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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

MATILDA BROOKS, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

HERSHA HOSPITALITY MANAGEMENT,
L.P., a Pennsylvania corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 20CV373660

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
7. Penalties Pursuant to Labor Code § 2699, *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff MATILDA BROOKS (“Plaintiff”), on behalf of herself, all others similarly situated,
2 aggrieved employees, the State of California, and the general public, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class an representative action against Defendants HERSHA
5 HOSPITALITY MANAGEMENT, L.P., a Pennsylvania corporation; and DOES 1 through 50,
6 inclusive, (collectively referred to as “Defendants”) for alleged violations of the California Labor
7 Code and California Business and Professions Code. As set forth below, Plaintiff alleges that
8 Defendants have:

- 9 (1) failed to pay them at least minimum wage for all hours worked;
- 10 (2) failed to pay them overtime wages at the correct rate;
- 11 (3) failed to pay them double time wages at the correct rate;
- 12 (4) failed to pay them overtime and/or double time wages by failing to include all
13 applicable remuneration in calculating the regular rate of pay;
- 14 (5) failed to provide him and all other similarly situated individuals with meal
15 periods;
- 16 (6) failed to provide them with rest periods;
- 17 (7) failed to pay them premium wages for missed meal and/or rest periods;
- 18 (8) failed to provide them with accurate written wage statements; and
- 19 (9) failed to pay them all of their final wages following separation of employment.

20 Based on these alleged Labor Code violations, Plaintiff now brings this class and
21 representative action to recover unpaid wages, liquidated damages, penalties, restitution and related
22 relief on behalf of herself, all others similarly situated, and the general public.

23 **2. JURISDICTION AND VENUE**

24 3. This Court has subject matter jurisdiction to hear this case because the monetary
25 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction
26 of the Superior Court of the State of California.

27 4. Venue is proper in the County of Santa Clara pursuant to Code of Civil Procedure
28 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions

1 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
2 maintains offices, transacts business and/or has an agent therein.

3 5. Venue is proper in Santa Clara County because Defendants' have at all times alleged
4 herein, conducted business in Santa Clara County, and throughout California. As such, venue is
5 proper in any county in California.

6 **PARTIES**

7 6. Plaintiff MATILDA BROOKS is, and at all relevant times mentioned herein, an
8 individual residing in the State of California..

9 7. Plaintiff is informed and believes, and thereupon alleges that Defendant HERSHA
10 HOSPITALITY MANAGEMENT, L.P., is, and at all relevant times mentioned herein, a
11 Pennsylvania corporation doing business in the State of California.

12 8. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
13 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
14 will amend this Complaint to allege the true names and capacities of the DOE defendants when
15 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
16 named defendants are responsible in some manner for the occurrences, acts and omissions alleged
17 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
18 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
19 defendants when ascertained.

20 9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
21 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,
22 directors, associates, joint venturers, joint employers, principals or co-participants of some or all of
23 the other defendants, and in doing the things alleged herein, were acting within the course and scope
24 of such relationship and with the full knowledge, consent and ratification by such other defendants.

25 10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
26 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
27 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
28 and omissions alleged herein.

1 11. This action has been brought and may be maintained as a class action pursuant to Code
2 of Civil Procedure section 382 because there is a well-defined community of interest among the
3 persons who comprise the readily ascertainable classes defined below and because Plaintiff is
4 unaware of any difficulties likely to be encountered in managing this case as a class action.

5 12. **Relevant Time Period:** The relevant time period is defined as the time period
6 beginning four years prior to the filing of this action until judgment is entered.

7 **Hourly Employee Class:** All persons employed by Defendants, collectively or separately,
8 and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions
9 in California four years prior to the filing of this action and ending on the date that final
judgment is entered in this action (“Hourly Employee Class”).

10 **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in a
11 shift in excess of five hours during the four years prior to the filing of this action and
ending on the date that final judgment is entered in this action.

12 **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a shift
13 of at least three and one-half (3.5) hours the four years prior to the filing of this action
and ending on the date that final judgment is entered in this action.

14 **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who
15 separated from their employment with Defendants during the period beginning three
years before the filing of this action and ending when final judgment is entered.

16 **Wage Statement Class:** All persons employed by Defendants in California during the period
17 beginning one year before the filing of this action and ending when final judgment is entered.

18 **UCL Class:** All **Hourly Employee Class** members employed by Defendants in California
19 during the four years prior to the filing of this action and ending on the date that final judgment
is entered in this action.

20 13. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right
21 to amend or modify the class definitions with greater specificity, by further division into sub-classes
22 and/or by limitation to particular issues.

23 14. **Numerosity:** The class members are so numerous that the individual joinder of each
24 individual class member is impractical. While Plaintiff does not currently know the exact number of
25 class members, Plaintiff is informed and believes, and thereupon alleges that the actual number
26 exceeds the minimum required for numerosity under California law.

27 15. **Commonality and Predominance:** Common questions of law and fact exist as to all
28 class members and predominate over any questions which affect only individual class members.

1 These common questions include, but are not limited to:

- 2 A. Whether Defendants maintained a policy or practice of failing to provide
- 3 employees with their meal periods;
- 4 B. Whether Defendants maintained a policy or practice of failing to provide
- 5 employees with their rest periods;
- 6 C. Whether Defendants failed to pay premium wages to class members when they
- 7 have not been provided with required meal and/or rest periods;
- 8 D. Whether Defendants failed to pay minimum and/or overtime wages to class
- 9 members as a result of policies that fail to provide meal periods in accordance
- 10 with California law;
- 11 E. Whether Defendants failed to pay minimum and/or overtime wages to class
- 12 members for all time worked;
- 13 F. Whether Defendants failed to provide class members with accurate written
- 14 wage statements as a result of providing them with written wage statements
- 15 with inaccurate entries for, among other things, amounts of gross and net
- 16 wages, and total hours worked;
- 17 G. Whether Defendants applied policies or practices that result in late and/or
- 18 incomplete final wage payments;
- 19 H. Whether Defendants are liable to class members for waiting time penalties
- 20 under Labor Code section 203; and
- 21 I. Whether class members are entitled to restitution of money or property that
- 22 Defendants may have acquired from them through unfair competition;

23 16. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
24 is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to
25 comply with the California Labor Code and Business and Professions Code as alleged in this
26 Complaint.

27 17. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in
28 that he has no interests that are adverse to, or otherwise conflict with, the interests of absent class

1 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
2 and adequately represent and protect the interests of the other class members.

3 18. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
4 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
5 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf
6 of Plaintiff and absent class members.

7 19. **Superiority:** A class action is vastly superior to other available means for fair and
8 efficient adjudication of the class members' claims and would be beneficial to the parties and the
9 Court. Class action treatment will allow a number of similarly situated persons to simultaneously and
10 efficiently prosecute their common claims in a single forum without the unnecessary duplication of
11 effort and expense that numerous individual actions would entail. In addition, the monetary amounts
12 due to many individual class members are likely to be relatively small and would thus make it difficult,
13 if not impossible, for individual class members to both seek and obtain relief. Moreover, a class
14 action will serve an important public interest by permitting class members to effectively pursue the
15 recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent
16 or contradictory judgments inherent in individual litigation.

17 **GENERAL ALLEGATIONS**

18 20. Plaintiff worked for Defendants from November 8, 2019 through March 6, 2020 as a
19 non-exempt hourly employee.

20 21. Plaintiff and Class members were not paid proper wages for all hours worked. Plaintiff
21 and class members were regularly required to work off the clock, for which they were never paid
22 wages. Specifically, Defendants also had a policy of requiring Plaintiff's and class members to work
23 during their unpaid meal periods. As such, what meal periods were taken by Plaintiff and putative
24 class members were consistently interrupted by work. Thus, Plaintiff and Class Members were
25 regularly required to work during unpaid meal periods which they were systemically denied. These
26 uncompensated hours were worked in excess of eight (8) hours a day and/or forty (40) hours a week
27 entitled Plaintiff and Class Members to overtime wages which they were systemically denied.

28 22. Putative class members were not provided with meal periods of at least thirty (30)

1 minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal
2 period as part of each work shift; (2) no formal written meal policy that encouraged employees to
3 take their meal periods, or that advised putative class members of their meal and rest period rights;
4 and (3) Defendants' practice of requiring putative class members to continue working through their
5 meal and rest periods due to the excessive workload. Defendants also had a common policy and
6 practice of automatically deducting 30 minutes, and up to an hour, of wages from putative class
7 members' time whether a meal period was taken or not. Furthermore, what meal periods were taken
8 by putative class members were consistently interrupted by work. Additionally, Plaintiff and putative
9 class members' meal periods were consistently taken after the completion of their fifth hour of work.
10 Moreover, Plaintiff and putative class members were never afforded the opportunity to take second
11 meal periods when they worked in excess of ten (10) hours a day.

12 23. Putative class members were not provided with rest periods of at least ten (10) minutes
13 for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not
14 scheduling each rest period as part of each work shift; (2) no formal written rest period policy that
15 encouraged employees to take their rest periods, or that advised putative class members of their meal
16 and rest period rights; and (3) Defendants' practice of requiring putative class members to continue
17 working through their rest breaks due to the excessive workload. Putative class members were often
18 given work-related tasks to complete during their rest periods and were never provided the
19 opportunity to take uninterrupted rest breaks to which they were entitled.

20 24. Plaintiff and the putative class were not provided with accurate wage statements as
21 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage
22 statements as "a detachable part of the check, draft, or voucher paying the employee's wages, or
23 separately if wages are paid by personal check or cash, an accurate itemized statement in writing."
24 Additionally, the wage statements issued to Plaintiff and class members were not recorded in "ink or
25 other indelible form."

26 25. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
27 earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

28 26. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked

1 by the employee” were not accurately reflected in that: all hours worked, including overtime, were
2 not included.

3 27. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned”
4 were not accurately reflected in that: all hours worked, including overtime, were not included.

5 28. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
6 hourly rates in effect during the pay period and the corresponding number of hours worked at each
7 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
8 overtime, were not included.

9 29. Additionally, Plaintiff and class members were required to purchase no-slip shoes and
10 black slacks in order to execute his duties under Defendants’ employ, and for which hey were never
11 reimbursed.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS**

14 **(Lab. Code §§ 004, 223, 226.7, 512 and 1198)**

15 **(Plaintiff and Meal Period Sub-Class)**

16 30. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if
17 fully alleged herein.

18 31. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
19 non-exempt employees of Defendant entitled to the full meal period protections of both the Labor
20 Code and the applicable Industrial Welfare Commission Wage Order.

21 32. Labor Code section 512 and Section 11 of the applicable Industrial Welfare
22 Commission Wage Order impose an affirmative obligation on employers to provide non-exempt
23 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
24 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty
25 minutes for each work period of ten hours.

26 33. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
27 Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work
28 during required meal periods and require employers to pay non-exempt employees an hour of

1 premium wages on each workday that the employee is not provided with the required meal period.

2 34. Compensation for missed meal periods constitutes wages within the meaning of Labor
3 Code section 200.

4 35. Labor Code section 1198 makes it unlawful to employ a person under conditions that
5 violate the applicable Wage Order.

6 36. Section 11 of the applicable Wage Order states:

7 “No employer shall employ any person for a work period of more than five (5) hours
8 without a meal period of not less than 30 minutes, except that when a work period of
9 not more than six (6) hours will complete the day’s work the meal period may be
10 waived by mutual consent of the employer and employee. Unless the employee is
11 relieved of all duty during a 30 minute meal period, the meal period shall be considered
12 an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall
13 be permitted only when the nature of the work prevents an employee from being
14 relieved of all duty and when by written agreement between the parties an on-the-job
15 paid meal period is agreed to. The written agreement shall state that the employee
16 may, in writing, revoke the agreement at any time.”

17 37. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
18 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
19 members were not subject to valid on-duty meal period agreements with Defendants.

20 38. Plaintiff alleges that, at all relevant times during the applicable limitations period,
21 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
22 **Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
23 hour work period, as required by Labor Code section 512 ad the applicable Wage Order.

24 39. Plaintiff alleges that, at all relevant times during the applicable limitations period,
25 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
26 **Class** members when they worked five (5) hours without clocking out for any meal period.

27 40. Plaintiff alleges that, at all relevant times during the applicable limitations period,
28 Defendants maintained a policy or practice of requiring Plaintiff and **Meal Period Sub-Class**
members to work during their unpaid meal periods. What meal periods were taken by **Meal Period**
Sub-Class members were consistently interrupted by work. Additionally, Plaintiff and **Meal Period**
Sub-Class members’ meal periods were consistently taken after the completion of their fifth hour of
work. Moreover, Plaintiff and **Meal Period Sub-Class** members were never afforded the opportunity

1 to take second meal periods when they worked in excess of ten (10) hours a day.

2 41. Plaintiff alleges that, at all relevant times during the applicable limitations period,
3 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
4 **Sub-Class** with a second meal period when they worked shifts of ten or more hours and failed to pay
5 them premium wages as required by Labor Code 512 and the applicable Wage Order.

6 42. Moreover, Defendants written policies fail to inform Meal period Class Members of
7 their meal period rights under the Labor Code and applicable Wage Orders.

8 43. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
9 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
10 regular rates of pay when required meal periods were not provided.

11 44. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of
12 herself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest
13 thereon, and costs of suit.

14 45. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
15 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the
16 **Meal Period Sub-Class** members, seek to recover reasonable attorneys' fees.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REST PERIODS**

19 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

20 **(Plaintiff and Rest Period Sub-Class)**

21 46. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
22 herein.

23 47. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
24 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
25 Code and the applicable Wage Order.

26 48. Section 12 of the applicable Wage Order imposes an affirmative obligation on
27 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
28 minutes of net rest time for each four hour work period, or major fraction thereof, that must be in the

1 middle of each work period insofar as practicable.

2 49. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
3 employers from requiring employees to work during required rest periods and require employers to
4 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each
5 workday that the employee is not provided with the required rest period(s).

6 50. Compensation for missed rest periods constitutes wages within the meaning of Labor
7 Code section 200.

8 51. Labor Code section 1198 makes it unlawful to employ a person under conditions that
9 violate the Wage Order.

10 52. Plaintiff alleges that, at all relevant times during the applicable limitations period,
11 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
12 with net rest period of at least ten uninterrupted minutes for each four hour work period, or major
13 fraction thereof, as required by the applicable Wage Order.

14 53. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class**
15 members additional premium wages when required rest periods were not provided.

16 54. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of herself
17 and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
18 costs of suit.

19 55. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
20 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest**
21 **Period Sub-Class** members, seek to recover reasonable attorneys' fees.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

24 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

25 **(Plaintiff and Hourly Employee Class)**

26 56. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
27 herein.

28 57. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been

1 non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
2 applicable Wage Order.

3 58. Section 2 of the applicable Wage Order defines “hours worked” as “the time during
4 which an employee is subject to the control of the employer, and includes all the time the employee
5 is suffered or permitted to work, whether or not required to do so.”

6 59. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
7 employees at least the minimum wage set forth therein for all hours worked, which consist of all hours
8 that an employer has actual or constructive knowledge that employees are working.

9 60. Labor Code section 1194 invalidates any agreement between an employer and an
10 employee to work for less than the minimum or overtime wage required under the applicable Wage
11 Order.

12 61. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
13 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
14 to the underlying unpaid minimum wages and interest thereon.

15 62. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
16 than the minimum wage required under the applicable Wage Order for all hours worked during a
17 payroll period.

18 63. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
19 person acting either individually or as an officer, agent or employee of another person, to pay an
20 employee, or cause an employee to be paid, less than the applicable minimum wage.

21 64. Labor Code section 1198 makes it unlawful for employers to employ employees under
22 conditions that violate the applicable Wage Order.

23 65. Labor Code section 204 requires employers to pay non-exempt employees their earned
24 wages for the normal work period at least twice during each calendar month on days the employer
25 designates in advance and to pay non-exempt employees their earned wages for labor performed in
26 excess of the normal work period by no later than the next regular payday.

27 66. Labor Code section 223 makes it unlawful for employers to pay their employees lower
28 wages than required by contract or statute while purporting to pay them legal wages.

1 67. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
2 to pay non-exempt employees overtime wages of no less than one and one-half times their respective
3 regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in
4 excess of forty hours in one workweek, and/or for the first eight hours worked on the seventh
5 consecutive day of one workweek.

6 68. Labor Code section 510 and Section 3 of the applicable Wage Order also require
7 employers to pay non-exempt employees overtime wages of no less than two times their respective
8 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
9 worked in excess of eight hours on a seventh consecutive workday during the workweek.

10 69. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
11 centrally devised policies and practices to her and **Hourly Employee Class** members with respect to
12 working conditions and compensation arrangements.

13 70. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
14 **Employee Class** members for all time worked, including but not limited to, overtime hours at
15 statutory and/or agreed rates.

16 71. At all relevant times during the applicable limitations period, Defendants maintained
17 a policy or practice of requiring Plaintiff and **Hourly Employee Class** members' to work during meal
18 periods for which they were not paid wages. Furthermore, what meal periods were taken by **Hourly**
19 **Employee Class** members were consistently interrupted by work.

20 72. As a result of Defendants' policy or practices, Plaintiff and **Hourly Employee Class**
21 members were required to perform off-the-clock work that Defendants either knew or should have
22 known they were working.

23 73. Plaintiff is informed and believes that, at all relevant times during the applicable
24 limitations period, Defendants maintained a policy or practice of not paying hourly wages to **Hourly**
25 **Employee Class** members for all time worked, including but not limited to, overtime hours at
26 statutory and/or agreed rates by suffering or permitting them to work during unpaid meal periods.

27 74. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
28 **Employee Class** members all earned wages every pay period at the correct rates, including overtime

1 rates, because Defendants directed, permitted or otherwise encouraged Plaintiff and **Hourly**
2 **Employee Class** members to perform off-the-clock work, discussed herein.

3 75. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
4 members have suffered damages in an amount, subject to proof, to the extent they were not paid the
5 full amount of wages earned during each pay period during the applicable limitations period,
6 including overtime wages.

7 76. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
8 behalf of herself and **Hourly Employee Class** members, seek to recover unpaid straight time and
9 overtime wages, interest thereon and costs of suit.

10 77. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
11 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and
12 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

15 **(Lab. Code § 226)**

16 **(Plaintiff and Wage Statement Penalties Sub-Class)**

17 78. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
18 herein.

19 79. Labor Code section 226(a) states:

20 "An employer, semimonthly or at the time of each payment of wages, shall furnish to
21 his or her employee, either as a detachable part of the check, draft, or voucher paying
22 the employee's wages, or separately if wages are paid by personal check or cash, an
23 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
24 worked by the employee, except as provided in subdivision (j), (3) the number of
25 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
26 rate basis, (4) all deductions, provided that all deductions made on written orders of
27 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
28 inclusive dates of the period for which the employee is paid, (7) 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, (8) the name and
address of the legal entity that is the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682, the name and address of the
legal entity that secured the services of the employer, and (9) all applicable hourly
rates in effect during the pay period and the corresponding number of hours worked at
each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
temporary services employer as defined in Section 201.3, the rate of pay and the total

1 hours worked for each temporary services assignment. The deductions made from
2 payment of wages shall be recorded in ink or other indelible form, properly dated,
3 showing the month, day, and year, and a copy of the statement and the record of the
4 deductions shall be kept on file by the employer for at least three years at the place of
5 employment or at a central location within the State of California. For purposes of
6 this subdivision, ‘copy’ includes a duplicate of the itemized statement provided to an
7 employee or a computer-generated record that accurately shows all of the information
8 required by this subdivision.”

9 80. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize the
10 “detachable part of the check” provision and the “accurate itemized statement in writing” provision
11 of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee
12 retains the right to elect to receive a written paper stub or record and that those who are provided with
13 electronic wage statements retain the ability to easily access the information and convert the electronic
14 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

15 81. Plaintiff is informed and believes that, at all relevant times during the applicable
16 limitations period, Defendants have failed to provide **Wage Statement Class** members with written
17 wage statements as described above. Additionally, the wage statements issued to class members
18 failed to account for the unpaid minimum wages, overtime, and premium pay wages described
19 above.

20 82. Plaintiff is informed and believes that Defendants’ failure to provide her and **Wage**
21 **Statement Class** members with accurate written wage statements were intentional in that Defendants
22 have the ability to provide them with accurate wage statements but have intentionally provided them
23 with written wage statements that Defendants have known do not comply with Labor Code section
24 226(a).

25 83. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
26 Defendants have violated their legal rights to receive accurate wage statements and have misled them
27 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
28 statements have prevented immediate challenges to Defendants’ unlawful pay practices, has required
discovery and mathematical computations to determine the amount of wages owed, has caused
difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
submission of inaccurate information about wages and deductions to federal and state government

1 agencies.

2 84. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of herself and **Wage**
3 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in
4 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
5 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
6 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

9 **(Lab. Code §§ 201-203)**

10 **(Plaintiff and Waiting Time Penalties Sub-Class)**

11 85. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
12 herein.

13 86. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have
14 been entitled, upon the end of their employment with Defendants, to timely payment of all wages
15 earned and unpaid before termination or resignation.

16 87. At all relevant times, pursuant to Labor Code section 201, employees who have been
17 discharged have been entitled to payment of all final wages immediately upon termination.

18 88. At all relevant times, pursuant to Labor Code section 202, employees who have
19 resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to
20 payment of all final wages at the time of resignation.

21 89. Plaintiff is informed and believes that, at all relevant time during the applicable
22 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
23 members all of their final wages in accordance with the Labor Code.

24 90. Plaintiff is informed and believes that, at all relevant times during the applicable
25 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
26 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
27 sections 201 or 202 by failing to timely pay them all final wages.

28 91. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to

1 timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful
2 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
3 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
4 requirements.

5 92. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of herself and
6 **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their
7 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

8 93. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
9 and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-**
10 **Class** members, seek awards of reasonable attorneys' fees and costs.

11 **SIXTH CAUSE OF ACTION**

12 **UNFAIR COMPETITION**

13 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

14 **(Plaintiff and UCL Class)**

15 94. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
16 herein.

17 95. Business and Professions Code section 17200 defines “unfair competition” to include
18 any unlawful business practice.

19 96. Business and Professions Code section 17203-17204 allow a person who has lost
20 money or property as a result of unfair competition to bring a class action in accordance with Code
21 of Civil Procedure section 382 to recover money or property that may have been acquired from
22 similarly situated persons by means of unfair competition.

23 97. California law requires employers to pay hourly, non-exempt employees for all hours
24 they are permitted or suffered to work, including hours that the employer knows or reasonable should
25 know that employees have worked.

26 98. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIRST,
27 SECOND, and THIRD causes of action herein.

28 99. Plaintiff lost money or property as a result of the aforementioned unfair competition.

1 100. Defendants have or may have acquired money by means of unfair competition.

2 101. Plaintiff is informed and believes and thereupon alleges that by committing the Labor
3 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225,
4 226.6, 226.7, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 1199,
5 which make it a misdemeanor to commit the Labor Code violations alleged herein.

6 102. Defendants have committed criminal conduct through their policies and practices of,
7 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt
8 employees with compliant meal and rest periods and pay non-exempt employees for all hours worked.

9 103. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
10 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
11 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows
12 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
13 unlawful or fraudulent business practice to seek restitution on her own behalf and on behalf of
14 similarly situated persons in a class action proceeding.

15 104. As a result of Defendants' violations of the Labor Code during the applicable
16 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
17 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

18 105. Plaintiff is informed and believes that other similarly situated persons have been
19 subject to the same unlawful policies or practices of Defendants.

20 106. Due to the unfair and unlawful business practices in violation of the Labor Code,
21 Defendants have gained a competitive advantage over other comparable companies doing business in
22 the State of California that comply with their legal obligations.

23 107. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
24 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates
25 or is considered unlawful under any other state or federal law.

26 108. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
27 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
28 Defendants, and each of them, and their agents and employees, from further violations of the Labor

1 Code and applicable Wage Orders.

2 109. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiffs
3 request the issuance of temporary, preliminary and permanent injunctive relief enjoining Defendants,
4 and each of them, and their agents and employees, from further violations of the Labor Code and
5 applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an order
6 permanently enjoining Defendants, and each of them, and their respective agents and employees,
7 from further violations of the Labor Code and applicable Industrial Welfare Commission Wage
8 Orders.

9 110. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
10 herself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
11 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
12 and unfair business practices.

13 111. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
14 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
15 reasonable attorneys' fees in connection with their unfair competition claims.

16 112. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
17 herself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
18 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
19 and unfair business practices.

20 113. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
21 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
22 reasonable attorneys' fees in connection with their unfair competition claims.

23 **SEVENTH CAUSE OF ACTION**

24 **CIVIL PENALTIES**

25 **(Lab. Code §§ 2698 et seq.)**

26 114. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
27 herein.

28 115. During the applicable limitations period, Defendants have violated Labor Code

1 sections 201, 202, 203, 204, 210, 223, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1197, and 1198.

2 116. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of
3 herself and other current and former employees, to bring a representative civil action to recover civil
4 penalties pursuant to the procedures set forth in Labor Code section 2699.3 that may, but need not,
5 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

6 117. Plaintiff, a former employee against who Defendants committed one or more of the
7 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
8 within the meaning of Labor Code section 2699(c).

9 118. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
10 section 2699.3.

11 119. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
12 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 210, 223, 226(a),
13 226.7, 227.3, 510, 512, 558, 1194, 1197, and 1198:

14 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 1174, 1194,
15 and 1198, \$100 for each employee per pay period for each initial violation and
16 \$200 for each employee per pay period for each subsequent violation (penalties
17 set by Labor Code section 2699(f)(2));

18 B. For violations of Labor Code section 203, a penalty in an amount not exceeding
19 thirty days pay as waiting time (penalties set by Labor Code section 256);

20 C. For violations of Labor Code section 204, \$100 for each employee for each
21 initial violation that was neither willful nor intentional, \$200 for each
22 employee, plus 25% of the amount unlawfully withheld from each employee,
23 for each initial violation that was either willful or intentional, and \$200 for
24 each employee, plus 25% of the amount unlawfully withheld from each
25 employee, for each subsequent violation, regardless of whether the subsequent
26 violation was either willful or intentional (penalties set by Labor Code section
27 210);

28 D. For violations of Labor Code section 223, \$100 for each employee for each

1 initial violation that was neither willful nor intentional, \$200 for each
2 employee, plus 25% of the amount unlawfully withheld from each employee,
3 for each initial violation that was either willful or intentional, and \$200 for
4 each employee, plus 25% of the amount unlawfully withheld from each
5 employee, for each subsequent violation, regardless of whether the subsequent
6 violation was either willful or intentional (penalties set by Labor Code section
7 225.5);

8 E. For violations of Labor Code section 226(a), if this action is deemed to be an
9 initial citation, \$250 for each employee for each violation. Alternatively, if an
10 initial citation or its equivalent occurred before the filing of this action, \$1,000
11 for each employee for each violation (penalties set by Labor Code section
12 226.3);

13 F. For violation of Labor Code sections 510 and 512, \$50 for each employee for
14 each initial pay period for which the employee was underpaid, and \$100 for
15 each employee for each subsequent pay period for which the employee was
16 underpaid (penalties set by Labor Code section 558);

17 G. For violations of Labor Code section 1197, \$100 for each aggrieved employee
18 for each initial violation of Labor Code section 1197 that was intentional, and
19 \$250 for each aggrieved employee per pay period for each subsequent violation
20 of Labor Code section 1197, regardless of whether the initial violation was
21 intentional (penalties set by Labor Code section 1197.1);

22 H. Pursuant to Labor Code section 2699(g), Plaintiff seeks award of reasonable
23 attorneys' fees and costs in connection with her claims for civil penalties.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general
26 public, prays for relief and judgment against Defendants as follows:

- 27 (1) An order that the action be certified as a class action;
28 (2) An order that Plaintiff be appointed class representative;

- (3) An order that counsel for Plaintiff be appointed class counsel;
- (4) Unpaid wages;
- (5) Actual damages;
- (6) Liquidated damages;
- (7) Restitution;
- (8) Declaratory relief;
- (9) Pre-judgment interest;
- (10) Statutory penalties;
- (11) Civil penalties;
- (12) Costs of suit;
- (13) Reasonable attorneys' fees; and
- (14) Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself, all other similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

Dated: June 11, 2021

SETAREH LAW GROUP



Shaun Setareh
David Keledjian
Attorneys for Plaintiff
MATILDA BROOKS

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PROOF OF SERVICE

I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 9665 Wilshire Blvd., Suite 430 Beverly Hills, CA 90212

On June 11, 2021, I served the foregoing documents described as:

FIRST AMENDED COMPLAINT

in this action by transmitting a true copy thereof enclosed in a sealed envelope addressed as follows:

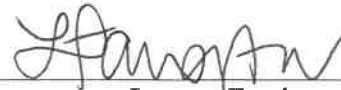
Hilda Aguilar
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FORD & HARRISON LLP
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Los Angeles, CA 90071
**Counsel for Defendant HERSHA
HOSPITALITY MANAGEMENT, L.P.**

[X] ONLY BY ELECTRONIC TRANSMISSION

Only by e-mailing the document(s) to the persons at the e-mail address(es) listed based on notice provided on January 7, 2021 that, during the Coronavirus (COVID-19) pandemic, this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

[X] STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 11, 2021, at Beverly Hills, California.



Lauren Farrington