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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

ROCIO MADRIGAL, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

SOLAGE MANAGEMENT, INC., a
California corporation; AUBERGE
RESORTS LLC, a Delaware limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

FILED

APR 12 2021

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: G. Roary, Deputy

Case No.: CIV 2100081

**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 Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) (Failure to Provide Reporting Time Pay);

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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 Rocio Madrigal, individually and on behalf of all other members of the public
2 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. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants filed Statement of
5 Information forms with the California Secretary of State designating a principal place of
6 business in Mill Valley, County of Marin, in accordance with California Corporations Code
7 section 2105(a)(3). Venue is also proper in this Court because Defendants employ persons in
8 this county, and thus a substantial portion of the transactions and occurrences related to this
9 action occurred in this county.

10 **THE PARTIES**

11 4. Plaintiff ROCIO MADRIGAL is a resident of Middletown, in Lake County,
12 California. Defendants employed Plaintiff as an hourly paid, non-exempt Cook from
13 approximately July 2018 to March 2020. Plaintiff worked for Defendants at their location in
14 Calistoga, California. During her employment, Plaintiff typically worked eight (8) hours or
15 more per day, and five (5) or more days per week. Plaintiff's primary job duties included,
16 without limitation, completing a daily checklist of food preparation tasks, washing and
17 cooking food, preparing stocks and sauces, and cleaning and organizing her cook station.

18 5. SOLAGE MANAGEMENT, INC. was and is, upon information and belief, a
19 California corporation, and at all times hereinafter mentioned, an employer whose employees
20 are engaged throughout this county, the State of California, or the various states of the United
21 States of America.

22 6. AUBERGE RESORTS LLC was and is, upon information and belief, a
23 Delaware limited liability company, and at all times hereinafter mentioned, an employer
24 whose employees are engaged throughout this county, the State of California, or the various
25 states of the United States of America.

26 7. Plaintiff is unaware of the true names or capacities of the Defendants sued
27 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
28 amend the complaint and serve such fictitiously named Defendants once their names and

1 capacities become known.

2 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
3 were the partners, agents, owners, or managers of SOLAGE MANAGEMENT, INC. and
4 AUBERGE RESORTS LLC at all relevant times.

5 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
6 acts and omissions alleged herein was performed by, or is attributable to, SOLAGE
7 MANAGEMENT, INC; AUBERGE RESORTS LLC; and/or DOES 1 through 10
8 (collectively, “Defendants” or “SOLAGE”), each acting as the agent, employee, alter ego,
9 and/or joint venturer of, or working in concert with, each of the other co-Defendants and was
10 acting within the course and scope of such agency, employment, joint venture, or concerted
11 activity with legal authority to act on the others’ behalf. The acts of any and all Defendants
12 were in accordance with, and represent, the official policy of Defendants.

13 10. At all relevant times, Defendants, and each of them, ratified each and every act
14 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
15 and abetted the acts and omissions of each and all the other Defendants in proximately causing
16 the damages herein alleged.

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

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

1 to Plaintiff and class members under the law.

2 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
3 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
4 members because Defendants have:

- 5 (a) jointly exercised meaningful control over the work performed by
6 Plaintiff and class members;
- 7 (b) jointly exercised meaningful control over Plaintiff's and class members'
8 wages, hours, and working conditions, including the quantity, quality
9 standards, speed, scheduling, and operative details of the tasks
10 performed by Plaintiff and class members;
- 11 (c) jointly required that Plaintiff and class members perform work which is
12 an integral part of Defendants' businesses; and
- 13 (d) jointly exercised control over Plaintiff and class members as a matter of
14 economic reality in that Plaintiff and class members were dependent on
15 Defendants, who shared the power to set the wages of Plaintiff and class
16 members and determined their working conditions, and who jointly
17 reaped the benefits from the underpayment of their wages and
18 noncompliance with other statutory provisions governing their
19 employment.

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

23 15. SOLAGE MANAGEMENT, INC.; AUBERGE RESORTS LLC; and/or DOES
24 1 through 10 are therefore alter egos of each other.

25 16. Adherence to the fiction of the separate existence of Defendants would permit
26 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
27 from liability for the wrongful acts committed by them under the name SOLAGE.

28 17. Plaintiff further alleges, upon information and belief, that Defendants SOLAGE

1 MANAGEMENT, INC. and AUBERGE RESORTS LLC are alter egos of each other for the
2 following reasons:

- 3 (a) On information and belief, AUBERGE RESORTS LLC is the parent
4 company of SOLAGE MANAGEMENT, INC., the management entity
5 of the Napa Valley, California-based group of hotels Solage, Auberge
6 du Soleil, and Calistoga Ranch;
- 7 (b) On the California Secretary of State's website
8 (<https://businesssearch.sos.ca.gov/>), SOLAGE MANAGEMENT, INC.
9 and AUBERGE RESORTS LLC share the same entity address, "33
10 REED BOULEVARD, MILL VALLEY, CA 94941;"
- 11 (c) According to Defendants' most recent "Statement of Information" forms
12 filed with the California Secretary of State, SOLAGE MANAGEMENT,
13 INC. and AUBERGE RESORTS LLC share the same officers and/or
14 directors, including, but not limited to, Craig Reed, who serves
15 respectively as Chief Executive Officer and as a Managing Member;
16 and
- 17 (d) On information and belief, SOLAGE MANAGEMENT, INC. and
18 AUBERGE RESORTS LLC utilize the same standardized employment
19 forms and issue the same employment policies.

20 GENERAL ALLEGATIONS

21 18. Defendant SOLAGE MANAGEMENT, INC. is a hotel management company
22 for "Solage, an Auberge Resort" in Calistoga, California, which is one of the three properties
23 owned and operated by Defendant AUBERGE RESORTS LLC in California. Upon
24 information and belief, Defendants maintain a single, centralized Human Resources ("HR")
25 department at their company headquarters in Mill City, California, which is responsible for the
26 recruiting and hiring of new employees, and communicating and implementing Defendants'
27 company-wide policies, including timekeeping policies and meal and rest period policies, to
28 employees throughout California.

1 19. In particular, Plaintiff and class members, on information and belief, received
2 the same standardized documents and/or written policies. Upon information and belief, the
3 usage of standardized documents and/or written policies, including new-hire documents,
4 indicate that Defendants dictated policies at the corporate level and implemented them
5 company-wide, regardless of their employees' assigned locations or positions. Upon
6 information and belief, Defendants set forth uniform policies and procedures in several
7 documents provided at an employee's time of hire.

8 20. Upon information and belief, Defendants maintain a centralized Payroll
9 department at their company headquarters in Mill City, California, which processes payroll for
10 all non-exempt, hourly paid employees working for Defendants at their various locations and
11 jobsites in California, including Plaintiff and class members. Based upon information and
12 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
13 employees in California, irrespective of their work locations. Upon information and belief,
14 Defendants process payroll for departing employees in the same manner throughout the State
15 of California, regardless of the manner in which each employee's employment ends.

16 21. Defendants continue to employ non-exempt or hourly paid employees in
17 California.

18 22. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
20 and advisors knowledgeable about California labor and wage law, employment and personnel
21 practices, and about the requirements of California law.

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

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

28 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to receive at least minimum
2 wages for compensation and that they were not receiving at least minimum wages for work
3 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
4 and class members were not paid at least minimum wages for work done off-the-clock.

5 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to meal periods in
7 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
8 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
9 periods and that Plaintiff and class members were not provided with all meal periods or
10 payment of one (1) additional hour of pay at their regular rates of pay when they did not
11 receive a timely, uninterrupted, thirty (30) minute meal period.

12 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to rest periods in
14 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
15 additional hour of pay at their regular rates of pay when they were not authorized and
16 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
17 and class members were not authorized and permitted to take compliant rest periods, nor did
18 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
19 pay at their regular rates of pay when they were not authorized and permitted to take a
20 compliant rest period.

21 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive complete and
23 accurate wage statements in accordance with California law. In violation of the California
24 Labor Code, Plaintiff and class members were not provided complete and accurate wage
25 statements.

26 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that they had a duty to maintain accurate and complete payroll records in
28 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,

1 and intentionally failed to do so.

2 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to timely payment of all
4 wages earned upon termination of employment. In violation of the California Labor Code,
5 Plaintiff and class members did not receive payment of all wages due, including, but not
6 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting
7 time pay, within permissible time periods.

8 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to timely payment of wages
10 during their employment. In violation of the California Labor Code, Plaintiff and class
11 members did not receive payment of all wages, including, but not limited to, overtime wages,
12 minimum wages, meal and rest period premiums, and/or reporting time pay, within
13 permissible time periods.

14 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
16 and expenses Plaintiff and class members incurred obtaining mandatory physical examinations
17 and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

18 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive all reporting time
20 pay when Defendants required Plaintiff and class members were required to report to work but
21 were put to work for less than half of their regular scheduled shift. In violation of the
22 California Labor Code, Plaintiff and class members were not paid all reporting time pay.

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

27 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to receive full

1 reimbursement for all business-related expenses and costs they incurred during the course and
2 scope of their employment and that they did not receive full reimbursement of applicable
3 business-related expenses and costs incurred.

4 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants knew or should have known that they had a duty to compensate
6 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
7 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
8 falsely represented to Plaintiff and class members that they were properly denied wages, all in
9 order to increase Defendants' profits.

10 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

- 26 (a) The aggrieved employee or representative shall give written notice by
27 online filing with the LWDA and by certified mail to the employer of
28 the specific provisions of the California Labor Code alleged to have

1 been violated, including the facts and theories to support the alleged
2 violation.

3 (b) An aggrieved employee's notice filed with the LWDA pursuant to
4 2699.3(a) and any employer response to that notice shall be
5 accompanied by a filing fee of seventy-five dollars (\$75).

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

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

18 (a) The aggrieved employee or representative shall give written notice by
19 online filing with the LWDA and by certified mail to the employer of
20 the specific provisions of the California Labor Code alleged to have
21 been violated (other than those listed in Section 2699.5), including the
22 facts and theories to support the alleged violation.

23 (b) An aggrieved employee's notice filed with the LWDA pursuant to
24 2699.3(c) and any employer response to that notice shall be
25 accompanied by a filing fee of seventy-five dollars (\$75).

26 (c) The employer may cure the alleged violation within thirty-three (33)
27 calendar days of the postmark date of the notice sent by the aggrieved
28 employee or representative. The employer shall give written notice

1 within that period of time by certified mail to the aggrieved employee or
2 representative and by online filing with the LWDA if the alleged
3 violation is cured, including a description of actions taken, and no civil
4 action pursuant to Section 2699 may commence. If the alleged violation
5 is not cured within the 33-day period, the aggrieved employee may
6 commence a civil action pursuant to Section 2699.

7 42. On February 4, 2021, Plaintiff provided written notice by online filing to the
8 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
9 Code alleged to have been violated, including facts and theories to support the alleged
10 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
11 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
12 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
13 Plaintiff PAGA Case Number LWDA-CM-820726-21. A true and correct copy of Plaintiff's
14 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

18 44. Thus, Plaintiff has satisfied the administrative prerequisites under California
19 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
20 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
21 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

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

47. 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.

48. 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 herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

49. Plaintiff brings this action on her 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.

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

51. 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”).

52. 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”).

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1 53. Members of the Class and Subclass are referred to herein as “class members.”

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

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

- 7 (a) Whether Defendants required Plaintiff and class members to work over
8 eight (8) hours per day, over twelve (12) hours per day, or over forty
9 (40) hours per week and failed to pay all legally required overtime
10 compensation to Plaintiff and class members;
- 11 (b) Whether Defendants failed to pay Plaintiff and class members at least
12 minimum wages for all hours worked;
- 13 (c) Whether Defendants failed to provide Plaintiff and class members with
14 meal periods;
- 15 (d) Whether Defendants failed to authorize and permit Plaintiff and class
16 members to take rest periods;
- 17 (e) Whether Defendants provided Plaintiff and class members with
18 complete and accurate wage statements as required by California Labor
19 Code section 226(a);
- 20 (f) Whether Defendants maintained accurate payroll records as required by
21 California Labor Code section 1174(d);
- 22 (g) Whether Defendants failed to pay earned overtime wages, minimum
23 wages, meal and rest period premiums, and/or reporting time pay due to
24 Plaintiff and class members upon their discharge;
- 25 (h) Whether Defendants failed timely to pay overtime wages, minimum
26 wages, meal and rest period premiums, and/or reporting time pay due to
27 Plaintiff and class members during their employment;
- 28 (i) Whether Defendants failed to pay Plaintiff and class members for the

costs of mandatory physical examinations and/or drug testing;

- (j) Whether Defendants required Plaintiff and class members to report to work, but failed to provide them with work or provided them with less than half their scheduled day's work, without properly compensating them as required by California Code of Regulations, Title 8, section 11050, subsection 5;
- (k) Whether Defendants failed to provide Plaintiff and/or class members with suitable seating;
- (l) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (m) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (n) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

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

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.

- 1 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
2 protect the interests of each class member with whom she has a well-
3 defined community of interest and typicality of claims, as demonstrated
4 herein. Plaintiff acknowledges that she has an obligation to make
5 known to the Court any relationship, conflicts or differences with any
6 class member. Plaintiff's attorneys, the proposed class counsel, are
7 versed in the rules governing class action discovery, certification, and
8 settlement. Plaintiff has incurred, and throughout the duration of this
9 action, will continue to incur costs and attorneys' fees that have been,
10 are, and will be necessarily expended for the prosecution of this action
11 for the substantial benefit of each class member.
- 12 (d) Superiority: The nature of this action makes the use of class action
13 adjudication superior to other methods. A class action will achieve
14 economies of time, effort, and expense as compared with separate
15 lawsuits, and will avoid inconsistent outcomes because the same issues
16 can be adjudicated in the same manner and at the same time for the
17 entire class.
- 18 (e) Public Policy Considerations: Employers in the State of California
19 violate employment and labor laws every day. Current employees are
20 often afraid to assert their rights out of fear of direct or indirect
21 retaliation. Former employees are fearful of bringing actions because
22 they believe their former employers might damage their future
23 endeavors through negative references and/or other means. Class
24 actions provide the class members who are not named in the complaint
25 with a type of anonymity that allows for the vindication of their rights
26 while simultaneously protecting their privacy.

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1 **FIRST CAUSE OF ACTION**

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

3 **(Against all Defendants)**

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

6 58. Labor Code section 1198 makes it illegal to employ an employee under
7 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
8 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
9 shall be the . . . standard conditions of labor for employees. The employment of any employee
10 . . . under conditions of labor prohibited by the order is unlawful.”

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

15 60. Specifically, the applicable IWC Wage Order provides that Defendants are and
16 were required to pay Plaintiff and class members working more than eight (8) hours in a day
17 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
18 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
19 workweek.

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

25 62. California Labor Code section 510 codifies the right to overtime compensation
26 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
27 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
28 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate

1 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
2 in a day on the seventh (7th) day of work.

3 63. During the relevant time period, Defendants willfully failed to pay all overtime
4 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
5 class members were not paid overtime premiums for all of the hours they worked in excess of
6 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
7 hours in a week, because all hours worked were not recorded.

8 64. First, during the relevant period, Defendants had a policy and/or practice of
9 discouraging and impeding Plaintiff and class members from recording hours worked that
10 were outside of their scheduled shifts, upon threat of discipline, in order to limit the amount of
11 overtime employees could accrue. On information and belief, this policy of limiting overtime,
12 coupled with Defendants' use of labor budgets and assignment of heavy workloads and
13 deadlines (*see infra*), led Plaintiff and class members to work off-the-clock before and after
14 their scheduled shift times in order to complete their assigned tasks. For example, twice per
15 week, Plaintiff was required to clock out at the end of her shift and continue working to
16 complete her daily checklist of tasks, such as preparing food or cleaning and organizing her
17 workstation.

18 65. Second, as stated, upon information and belief, Defendants had, and continue to
19 have, a company-wide policy staffing their locations strictly based on the labor hours or labor
20 budget set by the corporate office. Defendants' use of a labor budget resulted in chronic
21 understaffing, such that there were too few employees on duty to handle the heavy workload,
22 which included completing daily tasks for preparing food and maintaining each workstation,
23 to be completed on a deadline. Because Defendants did not employ or staff an adequate
24 number of employees to meet their productivity expectations and failed to provide employees
25 with adequate meal period coverage, Plaintiff and class members were assigned heavy
26 workloads, which Defendants knew or should have known could only be met by working
27 additional hours. For example, Plaintiff was required to complete the first part of her
28 checklist before her meal period and the second part of her list before the end of her shift.

1 Due to the heavy workload and requirement to complete certain daily tasks before and after
2 meal periods, Plaintiff and class members would complete their duties and perform work
3 during unpaid meal periods. Plaintiff and class members missed meal periods and/or had meal
4 periods cut short or interrupted in order to handle their workloads. However, Defendants did
5 not compensate them for all of their time spent performing their duties.

6 66. Third, Defendants had, and continue to have, a practice of failing to schedule
7 meal periods. This company-wide practice, coupled with the heavy workload and pressure
8 from Defendants to complete assigned tasks, impeded Plaintiff and class members from taking
9 timely, compliant meal periods. As a result, Plaintiff and class members were not afforded
10 timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled
11 to receive meal periods. Further, because Defendants frowned upon employees accruing meal
12 period penalties, Defendants pressured Plaintiff and class members to clock out for meal
13 periods upon threat of discipline and/or adjusted employee time records to reflect compliant
14 meal periods, regardless of whether they had received a compliant meal period or not, in order
15 to strictly limit meal penalties that Defendants would otherwise owe. For example, twice per
16 week, Plaintiff would clock out at the direction of her supervisors and continued performing
17 duties, such as preparing food or maintaining her workstation, during her meal period. Thus,
18 Plaintiff and class members performed work during meal periods for which they were not
19 paid.

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

27 68. Defendants' failure to pay Plaintiff and class members the balance of overtime
28 compensation as required by California law, violates the provisions of California Labor Code

1 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
2 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
3 and attorneys' fees.

4 **SECOND CAUSE OF ACTION**

5 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 6 **Minimum Wages** 7 **(Against all Defendants)**

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

10 70. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
11 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
12 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
13 fixed is unlawful. Compensable work time is defined in Wage Order No. 5-2001 as "the time
14 during which an employee is subject to the control of an employer, and includes all the time
15 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
16 Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

17 71. As stated, due to Defendants' restrictions on overtime accrual, Defendants
18 systematically failed to pay Plaintiff and class members for actual hours worked before and
19 after scheduled shifts, because these hours were not accurately recorded. Additionally, as set
20 forth above, due to Defendants' uniform practice of utilizing labor budgets, resultant
21 understaffing, assignment of heavy workloads and deadlines, and failing to schedule meal
22 periods, Plaintiff and class members were impeded from taking all uninterrupted meal periods
23 to which they were entitled and were required to work off-the-clock. In addition, Defendants
24 systematically failed to pay Plaintiff and class members for actual hours worked during unpaid
25 meal periods because these hours were not always correctly recorded; as set forth above,
26 Defendants' policies required Plaintiff and class members to clock out for meal periods, even
27 though Plaintiff and class members performed additional duties and were subject to
28 Defendants' control during this time.

1 72. Moreover, Defendants implemented, on a company-wide basis, an employer-
2 imposed requirement that Plaintiff and class members undergo a mandatory drug test and/or
3 physical examination upon hiring. At all times, Defendants were in control of scheduling the
4 date and time for the testing and/or physical examinations, selecting the provider/facility
5 where the testing and/or physical examinations were to take place, and determining the scope
6 of the testing and/or physical examinations. Defendants gave Plaintiff and class members
7 strict instructions to obtain drug testing and/or physical examinations, and Plaintiff and class
8 members underwent the testing and/or physical examinations for the sole benefit of
9 Defendants. Plaintiff and class members were required to travel in their own personal
10 vehicles or obtain alternate transportation and spend time undergoing Defendants' mandatory
11 drug testing and/or physical examinations. For example, Plaintiff spent 45 minutes driving to
12 the designated medical facility, St. Helena Hospital; waited 30 minutes; spent 40 minutes
13 undergoing the physical examination; and spent 45 minutes driving home. However,
14 Defendants did not compensate Plaintiff and class members for the time they spent traveling
15 to and from the medical facilities and for the time they spent undergoing the drug testing
16 and/or physical examinations.

17 73. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
18 and class members. To the extent that these off-the-clock hours did not qualify for overtime
19 premium payment, Defendants did not pay at least minimum wages for those hours worked
20 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
21 1198.

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

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1 **THIRD CAUSE OF ACTION**

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

3 **Violations**

4 **(Against all Defendants)**

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

7 76. At all relevant times herein set forth, California Labor Code section 512(a)
8 provides that an employer may not require, cause, or permit an employee to work for a period
9 of more than five (5) hours per day without providing the employee with a meal period of not
10 less than thirty (30) minutes, except that if the total work period per day of the employee is
11 not more than six (6) hours, the meal period may be waived by mutual consent of both the
12 employer and the employee. Under California law, first meal periods must start after no more
13 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
14 2012).

15 77. At all relevant times herein set forth, California Labor Code sections 226.7,
16 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
17 meal period mandated by an applicable order of the IWC.

18 78. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
19 the applicable IWC Wage Order also require employers to provide a second meal period of
20 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
21 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
22 hours worked is no more than twelve (12) hours, the second meal period may be waived by
23 mutual consent of the employer and the employee only if the first meal period was not waived.

24 79. As stated, upon information and belief, Defendants had, and continue to have,
25 company-wide policies and/or practices of understaffing their locations due to labor
26 budgeting, while simultaneously assigning heavy workloads and daily checklist deadlines,
27 discouraging employees from incurring overtime, and failing to schedule meal periods, which
28 has resulted in a lack of meal period coverage and prevented Plaintiff and class members from

1 taking all timely, uninterrupted meal periods to which they were entitled.

2 80. Defendants' practices and policies prevented Plaintiff and class members from
3 taking all compliant meal periods to which they were entitled. As a result, Plaintiff and class
4 members would be forced to work in excess of five (5) hours before taking a meal period and,
5 at times, had their meal periods interrupted and/or had to forgo their meal periods altogether.
6 For example, once per week, Plaintiff took her meal periods after the end of her fifth hour of
7 work because she had to finish baking or boiling food items. As a further example, twice per
8 week, Plaintiff worked through her meal periods in order to finish preparing food or to clean
9 and organize her workstation.

10 81. Moreover, as stated, because Defendants frowned upon employees accruing
11 meal period penalties, Defendants' management would adjust Plaintiff's and class members'
12 time records and/or pressured employees to clock out for meal periods to reflect compliant
13 meal periods, regardless of whether they had received a compliant meal period, in order to
14 strictly limit meal penalties that would need to be paid by Defendants. For example, Plaintiff
15 was instructed by her supervisor to clock out and continue working through her meal periods
16 to record that she had received compliant meal periods on shifts when she had not, in fact,
17 received these meal periods.

18 82. In addition, during the relevant time period, Defendants did not provide
19 Plaintiff and class members with second 30-minute meal periods on days that they worked in
20 excess of ten (10) hours in one day. For example, Plaintiff would work shifts in excess of ten
21 (10) hours per day, but was not provided second meal periods during these shifts. Plaintiff
22 and class members did not sign valid meal period waivers on days that they were entitled to
23 meal periods and were not relieved of all duties.

24 83. At all times herein mentioned, Defendants knew or should have known that, as
25 a result of these policies, Plaintiff and class members were prevented from being relieved of
26 all duties and required to perform some of their assigned duties during meal periods.
27 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
28 members meal period premiums when meal periods were late, interrupted, shortened, or

missed.

84. Furthermore, Defendants 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, Plaintiff and class members have not received premium pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiff and class members compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

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

FOURTH CAUSE OF ACTION

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

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

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

88. At all relevant times, 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.

89. At all relevant times, 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. To comply with its obligation to authorize and permit rest

1 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
2 employer must “relinquish any control over how employees spend their break time, and
3 relieve their employees of all duties—including the obligation that an employee remain on
4 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
5 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
6 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
7 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
8 that a required rest period was not authorized and permitted.

9 90. During the relevant time period, Defendants regularly failed to authorize and
10 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
11 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
12 practices, including utilizing labor budgets, assigning heavy workloads and deadlines, and
13 resultant understaffing, prevented Plaintiff and class members from being relieved of all duty
14 to take rest periods. Additionally, Defendants failed to schedule rest periods, which, coupled
15 with Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and
16 class members not being authorized and permitted to take compliant rest periods.

17 91. Additionally, during the relevant time period, Defendants maintained and
18 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff
19 and class members remain on the work premises during their rest periods. Because Plaintiff
20 and class members were restricted from leaving the premises during rest periods, they were
21 denied the ability to use their rest periods freely for their own purposes, such as running
22 personal errands. Thus, Defendants effectively maintained control over Plaintiff and class
23 members during rest periods.

24 92. As a result of Defendants’ practices and policies, Plaintiff and class members
25 worked shifts in excess of 3.5 hours, in excess of 6 hours, and in excess of 10 hours without
26 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
27 Plaintiff missed her rest periods in order to complete all of the work-related duties Defendants
28 assigned to her. Additionally, Plaintiff did not receive a third rest period when working shifts

1 in excess of 10 hours.

2 93. Defendants have also engaged in a company-wide practice and/or policy of not
3 paying all rest period premiums owed when compliant rest periods are not authorized and
4 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
5 to pay them rest period premiums due, in violation of Labor Code section 226.7, 516, and the
6 applicable IWC Wage Order.

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

12 **FIFTH CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 14 **Statements and Failure to Maintain Accurate Payroll Records** 15 **(Against all Defendants)**

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

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

23 97. At all relevant times, Defendants have knowingly and intentionally provided
24 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
25 For example, Defendants issued uniform wage statements to Plaintiff and class members that
26 fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
27 applicable hourly rates in effect during the pay period, including overtime rates of pay, and
28 the corresponding number of hours worked at each hourly rate. Specifically, Defendants

1 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

2 98. Because Defendants did not record the time Plaintiff and class members spent
3 working off-the-clock and deducted time from their records for meal periods that were
4 interrupted and/or missed (and therefore time for which they should have been paid),
5 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
6 and class members in compliance with section 226(a)(1) and section 226(a)(5), respectively.
7 For the same reason, Defendants failed to accurately list the total number of hours worked by
8 Plaintiff and class members, in violation of section 226(a)(2), and failed to list the applicable
9 hourly rates of pay in effect during the pay period and the corresponding accurate number of
10 hours worked at each hourly rate, in violation of section 226(a)(9)).

11 99. The wage statement deficiencies also include, among other things, failing to list
12 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
13 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
14 only the last four digits of his or her social security number or an employee identification
15 number other than a social security number; failing to list the name and address of the legal
16 entity that is the employer; failing to list the inclusive dates of the period for which employees
17 were paid; and/or failing to state all hours worked as a result of not recording or stating the
18 hours they worked off-the-clock.

19 100. California Labor Code section 1198 provides that the maximum hours of work
20 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
21 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
22 employment of any employees for longer hours than those fixed by the order or under
23 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
24 Wage Order, employers are required to keep accurate time records showing when the
25 employee begins and ends each work period and meal period. During the relevant time
26 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
27 and meal period start and stop times for Plaintiff and Subclass members, in violation of
28 section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of

1 falsifying Plaintiff's and Subclass members' time records by recording that compliant meal
2 periods were taken regardless of if or when meal periods were actually taken, and thereby
3 failed to keep accurate records of meal start and end times for Plaintiff and Subclass members.
4 Furthermore, in light of Defendants' failure to provide Plaintiff and Subclass members with
5 second 30-minute meal periods to which they were entitled, Defendants kept no records of
6 meal start and end times for second meal periods.

7 101. California Labor Code section 1174(d) provides that "[e]very person employing
8 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
9 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
10 plants or establishments at which employees are employed, payroll records showing the hours
11 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
12 applicable piece rate paid to, employees employed at the respective plants or
13 establishments" At all relevant times, and in violation of Labor Code section 1174(d),
14 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
15 members showing the daily hours they worked and the wages paid thereto as a result of failing
16 to record the off-the-clock hours that they worked.

17 102. Plaintiff and Subclass members are entitled to recover from Defendants the
18 greater of their actual damages caused by Defendants' failure to comply with California Labor
19 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
20 employee.

21 **SIXTH CAUSE OF ACTION**

22 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

23 **Upon Termination**

24 **(Against all Defendants)**

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

27 104. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
28 that if an employer discharges an employee, the wages earned and unpaid at the time of

1 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
2 her employment, his or her wages shall become due and payable not later than seventy-two
3 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
4 his or her intention to quit, in which case the employee is entitled to his or her wages at the
5 time of quitting.

6 105. Defendants have a company-wide practice or policy of failing to adhere to the
7 time requirements set forth in Labor Code sections 201 and 202. For example, Plaintiff
8 attended a meeting held by Defendants on March 14, 2020, where she was informed that
9 employees were being furloughed due to COVID-19. She returned to work in May 2020, and
10 was told at that time her position had been eliminated. Plaintiff did not receive her final
11 wages, including all earned vacation wages, from Defendants until May 29, 2020. Thus,
12 Defendants failed to pay Plaintiff her final wages immediately, in violation of Labor Code
13 section 201.

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

19 107. Defendants' failure to pay Plaintiff and class members who are no longer
20 employed by Defendants their wages earned and unpaid at the time of discharge, or within
21 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
22 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
23 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
24 thirty (30) day maximum pursuant to California Labor Code section 203.

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1 **SEVENTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**

3 **Employment**

4 **(Against all Defendants)**

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

7 109. This cause of action is dependent upon, and wholly derivative of, the overtime
8 wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were
9 not timely paid to Plaintiff and those class members.

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

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

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

26 113. During the relevant time period, Defendants willfully failed to pay Plaintiff and
27 class members all wages due including, but not limited to, overtime wages, minimum wages,
28 meal and rest period premiums, and/or reporting time pay within the time periods specified by

1 California Labor Code section 204.

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

5 **EIGHTH CAUSE OF ACTION**

6 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section**
7 **11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay**
8 **(Against all Defendants)**

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

11 116. California Labor Code section 1198 dictates that no employer may employ an
12 employee under conditions of labor that are prohibited by the applicable IWC Wage Order.
13 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
14 fixed by the commission shall be the . . . standard conditions of labor for employees. The
15 employment of any employee . . . under conditions of labor prohibited by the order is
16 unlawful.”

17 117. The applicable IWC Wage Order, California Code of Regulations, Title 8,
18 section 11050(5)(A), provides that “[e]ach workday an employee is required to report for
19 work and does report, but is not put to work or is furnished less than half said employee’s
20 usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled
21 day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the
22 employee’s regular rate of pay, which shall not be less than the minimum wage.”

23 118. During the relevant time period, Defendants violated California Labor Code
24 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
25 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
26 work for their scheduled shift but were put to work for less than half of the regularly
27 scheduled day’s work.

28 119. Defendants had a company-wide practice of sending Plaintiff and class

1 members home early from their shifts, including before they had worked at least half of their
2 regular shift, but would not pay Plaintiff and class members for half of their scheduled shift.
3 For example, on at least one occasion, Plaintiff reported to work for her scheduled shift, but
4 was sent home after a few hours by Defendants' management because business was slow.
5 Although Plaintiff and class members would report to work based on the schedule that
6 Defendants provided to them, Defendants would send them home before they had worked at
7 least half of their scheduled shifts without giving them reporting time pay.

8 120. Accordingly, Plaintiff and class members were not properly compensated with
9 reporting time pay in violation of California Labor Code section 1198.

10 **NINTH CAUSE OF ACTION**

11 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 12 **(Against all Defendants)**

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

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

26 123. First, during the relevant time period, Defendants had a company-wide policy
27 of requiring Plaintiff and class members to travel in their own personal vehicles to obtain
28 mandatory drug testing and/or physical examinations, but did not reimburse them for their

1 travel expenses, including mileage. Defendants maintained and implemented a company-wide
2 policy of requiring employees to travel to a medical facility on their own time and using their
3 own personal vehicles to undergo mandatory drug testing and/or physical examinations. At
4 all times, Defendants were in control of scheduling the date and time for the testing and/or
5 physical examinations, selecting the provider or facility where the testing and/or physical
6 examinations were to take place, and determining the scope of the testing and/or physical
7 examinations. Defendants gave Plaintiff and class members strict instructions to obtain drug
8 testing and physical examinations, and Plaintiff and class members underwent the testing and
9 physical examinations for the sole benefit of Defendants.

10 124. As described above, Plaintiff followed Defendants' instructions, traveled for
11 approximately 90 minutes roundtrip in her personal vehicle to and from St. Helena Hospital,
12 and underwent Defendants' physical examination, but was not reimbursed for her mileage to
13 and from the medical facility. Although Defendants required Plaintiff and class members to
14 undergo drug testing and/or physical examinations, Defendants failed to reimburse them for
15 their travel expenses.

16 125. Second, during the relevant time period, Defendants, on a company-wide basis,
17 required Plaintiff and class members to report to work wearing clean uniforms while
18 simultaneously failing to provide employees with an adequate number of those uniforms.
19 This forced Plaintiff and class members to frequently wash their uniforms, and incur expenses
20 in doing so. For example, Plaintiff was given only three (3) branded black, button-up shirts
21 with the hotel restaurant's logo embroidered on the upper left chest. Due to the nature of her
22 work, Plaintiff's uniforms would become stained and/or acquire an unpleasant odor, and
23 Plaintiff would be required to wash these uniforms separately from her other clothes,
24 increasing her overall laundry costs even more.

25 126. Third, during the relevant time period, Defendants, on a company-wide basis,
26 forced Plaintiff and class members to purchase basic supplies and tools that were necessary
27 for completion of their work-related duties. For example, Plaintiff was required to purchase
28 knives, peelers, and spoons in order to perform her job duties in the kitchen. Although

1 Defendants required Plaintiff and class members to purchase and use their own supplies and
2 tools for work, Defendants did not reimburse them for these expenses.

3 127. Defendants could have provided Plaintiff and class members with the actual
4 tools for use on the job, such as company vehicles, an adequate number of uniforms and/or
5 access to laundering services, and basic supplies and tools. Or, Defendants could have
6 reimbursed employees for the costs of their mileage, travel, uniform and laundry expenses,
7 and basic supplies and tools. Instead, Defendants passed these operating costs off onto
8 Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2) times
9 the minimum wage.

10 128. Defendants' company-wide policy and/or practice of passing on their operating
11 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
12 have intentionally and willfully failed to reimburse Plaintiff and other class members for
13 necessary business-related expenses and costs.

14 129. Plaintiff and class members are entitled to recover from Defendants their
15 business-related expenses incurred during the course and scope of their employment, plus
16 interest.

17 **TENTH CAUSE OF ACTION**

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

19 **(Against all Defendants)**

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

22 131. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
23 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
24 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
25 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor
26 Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
27 penalties for violations of those Labor Code sections not found in section 2699.5, including
28 sections 516 and 1182.12.

1 132. Defendants' conduct, as alleged herein, violates numerous sections of the
2 California Labor Code, including, but not limited to, the following:

- 3 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
4 Wage Order for Defendants' failure to compensate Plaintiff and other
5 aggrieved employees with all required overtime pay, as alleged herein;
- 6 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
7 and the applicable IWC Wage Order for Defendants' failure to
8 compensate Plaintiff and other aggrieved employees with at least
9 minimum wages for all hours worked, as alleged herein;
- 10 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
11 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
12 and other aggrieved employees with meal periods, as alleged herein;
- 13 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
14 IWC Wage Order for Defendants' failure to authorize and permit
15 Plaintiff and other aggrieved employees to take rest periods, as alleged
16 herein;
- 17 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
18 Wage Order for failure to provide accurate and complete wage
19 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 20 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
21 IWC Wage Order for failure to maintain payroll records, as alleged
22 herein;
- 23 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
24 earned wages upon termination, as alleged herein;
- 25 (h) Violation of Labor Code section 204 for failure to pay all earned wages
26 during employment, as alleged herein;
- 27 (i) Violation of Labor Code section 222.5 for failure to compensate other
28 aggrieved employees for mandatory physical examinations and/or drug

1 testing, as set forth below;

2 (j) Violation of Labor Code section 1198 and the applicable IWC Wage
3 Order for failure to pay reporting time pay when Plaintiff and other
4 aggrieved employees were put to work for less than half of their regular
5 scheduled shifts, as alleged herein;

6 (k) Violation of Labor Code section 1198 for failing to provide suitable
7 seating to Plaintiff and/or other aggrieved employees, as set forth below;
8 and

9 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
10 and other aggrieved employees for all business expenses necessarily
11 incurred, as alleged herein.

12 133. At all relevant times herein, California Labor Code section 222.5 requires
13 employers to pay for the costs an employee incurs for obtaining any medical or physical
14 examination taken.

15 134. At all times relevant herein, Defendants implemented, on a company-wide
16 basis, an employer-imposed requirement that other aggrieved employees undergo mandatory
17 drug testing and/or physical examinations, but required them to do so at their own expense.
18 Defendants had a company-wide policy requiring that other aggrieved employees travel to a
19 specified medical facility using their own personal vehicles to undergo drug testing and/or
20 physical examinations. At all times, Defendants were in control of scheduling the date and
21 time for the testing and/or examinations, selecting the provider/facility where the testing
22 and/or examinations were to take place, and determining the scope of the testing and/or
23 examinations. However, Defendants did not compensate other aggrieved employees for the
24 time they spent traveling to and from the medical facilities; for the time they spent undergoing
25 the drug testing and/or physical examinations; or reimburse them for the travel expenses they
26 incurred getting to and from the medical facilities.

27 135. Defendants' policy and/or practice of not paying for all costs other aggrieved
28 employees incurred obtaining mandatory drug tests and/or physical examinations violates

1 California Labor Code section 222.5. Other aggrieved employees are therefore entitled to
2 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

3 136. 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.”

9 137. 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.”

12 138. Plaintiff alleges that Defendants’ California hotels’ front desk, registration
13 desk, and concierge desk areas are generally similar in their layout and design and there was,
14 and 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 seat or stool at
18 their front desks, registration desks, and concierge desks, but instead denied them seating and
19 forced other aggrieved employees to stand throughout the day.

20 139. 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 seats or stools at or near the front desks, registration
25 desks, or concierge desks, forcing other aggrieved employees to stand throughout their work
26 shifts.

27 140. 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. Other aggrieved employees were assigned front desk, registration
3 desk, and concierge duties, which were performed from and connected to a front desk,
4 registration desk, and concierge desk, and could have been performed from a seated position.
5 Other aggrieved employees could have provided customer service at the front desks,
6 registration desks, and concierge desks while seated, without interference to their ability to
7 complete these duties.

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

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

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

27 144. California Code of Regulations, Title 8, section 11050(14)(B) provides that
28 "[w]hen employees are not engaged in the active duties of their employment and the nature of

1 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
2 proximity to the work area and employees shall be permitted to use such seats when it does
3 not interfere with the performance of their duties.”

4 145. During the relevant time period, Defendants violated California Labor Code
5 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because
6 Plaintiff and other aggrieved employees were not allowed to sit, even during lulls in their
7 work duties, nor were they provided with suitable seats in reasonable proximity to their work
8 areas.

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

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

25 148. As a result of Defendants’ company-wide policy and/or practice of prohibiting
26 employees from sitting at any time, even when they were not engaged in active duties
27 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
28 work areas, Plaintiff and other aggrieved employees were forced to stand during shifts and

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

5 **ELEVENTH CAUSE OF ACTION**

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

7 **Unlawful Business Practices**

8 **(Against all Defendants)**

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

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

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

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

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

- 25 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
26 class members, to work overtime without paying them proper
27 compensation in violation of California Labor Code sections 510 and
28 1198 and the applicable IWC Order, as alleged herein;

- 1 (b) Failing to pay at least minimum wage to Plaintiff and class members in
2 violation of California Labor Code sections 1182.12, 1194, 1197,
3 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 4 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
5 members in violation of California Labor Code sections 226.7, 512(a),
6 516, 1198, and the applicable IWC Order, as alleged herein;
- 7 (d) Failing to authorize and permit Plaintiff and class members to take
8 uninterrupted rest periods in violation of California Labor Code sections
9 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 10 (e) Failing to provide Plaintiff and class members with accurate wage
11 statements and failing to maintain accurate payroll records in violation
12 of California Labor Code sections 226(a), 1174(d), 1198, and the
13 applicable IWC Order, as alleged herein;
- 14 (f) Failing timely to pay all earned wages to Plaintiff and class members in
15 violation of California Labor Code section 204 and the applicable IWC
16 Order, as alleged herein;
- 17 (g) Failing to pay Plaintiff and class members the costs of mandatory
18 physical examinations and/or drug testing in violation of California
19 Labor Code section 222.5, as set forth below;
- 20 (h) Failing to pay reporting time pay in violation of California Labor Code
21 section 1198 and the applicable IWC Wage Order, as alleged herein;
22 and
- 23 (i) Failing to reimburse Plaintiff and class members for all business
24 expenses necessarily incurred in violation of California Labor Code
25 sections 2802, as alleged herein.

26 154. At all relevant times herein, California Labor Code section 222.5 requires
27 employers to pay for the costs an employee incurs for obtaining any medical or physical
28 examination.

1 155. At all times relevant herein, Defendants implemented, on a company-wide
2 basis, an employer-imposed requirement that Plaintiff and class members undergo a
3 mandatory physical examination and/or drug test, but required them to do so at their own
4 expense. As stated, Defendants had a company-wide policy requiring that all employees,
5 including Plaintiff and class members, travel to a specified medical facility using their own
6 personal vehicles or obtain alternate transportation to undergo physical examinations and/or
7 drug testing. At all times, Defendants were in control of scheduling the date and time for the
8 physical examinations and/or testing, selecting the provider/facility where the physical
9 examinations and/or testing were to take place, and determining the scope of the physical
10 examinations and/or testing.

11 156. During the relevant time period, Plaintiff was instructed by Defendants to travel
12 to a medical facility, St. Helena Hospital, and obtain a physical examination. Plaintiff
13 followed Defendants' instructions, traveled to the facility Defendants selected, and underwent
14 the physical examination. Plaintiff was required to travel for approximately 90 minutes total
15 to and from a medical facility selected by Defendants using her own vehicle, spent 30 minutes
16 waiting at the medical facility, and spent 40 minutes undergoing the physical examination.

17 157. However, Defendants did not compensate Plaintiff and class members for the
18 time they spent traveling to and from their drug tests and/or physical examinations, or for the
19 time they spent undergoing the testing and/or physical examinations, or reimburse them for
20 the travel expenses they incurred getting to and from the medical facilities. Defendants'
21 policy and/or not paying for all costs Plaintiff and class members incurred obtaining
22 mandatory physical examinations and/or drug testing is in violation of California Labor Code
23 section 222.5.

24 158. As a result of the violations of California law herein described, Defendants
25 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
26 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
27 herein.

28 159. Pursuant to California Business & Professions Code sections 17200, *et seq.*,

1 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
2 Defendants during a period that commences four years prior to the filing of this complaint; a
3 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
4 class members; and an award of attorneys' fees pursuant to California Code of Civil
5 Procedure section 1021.5 and other applicable laws; and an award of costs.

6 **TWELFTH CAUSE OF ACTION**

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

8 **Unfair Business Practices**

9 **(Against all Defendants)**

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

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

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

20 163. Defendants’ activities, namely Defendants’ company-wide practice and/or
21 policy of not paying Plaintiff and class members meal and rest period premiums due to them
22 under Labor Code section 226.7, deprived Plaintiff and class members of the compensation
23 guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy
24 provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate
25 employees, and secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238
26 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to
27 Plaintiff and class members as part of their employment with Defendants, and thus
28 Defendants’ practice and/or policy of denying these statutory benefits constitutes an unfair

1 business practice in violation of California Business & Professions Code sections 17200, *et*
2 *seq. (Id.)*

3 164. A violation of California Business & Professions Code sections 17200, *et seq.*
4 may be predicated on any unfair business practice. In the instant case, Defendants' policies
5 and practices have violated the spirit of California's meal and rest period laws and constitute
6 acts against the public policy behind these laws.

7 165. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
8 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
9 benefits implemented by section 226.7 withheld and retained by Defendants during a period
10 that commences four years prior to the filing of this complaint; a permanent injunction
11 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
12 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
13 Procedure section 1021.5 and other applicable laws; and an award of costs.

14 **REQUEST FOR JURY TRIAL**

15 Plaintiff requests a trial by jury.

16 **PRAYER FOR RELIEF**

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

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

22 **Class Certification**

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

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

27 5. That the Court declare, adjudge, and decree that Defendants violated California
28 Labor Code sections 510 and 1198 and applicable IWC Wage Order(s) by willfully failing to

1 pay all overtime wages due to Plaintiff and class members;

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

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

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

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

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

11 10. That the Court declare, adjudge and decree that Defendants violated California
12 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and applicable IWC Wage
13 Order(s) by willfully failing to pay minimum wages to Plaintiff and class members;

14 11. For general unpaid wages and such general and special damages as may be
15 appropriate;

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

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

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

21 15. For such other and further relief as the Court may deem equitable and
22 appropriate.

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

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

27 17. That the Court make an award to the Plaintiff and class members of one (1)
28 hour of pay at each employee's regular rate of pay for each workday that a meal period was

1 not provided;

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

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

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

7 21. For attorneys' fees pursuant to California Code of Civil Procedure section
8 1021.5, or as otherwise provided by law; and

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

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

12 23. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Order(s) by willfully
14 failing to authorize and permit Plaintiff and class members to take all rest periods;

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

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

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

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

23 28. For attorneys' fees pursuant to California Code of Civil Procedure section
24 1021.5, or as otherwise provided by law; and

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

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

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

recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Order(s) as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

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

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

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

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

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

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay owed at the time of termination of the employment of Plaintiff and other terminated class members;

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

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

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

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

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

As to the Seventh Cause of Action

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

1 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
2 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay
3 during their employment;

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

6 44. For statutory penalties according to proof pursuant to California Labor Code
7 section 210;

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

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

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

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

15 48. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by
17 failing to provide Plaintiff and class members with reporting time pay;

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

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

22 51. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Ninth Cause of Action**

25 52. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
27 related expenses and costs incurred by Plaintiff and class members;

28 53. For unpaid business-related expenses and such general and special damages as

1 may be appropriate;

2 54. For pre-judgment interest on any unpaid business-related expenses from the
3 date such amounts were due, or as otherwise provided by law;

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

6 56. For attorneys' fees and costs pursuant to California Labor Code section
7 2802(c), or as otherwise provided by law; and

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

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

11 58. That the Court declare, adjudge and decree that Defendants violated the
12 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
13 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
14 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
15 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
16 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
17 statements and maintain accurate payroll records); 201, 202, and 203 (by failing to timely pay
18 all earned wages upon termination); 204 (by failing to timely pay all earned wages during
19 employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical
20 examinations); 1198 (by failing to provide reporting time pay); 1198 (by failing to provide
21 suitable seating); and 2802 (by failing to reimburse business expenses);

22 59. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
23 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
24 sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
25 1197, 1197.1, 1198, and 2802;

26 60. For attorneys' fees and costs pursuant to California Labor Code section
27 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
28 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),

1 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

3 62. For such other and further relief as the Court may deem equitable and
4 appropriate.

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

6 63. That the Court declare, adjudge and decree that Defendants' conduct of failing
7 to provide Plaintiff and class members all overtime wages due to them, failing to provide
8 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
9 class members all meal periods, failing to authorize and permit Plaintiff and class members to
10 take all rest periods, failing to provide Plaintiff and class members accurate and complete
11 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
12 failing to timely pay Plaintiff and class members all earned wages during employment, failing
13 to reimburse Plaintiff and class members for the costs of mandatory drug testing and/or
14 physical examinations, failing to pay Plaintiff and class members reporting time pay, and
15 failing to reimburse Plaintiff and class members for business-related expenses, constitutes an
16 unlawful business practice in violation of California Business and Professions Code sections
17 17200, *et seq.*;

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

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

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

26 67. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 //

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

2 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
3 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
4 an unfair business practice in violation of California Business and Professions Code sections
5 17200, *et seq.*;

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

9 70. For the appointment of a receiver to receive, manage and distribute any and all
10 funds disgorged from Defendants and determined to have been wrongfully acquired by
11 Defendants as a result of violations of California Business & Professions Code sections
12 17200, *et seq.*;

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

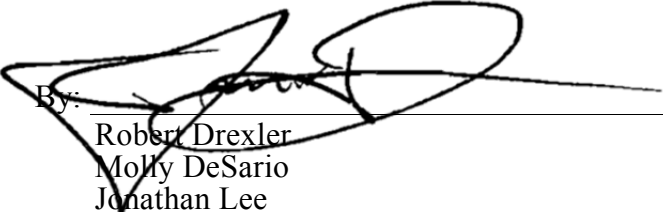
15 72. For pre-judgment and post-judgment interest as provided by law; and

16 73. For such other and further relief as the Court may deem equitable and
17 appropriate.

18
19 Dated: April 12, 2021

Respectfully submitted,

20 Capstone Law APC

21
22 By: 

23 Robert Drexler
24 Molly DeSario
Jonathan Lee
Helga Hakimi

25 Attorneys for Plaintiff Rocio Madrigal
26
27
28

Exhibit 1



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

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February 4, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Rocio Madrigal v. Solage Management, Inc., et al.*

Dear PAGA Administrator:

This office represents Rocio Madrigal in connection with her claims under the California Labor Code. Ms. Madrigal was an employee of SOLAGE MANAGEMENT, INC. and/or AUBERGE RESORTS LLC. For the purpose of this letter, Ms. Madrigal collectively refers to these entities as "SOLAGE."

The employers may be contacted directly at the addresses below:

SOLAGE MANAGEMENT, INC.
33 REED BLVD
MILL VALLEY CA 94941

AUBERGE RESORTS LLC
33 REED BOULEVARD #A
MILL VALLEY CA 94941

Ms. Madrigal 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"). Ms. Madrigal seeks relief on behalf of herself, the State of California, and other persons who are or were employed by SOLAGE 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.

SOLAGE employed Ms. Madrigal as an hourly paid, non-exempt employee from approximately July 2018 to March 2020. Ms. Madrigal worked for SOLAGE as a Cook at the Solage Resort & Spa, located at 755 Silverado Trail N, Calistoga, California 94515. During her employment, Ms. Madrigal typically worked eight (8) hours or more per day, and five (5) or more days per week. At the time Ms. Madrigal's employment with SOLAGE ended, she earned approximately \$14.85 per hour. Her job duties included, without limitation, completing a daily checklist of food preparation tasks, washing and cooking food, preparing stocks and sauces, and cleaning and organizing her cook station.

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

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

SOLAGE MANAGEMENT, INC. is a California corporation, while AUBERGE RESORTS LLC is a Delaware limited liability company. SOLAGE MANAGEMENT, INC. is a hotel management company for “Solage, an Auberge Resort” in Calistoga, California, which is one of the three properties owned and operated by AUBERGE RESORTS LLC in California. Upon information and belief, SOLAGE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Mill City, California, for all non-exempt, hourly paid employees working for SOLAGE in California, including Ms. Madrigal and other aggrieved employees. At all relevant times, SOLAGE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Madrigal and other aggrieved employees, regardless of their location or position.

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

SOLAGE willfully failed to pay all overtime wages owed to Ms. Madrigal and other aggrieved employees. During the relevant time period, Ms. Madrigal 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

¹ These facts, theories, and claims are based on Ms. Madrigal’s experience and counsel’s review of those records currently available relating to Ms. Madrigal’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, Ms. Madrigal reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

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, SOLAGE had a company-wide policy and/or practice of discouraging and impeding Ms. Madrigal and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, upon threat of discipline, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with SOLAGE's use of labor budgets and assignment of heavy workloads and deadlines (*see infra*), led Ms. Madrigal and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. For example, twice per week, Ms. Madrigal was required to clock out at the end of her shift and continue working to complete her daily checklist of tasks, such as preparing food or cleaning and organizing her workstation.

Second, as stated, upon information and belief, SOLAGE had, and continues to have, a company-wide policy staffing its locations strictly based on the labor hours or labor budget set by the corporate office. SOLAGE's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload, which included completing daily tasks for preparing food and maintaining each workstation, to be completed on a deadline. Because SOLAGE did not employ or staff an adequate number of employees to meet its productivity expectations and failed to provide employees with adequate meal period coverage, Ms. Madrigal and other aggrieved employees were assigned heavy workloads, which SOLAGE knew or should have known could only be met by working additional hours. For example, Ms. Madrigal was required to complete the first part of her checklist before her meal period and the second part of her list before the end of her shift. Due to the heavy workload and requirement to complete certain daily tasks before and after meal periods, Ms. Madrigal and other aggrieved employees would complete their duties and perform work during unpaid meal periods. Ms. Madrigal and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads. However, SOLAGE did not compensate them for all of their time spent performing their duties.

Third, SOLAGE had, and continues to have, a practice of failing to schedule meal periods. This company-wide practice, coupled with the heavy workload and pressure from SOLAGE to complete assigned tasks, impeded Ms. Madrigal and other aggrieved employees from taking compliant meal periods. Further, because SOLAGE frowned upon employees accruing meal period penalties, SOLAGE pressured Ms. Madrigal and other aggrieved employees to clock out for meal periods upon threat of discipline and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that SOLAGE would otherwise owe. For example, twice per week, Ms. Madrigal would clock out at the direction of her supervisors and continued performing duties, such as preparing food or maintaining her workstation, during her meal period. Thus, Ms. Madrigal and other aggrieved employees performed work during meal periods for which they were not paid.

SOLAGE knew or should have known that as a result of these company-wide practices and/or policies, Ms. Madrigal 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 Ms. Madrigal 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.

Furthermore, SOLAGE did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, SOLAGE paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SOLAGE 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, SOLAGE failed to pay all overtime wages by paying a lower overtime rate than required.

Therefore, Ms. Madrigal 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. Ms. Madrigal 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 SOLAGE's restrictions on overtime accrual, SOLAGE systematically failed to pay Ms. Madrigal and other aggrieved employees for actual hours worked before and after scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, due to SOLAGE's uniform practice of utilizing labor budgets, resultant understaffing, assignment of heavy workloads and deadlines, and failing to schedule meal periods, Ms. Madrigal and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. In addition, SOLAGE systematically failed to pay Ms. Madrigal and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded; as set forth above, SOLAGE's policies required Ms. Madrigal and other aggrieved employees to clock out for meal periods, even though Ms. Madrigal and other aggrieved employees performed additional duties and were subject to SOLAGE's control during this time.

Furthermore, on information and belief, SOLAGE maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, SOLAGE was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. SOLAGE gave Ms. Madrigal and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and Ms. Madrigal and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of SOLAGE. Ms. Madrigal and other aggrieved employees were required to travel in their personal vehicles or obtain alternate transportation and spend time undergoing the requisite testing and/or physical examinations. For example, Ms. Madrigal spent 45 minutes driving

to the designated medical facility, St. Helena Hospital; waited 30 minutes; spent 40 minutes undergoing the physical examination; and spent 45 minutes driving home. However, SOLAGE did not compensate Ms. Madrigal and other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the mandatory drug testing and/or physical examinations.

Thus, SOLAGE 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, SOLAGE 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, SOLAGE regularly failed to pay at least minimum wages to Ms. Madrigal 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.

Ms. Madrigal 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 period 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, upon information and belief, SOLAGE had, and continues to have, company-wide policies and/or practices of understaffing its locations due to labor budgeting, while simultaneously assigning heavy workloads and daily checklist deadlines, discouraging employees from incurring overtime, and failing to schedule meal periods, which has resulted in a lack of meal period coverage and prevented Ms. Madrigal and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled.

As a result of SOLAGE's company-wide practices and/or policies, Ms. Madrigal and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, once per week, Ms. Madrigal took her meal periods after the end of her fifth hour of work because she had to finish baking or boiling food items. As a further example, twice per week, Ms.

Madrigal worked through her meal periods in order to finish preparing food or to clean and organize her workstation.

Moreover, as stated, because SOLAGE frowned upon employees accruing meal period penalties, SOLAGE's management would adjust Ms. Madrigal's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by SOLAGE. For example, Ms. Madrigal was instructed by her supervisor to clock out and continue working through her meal periods to record that she had received compliant meal periods on shifts when she had not, in fact, received these meal periods.

In addition, SOLAGE did not provide Ms. Madrigal and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Ms. Madrigal would work shifts in excess of ten (10) hours per day, but was not provided second meal periods during these shifts. Ms. Madrigal 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.

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

Furthermore, SOLAGE 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, Ms. Madrigal and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that SOLAGE did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, SOLAGE did not pay other aggrieved employees at the correct rate of pay for premium wages because SOLAGE 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, SOLAGE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Madrigal 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, SOLAGE regularly failed to authorize and permit Ms. Madrigal 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, SOLAGE’s company-wide policies and/or practices, including utilizing labor budgets, assigning heavy workloads and deadlines, and resultant understaffing, prevented Ms. Madrigal and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. SOLAGE also failed to schedule rest periods, which, coupled with SOLAGE’s failure to provide adequate rest period coverage, further led to Ms. Madrigal and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, SOLAGE maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Madrigal and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Madrigal and other aggrieved employees were restricted from leaving SOLAGE’s premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, SOLAGE effectively maintained control over Ms. Madrigal and other aggrieved employees during rest periods.

As a result of SOLAGE’s practices and policies, Ms. Madrigal 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 her employment, Ms. Madrigal missed her rest periods in order to complete all of the work-related duties SOLAGE assigned to her. Additionally, Ms. Madrigal did not receive a third rest period when working shifts in excess of 10 hours.

SOLAGE 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, Ms. Madrigal and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SOLAGE did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SOLAGE did not pay other aggrieved employees at the correct rate of pay for premium wages because SOLAGE 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, SOLAGE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Madrigal 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. SOLAGE has not provided Ms. Madrigal 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, SOLAGE has knowingly and intentionally provided Ms. Madrigal and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SOLAGE issued uniform wage statements to Ms. Madrigal and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; 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, SOLAGE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SOLAGE did not record the time Ms. Madrigal and other aggrieved employees spent working off the clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), SOLAGE did not list the correct amount of gross wages and net wages earned by Ms. Madrigal and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SOLAGE failed to accurately list the total number of hours worked by Ms. Madrigal 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).

Moreover, because SOLAGE did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, SOLAGE did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, SOLAGE also failed to list the correct amount of net wages in violation of section 226(a)(5). SOLAGE 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).

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 and address 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), SOLAGE willfully failed to maintain accurate payroll records for Ms. Madrigal 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, SOLAGE failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Madrigal and other aggrieved employees, in violation of section 1198. As stated, SOLAGE engaged in a company-wide practice and/or policy of falsifying Ms. Madrigal’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Ms. Madrigal and other aggrieved employees. Furthermore, in light of SOLAGE’s failure to provide Ms. Madrigal and other aggrieved employees with second 30-minute meal periods to which they were entitled, SOLAGE kept no records of meal start and end times for second meal periods.

Because SOLAGE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Madrigal 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, Ms. Madrigal 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.

Ms. Madrigal 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, SOLAGE failed to pay Ms. Madrigal and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Ms. Madrigal 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.

SOLAGE had a company-wide practice or policy of failing to adhere to the time requirements set forth in Labor Code sections 201 and 202. For example, Ms. Madrigal attended a meeting held by SOLAGE on March 14, 2020, where she was informed that employees were being furloughed due to COVID-19. She returned to work in May 2020, and was told at that time her position had been eliminated. Ms. Madrigal did not receive her final wages, including all earned vacation wages, from SOLAGE until May 29, 2020. Thus, SOLAGE failed to pay Ms. Madrigal her final wages immediately, in violation of Labor Code section 201.

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

Ms. Madrigal 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 § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, SOLAGE implemented, on a company-wide basis, an employer-imposed requirement that Ms. Madrigal and other aggrieved employees undergo a mandatory physical examination and/or drug test, but required them to do so at their own expense. As stated, SOLAGE had a company-wide policy requiring that all employees travel to a specified medical

facility using their own personal vehicles or obtain alternate transportation to undergo physical examinations and/or drug testing. At all times, SOLAGE was in control of scheduling the date and time for the physical examinations and/or testing, selecting the provider/facility where the physical examinations and/or testing were to take place, and determining the scope of the physical examinations and/or testing.

Ms. Madrigal was instructed by SOLAGE to travel to a medical facility, St. Helena Hospital, and obtain a physical examination. Ms. Madrigal followed SOLAGE's instructions, traveled to the facility SOLAGE selected, and underwent the physical examination. Ms. Madrigal was required to travel for approximately 90 minutes total to and from a medical facility selected by SOLAGE using her own vehicle, spent 30 minutes waiting at the medical facility, and spent 40 minutes undergoing the physical examination.

However, SOLAGE did not compensate Ms. Madrigal and other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. SOLAGE's policy and/or practice of not paying for all costs Ms. Madrigal and other aggrieved employees incurred obtaining mandatory physical examinations and/or drug testing is in violation of California Labor Code section 222.5.

Ms. Madrigal and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 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.*

SOLAGE'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. SOLAGE 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, SOLAGE 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.

SOLAGE 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. SOLAGE'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 SOLAGE'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. SOLAGE'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 SOLAGE 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, SOLAGE's California hotels 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 Ms. Madrigal and other aggrieved employees during lulls in operation. SOLAGE could provide Ms. Madrigal and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Ms. Madrigal and other aggrieved employees to stand throughout the day.

SOLAGE did not provide Ms. Madrigal and 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 Ms. Madrigal and other aggrieved employees engaged in duties in which the nature of the work required standing, SOLAGE denied them the use of seats nearby during lulls in their work duties. Moreover, SOLAGE did not inform Ms. Madrigal and other aggrieved employees of their rights to a seat or stool under California law.

As a result of SOLAGE'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, Ms. Madrigal and other aggrieved employees were forced to stand during shifts and denied seats. SOLAGE's failure to provide suitable seating to Ms. Madrigal and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(B).

Ms. Madrigal and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring SOLAGE 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 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further 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(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

During the relevant time period, SOLAGE violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5) because SOLAGE failed to pay Ms.

Madrigal and other aggrieved employees reporting time pay when they reported for work for their scheduled shift but were put to work for less than half of the regular schedule.

SOLAGE had a company-wide practice of sending Ms. Madrigal and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Ms. Madrigal and other aggrieved employees for half of their scheduled shift. For example, on at least one occasion, Ms. Madrigal reported to work for her scheduled shift, but was sent home after a few hours by SOLAGE's management because business was slow. Although Ms. Madrigal and other aggrieved employees would report to work based on the schedule that SOLAGE provided to them, SOLAGE would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Ms. Madrigal and other aggrieved employees were not properly compensated with reporting time pay, in violation of California Labor Code section 1198.

Ms. Madrigal and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 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."

First, during the relevant time period, SOLAGE had a company-wide policy of requiring Ms. Madrigal and other aggrieved employees to travel in their own personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, SOLAGE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. SOLAGE gave Ms. Madrigal and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and Ms. Madrigal and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of SOLAGE.

As stated, Ms. Madrigal followed SOLAGE's instructions, traveled for approximately 90 minutes roundtrip in her personal vehicle to and from St. Helena Hospital, and underwent SOLAGE's physical examination, but was not reimbursed for her mileage to and from the medical facility. Although SOLAGE required Ms. Madrigal and other aggrieved employees to undergo drug testing and/or physical examinations, SOLAGE failed to reimburse them for their travel expenses.

Second, during the relevant time period, SOLAGE, on a company-wide basis, required Ms. Madrigal and other aggrieved employees to report to work wearing clean uniforms while simultaneously failing to provide employees with an adequate number of those uniforms. This forced Ms. Madrigal and other aggrieved employees to frequently wash their uniforms, and incur expenses in doing so.

For example, Ms. Madrigal was given only three (3) branded black, button-up shirts with the hotel restaurant's logo embroidered on the upper left chest. Due to the nature of her work, Ms. Madrigal's uniforms would become stained and/or acquire an unpleasant odor, and Ms. Madrigal would be required to wash these uniforms separately from her other clothes, increasing her overall laundry costs even more. Additionally, SOLAGE failed to provide other aggrieved employees with an adequate number of uniforms in relation to their scheduled shifts and for the tasks they were required to perform, forcing other aggrieved employees to pay out-of-pocket for replacement uniform shirts. Since SOLAGE did not provide an adequate number of uniform shirts to all employees, other aggrieved employees were required to purchase additional uniform shirts directly from SOLAGE, and were not reimbursed for these costs.

Third, during the relevant time period, SOLAGE, on a company-wide basis, forced Ms. Madrigal and other aggrieved employees to purchase basic supplies and tools that were necessary for completion of their work-related duties. For example, Ms. Madrigal was required to purchase knives, peelers, and spoons in order to perform her job duties in the kitchen. Although SOLAGE required Ms. Madrigal and other aggrieved employees to purchase and use their own supplies and tools for work, SOLAGE did not reimburse them for these expenses.

SOLAGE could have provided Ms. Madrigal and other aggrieved employees with the actual tools for use on the job, such as company vehicles, an adequate number of uniforms and/or access to laundering services, and basic supplies and tools. Or, SOLAGE could have reimbursed employees for the costs of their mileage, travel, uniform and laundry expenses, and basic supplies and tools. Instead, SOLAGE passed these operating costs off onto Ms. Madrigal and other aggrieved employees. At all relevant times, Ms. Madrigal did not earn at least two (2) times the minimum wage.

Thus, SOLAGE 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. Ms. Madrigal 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." SOLAGE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Madrigal's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Madrigal seeks the remedies set forth in Labor Code section 558 for herself, 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, Ms. Madrigal, acting in the public interest as a private attorney general, seeks assessment and

collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against SOLAGE for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Madrigal 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:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: SOLAGE MANAGEMENT, INC. (via U.S. Certified Mail); AUBERGE RESORTS LLC (via U.S. Certified Mail)



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LAW APC

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I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

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

Todd Cilano	CT Corporation System
755 Silverado Trail N	818 West 7th Street, Suite 930
Calistoga, CA 94515	Los Angeles, CA 90017
<i>Agent for Service of Process for Defendant</i>	<i>Agent for Service of Process for Defendant</i>
<i>Solage Management, Inc.</i>	<i>Auberge Resorts LLC</i>

- EXECUTED** this document on April 12, 2021, at Los Angeles, California.

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