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Attorneys for Plaintiff ALBERT THOMPCKINS,
on behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ALBERT THOMPCKINS, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

HOST INTERNATIONAL INC., dba HMS
HOST, a Delaware Corporation; and DOES 1-
50, inclusive,

Defendants

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq*).**

COMES NOW Plaintiff ALBERT THOMPkins (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants HOST INTERNATIONAL INC., dba HMS HOST; and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) to pay wages including overtime, (b) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant’s employ, (e) failing to provide accurate itemized wage statements, and (f) failure to provide suitable seating. As a result Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief,

1 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
2 avails itself of the California market so as to render the exercise of jurisdiction over it by the
3 California Courts consistent with traditional notions of fair play and substantial justice.

4 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
5 Civil Procedure section 395. Defendants are doing business throughout California, including but
6 not limited to Los Angeles County, and each Defendant is within the jurisdiction of this Court for
7 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and
8 all other aggrieved employees within the State of California. Defendants employ numerous
9 aggrieved employees in in the State of California.

10 6. On information and belief, Defendants have conducted business within the State of
11 California during the purported liability period and continue to conduct business throughout the
12 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
13 similarly situated non-exempt aggrieved employees within California.

14 7. The California Superior Court also has jurisdiction in this matter because on
15 information and belief there are no federal questions at issue, as the issues herein are based solely
16 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
17 California Code of Civil Procedure, the California Civil Code, and the California Business and
18 Professions Code.

19 8. On information and belief, during the statutory liability period and continuing to
20 the present ("liability period"), Defendant consistently maintained and enforced against
21 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
22 and policies, in violation of California state wage and hour laws: (a) to pay wages including
23 overtime, (b) failure to provide meal periods for every work period exceeding more than ten (10)
24 hours per day and failure to pay an additional hour's of pay or accurately pay an additional hour's
25 of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or
26 major fraction thereof worked and failure to pay an additional hour's of pay or accurately pay an
27 additional hour's of pay in lieu of providing a rest period; (d) failing to pay all wages earned and
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1 owed upon separation from Defendant's employ, (e) failing to provide accurate itemized wage
2 statements, and (f) failure to provide suitable seating.

3 9. On information and belief, during the statutory liability period and continuing to
4 the present, Defendants have had a consistent policy of failing to provide its Non-Exempt
5 Employees within the State of California, including Plaintiff, unfettered, uninterrupted, duty free
6 rest periods of at least (10) minutes per four (4) hours worked or major fraction thereof and failing
7 to pay such employees one (1) hour of pay at the employees regular rate of compensation for each
8 workday that the rest period is not provided, as required by California state wage and hour laws.

9 10. On information and belief, during the statutory liability period and continuing to
10 the present, Defendants have had a consistent policy of failing to pay wages including overtime
11 wages for hours worked while subject to the control of Defendants.

12 11. On information and belief, during the statutory liability period and continuing to
13 the present (rest and meal period liability period), Defendants have had a consistent policy of
14 requiring its Non-Exempt Employees within the State of California, including Plaintiff, to work at
15 least five (5) and or ten (10) hours without a meal period and failing to pay or accurately pay such
16 employees one (1) hour of pay at the employees regular rate of compensation for each workday
17 that the meal period is not provided, as required by California state wage and hour laws.

18 12. On information and belief, during the statutory liability period and continuing to
19 the present (rest and meal period liability period), Defendants have had a consistent policy of
20 requiring its Non-Exempt Employees within the State of California, including Plaintiff, to work in
21 excess of four hours and or ten (10) hours without authorizing and permitting a rest period and
22 failing to pay or accurately pay such employees one (1) hour of pay at the employees regular rate
23 of compensation for each workday that the rest period is not authorized and permitted, as required
24 by California state wage and hour laws.

25 13. On information and belief, during the statutory liability period and continuing to
26 the present, Defendants have had a consistent policy of failing to timely pay wages upon
27 separation.
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14. On information and belief, during the statutory liability period and continuing to the present, Defendants have failed to provide Plaintiff and aggrieved employees accurate itemized wage statements.

15. During the liability period, Defendants failed to provide suitable seating to Plaintiff and Aggrieved Employees while performing their job duties in violation of applicable California Wage Order 5-2001 and 5-2001 sec. (14) (A)-(B).

16. Plaintiff on behalf of the general public as private attorney general and all other aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations enumerated under 2699.5 as follows: sections 201-203, 510, 512, 558, 226, 226.3, 226.7, 226.3, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, and seeking penalties, interest, attorneys' fees and costs.

III. PARTIES

A. Plaintiff

17. Plaintiff, ALBERT THOMPCKINS, was at all times relevant to this action, a resident of California. Plaintiff was employed by Defendants in approximately April 2019 as a Non-Exempt Employee and worked during the liability period for Defendants' as a Busser/Server, until his separation from Defendants' employ in approximately October 2020. Plaintiff was assigned to work at Defendants' LAX Airport location.

18. As Defendants' employee, Plaintiff, and all other aggrieved employees were regularly required to and subsequently suffered:

- a) perform work subject to the control of the employer without being compensated all wages including overtime, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Order (“IWC”);
- b) work without being permitted or authorized a minimum ten-minute rest period for every four hours or major fraction thereof worked and not compensated one (1) hour of pay at his regular rate of compensation for each workday that a rest period was not provided, all in violation of California labor laws, regulations, and the Industrial

1 Welfare Commission Wage Orders (“IWC”);

- 2 c) work in excess of six and ten hours per day without being provided meal periods and
3 not compensated one (1) hour of pay at the regular rate of compensation for each
4 workday that a meal period was not provided, all in violation of California labor laws,
5 regulations, and the Industrial Welfare Commission Wage Orders (“IWC”);
6 d) not provided accurate itemized wage statements; and
7 e) not provided suitable seating.

8 19. On information and belief, Defendants willfully failed to pay all earned wages in
9 the form regular wages and overtime wages, and meal and rest period premium wages, to its
10 Non-Exempt Employees and members of the Representative Group; nor have Defendants
11 returned to Plaintiff or members of the Representative Group, upon or after separation from
12 employment with Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor
13 Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other
14 aggrieved employees.

15 **B. Defendants**

16 20. Defendants HOST INTERNATIONAL INC., dba HMS HOST operates as a food
17 and beverage service provider with dining locations at airports and motorways across the United
18 States and California. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who
19 work or have worked for Defendants over the last year.

20 21. Other than identified herein, Plaintiff is unaware of the true names, capacities,
21 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
22 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
23 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
24 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
25 are ascertained.

26 22. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
27 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
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1 Representative Group , and exercised control over their wages, hours, and working conditions.
2 Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects
3 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
4 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable
5 to the other defendants.

6 **IV. GENERAL ALLEGATIONS**

7 23. At all times set forth herein, Defendants employed Plaintiff and other persons in
8 the capacity of non-exempt positions, however titled, throughout the state of California.

9 24. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent
10 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
11 rules and regulations of the IWC California Wage Orders.

12 25. Defendants employed Plaintiff and Aggrieved Employees as a Non-Exempt hourly
13 paid employees during the liability period.

14 26. Defendants continue to employ Non-Exempt Employees, however titled, in
15 California and implement a uniform set of policies and practices to all non-exempt employees, as
16 they were all engaged in the generic job duties of providing food and beverage services at
17 Defendants various locations in California.

18 27. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
19 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
20 the requirements of California's wage and employment laws.

21 28. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
22 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
23 week and worked approximately five (5)-day work weeks.

24 29. Plaintiff is informed and believes that Plaintiff and Aggrieved Employees were not
25 compensated for all time worked as Plaintiff and Aggrieved Employees as a result of off-the-
26 clock work performed. For instance, Plaintiff and Aggrieved Employees were subjected to
27 security checks which took approximately 5 minutes and were done while Plaintiff and Aggrieved
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1 Employees were not clocked in. During the security checks, Plaintiff and Aggrieved Employees
2 had to enter a line and were required to show their employee badges and would be subject to a
3 pat down of their persons and a search of any bags they were carrying. Plaintiff and Aggrieved
4 Employees were not compensated for this time and resulted in a disproportionate underpayment
5 of minimum and overtime wages.

6 30. Plaintiff is informed and believes, and thereon alleges that, during the relevant time
7 frame, Defendant also compensated Plaintiff and Aggrieved Employees with shift differentials
8 but failed to incorporate the shift differentials into the regular rate of pay for overtime calculation
9 purposes and therefore were provided inaccurate overtime pay.

10 31. Plaintiff and the Aggrieved Employees were regularly required to work shifts in
11 excess of five hours without being provided a lawful meal period and over ten hours in a day
12 without being provided a second lawful meal period as required by law.

13 32. Indeed, during the relevant time, as a consequence of Defendants' staffing and
14 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
15 Defendants frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally
16 compliant uninterrupted 30-minute meal periods on shifts over five hours as required by law.

17 33. Similarly, as a consequence of Defendants' staffing and scheduling practices, lack
18 of coverage, work demands, and Defendants' policies and practices, Defendants frequently failed
19 to provide Plaintiff and the Aggrieved Employees legally compliant second meal periods on shifts
20 over ten hours as required by law.

21 34. On information and belief, Plaintiff and Aggrieved Employees did not waive their
22 rights to meal periods under the law.

23 35. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-duty
24 meal periods.

25 36. Despite the above-mentioned meal period violations, Defendants failed to
26 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
27 one additional hour of pay at their regular rate as required by California law when meal periods
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1 were not timely or lawfully provided in a compliant manner.

2 37. Plaintiff are informed and believe, and thereon alleges, that Defendants know,
3 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
4 were entitled to receive premium wages based on their regular rate of pay under Labor Code
5 §226.7 but were not receiving such compensation.

6 38. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
7 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
8 period for every four hours worked or major fraction thereof, which is a violation of the Labor
9 Code and IWC wage order.

10 39. Defendants maintained and enforced scheduling practices, policies, and imposed
11 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
12 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
13 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure
14 to provide relief for Plaintiff and Aggrieved Employees to take their lawfully required breaks.

15 40. Despite the above-mentioned rest period violations, Defendants did not compensate
16 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of
17 pay at their regular rate as required by California law, including Labor Code section 226.7 and
18 the applicable IWC wage order, for each day on which lawful rest periods were not authorized
19 and permitted.

20 41. Defendants also failed to provide accurate, lawful itemized wage statements to
21 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
22 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
23 worked, including premiums due and owing for meal and rest period violations, gross pay and net
24 pay figures from Plaintiff and the Aggrieved Employees' wage statements.

25 42. Plaintiff are informed and believe, and thereon alleges, that at all times herein
26 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
27 thereof for resignations without prior notice as the case may be) they had a duty to accurately
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1 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages,
2 meal and rest period premiums, and that Defendants had the financial ability to pay such
3 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
4 because of the above-specified violations. For instance, Plaintiff has not received his final pay
5 check since he left Defendant's employ in October 2020. In October 2020, Plaintiff was notified
6 by Defendants that his final pay check would be arriving, but to date has not received it.

7 43. During the liability period, Plaintiff and Aggrieved Employees were not provided
8 suitable seating and when such employees were not engaged in duties which required them to
9 stand, no seating was placed in reasonable proximity to their work stations. Thus, Defendants did
10 not provide Plaintiff and Class Members with suitable seating in accordance with applicable IWC
11 Wage Order 7-2001 (14)(A)-(B) and California law despite the fact that the nature of their work
12 reasonably permits use of seats.

13 44. Upon information and belief, Defendants failed to keep accurate records pursuant
14 to Labor Code § 1174.5.

15 45. Upon information and belief, Defendants knew and or should have known that it is
16 improper to implement policies and commit unlawful acts such as:

17 (a) requiring employees to work four (4) hours or a major fraction thereof without
18 being provided a minimum ten (10) minute rest period and without compensating the employees
19 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
20 rest period was not provided;

21 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day
22 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
23 and without compensating employees with one (1) hour of pay at the regular rate of compensation
24 for each workday that such a meal period was not provided;

25 (c) failing to provide accurate itemized wage statements;

26 (d) failing to timely pay Plaintiff and Aggrieved Employees; and

27 (e) failing to provide suitable seating
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46. In addition to the violations above, and on information and belief, Defendants knew they had a duty to compensate Plaintiff and aggrieved employees for the allegations asserted herein, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

V. REPRESENTATIVE CLAIMS

THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.*

47. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

48. On March 25, 2021 Plaintiff complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a representative capacity. The substance and violations set forth in this Complaint of which the LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative Action Complaint to the LWDA.

49. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt Employees of Defendants.

50. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint, including without limitation Labor Code section 201-203, 226, 226.3, 226.7, 510, 558, 512, 1174, 1174.5, 1175, 1194, 1197, 1197.1, and, 2698 *et seq.*, applicable IWC Wage Orders and California Code of Regulations, Title 8, section 11000 *et. seq.*

51. At all times relevant, Plaintiff and all other aggrieved employees regularly performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and rest break requirements of the applicable IWC wage order and the Labor Code.

1 52. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
2 overtime wages owed as discussed above for Defendants' failure to account for the time it took
3 Plaintiff and Aggrieved Employees to undergo security checks while they are off-the-clock.
4 Defendants also failed to accurately pay overtime wages by failing to incorporate shift differentials
5 into the regular rate of pay for overtime calculation purposes and therefore Plaintiff and Aggrieved
6 Employees were also provided inaccurate overtime pay for these reasons as well. Therefore,
7 Defendants violated section 510, and 1194 by not compensating its Non-Exempt Employees for
8 work performed in excess of eight hours (8) in a day or forty hours in a work week (40). Section
9 510 of the Labor Code codifies the right to overtime compensation at the rate of one and one-half
10 times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40)
11 hours in a work week and to overtime compensation twice the regular rate of pay for hours worked
12 in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
13 of work in a particular work week

14 53. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
15 accurately pay at least minimum wages due as a result Defendants' failure to account for the time
16 it took Plaintiff and Aggrieved Employees to undergo security checks while they are off-the-clock.

17 54. Defendants violated Labor Code sections 512 and 226.7 for failing to provide
18 timely, uninterrupted first and second meal periods and requiring unlawful on duty meal periods,
19 or compensation in lieu thereof. Pursuant to Labor Code section 512, no employer shall employ
20 an employee for a work period of more than five (5) hours without providing a meal break of not
21 less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An
22 employer may not employ an employee for a work period of more than ten (10) hours per day
23 without providing the employee with a second meal period of not less than thirty (30) minutes,
24 except that if the total hours worked is no more than twelve (12) hours, the second meal period
25 may be waived by mutual consent of the employer and the employee only if the first meal period
26 was not waived.

27 55. Defendants failed to provide Plaintiff and all other aggrieved employees
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1 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants implemented
2 and enforced policies of on duty meal period practices which required employees to work during
3 their meal periods, to forego their meal periods, and/or to return to work from meal periods prior
4 to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations,
5 Plaintiff and all other aggrieved employees have been damaged in an amount according to proof
6 at time of trial.

7 56. Plaintiff, and on information and belief, all aggrieved employees, were
8 systematically not permitted or authorized to take ten minute rest periods for every four hours
9 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
10 Plaintiff and on information and belief, aggrieved employees, were not compensated with one hour
11 of wages for every day in which a rest period was missed or untimely as a result of Defendants'
12 policies, practices, or work demands. By failing to authorize and permit a ten-minute rest period
13 for every four hours or major fraction thereof worked per day by its Non-Exempt Employees, and
14 by failing to provide compensation for such non-provided or shortened rest periods, as alleged
15 above, Defendants willfully violated the provisions of Labor Code sections 226.7, 512 and the
16 applicable IWC Wage Order.

17 57. Defendants also willfully violated Labor Code sections 201-203 by failing to
18 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
19 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
20 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
21 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
22 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
23 The penalty cannot exceed 30 days of wages.

24 58. Plaintiff and all other aggrieved employees who were separated from employment
25 are entitled to compensation for all forms of wages earned, including but not limited to
26 compensation regular and overtime wages, and for non-provided meal and rest periods, but to date
27 have not received such compensation, therefore entitling them to penalties under PAGA for
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1 violations of Labor Code sections 201-203. To date, Plaintiff has not received his final pay check.

2 59. On information and belief, Defendants willfully failed to pay all wages due and
3 owing upon separation from employment. These wages include regular and overtime wages, and
4 meal and rest period premiums.

5 60. On information and belief, Defendants failed to provide accurate itemized wage
6 statements which failed to include all hours worked, including overtime, accurate accounting of,
7 the lawful meal and rest period premiums due and owing to Plaintiff and the aggrieved employees,
8 and the address of the legal entity that is the employer pursuant to Labor Code section 226(a).

9 61. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
10 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
11 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
12 for each violation in a subsequent citation, for which the employer fails to provide the employee a
13 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

14 62. Additionally, Defendants have no accurate records relating to aggrieved
15 employees' work periods, meal periods, total daily hours worked, total hours worked per payroll
16 period and applicable pay rates, in violation of applicable Wage Orders. Similarly, Defendants
17 failed to maintain accurate records relating to hours worked daily in violation of Labor Code
18 sections 1174(d), 1174.5.

19 63. Wage Order 5-2001 states "All working employees shall be provided with suitable
20 seats when the nature of the work reasonably permits the use of seats." Plaintiff alleges that
21 Defendants failed to provide employees suitable seats while working even though the nature of the
22 work reasonably permitted the use of such seats.

23 64. Defendants' failure to provide suitable seats constitutes a violation of applicable
24 California laws and regulations, including Labor Code section 1198 and IWC Wage Order 5-2001.

25 65. Labor Code section 1198 makes it unlawful to employ an employee under
26 conditions of labor that are prohibited by the applicable Wage Order. By failing to provide Plaintiff
27 and the other current and former aggrieved employees with suitable seats in violation of Wage
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1 Order 5-2001, Defendants also violated Labor Code section 1198.

2 66. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees
3 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
4 worked.

5 67. Plaintiff and the Representative Aggrieved Employees are entitled to recover
6 Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 9 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 10 2. For reasonable attorneys' fees and costs; and
- 11 3. For such other and further relief as the Court deems proper.
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14 Dated: March 25, 2021

JAMES HAWKINS APLC

15 By: _____

16 JAMES R. HAWKINS, ESQ.
17 GREGORY MAURO, ESQ.
18 MICHAEL CALVO, ESQ.
19 Attorneys for Plaintiff ALBERT
20 THOMPSON on behalf of the general public
21 as private attorney general
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