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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, CA 92415 BRANCH NAME: San Bernardino Justice Center WEBSITE: http://www.sb-court.org	
ATTACHMENT NAME: Complaint: CLASS ACTION COMPLAINT	
CASE NAME: Ericka Kraut vs. DT EMPLOYER, LLC	CASE NUMBER: CIVSB2132004
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Attorneys for Plaintiff Ericka Kraut
and all other similarly situated current
and former employees of Defendants

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ERICKA KRAUT, individually, and on behalf)
of all other similarly situated current and)
former employees of Defendants,)

Plaintiffs,)

vs.)

DT EMPLOYER, LLC, a California limited)
liability company; DT MANAGEMENT, LLC,)
a California limited liability company;)
DOUBLETREE EMPLOYER, LLC, a)
California limited liability company; HILTON)
EMPLOYER, INC., a California corporation;)
HILTON HOTEL EMPLOYER, LLC, a)
California limited liability company;)
EMBASSY SUITES EMPLOYER, LLC, a)
California limited liability company; CURIO)
EMPLOYER, LLC, a California limited)
liability company; HAMPTON INNS)
EMPLOYER, LLC, a California limited)
liability company; HLT CONRAD)
DOMESTIC EMPLOYER, LLC, a California)
limited liability company; HLT CONRAD)
DOMESTIC, LLC, a California limited)
liability company; CONRAD EMPLOYER,)
LLC, a California limited liability company;)

CASE NO.:

CLASS ACTION COMPLAINT FOR:

1. Failure to provide meal periods and pay meal period premiums at correct rates
2. Failure to provide rest periods and pay rest period premiums at correct rates
3. Failure to pay all wages due during employment, including minimum and straight time wages
4. Failure to pay overtime
5. Failure to provide accurate wage statements and maintain accurate payroll records
6. Failure to pay all wages due to terminated employees
7. Unfair Business Practices (California Business & Professions Code, § 17200 et seq.)
8. Civil Penalties pursuant to the Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code, § 2698 et seq.)

1 WALDORF=ASTORIA EMPLOYER, LLC, a)
California limited liability company;)
2 HOMEWOOD SUITES EMPLOYER, LLC, a)
California limited liability company; and)
3 DOES 1 through 100, inclusive,)
4 Defendants.)

DEMAND FOR JURY TRIAL

6
7 Plaintiff ERICKA KRAUT (“Plaintiff”) on behalf of herself and all other similarly situated
8 current and former employees of Defendants DT EMPLOYER, LLC, DT MANAGEMENT, LLC,
9 DOUBLETREE EMPLOYER, LLC, HILTON EMPLOYER, LLC, HILTON HOTEL
10 EMPLOYER, LLC, EMBASSY SUITES EMPLOYER, LLC, CURIO EMPLOYER, LLC,
11 HAMPTON INNS EMPLOYER, LLC, HLT CONRAD DOMESTIC EMPLOYER, LLC, HLT
12 CONRAD DOMESTIC, LLC, CONRAD EMPLOYER, LLC, WALDORF=ASTORIA
13 EMPLOYER, LLC, and HOMEWOOD SUITES EMPLOYER, LLC (“Defendants”), complains
14 and alleges as follows:

INTRODUCTION & GENERAL ALLEGATIONS

15
16 1. Plaintiff brings this action against Defendants and DOES 1 through 100, inclusive,
17 (hereinafter collectively referred to as “DEFENDANTS”) for California Labor Code violations
18 stemming from DEFENDANTS’ failure to provide meal periods, failure to provide rest periods,
19 failure to pay all wages due during employment, including minimum, straight time, and overtime
20 wages, failure to provide accurate wage statements and maintain accurate payroll records, and
21 failure to pay all wages due to terminated employees.

22 2. Plaintiff brings the first (1st) through seventh (7th) causes of action individually, and
23 on behalf of all similarly situated current and former employees of DEFENDANTS (hereinafter
24 collectively referred to as “PLAINTIFFS” or the “CLASS”).

25 3. Plaintiff brings the eighth (8th) cause of action as a representative action under the
26 Labor Code Private Attorneys General Act of 2004 (“PAGA”) to recover civil penalties owed to
27 the State of California and current and former aggrieved employees of DEFENDANTS.
28

1 4. Plaintiff ERICKA KRAUT is a resident of the State of California, County of San
2 Bernardino. DEFENDANTS employed Plaintiff as an hourly, nonexempt employee at
3 DEFENDANTS' Ontario, California location from approximately June 2017 to July 2021.

4 5. Throughout the time period involved in this case, DEFENDANTS have wrongfully
5 failed to authorize and permit timely, adequate, and duty-free meal periods for PLAINTIFFS.
6 DEFENDANTS regularly required PLAINTIFFS to work in excess of five (5) consecutive hours a
7 day without providing a thirty (30) minute, continuous and uninterrupted, meal period for every
8 five (5) hours of work, and/or without adequately compensating PLAINTIFFS for meal periods
9 that were not provided by the end of the fifth (5th) hour of work or tenth (10th) hour of work.
10 Moreover, DEFENDANTS failed to pay meal period premiums at the rates required by California
11 law by, among other things, failing to adjust PLAINTIFFS' regular wages rates to reflect the per-
12 hour value of any nondiscretionary compensation earned by them including, without limitation,
13 the per-hour value of employer-provided meals, incentive pay, and mini-bar goods/services.

14 6. Throughout the time period involved in this case, DEFENDANTS have wrongfully
15 failed to authorize and permit timely and duty-free rest periods for PLAINTIFFS.
16 DEFENDANTS regularly required PLAINTIFFS to work in excess of four (4) consecutive hours
17 a day without a ten (10) minute, continuous and uninterrupted rest period for every four (4) hours
18 of work (or major fraction thereof), and/or without compensation for rest periods that were not
19 authorized or permitted. Moreover, DEFENDANTS failed to pay rest period premiums at the
20 rates required by California law by, among other things, failing to adjust PLAINTIFFS' regular
21 wages rates to reflect the per-hour value of any nondiscretionary compensation earned by them
22 including, without limitation, the per-hour value of employer-provided meals, incentive pay, and
23 mini-bar goods/services.

24 7. Throughout the time period involved in this case, DEFENDANTS maintained a
25 policy and practice of requiring PLAINTIFFS to perform work "off-the-clock" that was not
26 compensated. This "off-the-clock" work regularly occurred as a result of DEFENDANTS
27 requiring PLAINTIFFS to work before clocking in, or after clocking out, and/or automatically
28 deducting thirty (30) minutes for on-duty and/or short meal periods. DEFENDANTS did not pay

1 PLAINTIFFS for this work time, and some of this time should have been paid at the overtime and
2 double time rates.

3 8. DEFENDANTS willfully failed and refused to timely pay Plaintiff and members of
4 the CLASS at the conclusion of their employment for the conduct mentioned above with respect
5 to meal periods, rest periods, and “off the clock” work. As a result, DEFENDANTS violated
6 California Labor Code sections 201 to 203.

7 9. DEFENDANTS, as a matter of practice and policy, knowingly and intentionally
8 failed to furnish PLAINTIFFS with itemized wage statements that accurately showed the total
9 hours worked by PLAINTIFFS, PLAINTIFFS’ gross and net wages earned, and other information
10 required by California Labor Code section 226, subdivision (a). As a result of these violations of
11 section 226, subdivision (a), PLAINTIFFS suffered injury because, among other things: (a) the
12 violations led them to believe that they were not entitled to be paid daily minimum wages,
13 overtime wages, meal period premium wages, and rest period premium wages, even though they
14 were; (b) the violations led them to believe that they had been paid the correct minimum,
15 overtime, meal period premium, and rest period premium wages to which they were entitled, even
16 though they had not been; (c) the violations hindered them from determining the amounts of
17 minimum, overtime, meal period premium, and rest period premium wages owed to them; (d) in
18 connection with their employment before and during this action, and in connection with
19 prosecuting this action, the violations caused them to have to perform mathematical computations
20 to determine the amounts of wages owed to them, computations they would not have had to make
21 if the wage statements contained the required accurate information; (e) by understating the wages
22 truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of
23 Social Security, disability, unemployment, and other governmental benefits; (f) the wage
24 statements inaccurately understated the wages, hours, and wages rates to which PLAINTIFFS
25 were entitled, and PLAINTIFFS were paid less than the wages and wages rates to which they
26 were entitled. Accordingly, PLAINTIFFS are owed the amounts provided for in California Labor
27 Code section 226, subdivision (e).
28

10. DEFENDANTS' violations of the California Labor Code as set forth above constituted unlawful business policies and practices, which were in effect throughout PLAINTIFFS' employment with DEFENDANTS, and were consistently applied to PLAINTIFFS for the sole and exclusive benefit of DEFENDANTS.

PARTIES

A. Plaintiff

11. Plaintiff ERICKA KRAUT (“Plaintiff”) resides in the State of California, County of San Bernardino. DEFENDANTS employed Plaintiff as an hourly, nonexempt employee, at DEFENDANTS’ Ontario, California location from approximately June 2017 to July 2021.

12. Plaintiff reserves the right to seek leave to amend this Complaint to add new and additional Plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

13. Plaintiff is informed and believes, and thereupon alleges, that DEFENDANTS are companies organized under and existing by virtue of the laws of the State of California. Plaintiff is further informed and believes that DEFENDANTS are authorized to conduct, and do conduct, business in the State of California. Upon information and belief, DEFENDANTS maintain offices and conduct business, and engage in unlawful business policies and practices, in the State of California.

14. The true names and capacities of Doe Defendants 1 through 100, inclusive, are unknown to Plaintiff, who therefore sues said Doe Defendants 1 through 100, inclusive, by fictitious names. Plaintiff will amend this Complaint to show their true names and capacities when they have been ascertained.

15. Plaintiff is informed and believes, and thereupon alleges, that at all times mentioned herein, Doe Defendants 1 through 100, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured PLAINTIFFS in the State of California.

1 16. Plaintiff is informed and believes, and thereupon alleges, that all DEFENDANTS
2 engaged in the same unlawful business policies and practices through methods and schemes
3 including, without limitation, the formulation and direction of unlawful business policies and
4 practices, sharing of equipment, personnel, payroll systems and databases, and the exchange of
5 information and advice regarding payroll and human resources issues, either as an ostensible or
6 actual single entity, joint enterprise, joint employer, alter ego, division, affiliate, subsidiary,
7 parent, principal, related entity, co-conspirator, authorized agent, partner, joint venturer, and/or
8 guarantor.

9 17. Upon information and belief, Defendants were ostensible or actual alter egos,
10 divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals,
11 related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors of
12 Doe Defendants 1 through 100, inclusive.

13 18. Upon information and belief, DEFENDANTS, and each of them, were alter egos of
14 each other and/or operating as an integrated enterprise.

15 19. DEFENDANTS, and each of them, were the joint employers of PLAINTIFFS.

16 **CLASS ACTION ALLEGATIONS**

17 20. Plaintiff brings this action individually, as well as on behalf of all other similarly
18 situated persons, and thus, seeks class certification under California Code of Civil Procedure
19 section 382.

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

22 22. The proposed CLASS consists of and is defined as:

23 All current and former nonexempt employees of DEFENDANTS
24 that worked for DEFENDANTS in the State of California for a
25 period of time within the four (4) years preceding the filing of this
26 action. For purposes of this definition, "DEFENDANTS" mean DT
27 EMPLOYER, LLC, DT MANAGEMENT, LLC, DOUBLETREE
28 EMPLOYER, LLC, HILTON EMPLOYER, INC., HILTON
 HOTEL EMPLOYER, LLC, EMBASSY SUITES EMPLOYER,
 LLC, CURIO EMPLOYER, LLC, HAMPTON INNS EMPLOYER,
 LLC, HLT CONRAD DOMESTIC EMPLOYER, LLC, HLT
 CONRAD DOMESTIC, LLC, CONRAD EMPLOYER, LLC,

WALDORF=ASTORIA EMPLOYER, LLC, HOMEWOOD
SUITES EMPLOYER, LLC, and any of the fictitiously named
Defendants (Does 1 through 100), which may include subsidiaries
of, or companies owned by, any of the foregoing entities.

23. Plaintiff reserves the right to establish other sub-classes as appropriate.

24. At all material times, Plaintiff was a member of the CLASS.

25. Plaintiff's first (1st) through seventh (7th) causes of action are appropriately suitable
for class action treatment because:

(a) Numerosity: The members of the CLASS are so numerous that joinder of
all members would be unfeasible and impracticable. 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' records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
the interests of each CLASS member with whom there is a shared, well-defined community of
interest, and Plaintiff's claims are typical of all CLASS members' claims as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
the interests of each CLASS member with whom there is a shared, well-defined community of
interest and typicality of claims, as demonstrated herein. Plaintiff has no conflicts with, or
interests antagonistic to, any CLASS member. Plaintiff's attorneys, the proposed Class Counsel,
are well versed in the rules governing class action discovery, certification, and settlement.
Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and
attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this
action for the substantial benefit of each CLASS member.

(d) Superiority: A class action is superior to other available methods for the
fair and efficient adjudication of the controversy, given (i) the interests of the CLASS members in
individually controlling the prosecution or defense of separate actions; (ii) the extent and nature of
any litigation concerning the controversy already commenced by or against members of the
CLASS; (iii) the desirability or undesirability of concentrating the litigation of the claims in the

1 particular forum; and (iv) the difficulties likely to be encountered in the management of a class
2 action.

3 (e) Public Policy Considerations: Employers in the State of California violate
4 employment and labor laws every day. Current employees are often afraid to assert their rights
5 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
6 because they believe their former employers might damage their future endeavors through
7 negative references and/or other means. Class actions provide the CLASS members who are not
8 named in the complaint with a type of anonymity that allows for the vindication of their rights at
9 the same time as their privacy is protected.

10 26. There are common questions of law and fact as to the CLASS that predominate
11 over questions affecting only individual members, such as whether, as alleged herein,
12 DEFENDANTS have: (a) failed to authorize and permit timely, adequate, and duty-free meal
13 periods and pay adequate meal period premium wages to CLASS members; (b) failed to authorize
14 and permit timely and duty-free rest periods and pay adequate rest period premium wages to
15 CLASS members; (c) failed to pay CLASS members for all hours worked during employment,
16 including, minimum, straight time, and overtime wages; (d) failed to pay all wages due to
17 terminated CLASS members; and (e) failed to provide accurate wage statements to CLASS
18 members and maintain accurate payroll records.

19 27. This Court should permit this action to be maintained as a class action pursuant to
20 California Code of Civil Procedure section 382 because:

21 (a) The questions of law and fact common to the CLASS predominate over any
22 question affecting only individual members;

23 (b) A class action is superior to any other available method for the fair and
24 efficient adjudication of the claims of the members of the CLASS;

25 (c) The members of the CLASS are so numerous that it is impracticable to
26 bring them all before the Court;

27 (d) Plaintiff, and the other members of the CLASS, will not be able to obtain
28 effective and economic legal redress unless the action is maintained as a class action;

1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the statutory violations, and in obtaining adequate compensation for the
3 damages and injuries for which DEFENDANTS are responsible in an amount sufficient to
4 adequately compensate the members of the CLASS for the injuries sustained;

5 (f) Without class certification, the prosecution of separate actions by individual
6 members of the CLASS would create a risk of (i) inconsistent or varying adjudications with
7 respect to individual members of the CLASS, which would establish incompatible standards of
8 conduct for DEFENDANTS; and/or (ii) adjudications with respect to the individual members
9 which would, as a practical matter, be dispositive of the interests of other members not parties to
10 the adjudications, or would substantially impair or impede their ability to protect their interests,
11 including, but not limited to, the potential for exhausting the funds available from those parties
12 who are, or may be, responsible DEFENDANTS; and

13 (g) DEFENDANTS have acted or refused to act on grounds generally
14 applicable to the CLASS, thereby making final injunctive relief appropriate with respect to the
15 CLASS as a whole.

16 28. Plaintiff contemplates the eventual issuance of notice to the proposed members of
17 the CLASS that would set forth the subject and nature of the instant action. DEFENDANTS' own
18 business records may be utilized for assistance in the preparation and issuance of the contemplated
19 notices. To the extent that any further notices may be required, Plaintiff would contemplate the
20 use of additional techniques and forms commonly used in class actions, such as published notice,
21 e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods
22 suitable to the CLASS and deemed necessary and/or appropriate by the Court.

23 **FIRST CAUSE OF ACTION**

24 **Against All Defendants for Failure to Provide Meal Periods**
25 **(California Labor Code, §§ 226.7, 512; IWC Wage Order No. 5-2001)**

26 29. Plaintiff incorporates by reference and realleges, as if fully stated herein,
27 paragraphs one (1) through twenty-eight (28) of this Complaint.
28

1 30. Under California law, DEFENDANTS had an affirmative obligation to relieve
2 PLAINTIFFS of all duties in order to take their first (1st) daily meal periods no later than the fifth
3 (5th) hour of work in a workday, and to take their second (2nd) daily meal periods no later than the
4 tenth (10th) hour of work in the workday. However, despite these legal requirements,
5 DEFENDANTS regularly failed to authorize and permit PLAINTIFFS to take adequate, timely,
6 and duty-free meal periods as required by California law.

7 31. Moreover, DEFENDANTS were obligated under California law to pay
8 PLAINTIFFS one (1) hour of additional wages each time a meal period was not authorized or
9 permitted. However, despite these legal requirements, DEFENDANTS regularly failed to pay
10 PLAINTIFFS the premium wages to which they were entitled for meal periods that were not
11 provided, and failed to pay them at the appropriate legal rates. In calculating PLAINTIFFS’
12 “regular rate[s] of compensation” pursuant to California Labor Code section 226.7, subdivision
13 (c), DEFENDANTS failed to make adjustments to reflect the per-hour value of all
14 nondiscretionary compensation earned by PLAINTIFFS, including, without limitation, the per-
15 hour value of their employer-provided meals, incentive pay, and mini-bar goods/services. As a
16 result, DEFENDANTS are liable to PLAINTIFFS for one (1) hour of additional wages, at
17 appropriate rates, for each workday that they did not receive a meal period.

18 32. By failing to keep adequate time records as required by the California Labor Code
19 and applicable IWC wage orders, DEFENDANTS have made it difficult for PLAINTIFFS to
20 calculate the full extent of meal period premium wage compensation due to them.

21 33. California Labor Code section 204 requires employers to provide employees with
22 all wages due and payable twice a month. Throughout the statute of limitations period applicable
23 to this cause of action, PLAINTIFFS were entitled to be paid their regular, overtime, and premium
24 wages twice a month at rates required by law. However, during all such times, DEFENDANTS
25 systematically failed and refused to pay PLAINTIFFS all such wages due, and failed to pay those
26 wages twice a month.

27 34. As a result of DEFENDANTS’ wage and hour law violations, as set forth herein
28 above, PLAINTIFFS have been damaged in an amount according to proof at time of trial, and

1 seek all wages earned and due, interest, penalties, attorneys' fees, and costs of suit, including,
2 without limitation, penalties provided by California Labor Code section 558, subdivision (a).

3 **SECOND CAUSE OF ACTION**
4 **Against All Defendants for Failure to Provide Rest Periods**
5 **(Cal. Labor Code, § 226.7; IWC Wage Order No. 5-2001)**

6 35. Plaintiff incorporates by reference and realleges, as if fully stated herein,
7 paragraphs one (1) through thirty-four (34) of this Complaint.

8 36. Under California law, DEFENDANTS had an affirmative obligation to authorize
9 and permit duty-free rest periods of an uninterrupted ten (10) minutes for each four (4) hours of
10 work, or major fraction thereof (i.e., more than two (2) hours). That is, the required number of
11 rest breaks is equal to the number of work hours divided by four (4). If the work time is not
12 evenly divided by four (4), round the result down if the remaining fractional part is one-half or
13 less than one-half, and round the result up if the remaining fractional part is more than one-half.
14 Applying this formula, employees are entitled to: one (1) rest period for workdays three and one-
15 half (3.5) to six (6) hours in length; two (2) rest periods for workdays between six (6) and ten (10)
16 hours in length; and three (3) rest periods for workdays between ten (10) and fourteen (14) hours
17 in length.

18 37. Despite the foregoing legal requirements, DEFENDANTS failed to authorize and
19 permit PLAINTIFFS to take timely, duty-free rest breaks of ten (10) minutes in length, regardless
20 of whether employees worked more than four (4) hours in a day.

21 38. Moreover, DEFENDANTS were obligated under California law to pay
22 PLAINTIFFS one (1) hour of additional wages each time a rest period was not authorized or
23 permitted. However, despite these legal requirements, DEFENDANTS regularly failed to pay
24 PLAINTIFFS the premium wages to which they were entitled for rest periods that were not
25 authorized or permitted, and failed to pay them at the appropriate legal rates. In calculating
26 PLAINTIFFS' "regular rate[s] of compensation" pursuant to California Labor Code section 226.7,
27 subdivision (c), DEFENDANTS failed to make adjustments to reflect the per-hour value of all
28 nondiscretionary compensation earned by PLAINTIFFS, including, without limitation, the per-

1 hour value of their employer-provided meals, incentive pay, and mini-bar goods/services. As a
2 result, DEFENDANTS are liable to PLAINTIFFS for one (1) hour of additional wages, at
3 appropriate rates, for each workday that they did not receive a rest break.

4 39. By failing to keep adequate time records as required by the California Labor Code
5 and applicable IWC wage orders, DEFENDANTS have made it difficult for PLAINTIFFS to
6 calculate the full extent of rest period premium wage compensation due to them.

7 40. California Labor Code section 204 requires employers to provide employees with
8 all wages due and payable twice a month. Throughout the statute of limitations period applicable
9 to this cause of action, PLAINTIFFS were entitled to be paid their regular, overtime, and premium
10 wages twice a month at rates required by law. However, during all such times, DEFENDANTS
11 systematically failed and refused to pay PLAINTIFFS all such wages due, and failed to pay those
12 wages twice a month.

13 41. As a result of DEFENDANTS' wage and hour law violations, as set forth herein
14 above, PLAINTIFFS have been damaged in an amount according to proof at time of trial, and
15 seek all wages earned and due, interest, penalties, attorneys' fees, and costs of suit, including,
16 without limitation, penalties provided by California Labor Code section 558, subdivision (a).

17 **THIRD CAUSE OF ACTION**

18 **Against All Defendants for Failure to Pay All Wages Due During Employment, Including**
19 **Minimum and Straight Time Wages**
(Cal. Labor Code, §§ 204, 1194, 1197; IWC Wage Order No. 5-2001)

20 42. Plaintiff incorporates by reference and realleges, as if fully stated herein,
21 paragraphs one (1) through forty-one (41) of this Complaint.

22 43. "Hours worked" is the time during which an employee is subject to the control of
23 an employer, and includes all the time the employee is suffered or permitted to work, whether or
24 not required to do so.

25 44. At all relevant times herein mentioned, DEFENDANTS knowingly failed to
26 compensate PLAINTIFFS for all hours worked for DEFENDANTS. Accordingly, PLAINTIFFS
27 are entitled to recover their earned and unpaid straight time wages for all non-overtime hours
28 worked for DEFENDANTS.

1 45. By and through the conduct described above, PLAINTIFFS have been deprived of
2 their rights to be paid wages earned by virtue of their employment with DEFENDANTS.

3 46. By virtue of the DEFENDANTS' unlawful failure to compensate PLAINTIFFS for
4 all non-overtime hours worked by them, PLAINTIFFS have suffered, and will continue to suffer,
5 damages in amounts that are presently unknown to the CLASS, but which exceed the
6 jurisdictional minimum of this Court, and which will be ascertained according to proof at trial.

7 47. By failing to keep adequate time records as required by the California Labor Code
8 and applicable IWC wage orders, DEFENDANTS have made it difficult to calculate the full
9 extent of compensation due to PLAINTIFFS.

10 48. Pursuant to California Labor Code section 1194.2, PLAINTIFFS are entitled to
11 recover liquidated damages (double damages) for DEFENDANTS' failure to pay minimum
12 wages.

13 49. California Labor Code section 204 requires employers to provide employees with
14 all wages due and payable twice a month. Throughout the statute of limitations period applicable
15 to this cause of action, PLAINTIFFS were entitled to be paid their regular, overtime, and premium
16 wages twice a month at rates required by law. However, during all such times, DEFENDANTS
17 systematically failed and refused to pay PLAINTIFFS all such wages due, and failed to pay those
18 wages twice a month.

19 50. As a result of DEFENDANTS' wage and hour law violations, as set forth herein
20 above, PLAINTIFFS have been damaged in an amount according to proof at time of trial, and
21 seek all wages earned and due, interest, penalties, attorneys' fees, and costs of suit, including,
22 without limitation, penalties provided by California Labor Code section 558, subdivision (a).

23 **FOURTH CAUSE OF ACTION**

24 **Against All Defendants for Failure to Pay Overtime Wages**
25 **(Cal. Labor Code, §§ 510, 1194, 1198; IWC Wage Order No. 5-2001)**

26 51. Plaintiff incorporates by reference and realleges, as if fully stated herein,
27 paragraphs one (1) through fifty (50) of this Complaint.
28

1 52. California Labor Code section 510, subdivision (a), and IWC Wage Order No. 5-
2 2001 provide that an employer is obligated to pay an overtime premium for work in excess of
3 eight (8) hours in a day, forty (40) hours in a workweek, or for any work at all on a seventh (7th)
4 consecutive day. Furthermore, such work must be compensated at one and one-half (1.5) times
5 the employees' regular rate of pay, or twice the employees' regular rate of pay if the employee
6 works in excess of twelve (12) hours in a day or eight (8) hours on a seventh (7th) consecutive
7 workday.

8 53. Throughout the time period involved in this case, PLAINTIFFS worked for
9 DEFENDANTS more than eight (8), and at times more than twelve (12), hours in a workday.
10 However, DEFENDANTS failed to pay PLAINTIFFS the overtime compensation to which they
11 were entitled. Furthermore, in calculating PLAINTIFFS' "regular rate[s] of pay" pursuant to
12 California Labor Code section 510, subdivision (a), DEFENDANTS failed to make adjustments to
13 reflect the per-hour value of all nondiscretionary compensation earned by PLAINTIFFS,
14 including, without limitation, the per-hour value of their employer-provided meals, incentive pay,
15 and mini-bar goods/services. As a result, DEFENDANTS are liable to PLAINTIFFS for overtime
16 or doubletime wages, at appropriate rates, for work in excess of eight (8) hours in a day, forty
17 (40) hours in a workweek, or for any work at all on a seventh (7th) consecutive day.

18 54. By and through the conduct described above, PLAINTIFFS have been deprived of
19 their rights to be paid wages earned by virtue of their employment with DEFENDANTS.

20 55. By virtue of DEFENDANTS' unlawful failure to compensate PLAINTIFFS for all
21 overtime hours worked by them, PLAINTIFFS have suffered, and will continue to suffer,
22 damages in amounts that are presently unknown to the CLASS, but which exceed the
23 jurisdictional minimum of this Court, and which will be ascertained according to proof at trial.

24 56. By failing to keep adequate time records as required by the California Labor Code
25 and applicable IWC wage orders, DEFENDANTS have made it difficult to calculate the full
26 extent of overtime compensation due to PLAINTIFFS.

27 57. California Labor Code section 204 requires employers to provide employees with
28 all wages due and payable twice a month. Throughout the statute of limitations period applicable

1 to this cause of action, PLAINTIFFS were entitled to be paid their regular, overtime, and premium
2 wages twice a month at rates required by law. However, during all such times, DEFENDANTS
3 systematically failed and refused to pay PLAINTIFFS all such wages due, and failed to pay those
4 wages twice a month.

5 58. As a result of DEFENDANTS' wage and hour law violations, as set forth herein
6 above, PLAINTIFFS have been damaged in an amount according to proof at time of trial, and
7 seek all wages earned and due, interest, penalties, attorneys' fees, and costs of suit.

8 **FIFTH CAUSE OF ACTION**
9 **Against All Defendants for Failure to Provide Accurate Wage Statements and Maintain**
10 **Accurate Payroll Records**
11 **(Cal. Labor Code, §§ 226, 1174(d); IWC Wage Order No. 5-2001)**

12 59. Plaintiff incorporates by reference and realleges, as if fully stated herein,
13 paragraphs one (1) through fifty-eight (58) of this Complaint.

14 60. California Labor Code section 226, subdivision (a), provides as follows:

15 "An employer, semimonthly or at the time of each payment of
16 wages, shall furnish to his or her employee, either as a detachable
17 part of the check, draft, or voucher paying the employee's wages, or
18 separately if wages are paid by personal check or cash, an accurate
19 itemized statement in writing showing (1) gross wages earned, (2)
20 total hours worked by the employee, except as provided in
21 subdivision (j), (3) the number of piece-rate units earned and any
22 applicable piece rate if the employee is paid on a piece-rate basis,
23 (4) all deductions, provided that all deductions made on written
24 orders of the employee may be aggregated and shown as one item,
25 (5) net wages earned, (6) the inclusive dates of the period for which
26 the employee is paid, (7) the name of the employee and only the last
27 four digits of his or her social security number or an employee
28 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 the
corresponding number of hours worked at each hourly rate by the
employee...."

25 61. Furthermore, California Labor Code section 1174, subdivision (d), provides that
26 every employer shall keep payroll records "showing the hours worked daily by and the wages
27 paid" to employees.
28

62. Throughout the time period involved in this case, DEFENDANTS have willfully failed to provide accurate wage statements to PLAINTIFFS and maintain accurate payroll records. DEFENDANTS failed to provide wage statements to PLAINTIFFS that accurately showed their total hours worked, gross pay, and net pay. DEFENDANTS failed to provide wage statements to PLAINTIFFS that accurately showed DEFENDANTS' name and address. Moreover, DEFENDANTS failed to maintain payroll records that showed the true "hours worked daily by and the wages paid" to PLAINTIFFS.

63. As a result of DEFENDANTS' violations of the California Labor Code as alleged herein, PLAINTIFFS have suffered injury and damage to their statutorily-protected rights.

64. As a result of DEFENDANTS' violations of the California Labor Code and related laws and regulations, PLAINTIFFS have suffered, and will continue to suffer, by having to have commenced this difficult and time-consuming action to determine their true wages.

65. PLAINTIFFS are entitled to recover from DEFENDANTS the greater of their actual damages caused by DEFENDANTS' failure to comply with California Labor Code section 226, subdivision (a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

66. Pursuant to California Labor Code section 226, subdivision (h), PLAINTIFFS are also entitled to injunctive relief to ensure compliance with this section.

SIXTH CAUSE OF ACTION

**Against All Defendants for Failure to Pay All Wages Due to Terminated Employees
(Cal. Labor Code, §§ 201, 202, 203; IWC Wage Order No. 5-2001)**

67. Plaintiff incorporates by reference and realleges, as if fully stated herein, paragraphs one (1) through sixty-six (66) of this Complaint.

68. California Labor Code sections 201 and 202 provide that if an employer terminates an employee, the employee's wages earned and unpaid at the time of the discharge are due and payable immediately, except that if an employee voluntarily resigns, his or her wages are due and payable not later than seventy-two (72) hours thereafter, unless the employee gave seventy-two

1 (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to
2 payment of his or her wages at the time of his or her resignation.

3 69. Within the applicable statute of limitations period, Plaintiff and other CLASS
4 members were discharged by DEFENDANT or voluntarily resigned from DEFENDANTS'
5 employ. However, DEFENDANTS have failed to pay, and continue to fail to pay, without
6 abatement, Plaintiff and these CLASS members all their earned and unpaid wages as required by
7 sections 201 and 202 of the California Labor Code.

8 70. California Labor Code section 203, subdivision (a), provides that if an employer
9 willfully fails to pay earned and unpaid wages in accordance with sections 201 and 202, then the
10 wages of the employee shall continue as a penalty wage from the due date, and at the same rate
11 until paid or until an action is commenced; except that the wages shall not continue for more than
12 thirty (30) days. Despite these legal requirements, DEFENDANTS have failed to pay penalty
13 wages to Plaintiff and other CLASS members who were discharged by DEFENDANTS or
14 voluntarily resigned from DEFENDANTS' employ during the applicable statute of limitations
15 period.

16 71. Plaintiff and other CLASS members seek to recover from DEFENDANTS their
17 additionally-accruing wages for each day that they were not paid, at their regular hourly rates of
18 pay, up to thirty (30) days pursuant to California Labor Code section 203, subdivision (a), in
19 addition to all other earned and unpaid wages due, interest, penalties, attorneys' fees, and costs of
20 suit.

21 **SEVENTH CAUSE OF ACTION**
22 **Against All Defendants for Unfair Business Practices**
23 **(California Business and Professions Code, § 17200 et seq.)**

24 72. Plaintiff incorporates by reference and realleges, as if fully stated herein,
25 paragraphs one (1) through seventy-one (71) of this Complaint.

26 73. DEFENDANTS, and each of them, are "persons" as defined in California Business
27 and Professions Code section 17201.
28

1 74. DEFENDANTS' conduct, as alleged herein, has been, and continues to be, unfair,
2 unlawful, and harmful to PLAINTIFFS and the general public. PLAINTIFFS seek to enforce
3 important rights affecting the public interest within the meaning of California Code of Civil
4 Procedure section 1021.5.

5 75. Violations of California Business and Professions Code section 17200 et seq. may
6 be predicated on the violation of any state or federal statute or law. All of the acts and omissions
7 described herein as violations of, among other things, the California Labor Code and relevant
8 IWC wage orders, are unlawful and in violation of public policy; and, in addition, are immoral,
9 unethical, oppressive, fraudulent, and unscrupulous, and thereby constitute unfair, unlawful,
10 and/or fraudulent business practices under California Business and Professions Code section
11 17200 et seq. (See also *Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138.)

12 76. Specifically, DEFENDANTS' failure to provide meal periods and meal period
13 premiums, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and
14 Professions Code section 17200 et seq. (See also *Safeway v. Superior Court* (2015) 238
15 Cal.App.4th 1138.)

16 77. DEFENDANTS' failure to provide rest periods and rest period premiums, as
17 alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions
18 Code section 17200 et seq. (See also *Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138.)

19 78. DEFENDANTS' failure to pay minimum and straight time wages, as alleged
20 above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code
21 section 17200 et seq.

22 79. DEFENDANTS' failure to pay overtime compensation, as alleged above, and in
23 violation of California Penal Code sections 484 and 532 (obtaining labor through false pretenses)
24 constitutes unlawful and/or unfair activity prohibited by Business and Professions Code section
25 17200 et seq.

26 80. DEFENDANTS' failure to provide accurate wage statements, as alleged above,
27 constitutes unlawful and/or unfair activity prohibited by Business and Professions Code section
28 17200 et seq.

1 81. By and through their unfair, unlawful, and fraudulent business practices described
2 herein, DEFENDANTS have obtained valuable property, money, and services from
3 PLAINTIFFS, and have deprived PLAINTIFFS of valuable rights and benefits guaranteed by law,
4 all to their detriment.

5 82. DEFENDANTS have also avoided paying the appropriate taxes, insurance, and
6 other withholdings, and will continue to avoid paying the appropriate taxes, insurance, and other
7 withholdings unless and until they are enjoined from doing so.

8 83. PLAINTIFFS have suffered, and continue to suffer, monetary injury as a direct
9 result of DEFENDANTS' wrongful conduct as alleged herein.

10 84. PLAINTIFFS have no plain, speedy, and/or adequate remedy at law to redress the
11 injuries they have suffered as a consequence of DEFENDANTS' unfair, unlawful, and/or
12 fraudulent business practices. PLAINTIFFS seek a declaration that DEFENDANTS' business
13 practices alleged herein are unfair, unlawful, and/or fraudulent, and injunctive relief restraining
14 DEFENDANTS, and each of them, from engaging in any such unfair, unlawful, and/or fraudulent
15 business practices in the future.

16 85. PLAINTIFFS further seek restitution of all money and/or property that
17 DEFENDANTS have wrongfully acquired, or which PLAINTIFFS have been deprived, by means
18 of the foregoing unfair, unlawful, and/or fraudulent business practices.

19 86. PLAINTIFFS seek (a) restitution of all earned and unpaid wages wrongfully
20 withheld by DEFENDANTS during the period that commences four (4) years prior to the filing of
21 this Complaint, (b) a permanent injunction enjoining DEFENDANTS from engaging in the unfair,
22 unlawful, and/or fraudulent business practices described herein, (c) an award of attorneys' fees
23 pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws, and (d)
24 an award of costs.

25 ///

26 ///

27 ///

EIGHTH CAUSE OF ACTION
Representative Action Against All Defendants
(Cal. Labor Code, § 2698 et seq.)

87. Plaintiff incorporates by reference and realleges, as if fully stated herein, paragraphs one (1) through eighty-six (86) of this Complaint.

88. California Labor Code section 2699, subdivision (a), provides for a private right of action to recover penalties for an employer's violations of the Labor Code: "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3."

89. On October 15, 2021, Plaintiff delivered written notice, by certified mail, to the LWDA and Defendants of the specific provisions of the Labor Code alleged to have been violated by DEFENDANTS, including the facts and theories to support the violations. As of the date of this Complaint, more than sixty-five (65) days have elapsed since October 15, 2021 and no notice from the LWDA has been received by Plaintiff regarding the LWDA's intent to investigate the alleged violations. Accordingly, Plaintiff has exhausted her administrative remedies in compliance with Labor Code section 2699.3, subdivision (a), and may commence a civil action to recover penalties for DEFENDANTS' violations of the Labor Code on behalf of the state and the CLASS pursuant to section 2699, subdivision (a).

90. As a result of DEFENDANTS' violations of the California Labor Code as alleged above, PLAINTIFFS are entitled to collect civil penalties pursuant to the PAGA including, without limitation, the following:

(a) Pursuant to California Labor Code section 558, subdivision (a), PLAINTIFFS, and each of them, seek a penalty of fifty dollars (\$50) for DEFENDANTS' initial

1 failure to provide a legally-compliant meal period, and a subsequent penalty of one hundred
2 dollars (\$100) for every subsequent failure thereafter;

3 (b) Pursuant to California Labor Code section 2699, subdivision (f)(2),
4 PLAINTIFFS, and each of them, seek a penalty of one hundred dollars (\$100) for
5 DEFENDANTS' initial failure to provide a meal period premium payment and a subsequent
6 penalty of two hundred dollars (\$200) for every subsequent failure thereafter;

7 (c) Pursuant to California Labor Code section 558, subdivision (a),
8 PLAINTIFFS, and each of them, seek a penalty of fifty dollars (\$50) for DEFENDANTS' initial
9 failure to provide a legally-compliant rest period, and a subsequent penalty of one hundred dollars
10 (\$100) for every subsequent failure thereafter;

11 (d) Pursuant to California Labor Code section 2699, subdivision (f)(2),
12 PLAINTIFFS, and each of them, seek a penalty of one hundred dollars (\$100) for
13 DEFENDANTS' initial failure to provide a rest break premium payment and a subsequent penalty
14 of two hundred dollars (\$200) for every subsequent failure thereafter;

15 (e) Pursuant to California Labor Code section 1197.1, subdivision (a),
16 PLAINTIFFS, and each of them, seek a penalty of one hundred dollars for DEFENDANTS' initial
17 failure to pay the minimum wage and a subsequent penalty of two hundred fifty (\$250) for every
18 subsequent violation thereafter;

19 (f) Pursuant to California Labor Code section 558, subdivision (a),
20 PLAINTIFFS, and each of them, seek a penalty of fifty dollars (\$50) for DEFENDANTS' initial
21 failure to pay overtime, and a subsequent penalty of one hundred dollars (\$100) for every
22 subsequent failure thereafter; and

23 (g) Pursuant to California Labor Code section 226.3, PLAINTIFFS, and each
24 of them, seek a penalty of two hundred fifty dollars (\$250) for the initial failure to provide an
25 accurate wage statement and a subsequent penalty of one thousand dollars (\$1,000) for every
26 subsequent failure thereafter. (Cal. Labor Code, § 226.3.)

27 ///

1 **PRAYER FOR RELIEF**

2 Plaintiff, individually, and on behalf of all other similarly situated current and former
3 employees of DEFENDANTS, prays for relief and judgment against DEFENDANTS, jointly and
4 severally, as follows:

5 **Class Certification**

- 6 1. That this action be certified as a class action;
7 2. That Plaintiff be appointed as the representative of the CLASS; and
8 3. That counsel for Plaintiff be appointed as Class Counsel;

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

- 10 4. That the Court declare, adjudge and decree that DEFENDANTS violated Labor Code
11 sections 226.7 and 512, and the IWC wage orders;
12 5. For general unpaid wages and such general and special damages as may be
13 appropriate;
14 6. For pre-judgment interest on any unpaid compensation commencing from the date
15 such amounts were due;
16 7. For reasonable attorneys' fees and for costs of suit incurred herein; and
17 8. For such other and further relief as the Court may deem equitable and appropriate;

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

- 19 9. That the Court declare, adjudge and decree that DEFENDANTS violated Labor Code
20 section 226.7 and the IWC wage orders;
21 10. For general unpaid wages and such general and special damages as may be
22 appropriate;
23 11. For pre-judgment interest on any unpaid compensation commencing from the date
24 such amounts were due;
25 12. For reasonable attorneys' fees and for costs of suit incurred herein; and
26 13. For such other and further relief as the Court may deem equitable and appropriate;
27
28

As to the Third Cause of Action

14. That the Court declare, adjudge and decree that DEFENDANTS violated Labor Code section 204 and 1194;
15. For general unpaid wages and such general and special damages as may be appropriate;
16. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
17. For liquidated damages;
18. For reasonable attorneys' fees and for costs of suit incurred herein; and
19. For such other and further relief as the Court may deem equitable and appropriate;

As to the Fourth Cause of Action

20. That the Court declare, adjudge and decree that DEFENDANTS violated California Labor Code sections 510 and 1198 and the applicable IWC wage orders by willfully failing to pay all overtime wages due to Plaintiff and CLASS members;
21. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
22. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
23. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194, subdivision (a); and
24. For such other and further relief as the Court may deem equitable and appropriate;

As to the Fifth Cause of Action

25. That the Court declare, adjudge and decree that DEFENDANTS violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and other terminated CLASS members;
26. For all actual, consequential, and incidental losses and damages, according to proof;

1 27. For statutory wage penalties pursuant to California Labor Code section 203 for
2 Plaintiff and all other CLASS members who have left DEFENDANTS' employ;

3 28. For pre-judgment interest on any unpaid wages from the date such amounts were
4 due;

5 29. For reasonable attorneys' fees and for costs of suit incurred herein; and

6 30. For such other and further relief as the Court may deem equitable and appropriate;

7 As to the Sixth Cause of Action

8 31. That the Court declare, adjudge and decree that DEFENDANTS violated the record-
9 keeping provisions of California Labor Code section 226, subdivision (a), and the
10 applicable IWC wage orders as to Plaintiff and CLASS members, and willfully failed
11 to provide accurate itemized wage statements thereto;

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

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

15 34. For injunctive relief to ensure compliance with this section, pursuant to California
16 Labor Code section 226, subdivision (h);

17 35. For reasonable attorneys' fees and for costs of suit incurred herein; and

18 36. For such other and further relief as the Court may deem equitable and appropriate;

19 As to the Seventh Cause of Action

20 37. That the Court declare, adjudge, and decree that DEFENDANTS violated California
21 Business and Professions Code section 17200, et seq., by failing to provide Plaintiff
22 and the CLASS members with legally-compliant meal and rest periods, failing to
23 provide all compensation due during employment and upon termination of
24 employment, including minimum, straight, and overtime wages, and failing to
25 provide accurate, itemized wage statements;

26 38. For restitution of unpaid wages to Plaintiff and all the CLASS members and
27 prejudgment interest from the day such amounts were due and payable;
28

- 1 39. For restitution from DEFENDANTS of all funds determined to have been wrongfully
2 acquired by them as a result of violations of California Business & Professions Code
3 section 17200 et seq.;
- 4 40. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
5 Code of Civil Procedure section 1021.5;
- 6 41. For injunctive relief to ensure compliance with this section, pursuant to California
7 Business & Professions Code section 17200, et seq.; and
- 8 42. For such other and further relief as the Court may deem equitable and appropriate;
9 and

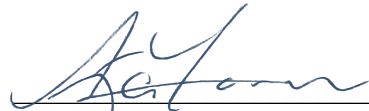
10 As to all Causes of Action

- 11 43. For any additional relief that the Court deems just and proper.
12

13 Dated: December 22, 2021

RASTEGAR LAW GROUP, APC

14
15 By:



16 Farzad Rastegar

17 Aja M. Taormina

18 Attorneys for Plaintiff Ericka Kraut,
19 and all other current and former
20 similarly situated employees of
21 Defendants
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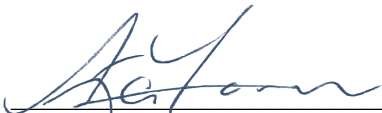
DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

Dated: December 22, 2021

RASTEGAR LAW GROUP, APC

By:



Farzad Rastegar
Aja M. Taormina
Attorneys for Plaintiff Ericka Kraut,
and all other current and former
similarly situated employees of
Defendants