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Superior Court of California
County of Los Angeles

JUL 01 2021

Sherril R. Carter, Executive Officer/Clerk of Court

Attorneys for Plaintiff,
MARCELA V. PEREIRA, on behalf of herself and all others similarly situated,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

MARCELA V. PEREIRA, on behalf of herself
and all others similarly situated;

Plaintiff,

v.

MELROSE VILLAS, INC. a California
Corporation, and DOES 1 through 50 inclusive,

Defendants.

Case No.: 21STCV13755

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

1. Failure to Pay Minimum Wage and Overtime Wages;
2. Failure to Provide Meal Periods;
3. Failure to Provide Rest Periods;
4. Failure to Provide Accurate Wage Statements;
5. Failure to Pay Wages Upon Ending Employment; and
6. Unfair Competition (Business and Professions Code § 17200 et seq.);
7. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq.;

DEMAND FOR JURY TRIAL

Assigned for All Purposes to the Hon. Amy D.
Hogue, Dept: 7

Complaint Filed: April 9, 2021

Trial Date: None Set

BY FAX

1 Plaintiff MARCELA V. PEREIRA (hereinafter “Ms. Maravilla” or “Plaintiff”) on behalf of
2 herself and all others similarly situated, complain and alleges as follows:

3 I.

4 **INTRODUCTION**

5 1. This is a class action brought on behalf of Plaintiff MARCELA V. PEREIRA (hereinafter
6 “Ms. Maravilla” or “Plaintiff”) and the class she seeks to represent (“Plaintiff Class”), as defined herein,
7 as all non-exempt employees employed by or formerly employed by Defendant MELROSE VILLAS,
8 INC. (herein referred to as “Defendant”). The Plaintiff Class consists of all non-exempt employees
9 employed by or formerly employed by Defendant within the State of California who are California
10 Citizens at the time of the filing of this Complaint.” The “Class Period” is defined as the four (4) years
11 prior to the filing of the Complaint through the date final judgment is entered. Plaintiff reserves the right
12 to amend this Complaint to reflect a different “Class Period” as further discovery is conducted.

13 2. Plaintiff also seeks to represent similarly Aggrieved Employees consisting of all non-
14 exempt employees employed by or formerly employed by Defendant within the State of California who
15 are California Citizens during the PAGA Liability Period. The term “PAGA Liability Period is defined
16 as one (1) year prior to the filing of Plaintiff’s administrative complaint with the Labor and Workforce
17 Development Agency (LWDA) through the present. Plaintiff filed her administrative complaint with the
18 LWDA on April 7, 2021. The Liability Period is from April 7, 2020 to the Present. Plaintiff reserves the
19 right to amend this complaint to reflect a different “PAGA Liability Period” or modify the definition of
20 “Aggrieved Employees” as further discovery is conducted.

21 3. Plaintiff individually, and on behalf the class she seeks to represent, seeks relief against
22 Defendant for (1) failure to pay all wages due, including minimum, regular, and overtime wages as a
23 result of Defendant’s policy of improperly paying its non-exempt hourly employees; (2) failure to
24 provide meal periods; (3) failure to provide rest periods; (4) failure to provide accurate wage statements;
25 and (5) failure to pay wages upon ending employment of terminated or resigned employees. Plaintiff
26 individually, and on behalf the Aggrieved Employees she seeks to represent, seeks relief against
27 Defendant for violation of the Private Attorneys’ General Act, Labor Code § 2698 et seq. stemming
28 from the aforementioned violations. Plaintiff further seeks equitable remedies in the form of declaratory
relief and relief under Business and Professions Code section 17200 et seq. for unfair business practices.

4. At all relevant times herein, Defendant, has consistently maintained and enforced against Plaintiff Class the unlawful practices and policies described herein.

II.

JURISDICTION AND VENUE

5. Venue is proper in this Judicial district and the County of Los Angeles, because the Defendant maintained its location and transacts business in this county, the obligations and liability arise in this county, and work was performed by Plaintiff and members of the proposed class made the subject of this action in the County of Los Angeles, California.

6. The California Superior Court has jurisdiction in the matter because the individual claims are under the Seventy-Five Thousand Dollar (\$75,000.00) jurisdictional threshold for Federal Court and upon information and belief Plaintiff is a resident of and/or domiciled in the State of California.

7. Further, there is no federal question at issue as the issues herein is based solely on California Statutes and law including the California Labor Code, Industrial Welfare Commission Wage Orders, *Code of Civil Procedure*, *Rule of Court*, and *Business and Professions Code*.

III.

THE PARTIES

A. The Plaintiff

8. Plaintiff at various relevant times herein, was an employee of the Defendant and entitled to compensation for all hours worked, minimum and overtime compensation, meal and rest premiums, and penalties from Defendant. Plaintiff was employed by the Defendant as a caregiver from on or about September 2017, more than three (3) years prior to the commencement of this action, in the County of Los Angeles at various times herein relevant. Plaintiff's job duties included assisting residents get in and out of bed, assisting with bathing and dressing. Plaintiff was employed by the Defendant during the Class Period in a non-exempt hourly position. Each of the Plaintiff Class members are identifiable, current and/or formerly similarly situated persons who were employed in non-exempt hourly positions in California for the Defendant during the Class Period.

B. The Defendants

9. Plaintiff is informed and believes, and based thereon alleges that, MELROSE VILLAS, INC., is an California Corporation doing business in the state of California and is and/or was the employer

1 of the Plaintiff and Plaintiff Class during the Class Period. During the liability period, Defendant
2 employed Plaintiff and similarly situated persons and failed to pay Plaintiff and Plaintiff Class for all
3 hours worked including minimum wage, overtime premium for overtime hours worked, failed to provide
4 lawful meal and rest periods or compensation in lieu thereof, failed to provide accurate itemized wage
5 statements, and failed to pay due and owing wages upon ending of employment for employees within
6 California. On information and belief and based thereon alleges that Defendant is conducting business
7 in good standing in California.

8 10. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation
9 in the conduct herein alleged, of the Defendant sued herein as DOES 1 through 50, inclusive, but on
10 information and belief allege that said Defendant is legally responsible for (1) failure to pay all wages
11 due; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to provide accurate
12 wage statements; and (5) failure to pay wages upon ending employment to Plaintiff and the Plaintiff Class
13 members by virtue of their unlawful practices, and therefore sue these Defendant by such fictitious
14 names. Plaintiff, also alleges DOES 1 through 50, on information and belief, are legally responsible for
15 violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. Plaintiff will amend this
16 complaint to allege the true names and capacities of the DOE Defendant when ascertained.

17 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
18 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
19 business plan or policy in all respects pertinent hereto, and the acts of each Defendant legally attributable
20 to the other Defendant.

21 IV.

22 GENERAL ALLEGATIONS

23 12. California *Labor Code* § 1194 provides that notwithstanding any agreement to work for
24 a lesser wage, an employee receiving less than the legal overtime compensation is entitled to recover in
25 a civil action the unpaid balance of their overtime compensation, including interest thereon, reasonable
26 attorneys' fees, and costs of suit.

27 13. Further, *Business and Professions Code* § 17203 provides that any person who engages
28 in unfair competition may be enjoined in any court of competent jurisdiction. *Business and Professions*

1 *Code* § 17204 provides that any person who has suffered actual injury and has lost money or property as
2 a result of the unfair competition may bring an action in a court of competent jurisdiction.

3 14. During all, or a portion of the Class Period, Plaintiff and each member of the Plaintiff
4 Class was employed by Defendant and each of them, in the State of California. Plaintiff and each of the
5 Plaintiff Class members were non-exempt employees covered under one or more Industrial Welfare
6 Commission (IWC) Wage Orders, and *Labor Code* § 510, and/or other applicable wage orders,
7 regulations and statutes, and each Plaintiff Class member was not subject to an exemption for executive,
8 administrative and professional employees, which imposed obligations on the part of the Defendant to
9 pay Plaintiff and Plaintiff Class members lawful overtime compensation.

10 15. During the Class Period, Defendant was obligated to pay Plaintiff and Plaintiff Class
11 Members for all hours worked. Defendant was obligated to pay Plaintiff and Plaintiff Class Members
12 minimum wages and overtime compensation for all hours worked over eight (8) hours of work in one (1)
13 day or forty (40) hours in one (1) week and double-time for hours worked in excess of twelve (12) in one
14 day.

15 16. Plaintiff and each Class Member primarily performed non-exempt work in excess of the
16 maximum regular rate hours set by the IWC in the applicable Wage Orders, regulations or statutes, and
17 therefore entitled the Plaintiff and Plaintiff Class members to overtime compensation at time and a half
18 rate, and when applicable, double time rates as set forth by the applicable Wage Orders, regulations
19 and/or statutes.

20 17. During the Class Period, the Defendant and each of them, required the Plaintiff and Class
21 members to work under a “Rounding Policy” that is not fair and neutral and resulted, over a period of
22 time, in failure to compensate the employees properly for all the time they have actually worked, in
23 violation of the various applicable Wage Orders, regulations and statutes, and the Defendant: (1)
24 Willfully failed and refused, and continues to fail and refuse to pay compensation for all hours worked,
25 including minimum wage and lawful overtime compensation to the Plaintiff Class Members; and (2)
26 willfully failed and refused, and continues to fail and refuse to pay due and owing wages promptly upon
27 termination of employment to Plaintiff and Plaintiff Class Members.

28 18. During the Class Period, the Defendant and each of them, as a result of Defendant’s failure
to provide Plaintiff and Plaintiff Class with all wages earned as described herein, also failed to provide

1 Plaintiff and Plaintiff with accurate itemized wage statements listing the accurate gross wages earned,
2 total hours worked, net wages earned, all applicable hourly rates and the corresponding number of hours
3 worked at each hourly rate by the employee, and the accurate address of the legal entity that is the
4 employer.

5 19. During the Class Period, Defendant was obligated to provide Plaintiff and Plaintiff Class
6 with a timely work free meal and/or rest period(s). During the Class Period, Defendant, and each of them
7 failed and/or refused to schedule Plaintiff and Plaintiff Class in an overlapping manner so as to reasonably
8 provide lawful and timely meal and/or rest breaks and/or shift relief for Plaintiff and Plaintiff Class,
9 thereby causing members of the Plaintiff Class to work without being given paid ten (10) minute rest
10 periods for every four (4) hours or major fraction thereof worked and without being given a timely thirty
11 (30) minute meal period for shifts of at least five (5) hours and a second thirty (30) minute meal period
12 for shifts of at least ten (10) hours during which Plaintiff Class was relieved of all duties and free to leave
13 the premises. Defendant further failed and/or refused to schedule Plaintiff and Plaintiff Class in an
14 overlapping manner and/or provide shift relief for Plaintiff and Plaintiff Class so as to reasonably ensure
15 meal and/or rest breaks were taken within the required statutory time frame as required by law.
16 Furthermore, Defendant failed and/or refused to pay any Plaintiff Class one (1) hour's pay at the
17 employees' regular rate of pay as premium compensation for failure to provide lawful rest and/or meal
18 periods or to providing such rest and/or meal periods within the statutory time frame as a result of their
19 scheduling policy.

20 20. Class Members who ended their employment during the Class Period but were not paid
21 the above due compensation for all hours worked, overtime compensation timely upon the termination
22 of their employment as required by *Labor Code* §§ 201-203 and are entitled to penalties as provided by
23 *Labor Code* § 203.

24 V.

25 ADMINISTRATIVE PREREQUISITE

26 21. Prior to filing this Complaint, On April 7, 2021, Plaintiff gave written notice by electronic
27 filing to the Labor Workforce Development Agency ("LWDA") (LWDA Case No. LWDA-CM-
28 828605-21) and by certified mail to Defendant of the specified provisions alleged to have been violated,
including the facts and theories to support the alleged violations as required by Labor Code section

2699.3.

22. A true and correct copy of Plaintiff's letter sent to the LWDA and Defendant, dated April 7, 2021, is attached hereto as "**Exhibit A.**" As of the filing of this complaint, LWDA has not responded.

23. Under Labor Code Section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving notice to the Labor Workforce Development Agency ("LWDA") and the employer of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice.

24. Under Labor Code Section 2699.3(a)(2)(C), "Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part."

25. More than sixty-five (65) days have passed since Plaintiff submitted notice to the LWDA and Defendant of the specific alleged Labor Code violations and the LWDA has not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff further has received no notice of Defendant's intent to cure any of the alleged violations. Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action.

VI.

CLASS ALLEGATIONS

26. Plaintiff brings this action on behalf of herself and all other similarly situated persons, as a class action pursuant to California Civil Code of Procedure section 382 on behalf of herself and all other similarly situated persons in the Class, which is composed of and defined as follows:

a. **Class 1: "Failure to Pay All Wages Due to Unlawful Rounding Policy"**

All current and former California hourly non-exempt employees who work or worked for Defendant during the Class Period to be determined and who were not paid all wages due to them, including but not limited to minimum and/or overtime wages as a result of Defendant requiring Plaintiff and Plaintiff Class under a "Rounding Policy" that is not fair and neutral and resulted, over a period of time, in failure to compensate non-exempt employees properly for all the time they have actually

worked, thereby causing non-exempt employees to work without compensation for regular and overtime wages;

b. **Class 2: "Failure to Provide Meal Periods"**

All current and former California hourly non-exempt employees who work or worked for Defendant during the Class Period to be determined and who were not provided legally complaint meal periods;

c. **Class 3: "Failure to Provide Rest Breaks"**

All current and former California hourly non-exempt employees who work or worked for Defendant during the Class Period to be determined and who did not receive, or were not afforded, or were not authorized or permitted, a rest period of at least ten (10) consecutive minutes for each four (4) hours or major fraction thereof pursuant to California law;

d. **Class 4: "Waiting Time Class"**

All current and former California hourly non-exempt employees who worked for Defendant during the Class Period, who have been terminated or resigned, and have not been paid wages pursuant to Labor Code section 203 and are owed restitution for waiting time penalties deriving from wages;

e. **Class 5: "Failure to Furnish Accurate Itemized Wage Statements"**

All current and former California hourly non-exempt employees who work or worked for Defendant during the Class Period to be determined and who were not provided pay stubs that complied with Labor Code section 226;

27. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

1 28. This action has been brought and may be maintained as a class action pursuant to Code
2 of Civil Procedure section 382 because there is a well-defined common interest of many persons and it
3 is impractical to bring them all before the Court.

4 29. This Court should permit this action to be maintained as a class action pursuant to
5 California Code of Civil Procedure section 382 because:

- 6 a) The questions of law and fact common to the Plaintiff Class predominate over any
7 question affecting only individual members;
- 8 b) A class action is superior to any other available method for the fair and efficient
9 adjudication of the claims of the members of the Plaintiff Class;
- 10 c) The Plaintiff Class is so numerous that it is impractical to bring all member of the
11 Class before the Court;
- 12 d) Plaintiff and the other members of the Plaintiff Class will not be able to obtain
13 effective and economic legal redress unless the action is maintained as a class action;
- 14 e) There is a community of interest in obtaining appropriate legal and equitable relief
15 for the common law and statutory violations and other improprieties, and in obtaining
16 adequate compensation for the damages and injuries which Defendant's actions have
17 inflicted upon the Plaintiff Class;
- 18 f) There is a community of interest in ensuring that the combined assets and available
19 insurance of the Defendant is sufficient to adequately compensate members of the
20 Plaintiff Class for the injuries sustained;
- 21 g) Without class certification, the prosecution of separate actions by individual members
22 of the Plaintiff Class would create a risk of:
 - 23 1) Inconsistent or varying adjudications with respect to individual members
24 of the Plaintiff Class which would establish incompatible standard of
25 conduct for the Defendant; and/or
 - 26 2) Adjudications with respect to the individual members which would, as a
27 practical matter, be dispositive of the interests of other members not
28 parties to the adjudications, or would substantially impair or impede their
 ability to protect their interests, including but not limited to the potential

for exhausting the funds available from those parties who are, or may be,
responsible for Defendant; and

h) Defendant has acted or refused to act on grounds generally applicable to the Plaintiff
Class, thereby making final injunctive relief appropriate with respect to the Class as
a whole.

///

VII.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGE AND OVERTIME WAGES

(Plaintiff and Plaintiff Class against Defendant Melrose Villas, Inc., And Does 1-50, Inclusive)

30. Plaintiff and Plaintiff Class re-allege and incorporate by reference the allegations in the
preceding paragraphs.

31. Plaintiff and Plaintiff Class members regularly worked over eight (8) hours per day and
forty (40) hours per week. Defendant failed to pay Plaintiff, and Plaintiff Class members minimum wage
for all hours worked and overtime premium for hours worked in excess of over eight (8) hours per day
and forty (40) hours per week for work performed for the Defendant. Defendant willfully violated the
Labor Code when Defendant failed to pay Plaintiff and Plaintiff Class the legally mandated wage rates
for all hours worked. Instead, Defendant paid Plaintiff and Plaintiff Class under a “Rounding Policy”
that is not fair and neutral and resulted, over a period of time, in failure to compensate the employees
properly for all the time they have actually worked, thereby causing Plaintiff and Plaintiff Class
members to work in excess of eight (8) hours per day and/or forty (40) hours per week. As such Plaintiff
and Plaintiff Class seek overtime in an amount according to proof. Pursuant to *Labor Code* § 1194, the
Class members seek the payment of all overtime compensation which they earned and accrued four (4)
years prior to filing this complaint, according to proof.

32. Additionally, Plaintiff and Plaintiff Class members are entitled to attorneys' fees, costs, pursuant to California *Labor Code* § 1194 and prejudgment interest.

VIII.

SECOND CAUSE OF ACTION

Failure to Provide Meal Periods or Compensation in Lieu Thereof

(Plaintiff and Plaintiff Class against Defendant Melrose Villas, Inc., And Does 1-50, Inclusive)

33. The Plaintiff and Plaintiff Class re-allege and incorporate by reference all the above paragraphs of this complaint as if fully alleged herein.

34. Labor Code sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30) minutes.

35. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section.

36. Defendant failed to schedule Plaintiff and similarly situated persons in an overlapping manner so as to reasonably ensure that Plaintiff and Plaintiff Class could take and/or receive such meal periods uninterrupted and within the statutory timeframe. As a result, Plaintiff and Plaintiff Class were often forced to forego a timely uninterrupted meal period and/or work during their meal period. In so doing, Defendant has intentionally and improperly denied timely uninterrupted meal periods to the Plaintiff and Plaintiff Class in violation of Labor Code sections 226.7 and 512 and other regulations and statutes.

37. At all times relevant hereto, Plaintiff and Plaintiff Class have worked more than five (5) hours in a workday.

38. At varying times relevant hereto, Plaintiff and Plaintiff Class have worked more than ten (10) hours in a workday.

39. At all times relevant hereto, the Defendant failed to schedule Plaintiff and similarly

1 situated persons in a manner so as to reasonably provide timely uninterrupted thirty (30) minute meal
2 and/or work free meal period as required by Labor Code sections 226.7 and 512.

3 40. By virtue of the Defendant's failure to schedule Plaintiff and Plaintiff Class in such a
4 way as to provide a timely and uninterrupted meal period, and/or work free meal period to the Plaintiff
5 and Plaintiff Class, thereby causing Plaintiff and Plaintiff Class to suffer, and will continue to suffer,
6 damages in the amounts which is presently unknown, but which exceed the jurisdictional limits of this
7 Court and which will be ascertained according to proof at trial.

8 41. Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of meal
9 period compensation pursuant to Labor Code section 226.7 which they are owed beginning four (4)
10 years prior to filing this complaint as well as the assessment of any statutory penalties against the
11 Defendant, and each of them, in a sum as provided by the Labor Code and/or other statutes.

12 IX.

13 **THIRD CAUSE OF ACTION**

14 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

15 **(Plaintiff and Plaintiff Class against Defendant Melrose Villas, Inc., And Does 1-50, Inclusive)**

16 42. The Plaintiff and Plaintiff Class re-allege and incorporate by reference all the above
17 paragraphs of this complaint as if fully alleged herein.

18 43. Labor Code section 226.7 provides that employers authorize and permit all employees to
19 take rest periods at the rate of ten (10) minutes rest time per four (4) work hours or major fraction thereof.

20 44. Labor Code section 226.7(b) provides that if an employer fails to provide and employee
21 rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at
22 the employees' regular rate of compensation for each workday that the rest period is not provided.

23 45. Defendant failed and or refused to implement a relief system by which Plaintiff and
24 Plaintiff Class could receive rest breaks and/or work free rest breaks. Furthermore, due to Defendant's
25 relief system, Plaintiff and Plaintiff Class did not receive their rest breaks within the required statutory
26 time frame. By and through their actions, Defendant intentionally and improperly denied rest periods to
27 the Plaintiff and Plaintiff Class in violation of Labor Code sections 226.7 and 512.

28 46. At all times relevant hereto, the Plaintiff and Plaintiff Class, have worked more than four
(4) hours in a workday.

47. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff and Plaintiff Class as a result of their scheduling and shift relief system, Plaintiff and Plaintiff Class have suffered, and will continue to suffer, damages in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

48. Plaintiff, individually, and on behalf of employees similarly situated, requests recovery of rest period compensation pursuant to Labor Code section 226.7, which they are owed beginning four (4) years prior to filing this complaint as well as the assessment of any statutory penalties against the Defendant, in a sum as provided by the Labor Code and/or any other statute.

X.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Plaintiff and Plaintiff Class against Defendant Melrose Villas, Inc., And Does 1-50, Inclusive)

49. Plaintiff and Plaintiff Class re-allege and incorporate by reference the allegations in the preceding paragraphs.

50. Labor Code sections 226, 226.3, 1174 and 1174.5 and applicable IWC Wage Order provides that employers must keep records and provide employees with itemized wage statements showing total hours worked and each applicable rate of pay in effect during the pay period with the corresponding number of hours worked at each hourly rate.

51. Labor Code section 226, subdivision (a), requires an employer provide employees- either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash-an accurate itemized wage statement in writing showing: "(1) gross wages earned, (2) total hours worked by the employee, (4) all deductions, (5) net wages, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee"

52. Labor Code section 226.2, subdivision (a)(2), requires the itemized statements required by subdivision (a) of section 226 shall, in addition to the other items specified in that subdivision, state

1 the following: total hours of compensable rest and recovery periods, the rate of compensation, and the
2 gross wages paid for those periods during the pay period.

3 53. Defendant willfully violated Labor Code section 226(a) by failing to provide Plaintiff
4 and Plaintiff's Class with wage statements that accurately reflect the total hours worked, and the rate of
5 pay for each hour worked, and net and gross wages earned.

6 54. Lab. Code, § 226, subdivision (a) states that, "every employer shall, semimonthly or at
7 the time of each payment of wages, furnish each of his or her employees, either as a detachable part of
8 the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal
9 check or cash, an accurate itemized statement in writing ..."

10 55. IWC Wage Order Number 2-2001, paragraph 7(a) requires that every employer shall
11 keep accurate information with respect to each employee, including time records showing when each
12 employee begins and ends each work period, the total daily hours worked by each employee, the total
13 hours worked in each payroll period, applicable rates of pay, and net and gross wages earned, and
14 accurate address of the legal entity that is the employer. Defendant failed to list its accurate legal address
15 as stated in its Statement of Information filed with the state of California, which is "16133 Ventura Blvd,
16 Suite 360, Encino, CA 91436," and instead listed "823 North Poinsettia Place, Los Angeles, CA 90046."

17 56. Plaintiff is informed, and believe that Defendant willfully and intentionally failed to
18 make and/or keep records which accurately reflect the hours worked by Plaintiff and Plaintiff Class and
19 failed to list the accurate address of the legal entity that is the employer. Specifically, Plaintiff believes
20 that Defendant's records do not accurately reflect the start and end times Plaintiff and Plaintiff Class
21 were required to work due to Defendant's "Rounding Policy" that is not fair and neutral and resulted,
22 over a period of time, in failure to compensate the employees properly for all the time they have actually
23 worked.
24

25 57. Plaintiffs are informed, and believe that Defendant's failure to keep accurate payroll
26 records, as described above, violated Lab. Code, § 1174, subdivision (d) and the applicable wage order.
27 Plaintiffs and the Plaintiff Class are entitled to penalties of one hundred dollars (\$100.00) for the initial
28 violation and two hundred dollars (\$200.00) for each subsequent violation for every pay period during
which these records and information was not kept by Defendant.

58. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Lab. Code, § 1174, subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

59. Plaintiffs are informed and believe that Defendant's failure to keep and maintain accurate records and information, as described above, were willful, and Plaintiffs and Plaintiff Class are entitled to a statutory penalty of five hundred dollars (\$500.00) for Plaintiffs and each member of Plaintiff Class pursuant to Lab. Code, § 1174.5.

XII.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON ENDING EMPLOYMENT

(Plaintiff and Plaintiff Class against Defendant Melrose Villas, Inc., And Does 1-50, Inclusive)

60. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though fully set forth herein, the above paragraphs in their entirety as if fully alleged herein.

61. Plaintiff and certain members of the Plaintiff Class who ended their employment with Defendant during the Class Period, were entitled to be promptly paid both minimum wage and lawful overtime compensation and other premiums, as required by *Labor Code* §§ 201-203. Defendant refused and/or failed to promptly compensate Plaintiff and Plaintiff Class wages owed as a result of their failure to pay Plaintiff and Plaintiff Class both minimum wage, overtime, and premium compensations. Pursuant to *Labor Code* § 203, such Plaintiff and Plaintiff Class seek the payment of penalties pursuant to *Labor Code* § 203, according to proof.

XIII.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION LAW

**(Plaintiff and Plaintiff Class against Defendant Melrose Villas, Inc., And Does 1-50,
Inclusive.)**

62. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though fully set forth herein, the above paragraphs in their entirety.

63. *California Business and Professions Code* § 17200 et. seq. (also referred to herein as the "Unfair Business Practices Act" or "Unfair Competition Law") prohibit unfair competition in the form of any unlawful, unfair or fraudulent business act or practice.

64. *California Business and Professions Code* § 17204 allows "any person who has suffered injury in fact and has lost money or property as a result of such unfair competition" to prosecute a civil action for violation of the Unfair Competition Law ("UCL").

65. *Labor Code* § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

66. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business practices and acts described in this Complaint including but not limited to violations of *Labor Code* §§ 510, 226.7, 226, 1194, 1197, 1198 as well as other statutes.

67. The violations of these laws and regulations, as well as of the fundamental California public policies protecting workers, serve as unlawful predicate acts and practices for purposes of *Business and Professions Code* § 17200 et. seq.

68. The acts and practices described above constitute unfair, unlawful and fraudulent Business Practices, and unfair competition, within the meaning of *Business and Professions Code* § 17200 et. seq. Among other things, the acts and practices have forced Plaintiff and other similarly situated employees to labor for many hours without receiving the both minim wage and overtime compensation, to forgo lawful meal and rest periods or compensation in lieu thereof, to which they are

entitled by law, while enabling Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

69. As a result of Defendant's acts, Plaintiff and Plaintiff Class have suffered injury in fact in being denied their statutorily entitled full compensation for hours of labor and not indemnified for necessary business-related expenses. As a direct and proximate result of Defendant's unlawful acts of unfair competition, Plaintiff and Plaintiff Class have lost money and property in the form of a loss of wages in an amount to be proven at trial.

70. *Business and Professions Code* § 17203 provides that a court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition.

71. *Business and Professions Code* § 17203 provides that the Court may restore to any person in interest any money or property that may have been acquired by means of such unfair competition. Plaintiff and Plaintiff Class are entitled to restitution pursuant to *Business and Professions Code* § 17203 for all wages and payments unlawfully withheld from employees, during the four-year period prior to the filing of this Complaint.

72. *Business and Professions Code* § 17202 provides, "Notwithstanding section 3369 of the *Civil Code*, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled to enforce all applicable penalty provisions of the *Labor Code* pursuant to *Business and Professions Code* § 17202.

73. Plaintiff's success in this action will enforce important rights affecting public interest, and in that regard, Plaintiff sues on behalf of the general public, as well as herself and other similarly situated employees. Plaintiff and Plaintiff Class seek and are entitled to restitution, civil penalties, declaratory relief, and all other equitable remedies owing them.

74. Plaintiff herein takes upon herself enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by forcing her to pay attorney's fees from the recovery in this action. Attorney's fees are appropriate pursuant to *Code of Civil Procedure* § 1021.5 and otherwise.

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XIV.

EIGHTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS' GENERAL ACT ("PAGA")

(LABOR CODE § 2698 ET SEQ.)

(Plaintiff and Aggrieved Employees against Defendant, and Does 1 – 50 inclusive)

76. Since the LWDA has not indicated that it will be investigating and more than 65 days have passed since Plaintiff mailed her letter, and because Defendant took no corrective action to remedy the allegations set forth herein, Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the provisions discussed herein.

77. Plaintiff by virtue of her employment with Defendant is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

78. Plaintiff is informed and believes that Defendant has violated and continues to violate provisions of the California Labor Code and applicable Wage orders related to the payment of minimum wages including overtime, failure to provide meal and rest periods or premium compensation in lieu thereof, failure to pay all wages upon end of employment, and failure to provide complaint wage statements.

79. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: 201-203, 226, 226.7, 510, 512, 1174, 2802, and 1194.

80. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Liability period, in an amount according to proof, as to those penalties that are otherwise only available to public

agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

81. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code sections 2699(g)(1), 218.5, 1194, and prejudgment interest.

a. Violation of PAGA for Failure to Pay Minimum and Overtime Wages.

82. Plaintiff and Aggrieved Employees re-allege and incorporate by reference the allegations in the preceding paragraphs.

83. Plaintiff and Aggrieved Employees members regularly worked over eight (8) hours per day and forty (40) hours per week. Defendant failed to pay Plaintiff, and Aggrieved Employees members minimum wage for all hours worked and overtime premium for hours worked in excess of over eight (8) hours per day and forty (40) hours per week for work performed for the Defendant. Defendant willfully violated the Labor Code when Defendant failed to pay Plaintiff and Aggrieved Employees the legally mandated wage rates for all hours worked. Instead, Defendant paid Plaintiff and Aggrieved Employees under a "Rounding Policy" that is not fair and neutral and resulted, over a period of time, in failure to compensate the employees properly for all the time they have actually worked, thereby causing Plaintiff and Aggrieved Employees members to work in excess of eight (8) hours per day and/or forty (40) hours per week.

84. Plaintiff individually, and on behalf of the Aggrieved Employees, requests recovery of statutory penalties against the Defendant and each of them, pursuant to PAGA for failure to pay all wages pursuant to Labor Code sections 510 and 1194 during the PAGA Liability Period, in a sum as provided by the Labor Code and/or other statutes.

b. Violation of PAGA for Failure to Provide Meal Periods or Compensation in Lieu Thereof.

84. The Plaintiff and Aggrieved Employees re-allege and incorporate by reference all the above paragraphs of this complaint as if fully alleged herein.

85. Defendant failed to provide Plaintiff and similarly situated for lawful meal periods as described herein. As a result, Plaintiff and Aggrieved Employees were often forced to forego a timely uninterrupted meal periods and/or work during their meal periods. In so doing, Defendant has intentionally and improperly denied timely uninterrupted meal periods to the Plaintiff and Aggrieved Employees in violation of Labor Code sections 226.7 and 512 and other regulations and statutes.

1 86. Plaintiff individually, and on behalf of the Aggrieved Employees, requests recovery of
2 statutory penalties against the Defendant and each of them, pursuant to PAGA for failure to provide
3 meal period compensation pursuant to Labor Code sections 226.7 and 512 during the PAGA Liability
4 Period, in a sum as provided by the Labor Code and/or other statutes.

5 **c. Violation of PAGA for Failure to Provide Rest Periods or Compensation in Lieu Thereof.**

6 93. The Plaintiff and Aggrieved Employees re-allege and incorporate by reference all the
7 above paragraphs of this complaint as if fully alleged herein.

8 94. Defendant failed and or refused to implement a relief system by which Plaintiff and
9 Aggrieved Employees could receive rest breaks and/or work free rest breaks. Furthermore, due to
10 Defendant's relief system, Plaintiff and Aggrieved Employees did not receive their rest breaks within
11 the required statutory time frame. By and through their actions, Defendant intentionally and improperly
12 denied rest periods to the Plaintiff and Aggrieved Employees in violation of Labor Code sections 226.7
13 and 512.

14 95. Plaintiff individually, and on behalf of the Aggrieved Employees, requests recovery of
15 statutory penalties against the Defendant and each of them, pursuant to PAGA for failure to provide rest
16 period compensation pursuant to Labor Code section 226.7 during the PAGA Liability Period, in a sum
17 as provided by the Labor Code and/or other statutes.

18 **d. Violation of PAGA for Failure to Provide Accurate Wage Statements.**

19 100. Plaintiff and Aggrieved Employees re-allege and incorporate by reference the allegations
20 in the preceding paragraphs.

21 101. Labor Code section 226.2, subdivision (a)(2), requires the itemized statements required
22 by subdivision (a) of section 226 shall, in addition to the other items specified in that subdivision, state
23 the following: total hours of compensable rest and recovery periods, the rate of compensation for every
24 hour worked, the number of hours worked at each rate of compensation, and the gross and net wages
25 paid for those periods during the pay period, and the true name of the employer.

26 102. Defendant willfully violated Labor Code section 226(a) by failing to provide Plaintiff
27 and Aggrieved Employees with wage statements that accurately reflect the total hours worked, the
28 accurate rate of pay for each hour worked, accurate premium wages earned, accurate net and gross wages

1 earned, and failed to list Employer's legal address as filed on their Statement of Information filed with
2 the State of California.

3 103. Plaintiff is informed and believes that Defendant's failure to keep accurate payroll
4 records, as described above, violated Lab. Code, § 1174, subdivision (d) and the applicable wage order.

5 104. Plaintiff individually, and on behalf of the Aggrieved Employees, requests recovery of
6 statutory penalties against the Defendant and each of them, pursuant to PAGA for failure to provide
7 accurate itemized wage statements pursuant to Labor Code sections 1174, 226 and 226.2 during the
8 PAGA Liability Period, in a sum as provided by the Labor Code and/or other statutes.

9 **e. Violation of PAGA for Failure to Pay Wages Upon Ending Employment.**

10 111. Plaintiff and Aggrieved Employees re-allege and incorporate by reference, as though
11 fully set forth herein, the above paragraphs in their entirety as if fully alleged herein.

12 112. Plaintiff and certain members of the Aggrieved Employees who ended their employment
13 with Defendant during the Liability Period, were entitled to be promptly paid both minimum wage and
14 lawful overtime compensation and other premiums, as required by *Labor Code* §§ 201-203. Defendant
15 refused and/or failed to promptly compensate Plaintiff and Aggrieved Employees wages owed as a result
16 of their failure to pay Plaintiff and Aggrieved Employees both minimum wage, overtime, and premium
17 compensations.

18 113. Plaintiff individually, and on behalf of the Aggrieved Employees, requests recovery of
19 statutory penalties against the Defendant and each of them, pursuant to PAGA for failure to pay wages
20 due upon end of employment pursuant to Labor Code sections 201 - 203 during the Liability Period, in
21 a sum as provided by the Labor Code and/or other statutes.

22 **XIV.**

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff and Plaintiff Class pray for judgment as follows:

- 25 1. For nominal damages;
- 26 2. For compensatory damages;
- 27 3. For restitution of all monies due to Plaintiff and Plaintiff Class, and disgorged profits from
- 28 the unlawful business practices of Defendant;

4. For waiting time penalties pursuant to *Labor Code* § 203, on behalf of the terminated or resigned employees;
5. For penalties pursuant to *Labor Code* §§ 226, 226(e), 512 and 1194;
6. For interest accrued to date;
7. Declaratory relief, enjoining Defendant's practices as being unlawful and unfair business practices within the meaning of *Bus. & Prof. Code* §§ 17200, et seq., and declaring Defendant has unlawfully treated Plaintiff and Plaintiff Class, failed to pay all wages, premium, regular, and overtime compensation in violation of California law, failed to pay wages to former employees Plaintiff and other certain members of Plaintiff Class, failed to provide Plaintiff and Plaintiff Class accurate itemized wage statements upon payment of wages, and declaring the amounts of damages, penalties, equitable relief, costs, and attorney's fees Plaintiff and Plaintiff Class are entitled to;
8. For costs of suit and expenses incurred herein pursuant to Code of Civil Procedure § 1021.5, *Labor Code* §§ 226, and 1194;
9. For reasonable attorneys' fees pursuant to Code of Civil Procedure § 1021.5, *Labor Code* §§ 226, and 1194;
10. For all such other and further relief as the Court may deem just and proper.

Dated: July 1, 2021

LAW OFFICES OF JAKE D. FINKEL



Jake D. Finkel, Esq.
Alexander Perez, Esq.
Sheryl L. Marx, Esq.
Attorneys for Plaintiff MARCELA V. PEREIRA
and on behalf of all employees similarly situated

DEMAND FOR JURY TRIAL

Plaintiff MARCELA V. PEREIRA hereby requests a jury trial on all issues so triable.

Dated: July 1, 2021

LAW OFFICES OF JAKE D. FINKEL, APC



Jake D. Finkel, Esq.
Alexander Perez, Esq.
Sheryl L. Marx, Esq.
Attorneys for Plaintiff MARCELA V. PEREIRA
and on behalf of all employees similarly situated

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a
4 party to the within action. My business address is 3470 Wilshire Boulevard, Suite 830, Los Angeles,
California, 90010.

5 On July 1, 2021 I served the documents entitled **FIRST AMENDED COMPLAINT FOR**
6 **DAMAGES** on the interested parties in this action as follows:

7 **SERVICE LIST:**

8 ☒ **BY EMAIL:**

9
10 ☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused the documents to be
11 sent to the persons at the e-mail addresses listed on the attached service list. I did
12 not receive, within a reasonable time after the transmission, any electronic message
or other indication that the transmission was unsuccessful.

13 Ben Mehdian
14 ben@mehdianlaw.com
15 **MEHDIAN LAW, APC**
16 1901 Avenue of the Stars, 11th Floor
Los Angeles, California 90067
Telephone: (310) 889-0706
Facsimile: (310) 893-0165

17 Dayton B. Parcels III, Esq. (SBN: 127495)
18 dbparcells@parcellslaw.com
19 **PARCELLS LAW FIRM**
20 1901 Avenue of the Stars, 11th Floor
Los Angeles, CA 90067
Telephone: (310) 201-9882
Facsimile: (310) 201-9855

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
22 and correct.
23

24 Executed on July 1, 2021, at Los Angeles, California.

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26
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28 Jasmin Beltran