 public similarly situated and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice.

23 3. Venue is proper in this Court because Defendants employ persons in this
24 county and employed Plaintiff in this county, and thus a substantial portion of the transactions
25 and occurrences related to this action occurred in this county.

26 THE PARTIES

27 4. Plaintiff Musharrof Hussain is a resident of Van Nuys, in Los Angeles County,
28 California. Defendants employed Plaintiff as an hourly paid, non-exempt In-Room Dining

1 Server from approximately April 2019 to February 2020. Plaintiff worked for Defendants at
2 their Santa Monica Proper Hotel, located at 700 Wilshire Boulevard, Santa Monica, California
3 90401. During his employment, Plaintiff typically worked eight (8) hours or more per day,
4 and five (5) to seven (7) days per week. Plaintiff's primary job duties included, without
5 limitation, receiving and delivering guest in-room dining orders, cleaning and maintaining his
6 work area, performing side work, and providing guest services on an as-needed basis.

7 5. WILSHIRE HM, LLC was and is, upon information and belief, a Delaware
8 limited liability company, and at all times hereinafter mentioned, an employer whose
9 employees are engaged throughout this county, the State of California, or the various states of
10 the United States of America.

11 6. SANTA MONICA PROPER JV, LLC was and is, upon information and belief,
12 a Delaware limited liability company, and at all times hereinafter mentioned, an employer
13 whose employees are engaged throughout this county, the State of California, or the various
14 states of the United States of America.

15 7. PROPER HOSPITALITY, LLC was and is, upon information and belief, a
16 Delaware limited liability company, and at all times hereinafter mentioned, an employer
17 whose employees are engaged throughout this county, the State of California, or the various
18 states of the United States of America.

19 8. Plaintiff is unaware of the true names or capacities of the Defendants sued
20 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
21 amend the complaint and serve such fictitiously named Defendants once their names and
22 capacities become known.

23 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
24 were the partners, agents, owners, or managers of WILSHIRE HM, LLC; SANTA MONICA
25 PROPER JV, LLC; and PROPER HOSPITALITY, LLC at all relevant times.

26 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
27 acts and omissions alleged herein was performed by, or is attributable to, WILSHIRE HM,
28 LLC; SANTA MONICA PROPER JV, LLC; PROPER HOSPITALITY, LLC; and/or DOES 1

1 through 10 (collectively, “Defendants” or “PROPER HOTELS”), each acting as the agent,
2 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
3 Defendants and was acting within the course and scope of such agency, employment, joint
4 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any
5 and all Defendants were in accordance with, and represent, the official policy of Defendants.

6 11. At all relevant times, Defendants, and each of them, ratified each and every act
7 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
8 and abetted the acts and omissions of each and all the other Defendants in proximately causing
9 the damages herein alleged.

10 12. Plaintiff is informed and believes, and thereon alleges, that each of said
11 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
12 omissions, occurrences, and transactions alleged herein.

13 13. Under California law, Defendants are jointly and severally liable as employers
14 for the violations alleged herein because they have each exercised sufficient control over the
15 wages, hours, working conditions, and employment status of Plaintiff and class members.
16 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
17 controlled their work schedule and/or conditions of employment, determined their rate of pay,
18 and maintained their employment records. Defendants suffered or permitted Plaintiff and
19 class members to work and/or “engaged” Plaintiff and class members so as to create a
20 common-law employment relationship. As joint employers of Plaintiff and class members,
21 Defendants are jointly and severally liable for the civil penalties and all other relief available
22 to Plaintiff and class members under the law.

23 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
24 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
25 members because Defendants have:

26 (a) jointly exercised meaningful control over the work performed by
27 Plaintiff and class members;

28 (b) jointly exercised meaningful control over Plaintiff’s and class members’

wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and class members;

(c) jointly required that Plaintiff and class members perform work which is an integral part of Defendants' businesses; and

(d) jointly exercised control over Plaintiff and class members as a matter of economic reality in that Plaintiff and class members were dependent on Defendants, who shared the power to set the wages of Plaintiff and class members and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased.

16. WILSHIRE HM, LLC; SANTA MONICA PROPER JV, LLC; PROPER HOSPITALITY, LLC; and DOES 1 through 10 are therefore alter egos of each other.

17. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name PROPER HOTELS.

18. Plaintiff further alleges, upon information and belief, that Defendants WILSHIRE HM, LLC; SANTA MONICA PROPER JV, LLC; and PROPER HOSPITALITY, LLC are alter egos of each other for the following reasons:

(a) According to the California Secretary of State's website (<https://businesssearch.sos.ca.gov/>), WILSHIRE HM, LLC; SANTA MONICA PROPER JV, LLC; and PROPER HOSPITALITY, LLC share the same Chief Executive Officer and/or Managing Member, Brad Korzen;

- (b) According to the Secretary of State’s website, SANTA MONICA PROPER JV, LLC and PROPER HOSPITALITY, LLC share the same business address of 1437 7th Street, Suite 250, Santa Monica, California 90401;
- (c) According to the Secretary of State’s website, WILSHIRE HM, LLC; SANTA MONICA PROPER JV, LLC; and PROPER HOSPITALITY, LLC share the same agent for service of process, “CT CORPORATION SYSTEM;” and
- (d) On information and belief, WILSHIRE HM, LLC; SANTA MONICA PROPER JV, LLC; and PROPER HOSPITALITY, LLC utilize the same standardized employment forms, including, but not limited to employee counseling/discipline forms, and issue the same employment policies.

GENERAL ALLEGATIONS

19. Defendants own and operate boutique hotels and residences in Arizona, California, and Texas. Defendants’ California properties include the Downtown LA Proper Hotel, Santa Monica Proper Hotel, San Francisco Proper Hotel, and Hotel June. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Venice, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

20. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions.

21. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Venice, California, which processes payroll for

1 all non-exempt, hourly paid employees working for Defendants at their various locations and
2 jobsites in California, including Plaintiff and class members. Based upon information and
3 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
4 employees in California, irrespective of their work locations. Upon information and belief,
5 Defendants process payroll for departing employees in the same manner throughout the State
6 of California, regardless of the manner in which each employee's employment ends.

7 22. Defendants continue to employ non-exempt or hourly paid employees in
8 California.

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

13 24. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
14 members were not paid for all hours worked because all hours worked were not recorded.

15 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to receive certain wages for
17 overtime compensation and that they were not receiving certain wages for overtime
18 compensation.

19 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive at least minimum
21 wages for compensation and that they were not receiving at least minimum wages for work
22 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
23 and class members were not paid at least minimum wages for work done off-the-clock.

24 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to meal periods in
26 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
27 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
28 periods and that Plaintiff and class members were not provided with all meal periods or

1 payment of one (1) additional hour of pay at their regular rates of pay when they did not
2 receive a timely, uninterrupted, thirty (30) minute meal period.

3 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to rest periods in
5 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
6 additional hour of pay at their regular rates of pay when they were not authorized and
7 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
8 and class members were not authorized and permitted to take compliant rest periods, nor did
9 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
10 pay at their regular rates of pay when they were not authorized and permitted to take a
11 compliant rest period.

12 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to receive complete and
14 accurate wage statements in accordance with California law. In violation of the California
15 Labor Code, Plaintiff and class members were not provided complete and accurate wage
16 statements.

17 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that they had a duty to maintain accurate and complete payroll records in
19 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
20 and intentionally failed to do so.

21 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to timely payment of all
23 wages earned upon termination of employment. In violation of the California Labor Code,
24 Plaintiff and class members did not receive payment of all wages due, including, but not
25 limited to, overtime wages, minimum wages, and/or meal and rest period premium wages,
26 within permissible time periods.

27 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to timely payment of wages

1 during their employment. In violation of the California Labor Code, Plaintiff and class
2 members did not receive payment of all wages, including, but not limited to, overtime wages,
3 minimum wages, and/or meal and rest period premium wages, within permissible time
4 periods.

5 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to the portion of wages
7 previously paid and subsequently unlawfully deducted by Defendants.

8 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to payment of wages as
10 designated by statute. In violation of the California Labor Code, Defendants secretly paid
11 Plaintiff and class members lower wages that required by statute while purporting to pay them
12 proper wages.

13 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to one day's rest in seven.
15 In violation of the California Labor Code, Defendants required Plaintiff and class members to
16 work more than six consecutive days without a day of rest, where the total hours worked
17 exceeded 30 hours in any week or six hours in any one day thereof.

18 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to suitable seating and/or
20 were entitled to sit when it did not interfere with the performance of their duties and also have
21 seats nearby to use during a lull in tasks that do require moving about or standing.

22 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive full
24 reimbursement for all business-related expenses and costs they incurred during the course and
25 scope of their employment and that they did not receive full reimbursement of applicable
26 business-related expenses and costs incurred.

27 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew or should have known that they had a duty to compensate

1 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
2 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
3 falsely represented to Plaintiff and class members that they were properly denied wages, all in
4 order to increase Defendants' profits.

5 **PAGA REPRESENTATIVE ALLEGATIONS**

6 39. At all times herein set forth, PAGA provides that any provision of law under
7 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
8 assessed and collected by the LWDA for violations of the California Labor Code and
9 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
10 civil action brought on behalf of themselves and other current or former employees pursuant
11 to procedures outlined in California Labor Code section 2699.3.

12 40. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
13 person who was employed by the alleged violator and against whom one or more of the
14 alleged violations was committed."

15 41. Plaintiff and other current and former employees of Defendants are "aggrieved
16 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
17 or former employees and one or more of the alleged violations were committed against them.

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

21 (a) The aggrieved employee or representative shall give written notice by
22 online filing with the LWDA and by certified mail to the employer of
23 the specific provisions of the California Labor Code alleged to have
24 been violated, including the facts and theories to support the alleged
25 violation.

26 (b) An aggrieved employee's notice filed with the LWDA pursuant to
27 2699.3(a) and any employer response to that notice shall be
28 accompanied by a filing fee of seventy-five dollars (\$75).

1 (c) The LWDA shall notify the employer and the aggrieved employee or
2 representative by certified mail that it does not intend to investigate the
3 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
4 the postmark date of the aggrieved employee’s notice. Upon receipt of
5 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
6 (65) calendar days of the postmark date of the aggrieved employee’s
7 notice, the aggrieved employee may commence a civil action pursuant
8 to California Labor Code section 2699 to recover civil penalties.

9 43. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
10 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
11 provision other than those listed in Section 2699.5 after the following requirements have been
12 met:

- 13 (a) The aggrieved employee or representative shall give written notice by
14 online filing with the LWDA and by certified mail to the employer of
15 the specific provisions of the California Labor Code alleged to have
16 been violated (other than those listed in Section 2699.5), including the
17 facts and theories to support the alleged violation.
- 18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(c) and any employer response to that notice shall be
20 accompanied by a filing fee of seventy-five dollars (\$75).
- 21 (c) The employer may cure the alleged violation within thirty-three (33)
22 calendar days of the postmark date of the notice sent by the aggrieved
23 employee or representative. The employer shall give written notice
24 within that period of time by certified mail to the aggrieved employee or
25 representative and by online filing with the LWDA if the alleged
26 violation is cured, including a description of actions taken, and no civil
27 action pursuant to Section 2699 may commence. If the alleged violation
28 is not cured within the 33-day period, the aggrieved employee may

1 commence a civil action pursuant to Section 2699.

2 44. On October 12, 2020, Plaintiff provided written notice by online filing to the
3 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
4 Code alleged to have been violated, including facts and theories to support the alleged
5 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
6 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
7 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
8 Plaintiff PAGA Case Number LWDA-CM-809334-20. A true and correct copy of Plaintiff's
9 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

10 45. As of the filing date of this complaint, over 65 days have passed since Plaintiff
11 sent the notice described above to the LWDA, and the LWDA has not responded that it
12 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

13 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
14 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
15 violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7,
16 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

17 47. Labor Code section 558(a) provides "[a]ny employer or other person acting on
18 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
19 provision regulating hours and days of work in any order of the Industrial Welfare
20 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
21 dollars (\$50) for each underpaid employee for each pay period for which the employee was
22 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
23 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
24 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
25 to any other civil or criminal penalty provided by law."

26 48. Defendants, at all times relevant to this complaint, were employers or persons
27 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
28 rights by violating various sections of the California Labor Code as set forth above.

49. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

51. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

52. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

53. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

54. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

55. Members of the Class and Subclass are referred to herein as "class members."

56. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

57. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- 1 (a) Whether Defendants required Plaintiff and class members to work over
2 eight (8) hours per day, over twelve (12) hours per day, over forty (40)
3 hours per week, or on the seventh (7th) day of a workweek and failed to
4 pay all legally required overtime compensation to Plaintiff and class
5 members;
- 6 (b) Whether Defendants failed to pay Plaintiff and class members at least
7 minimum wages for all hours worked;
- 8 (c) Whether Defendants failed to provide Plaintiff and class members with
9 meal periods;
- 10 (d) Whether Defendants failed to authorize and permit Plaintiff and class
11 members to take rest periods;
- 12 (e) Whether Defendants provided Plaintiff and class members with
13 complete and accurate wage statements as required by California Labor
14 Code section 226(a);
- 15 (f) Whether Defendants maintained accurate payroll records as required by
16 California Labor Code section 1174(d);
- 17 (g) Whether Defendants failed to pay earned overtime wages, minimum
18 wages, and meal and rest period premium wages due to Plaintiff and
19 class members upon their discharge;
- 20 (h) Whether Defendants failed timely to pay overtime wages, minimum
21 wages, and meal and rest period premium wages to Plaintiff and class
22 members during their employment;
- 23 (i) Whether Defendants unlawfully deducted a portion of wages previously
24 paid to Plaintiff and class members, in violation of Labor Code sections
25 221 and 224;
- 26 (j) Whether Defendants secretly paid Plaintiff and class members lower
27 wages than required by statute while purporting to pay the proper
28 wages, in violation of Labor Code section 223;

- 1 (k) Whether Defendants failed to provide Plaintiff and class members one
2 day's rest in seven;
- 3 (l) Whether Defendants failed to provide Plaintiff and class members with
4 suitable seating;
- 5 (m) Whether Defendants failed to reimburse Plaintiff and class members for
6 necessary and required business-related expenditures and/or losses
7 incurred by them in the scope of their employment;
- 8 (n) Whether Defendants engaged in unlawful and unfair business practices
9 in violation of California Business & Professions Code sections 17200,
10 *et seq.*; and
- 11 (o) The appropriate amount of damages, restitution, or monetary penalties
12 resulting from Defendants' violations of California law.

13 58. There is a well-defined community of interest in the litigation and the class
14 members are readily ascertainable:

- 15 (a) Numerosity: The class members are so numerous that joinder of all
16 members would be unfeasible and impractical. The membership of the
17 entire class is unknown to Plaintiff at this time; however, the class is
18 estimated to be greater than one hundred (100) individuals and the
19 identity of such membership is readily ascertainable by inspection of
20 Defendants' employment records.
- 21 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
22 protect the interests of each class member with whom he has a well-
23 defined community of interest, and Plaintiff's claims (or defenses, if
24 any) are typical of all class members as demonstrated herein.
- 25 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
26 protect the interests of each class member with whom he has a well-
27 defined community of interest and typicality of claims, as demonstrated
28 herein. Plaintiff acknowledges that he has an obligation to make known

1 to the Court any relationship, conflicts or differences with any class
2 member. Plaintiff's attorneys, the proposed class counsel, are versed in
3 the rules governing class action discovery, certification, and settlement.
4 Plaintiff has incurred, and throughout the duration of this action, will
5 continue to incur costs and attorneys' fees that have been, are, and will
6 be necessarily expended for the prosecution of this action for the
7 substantial benefit of each class member.

8 (d) Superiority: The nature of this action makes the use of class action
9 adjudication superior to other methods. A class action will achieve
10 economies of time, effort, and expense as compared with separate
11 lawsuits, and will avoid inconsistent outcomes because the same issues
12 can be adjudicated in the same manner and at the same time for the
13 entire class.

14 (e) Public Policy Considerations: Employers in the State of California
15 violate employment and labor laws every day. Current employees are
16 often afraid to assert their rights out of fear of direct or indirect
17 retaliation. Former employees are fearful of bringing actions because
18 they believe their former employers might damage their future
19 endeavors through negative references and/or other means. Class
20 actions provide the class members who are not named in the complaint
21 with a type of anonymity that allows for the vindication of their rights
22 while simultaneously protecting their privacy.

23 **FIRST CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

25 **(Against all Defendants)**

26 59. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 60. Labor Code section 1198 makes it illegal to employ an employee under

1 conditions of labor that are prohibited by the applicable wage order. California Labor Code
2 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
3 be the . . . standard conditions of labor for employees. The employment of any employee . . .
4 under conditions of labor prohibited by the order is unlawful.”

5 61. California Labor Code section 1198 and the applicable IWC Wage Order
6 provide that it is unlawful to employ persons without compensating them at a rate of pay
7 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
8 number of hours worked by the person on a daily or weekly basis.

9 62. Specifically, the applicable IWC Wage Order provides that Defendants are and
10 were required to pay Plaintiff and class members working more than eight (8) hours in a day
11 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
12 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
13 workweek.

14 63. The applicable IWC Wage Order further provides that Defendants are and were
15 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
16 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
17 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
18 employee, including shift differential pay, nondiscretionary bonuses and incentive pay.

19 64. California Labor Code section 510 codifies the right to overtime compensation
20 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
21 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
22 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
23 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
24 in a day on the seventh (7th) day of work.

25 65. During the relevant time period, Defendants willfully failed to pay all overtime
26 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
27 class members were not paid overtime premiums for all of the hours they worked in excess of
28 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)

1 hours in a week, because all hours worked were not recorded.

2 66. First, during the relevant time period, Defendants had, and continue to have, a
3 company-wide policy and/or practice of understaffing their hotel locations while assigning
4 heavy workloads and adhering to strict labor budgets, which led to Plaintiff and class
5 members being required to perform tasks off-the-clock. Defendants' insufficient staffing,
6 coupled with a high workload and hotel guest demands, created a work environment whereby
7 Defendants' management instructed Plaintiff and class members to perform tasks outside their
8 scheduled shifts in order to get the work done. For example, Defendants would instruct
9 Plaintiff and class members to return to work after clocking out to complete additional tasks.
10 As an example, Defendants asked Plaintiff to return to work after he clocked out of his shift to
11 perform work duties, such as carrying laundry bags to the docks for pickup and responding to
12 questions regarding guest orders and complaints. When Defendants required Plaintiff and
13 class members to perform duties while they were clocked out, Defendants did not record this
14 additional time worked or compensate Plaintiff and class members for this time. Defendants'
15 practice of adhering to strict labor budgets discouraged Plaintiff and class members from
16 being able to record hours worked outside their scheduled shifts.

17 67. In addition, Defendants would contact Plaintiff and class members outside of
18 their scheduled shifts to discuss work-related matters. Specifically, Defendants sent Plaintiff
19 and class members text messages to discuss, among other things, resolving hotel guest
20 complaints. When Defendants required Plaintiff and class members to perform duties while
21 they were clocked out, Defendants did not record this additional time worked or compensate
22 Plaintiff and class members for this time.

23 68. Second, during the relevant time period, Defendants had a company-wide
24 policy and/or practice of failing to schedule meal periods. Defendants' company-wide
25 understaffing of hotels and high workload and guest demand, coupled with their failure to
26 schedule meal periods, resulted in a failure to provide Plaintiff and class members with
27 adequate meal period coverage. Plaintiff and class members worked through meal periods
28 because there were not enough employees on duty to handle the workload and attend to hotel

1 guests, especially during peak hotel seasons. As a result, Plaintiff and class members were not
2 afforded thirty (30) minute meal periods during shifts in which they were entitled to receive
3 meal periods and were not paid for the time they spent working during meal periods.

4 Defendants knew or should have known that Plaintiff and class members were being made to
5 work during unpaid meal periods but failed to compensate them for this off-the-clock work.

6 69. Third, during the relevant time period, Defendants willfully and on a company-
7 wide basis failed to pay overtime wages owed to Plaintiff and class members for the first eight
8 (8) hours worked on the seventh day of work in any one workweek at the rate of no less than
9 one and one-half times the regular rate of pay. Defendants willfully and on a company-wide
10 basis also failed to pay overtime wages owed to Plaintiff and class members for work in
11 excess of eight (8) hours on any seventh day of the workweek at the rate of no less than two
12 times the regular rate of pay. During the relevant time period, Defendants required Plaintiff
13 and class members to work seven (7) or more consecutive days in the same workweek without
14 paying them overtime wages for the seventh day of work at the required rates of pay.

15 70. Defendants knew or should have known that as a result of these company-wide
16 practices and/or policies, Plaintiff and class members were performing their assigned duties
17 off-the-clock and during meal periods, and were suffered or permitted to perform work for
18 which they were not paid. Because Plaintiff and class members worked shifts of eight (8)
19 hours a day or more or forty (40) hours a week or more, some of this off-the-clock work
20 qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid
21 overtime wages for all of the overtime hours they actually worked.

22 71. Defendants' failure to pay Plaintiff and class members the balance of overtime
23 compensation as required by California law, violates the provisions of California Labor Code
24 sections 510 and 1198. Defendants failure to pay overtime pay to Plaintiff and class members
25 for the first eight (8) hours worked on the seventh day of work in any one workweek also
26 violates the provisions of California Labor Code sections 510 and 1198. Pursuant to
27 California Labor Code section 1194, Plaintiff and class members are entitled to recover their
28 unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

1 **SECOND CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid**
3 **Minimum Wages**
4 **(Against all Defendants)**

5 72. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 73. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
8 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
9 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
10 fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as “the time
11 during which an employee is subject to the control of an employer, and includes all the time
12 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
13 Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

14 74. As stated, due to Defendants’ company-wide policies and/or practices of
15 understaffing their hotels while assigning heavy workloads and policy and/or practice of
16 adhering to strict labor budgets, Plaintiff and class members were required to perform work
17 off-the-clock. For example, Plaintiff and class members were required to perform their duties
18 after clocking out for the day. In particular, Plaintiff would be called back to work by
19 Defendants and instructed to take out laundry bags to the docks for pickup. Plaintiff and class
20 members were also required to respond to communications from Defendants’ management via
21 text message regarding guest complaints and other matters while off-the-clock. Additionally,
22 as set forth above, due to Defendants’ company-wide policies and/or practices of
23 understaffing, assigning heavy workloads, failing to schedule meal periods, and resultant lack
24 of meal period coverage, Plaintiff and class members were impeded from taking all meal
25 periods to which they were entitled and were required to work off-the-clock. For example,
26 Plaintiff and class members were required to forego meal periods altogether to fulfill guest
27 orders and requests, especially during peak hotel seasons.

28 75. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff

1 and class members worked through that qualified for overtime premium payment. To the
2 extent that these off-the-clock hours did not qualify for overtime premium payment,
3 Defendants did not pay at least minimum wages for those hours worked off-the-clock in
4 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

5 76. Defendants' failure to pay Plaintiff and class members minimum wages violates
6 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
7 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
8 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

9 **THIRD CAUSE OF ACTION**

10 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

11 **Violations**

12 **(Against all Defendants)**

13 77. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 78. At all relevant times herein set forth, California Labor Code section 512(a)
16 provides that an employer may not require, cause, or permit an employee to work for a period
17 of more than five (5) hours per day without providing the employee with a meal period of not
18 less than thirty (30) minutes, except that if the total work period per day of the employee is
19 not more than six (6) hours, the meal period may be waived by mutual consent of both the
20 employer and the employee. Under California law, first meal periods must start after no more
21 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
22 2012).

23 79. At all relevant times herein set forth, California Labor Code sections 226.7,
24 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
25 meal period mandated by an applicable order of the IWC.

26 80. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
27 the applicable IWC Wage Order also require employers to provide a second meal period of
28 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an

1 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
2 hours worked is no more than twelve (12) hours, the second meal period may be waived by
3 mutual consent of the employer and the employee only if the first meal period was not waived.

4 81. During the relevant time period, as stated, Defendants had, and continue to
5 have, a company-wide policy and/or practice of understaffing their hotel locations and
6 adhering to strict labor budgets. As a result, Plaintiff and class members would be forced to
7 work in excess of five (5) hours before taking a meal period, have their meal periods
8 interrupted, and/or had to forgo their meal periods altogether. For example, during his
9 employment, Plaintiff was required to forego his meal periods and continue to fulfill guest
10 orders and provide in-room dining services. Further, as stated, Defendants had a company-
11 wide practice of failing to schedule meal periods, which further caused Plaintiff and class
12 members to not be relieved of their duties for compliant meal periods. For example, Plaintiff
13 would take his meal periods after six (6) hours into his shift, instead of before the end of the
14 fifth hour of work, as required by California law.

15 82. Moreover, Defendants engaged in a company-wide practice and/or policy of
16 not paying all meal period premiums owed when compliant meal periods are not provided. As
17 a result, Defendants failed to provide Plaintiff and class members compliant meal periods in
18 violation of California Labor Code sections 226.7, 512, and 516 and failed to pay meal period
19 premiums due.

20 83. Defendants' conduct violates the applicable IWC Wage Order, and California
21 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
22 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
23 rate of compensation for each work day that the meal period was not provided.

24 **FOURTH CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 26 **(Against all Defendants)**

27 84. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 85. At all relevant times herein set forth, the applicable IWC Wage Order and
2 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
3 members' employment by Defendants.

4 86. At all relevant times, the applicable IWC Wage Order provides that "[e]very
5 employer shall authorize and permit all employees to take rest periods, which insofar as
6 practicable shall be in the middle of each work period" and that the "rest period time shall be
7 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
8 hours or major fraction thereof" unless the total daily work time is less than three and one-half
9 (3½) hours.

10 87. At all relevant times, California Labor Code section 226.7 provides that no
11 employer shall require an employee to work during any rest period mandated by an applicable
12 order of the California IWC. To comply with its obligation to authorize and permit rest
13 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
14 employer must "relinquish any control over how employees spend their break time, and
15 relieve their employees of all duties—including the obligation that an employee remain on
16 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
17 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
18 California Labor Code section 226.7, Plaintiff and class members are entitled to recover from
19 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
20 required rest period was not authorized and permitted.

21 88. During the relevant time period, Defendants regularly failed to authorize and
22 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
23 period worked or major fraction thereof. As with meal periods, Defendants' policies and/or
24 practice of understaffing prevented Plaintiff and class members from being relieved of all duty
25 in order to take compliant rest periods. Defendants also failed to schedule rest periods, which,
26 coupled with Defendants' failure to provide adequate rest period coverage, further led to
27 Plaintiff and class members not being authorized and permitted to take rest periods.

28 89. Furthermore, upon information and belief, during the relevant time period,

1 Defendants maintained and implemented a company-wide practice and/or policy requiring that
2 Plaintiff and class members remain on Defendants' premises during their rest periods.
3 Because Plaintiff and class members were restricted from leaving Defendants' premises
4 during rest periods, they were denied the ability to use their rest periods freely for their own
5 purposes. Thus, Defendants effectively maintained control over Plaintiff and class members
6 during rest periods, and, as a result of this rest period policy, Defendants did not relinquish
7 control over Plaintiff and class members during rest periods.

8 90. As a result of Defendants' practices and policies, Plaintiff and class members
9 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
10 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
11 throughout his employment, Plaintiff only received one 10-minute rest period during his 8-
12 hour shifts. Due to the number of guest in-room dining orders and lack of rest period
13 coverage provided by Defendants, Plaintiff was not able to take all rest periods to which he
14 was entitled. Further, when Plaintiff was able to take a rest period, his rest periods were often
15 interrupted or cut short by Defendants' management who would interrupt him to discuss guest
16 orders. Other class members similarly were not authorized and permitted to take all rest
17 periods they were entitled to take during their shifts.

18 91. Defendants have also engaged in a systematic, company-wide practice and/or
19 policy of not paying rest period premiums owed when rest periods are not authorized and
20 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
21 to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the
22 applicable IWC Wage Order.

23 92. Defendants' conduct violates the applicable IWC Wage Order and California
24 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
25 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
26 compensation for each work day that a compliant rest period was not authorized and
27 permitted.

28 //

1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
3 **Statements and Failure to Maintain Accurate Payroll Records**
4 **(Against all Defendants)**

5 93. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 94. At all relevant times herein set forth, California Labor Code section 226(a)
8 provides that every employer shall furnish each of his or her employees an accurate and
9 complete itemized wage statement in writing, including, but not limited to, the name and
10 address of the legal entity that is the employer, the inclusive dates of the pay period, total
11 hours worked, and all applicable rates of pay.

12 95. At all relevant times, Defendants have knowingly and intentionally provided
13 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
14 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
15 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
16 applicable hourly rates in effect during the pay period, including overtime rates of pay, and
17 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
18 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

19 96. Because Defendants did not accurately record the time Plaintiff and Subclass
20 members spent working off-the-clock, Defendants did not list the correct amount of gross
21 wages and net wages earned by Plaintiff and Subclass members in compliance with section
22 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
23 number of hours worked by Plaintiff and Subclass members in violation of section 226(a)(2),
24 and failed to list the applicable hourly rates of pay in effect during the pay period and
25 corresponding accurate number of work hours worked at each hourly rate in violation of
26 section 226(a)(9).

27 97. The wage statement deficiencies also include, without limitation, failing to list
28 the number of piece-rate units earned and any applicable piece rate if the employee is paid on

1 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
2 only the last four digits of his or her social security number or an employee identification
3 number other than a social security number; failing to list the name and address of the legal
4 entity that is the employer; failing to list the inclusive dates of the period for which class
5 members were paid; and/or failing to state all hours worked as a result of not recording or
6 stating hours worked off-the-clock.

7 98. California Labor Code section 1198 provides that the maximum hours of work
8 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
9 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
10 employment of any employees for longer hours than those fixed by the order or under
11 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
12 Wage Order, employers are required to keep accurate time records showing when the
13 employee begins and ends each work period and meal period. During the relevant time
14 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
15 and meal period start and stop times for Plaintiff and Subclass members, in violation of
16 section 1198.

17 99. California Labor Code section 1174(d) provides that “[e]very person employing
18 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
19 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
20 plants or establishments at which employees are employed, payroll records showing the hours
21 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
22 applicable piece rate paid to, employees employed at the respective plants or
23 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
24 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
25 members showing the daily hours they worked and the wages paid thereto as a result of failing
26 to record the off-the-clock hours that they worked.

27 100. Plaintiff and Subclass members are entitled to recover from Defendants the
28 greater of their actual damages caused by Defendants’ failure to comply with California Labor

Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

101. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

102. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premium wages that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

103. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

104. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

105. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the

1 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
2 thirty (30) day maximum pursuant to California Labor Code section 203.

3 **SEVENTH CAUSE OF ACTION**

4 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
5 **Employment**
6 **(Against all Defendants)**

7 106. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

9 107. This cause of action is dependent upon, and wholly derivative of, the overtime
10 wages, minimum wages, and/or meal and rest period premium wages, that were not timely
11 paid to Plaintiff and class members during their employment.

12 108. At all times relevant herein set forth, Labor Code section 204 provides that all
13 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
14 days, inclusive, of any calendar month, other than those wages due upon termination of an
15 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
16 the month during which the labor was performed.

17 109. At all times relevant herein, Labor Code section 204 provides that all wages
18 earned by any person in any employment between the sixteenth (16th) and the last day,
19 inclusive, of any calendar month, other than those wages due upon termination of an
20 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
21 month.

22 110. At all times relevant herein, Labor Code section 204 provides that all wages
23 earned for labor in excess of the normal work period shall be paid no later than the payday for
24 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
25 204 provides that the requirements of this section are deemed satisfied by the payment of
26 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
27 seven (7) calendar days following the close of the payroll period.

28 111. During the relevant time period, Defendants willfully failed to pay Plaintiff and

1 class members all wages due including, but not limited to, overtime wages, minimum wages,
2 and meal and/or rest period premium wages, within the time periods specified by California
3 Labor Code section 204.

4 112. Defendants' failure to pay Plaintiff and class members all wages due violates
5 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
6 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

7 **EIGHTH CAUSE OF ACTION**

8 **Violation of California Labor Code §§ 551, 552, and 558—Failure to Provide One Day's**
9 **Rest in Seven**
10 **(Against all Defendants)**

11 113. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 114. At all relevant times herein, California Labor Code section 551 provides that
14 every person employed in any occupation of labor is entitled to one day's rest in seven.
15 Additionally, California Labor Code section 552 prohibits employers from requiring
16 employees to work more than six consecutive days without a day of rest.

17 115. At all relevant times herein set forth, California Labor Code section 556
18 exempts an employer from the day-of-rest requirement when the total hours worked by an
19 employee do not exceed 30 hours in any week or six hours in any one day thereof.

20 116. Labor Code section 558(a) provides "[a]ny employer or other person acting on
21 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
22 provision regulating hours and days of work in any order of the Industrial Welfare
23 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
24 dollars (\$50) for each underpaid employee for each pay period for which the employee was
25 underpaid in addition to an amount sufficient to recover underpaid wages. . . . (2) For each
26 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
27 period for which the employee was underpaid . . . in addition to an amount sufficient to
28 recover underpaid wages." Labor Code section 558(c) provides "[t]he civil penalties provided

1 for in this section are in addition to any other civil or criminal penalty provided by law.”

2 117. During the relevant time period, on information and belief, Defendants
3 scheduled Plaintiff and class members to work eight (8) or more hours per day and more than
4 seven (7) consecutive days in a workweek. On information and belief, during his
5 employment, Plaintiff worked seven (7) consecutive days in a workweek. Because Plaintiff
6 and class members worked over 30 hours per week and over six (6) hours per day in a
7 workweek, they were not exempt from the day-of-rest requirement. To the extent that
8 Plaintiff and class members may have signed purported waivers of their right to a day’s rest in
9 seven, such waivers are invalid.

10 118. Thus, during the relevant time period, and in violation of Labor Code sections
11 551 and 552, Defendants willfully caused Plaintiff and class members to work more than six
12 days in seven. Plaintiff and class members are therefore entitled to recover civil penalties
13 pursuant to Labor Code section 558.

14 NINTH CAUSE OF ACTION

15 Violation of California Labor Code § 2802—Unpaid Business-Related Expenses 16 (Against all Defendants)

17 119. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
18 and every allegation set forth above.

19 120. At all times herein set forth, California Labor Code section 2802 provides that
20 an employer must reimburse employees for all necessary expenditures and losses incurred by
21 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
22 to prevent employers from passing off their cost of doing business and operating expenses on
23 to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
24 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: “[w]hen tools or
25 equipment are required by the employer or are necessary to the performance of a job, such
26 tools and equipment shall be provided and maintained by the employer, except that an
27 employee whose wages are at least two (2) times the minimum wage provided herein may be
28 required to provide and maintain hand tools and equipment customarily required by the trade

1 or craft.”

2 121. During the relevant time period, Defendants had a company-wide policy of
3 requiring Plaintiff and class members to utilize their own personal cellular phones and cellular
4 data to discuss work-related matters, but Defendants failed to reimburse them for the costs of
5 their work-related cellular phone expenses. Defendants would contact Plaintiff and class
6 members on their personal cellular phones to discuss guest complaints and discuss resolving
7 guest issues. Although Defendants required Plaintiff and class members to utilize their
8 personal cellular phones to address work-related responsibilities, Defendants failed to
9 reimburse them for their cellular phone expenses.

10 122. In addition, Defendants required Plaintiff and class members to purchase
11 specific footwear for use while working at Defendants’ hotels and gave them instructions for
12 which brand and style of footwear to purchase, but did not fully reimburse them for this cost.
13 Specifically, Defendants instructed Plaintiff to purchase one (1) of two (2) Adidas styles to be
14 worn at work. Plaintiff followed Defendants’ instructions and purchased a pair of one of the
15 Adidas style shoes for approximately \$100.00. However, Defendants only reimbursed
16 Plaintiff for \$65.00.

17 123. Defendants could have provided Plaintiff and class members with the actual
18 tools for use on the job, such as company phones or required footwear, or Defendants could
19 have fully reimbursed employees for the costs of their cellular phone usage and uniform items.
20 Instead, Defendants passed these operating costs off onto Plaintiff and class members. At all
21 relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

22 124. Defendants’ company-wide policy and/or practice of passing on their operating
23 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
24 have intentionally and willfully failed to reimburse Plaintiff and other class members for
25 necessary business-related expenses and costs.

26 125. Plaintiff and class members are entitled to recover from Defendants their
27 business-related expenses incurred during the course and scope of their employment, plus
28 interest.

1 **TENTH CAUSE OF ACTION**

2 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

3 **(Against all Defendants)**

4 126. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 127. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
8 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 221, 223,
9 224, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802.
10 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover
11 civil penalties for violations of those Labor Code sections not found in section 2699.5,
12 including sections 516 and 1182.12.

13 128. Defendants’ conduct, as alleged herein, violates numerous sections of the
14 California Labor Code, including, but not limited to, the following:

- 15 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
16 wage order for Defendants’ failure to compensate Plaintiff and other
17 aggrieved employees with all required overtime pay, as alleged herein;
- 18 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
19 and the applicable IWC wage order for Defendants’ failure to
20 compensate Plaintiff and other aggrieved employees with at least
21 minimum wages for all hours worked, as alleged herein;
- 22 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
23 applicable IWC wage order for Defendants’ failure to provide Plaintiff
24 and other aggrieved employees with meal periods, as alleged herein;
- 25 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
26 IWC wage order for Defendants’ failure to authorize and permit
27 Plaintiff and other aggrieved employees to take rest periods, as alleged
28 herein;

- 1 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
2 wage order for failure to provide accurate and complete wage statements
3 to Plaintiff and other aggrieved employees, as alleged herein;
- 4 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
5 IWC wage order for failure to maintain payroll records as alleged
6 herein;
- 7 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
8 earned wages upon termination, as alleged herein;
- 9 (h) Violation of Labor Code section 204 for failure to pay all earned wages
10 during employment, as alleged herein;
- 11 (i) Violation of Labor Code sections 221 and 224 for unlawfully deducting
12 a portion of wages previously paid to Plaintiff and other aggrieved
13 employees, as set forth below;
- 14 (j) Violation of Labor Code section 223 for secretly paying Plaintiff and
15 other aggrieved employees lower wages than required by statute, while
16 purporting to pay the proper wages, as set forth below;
- 17 (k) Violation of Labor Code sections 551 and 552 for failure to provide one
18 day's rest in seven to Plaintiff and other aggrieved employees, as
19 alleged herein;
- 20 (l) Violation of Labor Code section 1198 for failing to provide suitable
21 seating to Plaintiff and other aggrieved employees, as set forth below;
22 and
- 23 (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
24 and other aggrieved employees for all business expenses necessarily
25 incurred, as alleged herein.

26 129. At all times herein set forth, California Labor Code section 221 provides that it
27 shall be unlawful for any employer to collect or receive from an employee any part of wages
28 theretofore paid by said employer to said employee. California Labor Code section 224 also

1 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
2 deduction is expressly authorized in writing by the employee."

3 130. During the relevant time period, Defendants unlawfully deducted a portion of
4 wages previously paid to Plaintiff and other aggrieved employees in violation of California
5 Labor Code sections 221 and 224. On information and belief, Defendants systematically, and
6 on a company-wide basis, deducted parking fees from Plaintiff's and other aggrieved
7 employees' wages without obtaining their express written authorization prior to deducting
8 such fees. By way of example, Defendants deducted \$50.00 in parking fees from Plaintiff's
9 wages for the pay period ending October 6, 2019, and deducted \$50.00 in parking fees from
10 Plaintiff's wages for the pay period ending October 20, 2019. Plaintiff did not provide
11 express written authorization for Defendants to deduct these and other parking fees from his
12 wages. On information and belief, other aggrieved employees similarly did not provide
13 express written authorization for Defendants to deduct parking fees from their wages.
14 Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties
15 pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

16 131. At all times, California Labor Code section 223 makes it unlawful for an
17 employer to secretly pay wages lower than required by statute while purporting to pay legal
18 wages.

19 132. During the relevant time period, Defendants willfully and systematically
20 deducted parking fees from Plaintiff's and other aggrieved employees' wages without their
21 express written authorization, which resulted in a discount in their wages. Defendants'
22 deduction of parking fees from their employees' wages resulted in the payment of less than
23 statutorily required wages to Plaintiff and other aggrieved employees. In doing so,
24 Defendants acted with the intent to deprive Plaintiff and other aggrieved employees of
25 statutory wages, including, but not limited to, overtime wages, minimum wages, and/or meal
26 and rest period premiums, to which they were entitled to under California law. Thus,
27 Defendants paid Plaintiff and other aggrieved employees lower wages than those they were
28 entitled to while purporting that Plaintiff and other aggrieved employees were properly paid.

1 Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties
2 pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

3 133. At all relevant times herein, California Labor Code section 1198 makes it
4 illegal to employ an employee under conditions of labor that are prohibited by the applicable
5 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
6 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
7 The employment of any employee . . . under conditions of labor prohibited by the order is
8 unlawful.”

9 134. California Code of Regulations, Title 8, section 11050(14)(A) provides that
10 “[a]ll working employees shall be provided with suitable seats when the nature of the work
11 reasonably permits the use of seats.”

12 135. Plaintiff alleges that Defendants’ hotels’ front desk, registration desk, and
13 concierge desk areas are generally similar in their layout and design and there was, and
14 continues to be, space behind the front desk, registration desk, and concierge desk areas to
15 allow for the presence and use of a seat or stool by other aggrieved employees (with
16 reasonable or no modification to these work areas) during the performance of their work
17 duties. Defendants could have provided other aggrieved employees with a suitable seat or
18 stool at the front desks, registration desks, and concierge desks, but instead denied them
19 seating and forced other aggrieved employees to stand throughout the day.

20 136. Other aggrieved employees spent a substantial portion of their day behind or at
21 the front desks, registration desks, and concierge desks. The nature of the work of an
22 employee performing front desk, registration desk, and concierge duties can reasonably be
23 accomplished from a seated position. However, Defendants systematically, and on a
24 company-wide basis, did not provide suitable seats or stools at or near the front desks,
25 registration desks, and concierge desks, forcing other aggrieved employees to stand
26 throughout their work shifts.

27 137. During the relevant time period, Defendants violated California Labor Code
28 section 1198 and California Code of Regulations, Title 8, section 11050(14)(A), because other

1 aggrieved employees were not allowed to sit, even when it would not have interfered with the
2 performance of their duties, nor were they provided with suitable seats. Other aggrieved
3 employees were assigned front desk, registration desk, and concierge duties, which were
4 performed from and connected to a front desk, registration desk, and concierge desk, and
5 could have been performed from a seated position. Other aggrieved employees could have
6 provided customer service at the front desks, registration desks, and concierge desks while
7 seated, without interference to their ability to complete these duties.

8 138. Defendants could have placed suitable seats or stools at the front desks,
9 registration desks, and concierge desks for use by other aggrieved employees with reasonable
10 or no modification to these work areas. However, on a company-wide basis, Defendants did
11 not provide suitable seats or stools at front desks, registration desks, and concierge desks.
12 Defendants' management did not inform other aggrieved employees that they were allowed to
13 sit down, provide any feasible means for them to sit down, and/or mention any policy
14 regarding sitting.

15 139. As a result of Defendants' company-wide policy and/or practice of prohibiting
16 employees from sitting during their shifts and company-wide failure to provide suitable
17 seating, other aggrieved employees were forced to stand during shifts and denied seats.
18 Defendants' failure to provide suitable seating to other aggrieved employees violated and
19 continues to violate California Labor Code section 1198 and IWC Wage Order 5-2001,
20 Section 14(A). Other aggrieved employees are therefore entitled to recover civil penalties
21 pursuant to Labor Code sections 2699(a), (f), and (g).

22 140. At all relevant times herein, California Labor Code section 1198 makes it
23 illegal to employ an employee under conditions of labor that are prohibited by the applicable
24 wage order. California Labor Code section 1198 requires that ". . . the standard conditions of
25 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
26 The employment of any employee . . . under conditions of labor prohibited by the order is
27 unlawful."

28 141. California Code of Regulations, Title 8, section 11050(14)(B) provides that

1 “[w]hen employees are not engaged in the active duties of their employment and the nature of
2 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
3 proximity to the work area and employees shall be permitted to use such seats when it does
4 not interfere with the performance of their duties.”

5 142. During the relevant time period, Defendants violated California Labor Code
6 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because
7 Plaintiff and other aggrieved employees were not provided with suitable seats in reasonable
8 proximity to their work areas and, therefore, effectively not allowed to sit, even during lulls in
9 their work duties.

10 143. As stated, Plaintiff alleges that Defendants’ California hotel locations are
11 generally similar in their layout and design and there was, and continues to be, space near
12 their work areas (with reasonable or no modification to these work areas) to allow for the
13 presence and use of a seat or stool by Plaintiff and other aggrieved employees during lulls in
14 operation. Defendants could have provided Plaintiff and other aggrieved employees with a
15 seat or stool in their work areas, but instead denied Plaintiff and other aggrieved employees
16 suitable seating altogether and forced Plaintiff and other aggrieved employees to stand
17 throughout the day.

18 144. Defendants did not provide Plaintiff and other aggrieved employees with
19 suitable seats or stools in reasonable proximity to their work areas to allow them to use seats
20 when it would not interfere with the performance of their duties for times when they were not
21 engaged in active duties that require standing. In other words, to the extent Plaintiff and other
22 aggrieved employees engaged in duties in which the nature of the work required standing,
23 Defendants denied them the use of suitable seats nearby during lulls in their work duties.
24 Moreover, Defendants did not inform Plaintiff and other aggrieved employees of their rights
25 to a seat or stool under California law.

26 145. As a result of Defendants’ company-wide policy and/or practice effectively
27 prohibiting employees from sitting at any time, even when they were not engaged in active
28 duties requiring standing, and company-wide failure to provide suitable seats in reasonable

1 proximity to their work areas, Plaintiff and other aggrieved employees were forced to stand
2 during shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiff and
3 other aggrieved employees violated and continues to violate California Labor Code section
4 1198 and IWC Wage Order 5-2001, Section 14(B). Plaintiff and other aggrieved employees
5 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f),
6 and (g).

7 **ELEVENTH CAUSE OF ACTION**

8 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

9 **Unlawful Business Practices**

10 **(Against all Defendants)**

11 146. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 147. Defendants are "persons" as defined by California Business & Professions
14 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
15 and/or associations.

16 148. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
17 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
18 suffered injury in fact and has lost money as a result of Defendants' unlawful business
19 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
20 meaning of Code of Civil Procedure section 1021.5.

21 149. Defendants' activities, as alleged herein, are violations of California law, and
22 constitute unlawful business acts and practices in violation of California Business &
23 Professions Code sections 17200, *et seq.*

24 150. A violation of California Business & Professions Code sections 17200, *et seq.*
25 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
26 policies and practices have violated state law in at least the following respects:

- 27 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
28 class members, to work overtime without paying them proper

1 compensation in violation of California Labor Code sections 510 and
2 1198 and the applicable IWC Order, as alleged herein;

3 (b) Failing to pay at least minimum wage to Plaintiff and class members in
4 violation of California Labor Code sections 1182.12, 1194, 1197,
5 1197.1, and 1198 and the applicable IWC Order, as alleged herein;

6 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
7 members in violation of California Labor Code sections 226.7, 512(a),
8 516, 1198, and the applicable IWC Order, as alleged herein;

9 (d) Failing to authorize and permit Plaintiff and class members to take
10 uninterrupted rest periods in violation of California Labor Code sections
11 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;

12 (e) Failing to provide Plaintiff and class members with accurate wage
13 statements and failing to maintain accurate payroll records in violation
14 of California Labor Code sections 226(a), 1174(d), 1198, and the
15 applicable IWC Order, as alleged herein;

16 (f) Failing timely to pay all earned wages to Plaintiff and class members in
17 violation of California Labor Code section 204 and the applicable IWC
18 Order, as alleged herein;

19 (g) Collecting or receiving wages already paid from Plaintiff and class
20 members in violation of California Labor Code sections 221 and 224, as
21 set forth below;

22 (h) Failing to pay the statutorily designated wage scale in violation of
23 California Labor Code section 223, as set forth below;

24 (i) Failing to provide one day's rest in seven to Plaintiff and class members
25 in violation of California Labor Code sections 551 and 552, as alleged
26 herein; and

27 (j) Failing to reimburse Plaintiff and class members for all business
28 expenses necessarily incurred in violation of California Labor Code

1 sections 2802, as alleged herein.

2 151. At all times relevant herein, California Labor Code section 221 provides that it
3 is unlawful for any employer to collect or receive from an employee any part of wages
4 theretofore paid by said employer to said employee. California Labor Code section 224 also
5 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
6 deduction is expressly authorized in writing by the employee."

7 152. During the relevant time period, Defendants unlawfully deducted a portion of
8 wages previously paid to Plaintiff and class members in violation of California Labor Code
9 section 221. On information and belief, Defendants systematically, and on a company-wide
10 basis, deducted parking fees from Plaintiff's and class members' wages without obtaining
11 their express written authorization prior to deducting such fees. By way of example,
12 Defendants deducted \$82.50 in parking fees from Plaintiff's wages for the pay period ending
13 September 8, 2019, deducted \$50.00 in parking fees from Plaintiff's wages for the pay period
14 ending October 6, 2019, and deducted \$50.00 in parking fees from Plaintiff's wages for the
15 pay period ending October 20, 2019. Plaintiff did not provide express written authorization
16 for Defendants to deduct these and other parking fees from his wages. On information and
17 belief, other class members similarly did not provide express written authorization for
18 Defendants to deduct parking fees from their wages.

19 153. Defendants' act of deducting parking fees from Plaintiff's and class members'
20 wages resulted in a discount of wages to employees and was done without their express
21 written authorization, and therefore constitutes an unlawful deduction of wages, in violation of
22 Labor Code sections 221 and 224.

23 154. At all times, California Labor Code section 223 makes it unlawful for an
24 employer to secretly pay wages lower than required by statute while purporting to pay legal
25 wages.

26 155. During the relevant time period, Defendants willfully and systematically
27 deducted parking fees from Plaintiff's and class members' wages without their express written
28 authorization, which resulted in a discount in their wages. Defendants' deduction of parking

1 fees from their employees' wages resulted in the payment of less than statutorily required
2 wages to Plaintiff and class members. In doing so, Defendants acted with the intent to deprive
3 Plaintiff and class members of statutory wages, including, but not limited to, overtime wages,
4 minimum wages, and/or meal and rest period premiums, to which they were entitled to under
5 California law. Thus, Defendants paid Plaintiff and class members lower wages than those
6 they were entitled to while purporting that Plaintiff and class members were properly paid.

7 156. Defendants' failure to pay Plaintiff and class members the correct designated
8 wage, while purporting to pay legal wages, is a violation of California Labor Code section
9 223.

10 157. As a result of the violations of California law herein described, Defendants
11 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
12 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
13 herein.

14 158. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
15 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
16 Defendants during a period that commences four years prior to the filing of this complaint; a
17 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
18 class members; and an award of attorneys' fees pursuant to California Code of Civil
19 Procedure section 1021.5 and other applicable laws; and an award of costs.

20 **TWELEFTH CAUSE OF ACTION**

21 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

22 **Unfair Business Practices**

23 **(Against all Defendants)**

24 159. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 160. Defendants are "persons" as defined by California Business & Professions
27 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
28 and/or associations.

1 161. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
2 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
3 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
4 seeks to enforce important rights affecting the public interest within the meaning of Code of
5 Civil Procedure section 1021.5.

6 162. Defendants’ activities, namely Defendants’ company-wide practice and/or
7 policy of not paying Plaintiff and class members all meal and rest period premium wages due
8 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
9 compensation guarantee and enhanced enforcement implemented by section 226.7. The
10 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
11 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
12 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
13 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
14 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
15 unfair business practice in violation of California Business & Professions Code sections
16 17200, *et seq. (Id.)*

17 163. A violation of California Business & Professions Code sections 17200, *et seq.*
18 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
19 and practices have violated the spirit of California’s meal and rest period laws and constitute
20 acts against the public policy behind these laws.

21 164. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
22 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
23 benefits implemented by section 226.7 withheld and retained by Defendants during a period
24 that commences four years prior to the filing of this complaint; a permanent injunction
25 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
26 Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil
27 Procedure section 1021.5 and other applicable laws; and an award of costs.

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REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself and all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

Class Certification

- 2. That this case be certified as a class action;
- 3. That Plaintiff be appointed as the representative of the Class and Subclass;
- 4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys’ fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

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

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay minimum wages to Plaintiff and class members;

1 11. For general unpaid wages and such general and special damages as may be
2 appropriate;

3 12. For pre-judgment interest on any unpaid compensation from the date such
4 amounts were due, or as otherwise provided by law;

5 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
6 California Labor Code section 1194(a);

7 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

8 15. For such other and further relief as the Court may deem equitable and
9 appropriate.

10 **As to the Third Cause of Action**

11 16. That the Court declare, adjudge, and decree that Defendants violated California
12 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
13 willfully failing to provide all meal periods to Plaintiff and class members;

14 17. That the Court make an award to the Plaintiff and class members of one (1)
15 hour of pay at each employee's regular rate of pay for each workday that a meal period was
16 not provided;

17 18. For all actual, consequential, and incidental losses and damages, according to
18 proof;

19 19. For premiums pursuant to California Labor Code section 226.7(c);

20 20. For pre-judgment interest on any unpaid meal period premiums from the date
21 such amounts were due, or as otherwise provided by law;

22 21. For attorneys' fees pursuant to California Code of Civil Procedure section
23 1021.5, or as otherwise provided by law; and

24 22. For such other and further relief as the Court may deem equitable and
25 appropriate.

26 **As to the Fourth Cause of Action**

27 23. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully

1 failing to authorize and permit Plaintiff and class members to take all rest periods;

2 24. That the Court make an award to the Plaintiff and class members of one (1) hour
3 of pay at each employee's regular rate of pay for each workday that a rest period was not
4 authorized and permitted;

5 25. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 26. For premiums pursuant to California Labor Code section 226.7(c);

8 27. For pre-judgment interest on any unpaid rest period premiums from the date
9 such amounts were due, or as otherwise provided by law;

10 28. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 29. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Fifth Cause of Action**

15 30. That the Court declare, adjudge and decree that Defendants violated the
16 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
17 Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized
18 wage statements thereto;

19 31. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 32. For injunctive relief pursuant to California Labor Code section 226(h);

22 33. For statutory penalties pursuant to California Labor Code section 226(e);

23 34. For attorneys' fees and costs pursuant to California Labor Code section
24 226(e)(1); and

25 35. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Sixth Cause of Action**

28 36. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
2 and/or meal and rest period premiums owed at the time of termination of the employment of
3 Plaintiff and other terminated class members;

4 37. For all actual, consequential and incidental losses and damages, according to
5 proof;

6 38. For waiting time penalties according to proof pursuant to California Labor
7 Code section 203 for all employees who have left Defendants' employ;

8 39. For pre-judgment interest on any unpaid wages from the date such amounts
9 were due, or as otherwise provided by law;

10 40. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 41. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Seventh Cause of Action**

15 42. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
17 overtime wages, minimum wages, and/or meal and rest period premiums during their
18 employment;

19 43. For all actual, consequential and incidental losses and damages, according to
20 proof;

21 44. For statutory penalties according to proof pursuant to California Labor Code
22 section 210;

23 45. For pre-judgment interest on any unpaid wages from the date such amounts
24 were due, or as otherwise provided by law;

25 46. For attorneys' fees pursuant to California Code of Civil Procedure section
26 1021.5, or as otherwise provided by law; and

27 47. For such other and further relief as the Court may deem equitable and
28 appropriate.

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As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 551 and 552 by failing to provide a day’s rest in seven; and that Defendants committed said violations of the Labor Code against Plaintiff and class members;
49. For civil penalties for conduct occurring any time between one year prior to the filing of this complaint and judgment, pursuant to California Labor Code section 558;
50. For pre-judgment and post-judgment interest as provided by law; and
51. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

52. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;
53. For unpaid business-related expenses and such general and special damages as may be appropriate;
54. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;
55. For all actual, consequential, and incidental losses and damages, according to proof;
56. For attorneys’ fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and
57. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

58. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and

1 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
2 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
3 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
4 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
5 employment); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by
6 secretly paying wages lower than required by statute); 551 and 552 (by failing to provide one
7 day's rest in seven); 1198 (by failing to provide suitable seating); and 2802 (by failing to
8 reimburse business expenses);

9 59. For civil penalties pursuant to California Labor Code sections 210, 225.5,
10 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor
11 Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551, 552,
12 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

13 60. For attorneys' fees and costs pursuant to California Labor Code section
14 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
15 Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551,
16 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

17 61. For pre-judgment and post-judgment interest as provided by law; and

18 62. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 **As to the Eleventh Cause of Action**

21 63. That the Court declare, adjudge and decree that Defendants' conduct of failing
22 to provide Plaintiff and class members all overtime wages due to them, failing to provide
23 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
24 class members all meal periods, failing to authorize and permit Plaintiff and class members to
25 take all rest periods, failing to provide Plaintiff and class members accurate and complete
26 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
27 failing timely to pay Plaintiff and class members all earned wages during employment,
28 unlawfully deducting a portion of wages previously paid, secretly paying a lower wage, failing

1 to provide one day's rest in seven, and failing to reimburse Plaintiff and class members for
2 business-related expenses, constitutes an unlawful business practice in violation of California
3 Business and Professions Code sections 17200, *et seq.*;

4 64. For restitution of unpaid wages to Plaintiff and all class members and
5 prejudgment interest from the day such amounts were due and payable;

6 65. For the appointment of a receiver to receive, manage and distribute any and all
7 funds disgorged from Defendants and determined to have been wrongfully acquired by
8 Defendants as a result of violations of California Business & Professions Code sections 17200
9 *et seq.*;

10 66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
11 California Code of Civil Procedure section 1021.5; and

12 67. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Twelfth Cause of Action**

15 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
16 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
17 an unfair business practice in violation of California Business and Professions Code sections
18 17200, *et seq.*;

19 69. For restitution of the statutory benefits under section 226.7 unfairly withheld
20 from Plaintiff and class members and prejudgment interest from the day such amounts were
21 due and payable;

22 70. For the appointment of a receiver to receive, manage and distribute any and all
23 funds disgorged from Defendants and determined to have been wrongfully acquired by
24 Defendants as a result of violations of California Business & Professions Code sections 17200
25 *et seq.*;

26 71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
27 California Code of Civil Procedure section 1021.5;

28 72. For pre-judgment and post-judgment interest as provided by law; and

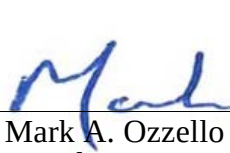
1 73. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: August 02, 2021

Respectfully submitted,

Capstone Law APC

5
6
7 By:



8 Mark A. Ozzello
9 Brandon K. Brouillette
10 Joseph Hakakian

11 Attorneys for Musharrof Hussain
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EXHIBIT 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
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Anthony.Castillo@capstonelawyers.com

October 12, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/295>)

Subject: *Musharrof Hussain v. Wilshire HM, LLC, et al.*

Dear PAGA Administrator:

This office represents Musharrof Hussain in connection with his claims under the California Labor Code. Mr. Hussain was an employee of WILSHIRE HM, LLC; SANTA MONICA PROPER JV, LLC; and/or PROPER HOSPITALITY, LLC. For the purpose of this letter, Mr. Hussain collectively refers to these entities as "SMPH."

The employers may be contacted directly at the addresses below:

WILSHIRE HM, LLC
1729 ABBOT KINNEY BLVD
VENICE CA 90291

PROPER HOSPITALITY, LLC
1437 7TH STREET SUITE 250
SANTA MONICA CA 90401

SANTA MONICA PROPER JV, LLC
1437 7TH ST STE 250
SANTA MONICA CA 90401

Mr. Hussain intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Hussain seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SMPH as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

SMPH employed Mr. Hussain as an hourly paid, non-exempt employee from approximately April 2019 to February 2020. Mr. Hussain worked for SMPH as an In-Room Dining Server at the its Santa Monica Proper Hotel, located at 700 Wilshire Boulevard, Santa Monica, California. During his employment, Mr. Hussain typically worked eight (8) hours or more per day and five (5) to seven (7) days per week. Throughout Mr. Hussain's employment with SMPH, he earned approximately

\$16.63 per hour. His job duties included, without limitation, receiving guest in-room dining orders, delivering in-room dining orders to guest rooms, cleaning and maintaining his work area, performing side work, and providing guest services on an as-needed basis.

SMPH committed one or more of the following Labor Code violations against Mr. Hussain, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

SMPH’s Company-Wide and Uniform Payroll and HR Practices

WILSHIRE HM, LLC; SANTA MONICA PROPER JV, LLC; and PROPER HOSPITALITY, LLC are Delaware limited liability companies. SMPH owns and operates boutique hotels and residences in Arizona, California, and Texas. SMPH’s California properties include the Downtown LA Proper Hotel, Santa Monica Proper Hotel, San Francisco Proper Hotel, and Hotel June. Upon information and belief, SMPH maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Venice, California, for all non-exempt, hourly paid employees working for SMPH in California, including Mr. Hussain and other aggrieved employees. At all relevant times, SMPH issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Hussain and other aggrieved employees, regardless of its location or position.

Upon information and belief, SMPH maintains a centralized Payroll department at its corporate headquarters in Venice, California, which processes payroll for all non-exempt, hourly paid employees working for SMPH in California, including Mr. Hussain and other aggrieved employees. Further, SMPH issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Hussain and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, SMPH utilized the same methods and formulas when calculating wages due to Mr. Hussain and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Mr. Hussain’s experience and counsel’s review of those records currently available relating to Mr. Hussain’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Hussain reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

SMPH willfully failed to pay all overtime wages owed to Mr. Hussain and other aggrieved employees. During the relevant time period, Mr. Hussain and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, SMPH had, and continues to have, a company-wide policy and/or practice of understaffing its hotel locations while assigning heavy workloads and adhering to strict labor budgets, which led to Mr. Hussain and other aggrieved employees being required to perform tasks off-the-clock. SMPH's insufficient staffing, coupled with a high workload and hotel guest demands, created a work environment whereby SMPH's management instructed Mr. Hussain and other aggrieved employees to perform tasks outside their scheduled shifts in order to get the work done. For example, SMPH would instruct Mr. Hussain and other aggrieved employees to return to work after clocking out to complete additional tasks. As an example, SMPH asked Mr. Hussain to return to work after he clocked out of his shift to perform work duties, such as carrying laundry bags to the docks for pickup and responding to questions regarding guest orders and complaints. When SMPH required Mr. Hussain and other aggrieved employees to perform duties while they were clocked out, SMPH did not record this additional time worked or compensate Mr. Hussain and other aggrieved employees for this time. SMPH's practice of adhering to strict labor budgets discouraged Mr. Hussain and other aggrieved employees from being able to record hours worked outside their scheduled shifts.

In addition, SMPH would contact Mr. Hussain and other aggrieved employees outside of their scheduled shifts to discuss work-related matters. Specifically, SMPH sent Mr. Hussain and other aggrieved employees text messages to discuss, among other things, resolving hotel guest complaints. When SMPH required Mr. Hussain and other aggrieved employees to perform duties while they were clocked out, SMPH did not record this additional time worked or compensate Mr. Hussain and other aggrieved employees for this time.

Second, during the relevant time period, SMPH had a company-wide policy and/or practice of failing to schedule meal periods. SMPH's company-wide understaffing of hotels and high workload and guest demand, coupled with their failure to schedule meal periods, resulted in a failure to provide Mr. Hussain and other aggrieved employees with adequate meal period coverage. Mr. Hussain and other aggrieved employees worked through meal periods because there were not enough employees on duty to handle the workload and attend to hotel guests, especially during peak hotel seasons. As a result, Mr. Hussain and other aggrieved employees were not afforded thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods and were not paid for the time they spent working during meal periods. SMPH knew or should have known that Mr. Hussain and other aggrieved employees were being made to work during unpaid meal periods but failed to compensate them for this off-the-clock work.

Third, during the relevant time period, SMPH willfully, and on a company-wide basis, failed to pay overtime wages owed to Mr. Hussain and other aggrieved employees for the first eight (8) hours worked on the seventh day of work in any one workweek at the rate of no less than one and one-half times the regular rate of pay. SMPH willfully and on a company-wide basis also failed to pay overtime wages owed to Mr. Hussain and other aggrieved employees for work in excess of eight (8) hours on any seventh day of the workweek at the rate of no less than two (2) times the regular rate of pay. During the relevant time period, SMPH required Mr. Hussain and other aggrieved employees to

work seven (7) or more consecutive days in the same workweek without paying them overtime wages for the seventh day of work at the required rates of pay.

SMPH knew or should have known that as a result of these company-wide practices and/or policies, Mr. Hussain and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Hussain and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Hussain and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked, in violation of California Labor Code sections 510 and 1198. SMPH's failure to pay overtime pay to Mr. Hussain and other aggrieved employees for the first eight (8) hours worked on the seventh day of work in any one workweek also violates the provisions of Labor Code sections 510 and 1198.

Furthermore, SMPH did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, SMPH paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SMPH failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, SMPH failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Hussain and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As stated, due to SMPH's company-wide policies and/or practices of understaffing its hotels while assigning heavy workloads and policy and/or practice of adhering to strict labor budgets, Mr. Hussain and other aggrieved employees were required to perform work off-the-clock. For example, Mr. Hussain and other aggrieved employees were required to perform their duties after clocking out for the day. In particular, Mr. Hussain would be called back to work by SMPH and instructed to take out laundry bags to the docks for pickup. Mr. Hussain and other aggrieved employees were also required to respond to communications from SMPH's management via text message regarding guest complaints and other matters while off-the-clock. Additionally, as set forth above, due to SMPH's company-wide policies and/or practices of understaffing, assigning heavy workloads, failing to schedule meal periods, and resultant lack of meal period coverage, Mr. Hussain and other aggrieved employees were impeded from taking all meal periods to which they were entitled and were required to work off-the-clock. For example, Mr. Hussain and other aggrieved employees were required to

forego meal periods altogether to fulfill guest orders and requests, especially during peak hotel seasons.

Thus, SMPH did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, SMPH did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, SMPH regularly failed to pay at least minimum wages to Mr. Hussain and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mr. Hussain and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as stated, SMPH had, and continues to have, a company-wide policy and/or practice of understaffing its hotel locations and adhering to strict labor budgets. As a result, Mr. Hussain and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period, have their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, during his employment, Mr. Hussain was required to forego his meal periods and continue to fulfill guest orders and provide in-room dining services. Further, as stated, SMPH had a company-wide practice of failing to schedule meal periods, which further caused Mr. Hussain and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Hussain would take his meal periods after six (6) hours into his shift, instead of before the end of the fifth hour of work, as required by California law.

In addition, during the relevant time period, other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Hussain and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

SMPH knew or should have known that as a result of its policies, that Mr. Hussain and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SMPH further knew or should have known that it did not pay Mr. Hussain and other aggrieved employees all meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, SMPH engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Hussain and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that SMPH did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, SMPH did not pay other aggrieved employees at the correct rate of pay for premium wages because SMPH systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SMPH failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Hussain and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, SMPH regularly failed to authorize and permit Mr. Hussain and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SMPH's policies and/or practice of understaffing prevented Mr. Hussain and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. SMPH also failed to schedule rest periods, which, coupled with SMPH's failure to provide adequate rest period coverage, further led to Mr. Hussain and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, SMPH maintained and implemented a company-wide practice and/or policy requiring that Mr. Hussain and other aggrieved employees remain on SMPH's premises during their rest periods. Because Mr. Hussain and other aggrieved employees were restricted from leaving SMPH's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, SMPH effectively maintained control over Mr. Hussain and other aggrieved employees during rest periods, and, as a result of this rest period policy, SMPH did not relinquish control over Mr. Hussain and other aggrieved employees during rest periods.

As a result of SMPH's practices and policies, Mr. Hussain and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Hussain only received one 10-minute rest period during his 8-hour shifts. Due to the number of guest in-room dining orders and lack of rest period coverage provided by SMPH, Mr. Hussain was not able to take all rest periods to which he was entitled. Further, when Mr. Hussain was able to take a rest period, his rest periods were often interrupted or cut short by SMPH's management who would interrupt him to discuss guest orders. Other aggrieved employees similarly were not authorized and permitted to take all rest periods they were entitled to take during their shifts.

SMPH also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Hussain and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SMPH did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SMPH did not pay other aggrieved employees at the correct rate of pay for premium wages because SMPH failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SMPH failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Hussain and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. SMPH has not provided Mr. Hussain and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, SMPH has knowingly and intentionally provided Mr. Hussain and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SMPH issued uniform wage statements to Mr. Hussain and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, SMPH violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because SMPH did not record the time Mr. Hussain and other aggrieved employees spent working off the clock, SMPH did not list the correct amount of gross wages and net wages earned by Mr. Hussain and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SMPH failed to accurately list the total number of hours worked by Mr. Hussain and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because SMPH did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, SMPH did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, SMPH also failed to list the correct amount of net wages in violation of section 226(a)(5). SMPH also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, SMPH issued uniform wage statements to Mr. Hussain and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. For example, Mr. Hussain's final wage statement incorrectly lists SMPH's address as "700 Wilshire Blvd, Santa Monica, California 90401", but, according to the California Secretary of State's website, SMPH's address is "1729 Abbot Kinney Blvd, Venice California 90291." *See example paystub below.*

WILSHIRE HM, LLC 700 WILSHIRE BLVD SANTA MONICA, CA 90401	Period Beginning Date: 02/24/2020 Period Ending: 03/08/2020 Pay Date: 02/28/2020
Social Security Number: [REDACTED] Taxable Marital Status: [REDACTED] Exemptions/Allowances: Federal: [REDACTED] State: [REDACTED] Local: [REDACTED]	MUSHARROF HUSSAIN [REDACTED]

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her

social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SMPH willfully failed to maintain accurate payroll records for Mr. Hussain and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SMPH failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Hussain and other aggrieved employees, in violation of section 1198. Furthermore, in light of SMPH’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, SMPH kept no records of meal start and end times for second meal periods.

Because SMPH failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Hussain and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Hussain and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Hussain and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of

the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, SMPH failed to pay Mr. Hussain and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Hussain and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

SMPH willfully failed to pay Mr. Hussain and other aggrieved employees who are no longer employed by SMPH all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving SMPH's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Hussain and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, SMPH unlawfully deducted a portion of wages previously paid to Mr. Hussain and other aggrieved employees in violation of California Labor Code section 221.

On information and belief, SMPH systematically, and on a company-wide basis, deducted parking fees from Mr. Hussain's and other aggrieved employees' wages without obtaining their express written authorization prior to deducting such fees. By way of example, SMPH deducted \$50.00 in parking fees from Mr. Hussain's wages for the pay period ending October 6, 2019, and deducted \$50.00 in parking fees from Mr. Hussain's wages for the pay period ending October 20, 2019. Mr. Hussain did not provide express written authorization for SMPH to deduct these and other parking fees from his wages. On information and belief, other aggrieved employees similarly did not provide express written authorization for SMPH to deduct parking fees from their wages.

Mr. Hussain and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, SMPH willfully and systematically deducted parking fees from Mr. Hussain's and other aggrieved employees' wages without their express written authorization, which resulted in a discount in their wages. SMPH's deduction of parking fees from its employees' wages resulted in the payment of less than statutorily required wages to Mr. Hussain and other aggrieved employees. In doing so, SMPH acted with the intent to deprive Mr. Hussain and other aggrieved employees of statutory wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, to which they were entitled to under California law. Thus, SMPH paid Mr. Hussain and other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Hussain and other aggrieved employees were properly paid.

Mr. Hussain and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant time period, on information and belief, SMPH scheduled Mr. Hussain and other aggrieved employees to work eight (8) or more hours per day and more than seven (7) consecutive days in a workweek. On information and belief, during his employment, Mr. Hussain worked seven (7) consecutive days in a workweek. Because Mr. Hussain and other aggrieved employees worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Hussain and other aggrieved employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, SMPH caused Mr. Hussain and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Hussain and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

SMPH’s California hotels’ front desk, registration desk, and concierge desk areas are generally similar in their layout and design and there was, and continues to be, space behind the front desk, registration desk, and concierge desk areas to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. SMPH could provide other aggrieved employees with a seat or stool at the front desks, registration desks, and concierge desks, but instead denies them seating and forces aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind the front desks, registration desks, and concierge desks, regardless of their actual job title or description. The nature of the work of an employee performing front desk, registration desk, and concierge duties can reasonably be accomplished from a seated position. However, SMPH systematically, and on a company-wide basis, does not provide seats or stools at or near front desks, registration desks, or concierge desks, forcing other aggrieved employees to stand throughout their work shifts.

SMPH violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. SMPH’s management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of SMPH’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. SMPH’s failure to provide suitable seating to

other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(A).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring SMPH into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11050(14)(B) provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

The IWC states that section 14(B) applies during "lulls in operation" when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during "lulls in operation." *Id.*

As stated, SMPH's California hotel locations are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Hussain and other aggrieved employees during lulls in operation. SMPH could provide Mr. Hussain and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Mr. Hussain and other aggrieved employees to stand throughout the day.

SMPH did not provide Mr. Hussain and/or other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Hussain and other aggrieved employees engaged in duties in which the nature of the work required standing, SMPH denied them the use of seats nearby during lulls in their work duties. Moreover, SMPH did not inform Mr. Hussain and other aggrieved employees of their rights to a seat or stool under California law.

As a result of SMPH's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Hussain and other aggrieved employees were forced to stand during shifts and denied seats. SMPH's failure to provide suitable seating to Mr. Hussain and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(B).

Mr. Hussain and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring SMPH into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, SMPH had a company-wide policy of requiring Mr. Hussain and other aggrieved employees to utilize their own personal cellular phones and cellular data to discuss work-related matters, but SMPH failed to reimburse them for the costs of their work-related cellular phone expenses. SMPH would contact Mr. Hussain and other aggrieved employees on their personal cellular phones to discuss guest complaints and discuss resolving guest issues. Although SMPH required Mr. Hussain and other aggrieved employees to utilize their personal cellular phones to address work-related responsibilities, SMPH failed to reimburse them for their cellular phone expenses.

In addition, SMPH required Mr. Hussain and other aggrieved employees to purchase specific footwear for use while working at SMPH's hotels and gave them instructions for which brand and style of footwear to purchase, but did not fully reimburse them for this cost. Specifically, SMPH instructed Mr. Hussain to purchase one (1) of two (2) Adidas styles to be worn at work. Mr. Hussain followed SMPH's instructions and purchased a pair of one of the Adidas style shoes for approximately \$100.00. However, SMPH only reimbursed Mr. Hussain for \$65.00.

SMPH could have provided Mr. Hussain and other aggrieved employees with the actual tools for use on the job, such as company phones or required footwear, or SMPH could have fully reimbursed employees for the costs of their cellular phone usage and uniform items. Instead, SMPH passed these operating costs off onto Mr. Hussain and other aggrieved employees. At all relevant times, Mr. Hussain did not earn at least two (2) times the minimum wage.

Thus, SMPH had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Hussain and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject

to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” SMPH, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Hussain’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Hussain seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Hussain, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against SMPH for violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Hussain seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
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Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: WILSHIRE HM, LLC (via U.S. Certified Mail); SANTA MONICA PROPER JV, LLC (via U.S. Certified Mail); PROPER HOSPITALITY, LLC (via U.S. Certified Mail)

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