

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

GUILLERMO NUNEZ, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

INTERSTATE MANAGEMENT
COMPANY, L.L.C., a Limited Liability
Company; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2021-00023535-CU-OE-CTL

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.*, for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 233, 246 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B)

1 Plaintiff Guillermo Nunez (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant INTERSTATE MANAGEMENT
8 COMPANY, L.L.C. (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself,
9 and on behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant Interstate Management Company, L.L.C., (“DEFENDANT”) is a
24 limited liability company that at all relevant times mentioned herein conducted and continues
25 to conduct substantial business in the state of California.

26 5. DEFENDANT primarily operates in the Hotel or Motel Management business
27 industry within the Engineering, Accounting, Research, and Management Services sector.
28

1 6. PLAINTIFF has been employed by DEFENDANT in California since June of
2 2019 and was classified as exempt from overtime from June of 2019 to February of 2020 and
3 reclassified by DEFENDANT as a non-exempt employee in February of 2020. PLAINTIFF is
4 now paid on an hourly basis, classified as a non-exempt employee, and entitled to the legally
5 required meal and rest periods and payment of minimum and overtime wages due for all time
6 worked.

7 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, brings this Representative Action on behalf of the State of California with respect to
10 himself and all individuals who are or previously were employed by DEFENDANT in
11 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
12 the time period of January 20, 2020 until a date as determined by the Court (the "PAGA
13 PERIOD").

14 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
15 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
16 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
17 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 233, 246
18 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
19 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).¹ Based upon
20 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
21 within the meaning of Labor Code § 2699, *et seq.*

22 9. The true names and capacities, whether individual, corporate, subsidiary,
23 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
24 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
25 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
26 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.

27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
2 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
3 responsible in some manner for one or more of the events and happenings that proximately
4 caused the injuries and damages hereinafter alleged.

5 10. The agents, servants and/or employees of the Defendants and each of them acting
6 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
7 agent, servant and/or employee of the Defendants, and personally participated in the conduct
8 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
9 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
10 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
11 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
12 agents, servants and/or employees.

13 THE CONDUCT

14 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
15 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
16 meaning the time during which an employee is subject to the control of an employer, including
17 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
18 and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are
19 under DEFENDANT's control. PLAINTIFF is from time to time interrupted by work
20 assignments while clocked out for what should be PLAINTIFF's off-duty meal break. Also,
21 DEFENDANT, as a matter of established company policy and procedure, administered a
22 uniform practice of rounding the actual time worked and recorded by PLAINTIFF and the
23 AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course
24 of their employment, PLAINTIFF and AGGRIEVED EMPLOYEES were paid less than they
25 would have been paid had they been paid for actual recorded time rather than "rounded" time.
26 As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit minimum wage,
27 overtime wage compensation, and off-duty meal breaks by working without their time being
28

1 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy
2 and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time
3 worked, is evidenced by DEFENDANT's business records.

4 12. State and federal law provides that employees must be paid overtime at one-and-
5 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
6 are compensated at an hourly rate plus incentive pay that is tied to specific elements of an
7 employee's performance.

8 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
9 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
10 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
11 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
12 hourly basis with incentive compensation when the employees met the various performance
13 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
14 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
15 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
16 of calculating overtime pay. Management and supervisors described the incentive program to
17 potential and new employees as part of the compensation package. As a matter of law, the
18 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
19 be included in the "regular rate of pay." DEFENDANT also underpays sick pay wages to
20 PLAINTIFF and other AGGRIEVED EMPLOYEES by failing to pay such wages at the regular
21 rate of pay. Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary
22 remuneration, including but not limited to, incentives, shift differential pay, and bonuses.
23 Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay to
24 PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay. The failure to
25 do so has resulted in a underpayment of overtime compensation to PLAINTIFF and other
26 AGGRIEVED EMPLOYEES by DEFENDANT.

27 14. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
28 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and

1 are not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
2 EMPLOYEES are required from time to time to perform work as ordered by DEFENDANT for
3 more than five (5) hours during some shifts without receiving a meal break. Further,
4 DEFENDANT from time to time fails to provide PLAINTIFF and AGGRIEVED
5 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
6 are required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
7 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
8 and in accordance with DEFENDANT's corporate policy and practice.

9 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
10 are also required from time to time to work in excess of four (4) hours without being provided
11 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
12 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
13 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
14 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
15 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
16 PLAINTIFF and other AGGRIEVED EMPLOYEES are also not provided with one hour wages
17 in lieu thereof. Additionally, the applicable California Wage Order requires employers to
18 provide employees with off-duty rest periods, which the California Supreme Court defined as
19 time during which an employee is relieved from all work related duties and free from employer
20 control. In so doing, the Court held that the requirement under California law that employers
21 authorize and permit all employees to take rest period means that employers must relieve
22 employees of all duties and relinquish control over how employees spend their time which
23 includes control over the locations where employees may take their rest period. Employers
24 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
25 five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and other AGGRIEVED
26 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which
27 states PLAINTIFF and other AGGRIEVED EMPLOYEES cannot leave the work premises
28 during their rest period.

1 16. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
2 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
3 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
4 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
5 meaning the time during which an employee was subject to the control of an employer,
6 including all the time the employee was permitted or suffered to permit this work.
7 DEFENDANT requires these employees to work off the clock without paying them for all the
8 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
9 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES are under compensated for
10 all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit time
11 worked by working without their time being accurately recorded and without compensation at
12 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
13 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
14 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
15 1197.1.

16 17. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other
17 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
18 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
19 provides that every employer shall furnish each of his or her employees with an accurate
20 itemized wage statement in writing showing, among other things, gross wages earned and all
21 applicable hourly rates in effect during the pay period and the corresponding amount of time
22 worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing to
23 identify the correct rates of pay and number of hours worked, including for the "MISC
24 Earnings" item of pay, which is a wage payment. Aside, from the violations listed above in this
25 paragraph, DEFENDANT fails to issue to PLAINTIFF an itemized wage statement that lists all
26 the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
27 to time provides PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements
28 which violated Cal. Lab. Code § 226.

1 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
2 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
3 wages are paid not more than seven calendar days following the close of the payroll period.

4 Cal. Lab. Code § 210 provides:

5 [I]n addition to, and entirely independent and apart from, any other penalty provided in
6 this article, every person who fails to pay the wages of each employee as provided in
7 Sections. . . .204. . . shall be subject to a civil penalty as follows: (1) For any initial
8 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
for each failure to pay each employee, plus 25 percent of the amount unlawfully
withheld.

9 19. DEFENDANT from time to time fails to pay PLAINTIFF and the AGGRIEVED
10 EMPLOYEES within seven (7) days of the close of the payroll period, including but not limited
11 to for the "MISC Earnings" regular wage payment, in accordance with Cal. Lab. Code § 204(d).

12 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
13 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
14 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
15 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
16 2802, employers are required to indemnify employees for all expenses incurred in the course
17 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
18 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
19 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
20 directions of the employer, even though unlawful, unless the employee, at the time of obeying
21 the directions, believed them to be unlawful."

22 21. In the course of their employment PLAINTIFF and other AGGRIEVED
23 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
24 cellular phones as a result of and in furtherance of their job duties as employees for
25 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
26 associated with the use of their personal cellular phones and personal vehicles for
27 DEFENDANT's benefit. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES
28 were required by DEFENDANT to use their personal cellular phones and personal vehicles for

1 work related issues. As a result, in the course of their employment with DEFENDANT,
2 PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses
3 which included, but were not limited to, costs related to the use of their personal cellular phones
4 and personal vehicles all on behalf of and for the benefit of DEFENDANT.

5 22. All of the conduct and violations alleged herein occurred during the PAGA
6 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
7 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
8 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
9 AJDAR 12157 (Certified for Publication 12/19/18).

10 **JURISDICTION AND VENUE**

11 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure, Section 410.10.

13 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
15 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
16 in this County and/or conducts substantial business in this County, and (ii) committed the
17 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
18 EMPLOYEES.
19

20 **FIRST CAUSE OF ACTION**

21 **For Violation of the Private Attorneys General Act**

22 **[Cal. Lab. Code §§ 2698, *et seq.*]**

23 **(By PLAINTIFF and Against All Defendants)**

24 25. PLAINTIFF incorporates by reference the allegations set forth in the prior
25 paragraphs as though fully set forth at this point.

26 26. PAGA is a mechanism by which the State of California itself can enforce state
27 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
28 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is

1 fundamentally a law enforcement action designed to protect the public and not to benefit private
2 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
3 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
4 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
5 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
6 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
7 subject to arbitration.

8 27. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, brings this Representative Action on behalf of the State of California with respect to
11 himself and all individuals who are or previously were employed by DEFENDANT in
12 California and classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during
13 the time period of January 20, 2020 until a date as determined by the Court (the "PAGA
14 PERIOD").

15 28. On January 20, 2021, PLAINTIFF gave written notice by electronic mail to the
16 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
17 employer of the specific provisions of this code alleged to have been violated as required by
18 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
19 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
20 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
21 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

22 29. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
24 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
25 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
26 to pay minimum wages, and (e) failed to reimburse employees for required expenses, all in
27 violation of the applicable Labor Code sections listed in Labor Code Sections §§ 201, 202, 203,
28 204 *et seq.*, 210, 226(a), 226.7, 233, 246 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,

1 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
2 applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such
3 conduct.² PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor
4 Code Private Attorney General Act of 2004 as the representative of the State of California for
5 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
9 severally, as follows:

10 1. On behalf of the State of California and with respect to all AGGRIEVED
11 EMPLOYEES:

12 A) Recovery of civil penalties as prescribed by the Labor Code Private
13 Attorneys General Act of 2004; and,

14 B) An award of attorneys' fees and cost of suit, as allowable under the
15 law, including, but not limited to, pursuant to Labor Code §2699.

16 Dated: May 27, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

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19 By: /s/ Norman Blumenthal
20 Norman B. Blumenthal
21 Attorneys for Plaintiff
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28 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).