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 and ARMANDO LEMUS

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF LOS ANGELES**

11 KAILEE WHITTAKER and ARMANDO
 12 LEMUS, on behalf of themselves, the State
 of California, and others similarly situated
 13 and aggrieved,

14 Plaintiff,

15 v.

16 YHB LONG BEACH LLC, a California
 17 limited liability company; L.A.
 18 KOREANA, INC., a California
 corporation; and DOES 1-100, inclusive,

19 Defendants.
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FILED
 Superior Court of California
 County of Los Angeles
06/12/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

Case No.: 22STCV34593

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Violations of Labor Code Section 226**
6. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
7. **Failure to Reimburse Business Expenses**
8. **Violations of the City of Long Beach Municipal Code**
9. **Unfair Competition and**
10. **Violation of Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

1 Plaintiffs, KAILEE WHITTAKER and ARMANDO LEMUS (“PLAINTIFFS”), on behalf
2 of themselves, the State of California, other similarly situated Class Members (defined below) and
3 Aggrieved Employees (defined below), hereby file this Complaint against Defendants YHB LONG
4 BEACH LLC, a California limited liability company; L.A. KOREANA, INC., a California
5 corporation, and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”).
6 PLAINTIFFS are informed and believe and thereon allege as follows:

7 **JURISDICTION AND VENUE**

8 1. This court possesses original subject matter jurisdiction over this matter. Venue is
9 proper in Los Angeles County, California, because DEFENDANTS transact business within this
10 judicial district and some of the complained of conduct occurred in this judicial district. *See also*
11 *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a
12 PAGA action is proper in any county where the defendants committed Labor Code violations against
13 some of its employees).

14 **THE PARTIES**

15 2. PLAINTIFFS are, and at all relevant times, were individuals domiciled in the State
16 of California and citizens of the State of California who worked as full-time non-exempt employees
17 for DEFENDANTS in the State of California.

18 3. PLAINTIFF KAILEE WHITTAKER worked for DEFENDANTS, from in or about
19 September 2020, through in or about January 2021. PLAINTIFF WHITTAKER worked for
20 DEFENDANTS during the relevant period as a non-exempt Front Desk Agent and/or or other
21 similar title(s) at one of DEFENDANTS’ California hotel locations located in Long Beach,
22 California.

23 4. PLAINTIFF ARMANDO LEMUS worked for DEFENDANTS, from in or about
24 March 28, 2022, though on or about May 30, 2022. PLAINTIFF LEMUS worked for
25 DEFENDANTS during the relevant period as a non-exempt and/or other similar title(s) at one of
26 DEFENDANTS’ California hotel locations located in Long Beach, California.

27 5. DEFENDANTS are each either a California limited liability company and/or
28 California corporation, that at all relevant times, were authorized to do business within the State of

California and are doing business in the State of California. DEFENDANTS are in the hotel / hospitality services business. DEFENDANTS own, manage, and/or operate several locations, including but not limited to, hotels operating in the following cities in California: Long Beach, San Francisco, and American Canyon, California. During the relevant period, DEFENDANTS assigned PLAINTIFFS to work at DEFENDANTS' hotel facility located at 2640 N Lakewood Blvd Long Beach, CA 90815, which operated/operates under the name Holiday Inn – Long Beach Airport.

6. The true names and capacities of the DOE Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to PLAINTIFFS, who therefore sues each such Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. PLAINTIFFS will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

7. PLAINTIFFS are further informed and believe that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. PLAINTIFFS are further informed and believe and thereon allege that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

JOINT LIABILITY

8. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3) to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control

1 was to reach situations in which multiple entities control different aspects of the employment
2 relationship. Supervision of the work, in the specific sense of exercising control over how services
3 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
4 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
5 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
6 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
7 California, applying a less stringent standard to what constitutes sufficient control by a business
8 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
9 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
10 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
11 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
12 employment,” *Id.* at 875 [emphasis added].

13 9. During PLAINTIFFS’ employment by DEFENDANTS, PLAINTIFFS and the Class
14 Members and the Aggrieved Employees were jointly employed by DEFENDANTS for purposes of
15 the Wage Orders, under the alternative definitions of “to employ” adopted by the California
16 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control
17 over wages, hours and working conditions of PLAINTIFFS, Class Members, and Aggrieved
18 Employees; (2) suffered or permitted PLAINTIFFS, Class Members and Aggrieved Employees to
19 work for them; and, (3) engaged PLAINTIFFS, Class Members and Aggrieved Employees to work
20 for them.

21 10. PLAINTIFFS are informed and believe, and thereon allege that at all relevant times
22 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
23 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
24 across all of their locations/facilities and subjected all of the Class Members and Aggrieved
25 Employees to these same policies and practices regardless of the location(s) or facilities where they
26 worked.

27 11. PLAINTIFFS are informed and believe, and thereon allege that at all times relevant
28 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFFS and the Class

1 Members and Aggrieved Employees upon whose behalf PLAINTIFFS bring these allegations and
2 causes of action, in that DEFENDANTS, exercised sufficient control over PLAINTIFFS and the
3 Class Members' and Aggrieved Employees' wages, hours and working conditions, and/or suffered
4 or permitted PLAINTIFFS, Class Members, and Aggrieved Employees to work so as to be
5 considered the joint employers of PLAINTIFFS, Class Members, and Aggrieved Employees. For
6 example, DEFENDANTS, and each of them, maintain the same principal office (4353 E. Willow
7 Street, Long Beach, California 90815) and/or same California registered Agent for Service of
8 Process.

9 12. As such, PLAINTIFFS allege that DEFENDANTS created a uniform set of policies,
10 practices and/or procedures concerning, inter alia, hourly and overtime pay, time-keeping practices,
11 meal and rest periods, reimbursement of business expenses and other working conditions that were
12 distributed to, and/or applied to PLAINTIFFS and the Class Members and Aggrieved Employees,
13 and further that DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFFS
14 and the Class Members and Aggrieved Employees in a uniform manner. DEFENDANTS
15 collectively represented to PLAINTIFFS, Class Members, and Aggrieved Employees that each was
16 an "at-will" employee of DEFENDANTS, and that DEFENDANTS collectively retained the right
17 to terminate PLAINTIFFS', Class Members' and Aggrieved Employees' employment with or
18 without cause. Upon information and belief, DEFENDANTS further collectively represented to
19 PLAINTIFFS, Class Members, and Aggrieved Employees in writing the details of their
20 compensation, and the manner in which they were to take meal and rest periods, the procedures
21 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
22 to PLAINTIFFS, Class Members, and Aggrieved Employees by which DEFENDANTS collectively
23 would evaluate the wage rates of PLAINTIFFS, Class Members, and Aggrieved Employees.

24 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
25 and working conditions of PLAINTIFFS, Class Members, and Aggrieved Employees. As such,
26 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFFS' and
27 the Class Members' and Aggrieved Employees' employment, including the instrumentality that
28 resulted in the illegal conduct for which PLAINTIFFS seek relief in this Complaint.

14. PLAINTIFFS are informed and believe that DEFENDANTS exercised the same control over, applied the same policies and practices, and engaged in the same acts and omissions with regard to the other Class Members and Aggrieved Employees.

CLASS ALLEGATIONS

15. PLAINTIFFS bring this action on behalf of themselves, and all others similarly situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFFS seek to represent is defined as follows and referred to as the “Class” or “Class Members”:

All current and former non-exempt employees who worked either directly or via a staffing agency for DEFENDANTS at any one or more locations owned, operated, and/or managed by DEFENDANTS in California at any time within the four years and 178 days prior to the filing of the initial Complaint (“Class Period”).¹

- a. Numerosity. While the exact number of Class Members is unknown to PLAINTIFFS at this time, the class is so numerous that the individual joinder of all members is impractical under the circumstances of this case. PLAINTIFFS are informed and believe the class consists of at least 100 individuals.
- b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment because common questions of law and fact predominate over individual issues. Common questions include, but are not limited to, the following: (1) whether DEFENDANTS understated hours worked and failed to pay all amounts due to PLAINTIFFS and the Class Members for wages earned, including minimum and overtime wages, under California law; (2) whether DEFENDANTS provided PLAINTIFFS and the Class Members with all meal periods or premium payments in lieu thereof in compliance with California law; (3) whether DEFENDANTS provided PLAINTIFFS and the Class Members with

¹ In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a) (California Rules of Court), whereby “statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1, 2020.”

1 all rest periods or premium payments in lieu thereof, in compliance with
2 California law; (4) whether DEFENDANTS provided PLAINTIFFS and the
3 Class Members with accurate, itemized wage statements in compliance with
4 California law, displaying, including but not limited to, the total hours worked
5 during the pay period and the correct name and/or address of the legal entity that
6 is the employer; (5) whether DEFENDANTS failed to produce and/or allow
7 access to employment records within the time limits prescribed under California
8 law; (6) whether DEFENDANTS timely paid PLAINTIFFS and the Class
9 Members all wages due upon separation of employment; (7) whether
10 DEFENDANTS failed to reimburse PLAINTIFFS and the Class Members for
11 all business expenses; (8) whether DEFENDANTS failed to provide “humane
12 working conditions” in violation of the City of Long Beach Municipal Code;
13 and (9) whether DEFENDANTS violated California Business and Professions
14 Code sections 17200, *et seq.*

- 15 c. Ascertainable Class. The proposed class is ascertainable as its members can be
16 identified and located using information in DEFENDANTS’ business, payroll
17 and personnel records.
- 18 d. Typicality. PLAINTIFFS’ claims are typical of the claims of the Class
19 Members. PLAINTIFFS suffered a similar injury as the other Class Members
20 as a result of DEFENDANTS’ common practices regarding, *inter-alia*, failure
21 to calculate and pay all owed minimum and overtime wages, failure to provide
22 proper meal and rest periods or premium compensation in lieu thereof, failure
23 to provide accurate wage statements, failure to timely produce employment
24 records, failure to reimburse business expenses, and failure to pay all wages due
25 upon separation of employment.
- 26 e. Adequacy. PLAINTIFFS will fairly and adequately protect the interests of the
27 Class Members. PLAINTIFFS have no interests adverse to the interests of the
28 other Class Members. Counsel who represent PLAINTIFFS are competent and

1 experienced in litigating similar class action cases and are California lawyers in
2 good standing. Counsel for PLAINTIFFS have the experience and resources to
3 vigorously prosecute this case.

4 f. Superiority. A class action is superior to other available means for the fair and
5 efficient adjudication of this controversy since individual joinder of all members
6 of the class is impractical. Class action treatment will permit a large number of
7 similarly situated persons to prosecute their common claims in a single forum
8 simultaneously, efficiently, and without the unnecessary duplication of effort
9 and expense that numerous individual actions would engender. Furthermore, as
10 the damages suffered by each individual member of the class may be relatively
11 small, the expenses and burden of individual litigation would make it difficult
12 or impossible for individual members of the class to redress the wrongs done to
13 them, while an important public interest will be served by addressing the matter
14 as a class action. The cost to the court system of adjudication of such
15 individualized litigation would be substantial. Individualized litigation would
16 also present the potential for inconsistent or contradictory judgments. Finally,
17 the alternative of filing a claim with the California Labor Commissioner is not
18 superior, given the lack of discovery in such proceedings, the fact that there are
19 fewer available remedies, and the losing party has the right to a trial de novo in
20 the Superior Court.

21 **FACTUAL AND LEGAL ALLEGATIONS**

22 16. During the four-year period preceding filing of this complaint, PLAINTIFFS, and
23 each of the Class Members, were employed by DEFENDANTS in the State of California as non-
24 exempt, employees. During the PAGA Period (defined below) PLAINTIFFS and the Aggrieved
25 Employees (defined below) were employed by DEFENDANTS in the State of California as non-
26 exempt employees. At all times referenced herein, DEFENDANTS exercised control over
27 PLAINTIFFS, Class Members, and Aggrieved Employees and suffered and/or permitted them to
28 work.

1 17. PLAINTIFF WHITTAKER worked for DEFENDANTS, from in or about
2 September 2020 through in or about January 2021. PLAINTIFF WHITTAKER continued to be
3 subject to DEFENDANTS' violations of one or more labor code provisions through the end of 2021
4 and early 2022. PLAINTIFF WHITTAKER worked for DEFENDANTS during the relevant period
5 as a non-exempt Front Desk Agent or other similar title at one of DEFENDANTS' hotels located in
6 Long Beach, California. PLAINTIFFS WHITTAKER's job duties included but were not limited to,
7 performing all check-in and check-out tasks, monitoring/managing online and or phone
8 reservations, and responding to guest inquiries and offering guest support service. PLAINTIFF
9 WHITTAKER was typically scheduled to work at least eight (8)-hours per day, at least five (5) days
10 per week.

11 18. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
12 PLAINTIFFS and Class Members and Aggrieved Employees for all hours worked, resulting in the
13 underpayment of minimum and overtime wages. DEFENDANTS failed to compensate
14 PLAINTIFFS and Class Members and Aggrieved Employees for all hours worked by virtue of,
15 DEFENDANTS' automatic deduction and time rounding policies, and failure to relieve employees
16 of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed
17 or improper meal periods, as explained below.

18 19. Based on information and belief, DEFENDANTS implemented a policy and/or
19 practice of rounding meal period start and end times and/or automatically deducting at least thirty
20 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
21 PLAINTIFFS and other Class Members and Aggrieved Employees were subject to DEFENDANTS'
22 control during purported meal periods and/or were otherwise not afforded lawful meal periods,
23 depriving PLAINTIFFS and Class Members and Aggrieved Employees of all wages owed.

24 20. Based on information and belief, Class Members and Aggrieved Employees were
25 not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to
26 scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies
27 and/or practices. For example, DEFENDANTS mandated pre-shift and/or post-shift off-the-clock
28 work that was neither recorded nor compensated, which included without limitation, requiring Class

1 Members and Aggrieved Employees to bestow their personal items and/or change into their work
2 uniforms/work clothing/shoes/face masks prior to clocking in for their shifts, requiring Class
3 Members and Aggrieved Employees to respond to work-related calls/messages on their cell
4 phones/mobile devices before clocking in for their shifts and/or after clocking out for their shifts,
5 and/or complete other mandated off-the-clock work tasks prior to clocking in for the start of their
6 shifts and/or after clocking out for the end of their shifts. For example, upon arriving at work,
7 PLAINTIFF WHITTAKER was required to first bestow her personal items in the employee storage
8 area prior to clocking in for the start of her shift and regularly had to respond to work-related
9 calls/messages to her personal cell phone from her supervisor before clocking in for the start of her
10 shifts and/or after clocking out for the end of her shifts. This pre-shift and post-shift time spent
11 under DEFENDANTS' control was not recorded and not compensated, resulting in the significant
12 underpayment of minimum and overtime wages owed to PLAINTIFF WHITTAKER.

13 21. Based on information and belief, DEFENDANTS failed to pay Class Members and
14 Aggrieved Employees for time they were required to spend completing orientation, policy
15 questionnaires, and/or time spent completing the onboarding process including but not limited to
16 reviewing various documents and policies provided by DEFEDANTS. Based on information and
17 belief, this work time was completed off-the-clock and was not compensated.

18 22. As explained above, Class Members and Aggrieved Employees were also required
19 to complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or
20 messages they received outside of their scheduled shift times to their personal phones/mobile
21 devices and were required to respond to, including but not limited to, communications from
22 customers/hotel guests and/or supervisors, resulting in significant off-the-clock work.

23 23. Moreover, based on information and belief, DEFENDANTS' employee
24 electronic/biometric time-keeping system consistently malfunctioned such that PLAINTIFFS and
25 other Class Members were consistently required to either reinitiate and/or otherwise troubleshoot
26 the system prior to being able to clock in and/or were unable to clock in at all for the start of their
27 shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment
28 of minimum and overtime wages owed to PLAINTIFFS and other Class Members. This time spent

1 under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid
2 minimum and overtime wages.

3 24. Based on further information and belief, DEFENDANTS implemented a time-
4 rounding system that as applied systematically deprived PLAINTIFFS and other Class Members
5 and Aggrieved Employees of compensable time because the time-rounding system implemented by
6 DEFENDANTS would almost always, if not always, result in understating actual compensable work
7 time.

8 25. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
9 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
10 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
11 minimum wages owed to PLAINTIFFS and Class Members and Aggrieved Employees as well as
12 unpaid overtime wages for those Class Members and Aggrieved Employees who worked more than
13 eight (8) hours in a day and/or more than forty (40) hours in a week.

14 26. Based on information and belief, DEFENDANTS had actual and/or constructive
15 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
16 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
17 underpayment of minimum wages owed to PLAINTIFFS and other Class Members and Aggrieved
18 Employees, in violation of California's minimum and overtime wage laws.

19 27. Based on information and belief, DEFENDANTS failed and continue to fail to pay
20 Class Members and Aggrieved Employees two times their regular rate of pay for time worked
21 beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh
22 consecutive day of work in a work week, in violation of California's overtime laws.

23 28. Based on information and belief, DEFENDANTS failed to incorporate all non-
24 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
25 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
26 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFFS and
27 other Class Members and Aggrieved Employees.

28 29. **Meal Period Violations.** PLAINTIFFS and other Class Members and Aggrieved

1 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to
2 at least one meal period. However, PLAINTIFFS and other Class Members and Aggrieved
3 Employees would not receive legally compliant thirty (30) minute first (and second) meal periods.
4 Based on information and belief, Class Members and Aggrieved Employees were consistently
5 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take
6 late meal periods, interrupted meal periods, and/or work through part or all their meal periods due
7 to understaffing, the nature and constraints of their job duties and/or commentary from supervisors
8 pressuring them to take non-compliant meal periods or skip meal periods completely. For example,
9 PLAINTIFFS were often forced to take an interrupted, shortened and/or late meal period due to the
10 need to respond to guest inquiries/provide guest support services and/or communicate with hotel
11 staff members. Based on information and belief, Class Members and Aggrieved Employees were
12 instructed by their supervisors to clock out for meal breaks but to continue attending to guests as
13 needed and/or complete other work tasks during their unpaid meal breaks.

14 30. Based on information and belief, other Class Members and Aggrieved Employees
15 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
16 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
17 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
18 duties, and/or the need to meet DEFENDANTS' goals and expectations.

19 31. Based on information and belief, DEFENDANTS implemented policies and/or
20 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
21 DEFENDANTS' control during unpaid meal periods. Class Members and Aggrieved Employees
22 were required to remain tethered to their work sites and or work communication devices during
23 purportedly off-duty meal periods. For example, Class Members and Aggrieved Employees
24 received calls/texts from guests and or their supervisors and/or were required to respond to guest
25 inquiries and/or complete other work tasks while clocked out for their meal periods.

26 32. Based on information and belief, DEFENDANTS required Class Members and
27 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
28 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and

1 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
2 unaccounted pre-shift off-the-clock work.

3 33. Based on information and belief, despite DEFENDANTS' failure to provide lawful
4 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
5 times of PLAINTIFFS' and other Class Members' and Aggrieved Employees' meal periods and/or
6 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
7 periods despite having actual and/or constructive knowledge that PLAINTIFFS and other Class
8 Members and Aggrieved Employees did not receive lawful meal periods.

9 34. Moreover, based on information and belief, per DEFENDANTS' uniform policy and
10 practice, Class Members and Aggrieved Employees who worked shifts of more than ten hours did
11 not receive a second legally compliant thirty (30) minute second meal period.

12 35. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFFS
13 and other Class Members, and Aggrieved Employees as to the timing and duty-free nature of meal
14 periods. Based on further information and belief, DEFENDANTS did not have a compliant written
15 meal period policy, nor did DEFENDANTS have any sort of compliant policy in practice.

16 36. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
17 records of the true start and end times of PLAINTIFFS and Class Members' and Aggrieved
18 Employees' meal periods. Based on information and belief, to the extent meal period were recorded,
19 DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in
20 PLAINTIFFS and other Class Members and Aggrieved Employees not being paid for all time
21 worked as well as late and/or shortened meal periods. See *Donohue v. AMN Services, LLC* (2021)
22 11 Cal.5th 58.

23 37. Based on information and belief, DEFENDANTS had actual and/or constructive
24 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
25 were free of DEFENDANTS' control owed to PLAINTIFFS and other Class Members and
26 Aggrieved Employees, in violation of California's meal period laws.

27 38. DEFENDANTS failed to pay PLAINTIFFS and other Class Members and Aggrieved
28 Employees, an additional hour of wages at their respective regular rates of compensation for each

1 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
2 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
3 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
4 but not limited to, bonuses/incentive pay, shift differential pay and/or multiple pay rates and/or other
5 non-discretionary compensation into the regular rate or compensation for purposes of calculating
6 the owed meal period premium.

7 **39. Rest Periods Violations.** DEFENDANTS did not properly authorize and provide
8 PLAINTIFFS and other Class Members and Aggrieved Employees with legally compliant rest
9 periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable,
10 are provided in the middle of the work period, as required by law.

11 **40.** PLAINTIFFS and other Class Members and Aggrieved Employees were not
12 adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest
13 periods per California law. Based on information and belief, DEFENDANTS had no policy in place
14 nor instruction as to the taking of duty-free rest periods.

15 **41.** Based on information and belief, DEFENDANTS did not have a have a compliant
16 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
17 practice. Based on information and belief, DEFENDANTS had no policy in place nor instruction as
18 to the taking, timing, or duty-free nature of rest periods. Any purported rest periods were interrupted,
19 cut short, on duty, restricted to premises, and/or late due to the nature and constraints of
20 PLAINTIFFS', Class Members' and other Aggrieved Employees' job duties and/or commentary
21 from supervisors pressuring them to skip rest periods completely or take non-compliant rest periods.
22 For example, based on information and belief PLAINTIFFS and other Class Members and
23 Aggrieved Employees were required to be on call in order to tend to the needs of guests and/or
24 compete other job duties, such that rest breaks were only taken once jobs were completed/if time
25 permitted. Based on information and belief, PLAINTIFFS and other Class Members and Aggrieved
26 Employees received work related calls and messages throughout the day, including but not limited
27 to during purported rest periods. As such, Class Members and Aggrieved Employees were afforded
28 an opportunity to take lawful rest periods. Based on information and belief, DEFENDANTS failed

1 to provide Class Members and Aggrieved Employees with lawful rest periods.

2 42. Based on information and belief, Class Members' and Aggrieved Employees' rest
3 periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing,
4 the nature and constraints of their job duties, and/or due to commentary from supervisors/managers
5 pressuring them to skip rest periods completely or otherwise take non-compliant rest periods.

6 43. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
7 lasting longer than ten hours. For example, based on information and belief, when Class Members
8 and Aggrieved Employees worked shifts lasting longer than ten hours, Class Members and
9 Aggrieved Employees were not afforded the opportunity and/or was not permitted to take a third
10 ten-minute rest period.

11 44. Based on information and belief, DEFENDANTS implemented policies and/or
12 practices that failed to relieve PLAINTIFFS and other Class Members and Aggrieved Employees
13 of all duties and DEFENDANTS' control during rest periods. Based on information and belief,
14 DEFENDANTS required PLAINTIFFS and Class Members and Aggrieved Employees to remain
15 tethered to their work sites and work communication devices during any rest periods;
16 DEFENDANTS prohibited PLAINTIFFS and other Class Members and Aggrieved Employees from
17 leaving the work premises during any rest periods; DEFENDANTS required PLAINTIFFS and
18 other Class Members and Aggrieved Employees to monitor their cell phones and or work
19 communication devices for work communications during any rest periods, rendering those rest
20 periods on duty and thus noncompliant with California law.

21 45. Based on information and belief, Class Members and Aggrieved Employees were
22 pressured to complete their work duties according to a designated schedule such that rest periods
23 were only taken once tasks were completed, and/or as time permitted.

24 46. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
25 which PLAINTIFFS and Class Members and Aggrieved Employees experienced a missed/unlawful
26 rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium
27 at all for each workday a proper rest period was not provided and/or failed to pay the proper rest
28 period premium for failure to incorporate all non-discretionary remuneration, including but not

1 limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
2 regular rate of compensation for purposes of calculating the owed rest period premium.

3 **47. Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
4 provide PLAINTIFFS and other Class Members and Aggrieved Employees with accurate wage
5 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
6 PLAINTIFFS and Class Members and Aggrieved Employees with meal and rest periods that
7 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFFS
8 and Class Members and Aggrieved Employees failed and continue to fail to correctly set forth the
9 gross wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in
10 effect during the pay period and the corresponding number of hours worked at each hourly rate by
11 the employee.

12 **48.** DEFENDANTS issued wage statements to PLAINTIFFS and Class Members and
13 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the
14 pay period, the correct applicable rates of pay for all hours worked, and the total hours worked by
15 PLAINTIFFS and Class Members and Aggrieved Employees (by virtue of rounded time entries,
16 automatic deduction for meal periods/failure to relieve Class Members and Aggrieved Employees
17 of all duties and employer control during unpaid meal periods, payment according to scheduled
18 hours worked rather than actual hours worked, and/or other off-the-clock work policies and
19 practices) which results in a violation of Labor Code section 226(a).

20 **49.** As described herein, based on information and belief, DEFENDANTS also failed to
21 incorporate all forms of non-discretionary compensation earned during the pay period into the
22 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
23 of overtime worked by PLAINTIFFS and other Class Members and Aggrieved Employees.

24 **50.** Moreover, based on information and belief, DEFENDANTS issued wage statements
25 to PLAINTIFFS and Class Members and Aggrieved Employees that further violate Labor Code
26 section 226(a), by among other things, failing to list the correct name and/or address of the legal
27 entity that is the employer.

28 **51.** As a result, DEFENDANTS issued wage statements to PLAINTIFFS and Class

1 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
2 required information. As such, DEFENDANTS violated Labor Code section 226.

3 **52. Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
4 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
5 Employees all wages that were due and owing upon termination or resignation. Based on
6 information and belief, DEFENDANTS untimely provide final wages to Class Members and
7 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

8 **53.** Upon separation of employment, Class Members and Aggrieved Employees' final
9 paychecks were not timely provided and/or were not timely provided with all owed vacation pay
10 and/or paid time off. Moreover, PLAINTIFFS' and Class Members and Aggrieved Employees' final
11 paychecks, once provided, did not include all wages owed as they were devoid of, including but not
12 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
13 sick leave and/or paid time off wages at the properly accrued rates.

14 **54.** These violations subject DEFENDANTS to civil penalties under Labor Code section
15 203, 210, and/or 256.

16 **55. Unreimbursed Business Expenses.** Based on information and belief,
17 DEFENDANTS required PLAINTIFFS and Class Members and Aggrieved Employees to incur
18 business expenses as a direct consequence of the performance of their job duties without providing
19 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
20 PLAINTIFFS and Class Members and Aggrieved Employees were improperly required to provide
21 and maintain work tools that are supposed to be the responsibility of the employer.

22 **56.** Based on information and belief, DEFENDANTS shifted the costs of doing business
23 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
24 including but not limited to, uniforms and/or the use of Class Members and Aggrieved Employees'
25 personal mobile phone and data usage for work related purposes including but not limited to
26 receiving and responding to work related messages and/or phone calls. For example, PLAINTIFF
27 WHITTAKER was regularly required to use her personal cellphone to text guest food orders to the
28 kitchen and to receive work-related calls/messages from her supervisor but was in no way

1 reimbursed by DEFENDANTS for this personal cell phone use.

2 57. Based on information and belief, DEFENDANTS improperly required Class
3 Members and Aggrieved Employees to pay for costs associated with the purchase and or
4 maintenance of uniforms/work clothing/shoes and /or safety equipment for work.

5 58. Based on information and belief, DEFENDANTS regularly failed to reimburse and
6 indemnify Class Members and Aggrieved Employees for business expenses. Pursuant to California
7 Labor Code section 2802, PLAINTIFFS and Class Members and Aggrieved Employees were
8 entitled to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS'
9 orders and/or carrying out the duties assigned by DEFENDANTS.

10 59. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with
11 full reimbursement for all reasonable expenses associated with carrying out their duties required
12 that Class Members and Aggrieved Employees subsidize and/or carry the burden of business
13 expenses in violation of Labor Code section 2802.

14 60. **Failure to Produce Employment Records.** Based on information and belief,
15 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
16 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
17 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, on November 22, 2021,
18 PLAINTIFF WHITTAKER sent a written request for time, pay and personnel records to
19 DEFENDANTS. After DEFENDANTS failed to respond within the statutory periods, PLAINTIFF
20 WHITTAKER sent a second written request on February 3, 2022. Yet, DEFENDANTS failed to
21 produce any records at all within the time periods delineated by California labor law. Based on
22 information and belief, DEFENDANTS failed and continue to fail to timely produce complete time,
23 pay, and personnel records when requested by other Class Members and Aggrieved Employees.

24 61. PLAINTIFFS are informed and believe and allege thereon that DEFENDANTS
25 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
26 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF
27 WHITTAKER.

28 **FIRST CAUSE OF ACTION**

**Recovery of Unpaid Minimum Wages and Liquidated Damages
(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

62. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

63. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

64. DEFENDANTS violated California’s minimum wage laws by failing to compensate PLAINTIFFS and the Class Members for all hours worked by virtue of, among other things, DEFENDANTS’ auto-deduction policy and practice for meal periods, paying for scheduled hours instead of actual hours worked, off the-clock work, and rounded time entries.

65. DEFENDANTS had and continue to have a continuous policy of failing to pay PLAINTIFFS and Class Members for all hours worked.

66. Based on information and belief, DEFENDANTS had and continue to have a continuous policy of rounding PLAINTIFFS and Class Members time punches, including the start and end of shift times, and meal period time punches. On information and belief, this policy favored DEFENDANTS more often than not, resulting in significant uncompensated time worked by PLAINTIFFS and Class Members.

67. Based on information and belief, DEFENDANTS had and continue to have a continuous policy of paying PLAINTIFFS and Class Members for scheduled hours, rather than actual hours worked.

68. Based on information and belief, DEFENDANTS had and continue to have a continuous policy of requiring PLAINTIFFS and the Class Members to perform work prior to clocking in for their shifts and/or after clocking out for their shifts and/or outside of their scheduled shift times and during uncompensated meal periods.

69. Based on information and belief, DEFENDANTS had actual or constructive knowledge that its time-rounding policies and practices, auto-deduction policies and practices for meal periods, failing to relieve employees of all duties and employer control during unpaid meal

1 periods, policy and practice of payment according to scheduled time rather than actual work time
2 resulted in the underpayment of minimum wages owed to PLAINTIFFS and other Class Members.

3 70. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFFS and the Class
4 Members are entitled to recover all unpaid minimum time wages and liquidated damages thereon,
5 plus attorney's fees and costs, in an amount to be proved at trial.

7 **SECOND CAUSE OF ACTION**

8 **Recovery of Unpaid Overtime Wages**

9 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

10 71. PLAINTIFFS incorporates all preceding paragraphs as if fully alleged herein.

11 72. Employees in California must be paid overtime, equal to one and one-half times the
12 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
13 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
14 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
15 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
16 consecutive day of work in a workweek, unless they are exempt.

17 73. PLAINTIFFS and the Class Members worked overtime hours for which they were
18 not compensated by DEFENDANTS by virtue of DEFENDANTS' auto-deduction for meal periods,
19 time-rounding policies for meal period start and end times and shift start and end times, off-the-
20 clock work policies and practices, and practice of only paying for scheduled hours instead of actual
21 hours worked (described above).

22 74. Based on information and belief, DEFENDANTS further violated California's
23 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
24 limited to, non-discretionary bonus compensation, shift differentials, multiple base rates of pay
25 and/or other non-discretionary compensation into the regular rate of pay used to calculate the
26 overtime rate of pay. Failing to include non-discretionary compensation in the regular rate of pay
27 resulted in a miscalculation of the overtime wage rate, resulting in the underpayment of overtime
28 wages owed to PLAINTIFFS and the Class Members.

75. DEFENDANTS' conduct described above is in violation of California Labor Code

1 sections 510 and 1194 and all applicable Wage Orders.

2 76. PLAINTIFFS and the Class Members are entitled to recover all unpaid overtime
3 wages, plus attorney's fees and costs, in an amount to be proved.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
6 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

7 77. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

8 78. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
9 DEFENDANTS were required to provide PLAINTIFFS and the Class Members with one 30-minute
10 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
11 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
12 waived, but only under the following circumstances: (1) if an employee's total work period in a day
13 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
14 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
15 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
16 waived by mutual consent of the employer and employee, but only if the first meal period was not
17 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
18 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
19 done so. If the employer fails to properly record a valid meal period, it is presumed no meal period
20 was provided.

21 79. PLAINTIFFS and the Class Members were consistently unable to take timely, off
22 duty, thirty-minute, uninterrupted first and second meal periods, often being forced to take late meal
23 periods, interrupted meal periods and/or work through part or all of their meal periods due to the
24 nature and constraints of their job duties, lack of relief workers, and/or commentary from
25 DEFENDANTS pressuring them to take non-compliant meal periods or skip meal periods
26 completely.

27 80. Based on information and belief, DEFENDANTS had and continue to have a
28 continuous policy of rounding the start and end times of employees' meal periods and/or
automatically deducting thirty minutes (or more) per shift despite having actual and/or constructive

1 knowledge that PLAINTIFFS and Class Members did not receive compliant meal periods.

2 81. Moreover, Class Members did not receive a timely, uninterrupted second meal period
3 when working shifts over ten (10) hours in a workday.

4 82. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
5 periods in violation of California law or failed to pay the proper meal period premium for failure to
6 incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
7 differential pay and/or other non-discretionary compensation into the regular rate or compensation
8 for purposes of calculating the owed meal period premium.

9 83. DEFENDANTS failed to provide PLAINTIFFS and the Class Members with all
10 required meal periods, or with proper compensation in lieu thereof. PLAINTIFFS are informed and
11 believe and thereon allege that DEFENDANTS had actual or constructive knowledge that its time-
12 rounding and auto-deduction policies and practices and policies, and practices that failed to relieve
13 PLAINTIFFS and other Class Members of all duties and employer control during meal periods
14 resulted in the denial of compliant meal periods in violation of California's meal period laws.

15 84. As a result, under Labor Code section 226.7, PLAINTIFFS and the Class Members
16 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
17 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
18 all in an amount to be proved at trial.

19 **FOURTH CAUSE OF ACTION**

20 **Failure to Provide Rest Periods or Compensation in Lieu Thereof (By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

21 85. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

22 86. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
23 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
24 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
25 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
26 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
27 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
28 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).

1 The rest period requirement obligates employers to permit and authorize employees to take off-duty
2 rest periods, meaning employers must relieve employees of all duties and relinquish control over
3 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257. If
4 the employer fails to provide any required rest period, the employer must pay the employee one
5 hour of pay at the employee's regular rate of compensation for each workday the employer did not
6 provide at least one legally required rest period, pursuant to Labor Code section 226.7.

7 87. PLAINTIFFS and the Class Members did not receive compliant, timely 10-minute
8 rest periods for every four (4) hours worked or major fraction thereof. Any purported rest periods
9 were interrupted, cut short, on duty, restricted to premises, and/or late. PLAINTIFFS and the Class
10 Members were pressured to complete their work such that rest breaks were only taken once tasks
11 were completed/as time permitted.

12 88. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
13 period premium to PLAINTIFFS and other Class Members for each workday in which there was a
14 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
15 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
16 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
17 regular rate of compensation for purposes of determining the owed rest period premium.

18 89. DEFENDANTS are therefore liable to PLAINTIFFS and the Class Members for one
19 hour of additional pay at the regular rate of compensation for each workday that a required rest
20 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
21 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
22 trial.

23 **FIFTH CAUSE OF ACTION**
24 **Violations of Labor Code Section 226**
(By PLAINTIFFS and the Class Members Against all DEFENDANTS)

25 90. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

26 91. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFFS and the
27 Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an
28 itemized wage statement accurately stating the following:

1 (1) gross wages earned, (2) total hours worked by the employee,
2 except for any employee whose compensation is solely based on a
3 salary and who is exempt from payment of overtime under
4 subdivision (a) of Section 515 or any applicable order of the Industrial
5 Welfare Commission, (3) the number of piece-rate units earned and
6 any applicable piece rate if the employee is paid on a piece-rate basis,
7 (4) all deductions, provided that all deductions made on written orders
8 of the employee may be aggregated and shown as one item, (5) net
9 wages earned, (6) the inclusive dates of the period for which the
employee is paid, (7) the name of the employee and his or her social
security number, except that by January 1, 2008, only the last four
digits of his or her social security number or an employee
identification number other than a social security number may be
shown on the itemized statement, (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.

10 92. As DEFENDANTS failed to provide PLAINTIFFS and other Class Members with
11 meal and rest periods that complied with Labor Code section 226.7, the wage statements
12 DEFENDANTS issued to PLAINTIFFS and other Class Members failed and continue to fail to
13 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
14 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
15 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
16 during the pay period and the corresponding number of hours worked at each hourly rate by the
17 employee, in violation of Labor Code section 226(a)(9).

18 93. Moreover, due to violations detailed above, including but not limited to,
19 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, and failure to
20 provide meal and rest break premiums, DEFENDANTS have violated California Labor Code § 226
21 by willfully failing to furnish PLAINTIFFS and other Class Members with accurate, itemized wage
22 statements that listed the earned gross and net wages earned and the correct applicable rates of pay
23 for all hours worked. Moreover, wage statements issued by DEFENDANTS failed to list the "total
24 hours worked" by PLAINTIFFS and Class Members (by virtue of the automatic deduction for meal
25 periods, failure to relieve Class Members of all duties and employer control during unpaid meal
26 periods, payment according to scheduled hours worked rather than actual hours worked, and off-
27 the-clock work policies and practices, all described in greater detail *supra*), which results in a
28 violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives

1 rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*,
2 (2018) 22 Cal.App.5th 1308, 1337).

3 94. DEFENDANTS' failure to accurately list all hours worked on all wage statements
4 caused confusion to PLAINTIFFS and caused and continues to cause confusion to other Class
5 Members over whether they received all wages owed to them.

6 95. As a result, PLAINTIFFS and other Class Members have suffered injury as they
7 could not easily determine whether they received all wages owed to them and whether they were
8 paid for all hours worked.

9 96. Separately, and independent of the above allegation, based on information and belief,
10 DEFENDANTS issued wage statements to PLAINTIFFS and other Class Members that further
11 violate Labor Code section 226(a), by failing to list the correct name and/or address of the legal
12 entity that is the employer.

13 97. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFFS and
14 the Class Members with accurate, itemized wage statements.

15 98. As a result of DEFENDANTS' unlawful conduct, PLAINTIFFS and the Class
16 Members have suffered injury. The absence of accurate information on their wage statements has
17 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
18 mathematical computations to determine the amount of wages owed, and will cause difficulty and
19 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
20 submission of inaccurate information about wages and amounts deducted from wages to state and
21 federal government agencies. As a result, PLAINTIFFS and the Class Members are required to
22 participate in this lawsuit and create more difficulty and expense for PLAINTIFFS and the Class
23 Members from having to reconstruct time and pay records than if DEFENDANT had complied with
24 its legal obligations.

25 99. Pursuant to California Labor Code section 226(e), PLAINTIFFS and the Class
26 Members are entitled to recover fifty dollars per employee for the initial pay period in which a
27 Section 226 violation occurred and one hundred dollars per employee per violation for each
28 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

1 100. Pursuant to California Labor Code § 226(h), PLAINTIFFS and the Class Members
2 are entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
3 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
4 provide currently employed Class Members with inaccurate wage statements in violation of
5 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
6 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
7 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
8 with California Labor Code § 226(a).

9 101. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFFS and the Class
10 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
11 attorneys' fees, and costs of suit.

12 **Failure to Produce Employment Records**

13 102. *Time and Pay Records.* Labor Code section 226(b)-(c) and all applicable IWC Wage
14 Orders, section 7 require that employers keep the following information on file for each employee
15 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
16 and the corresponding number of hours worked by the employee at each hourly rate, when the
17 employee begins and ends each work period (including meal periods) and split intervals; total hours
18 worked by the employee; all deductions; gross wages earned; and net wages earned.

19 103. Section (b) of Labor Code section 226 further requires employers to "afford current
20 and former employees the right to inspect or receive a copy of records pertaining to their
21 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
22 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
23 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
24 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
25 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe
26 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
27 the employer. Lab. Code section 226(f).

28 104. *Personnel Records.* In addition to their right to time and pay records, employees, and

1 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
2 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
3 section 432 further specifies that employers must furnish copies of all employment records bearing
4 the employee's signature.

5 105. Labor Code section 1198.5 also requires that the file be made available for inspection
6 or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date
7 the employer receives a written request." An employer's failure to comply within this timeframe
8 likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty
9 from the employer. Lab. Code section 1198.5(k).

10 106. Based on information and belief, DEFENDANTS have a uniform policy and practice
11 of failing to produce or make available a current or former employee's personnel records and/or
12 payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the
13 applicable Wage Order. For example, PLAINTIFFS sent a written request for time, pay and
14 personnel records to DEFENDANTS. Yet, DEFENDANTS failed to produce any records at all
15 within the time periods delineated by California labor law. Based on information and belief,
16 DEFENDANTS failed and continue to fail to timely produce complete time, pay and personnel
17 records when requested by other Class Members.

18 107. DEFENDANTS' conduct explained above is in violation of Labor Code Sections
19 226(b) & (c). Accordingly, PLAINTIFFS and Class Members are therefore each entitled to recover
20 a \$750.00 penalty from DEFENDANTS, along with costs and reasonable attorneys' fees, pursuant
21 to Labor Code Section 226(f).

22 108. DEFENDANTS' conduct is also in violation of Labor Code section 1198.5. Pursuant
23 to Labor Code Sections Labor Code section 1198.5(k), PLAINTIFFS and the Class Members are
24 entitled to recover an additional \$750.00 penalty from DEFENDANTS, along with injunctive relief,
25 costs and reasonable attorney's fees pursuant to Labor Code section 1198.5(l).

26 **SIXTH CAUSE OF ACTION**

27 **Failure to Timely Pay All Wages Due Upon Separation of Employment (By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

28 109. PLAINTIFFS incorporate all preceding paragraphs as if fully set forth herein.

110. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

111. California Labor Code section 202(a) provides, in relevant part, that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

112. Based in information and belief, DEFENDANTS fail to timely pay final wages to Class Members upon separation of employment in violation of Labor Code section 201-202. Moreover, final paychecks once provided to Class Members do not include all wages owed as they are devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

113. Under Labor Code section 203, PLAINTIFFS and the Class Members who are no longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days’ pay, plus attorney’s fees and costs, in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION
Failure to Reimburse Business Expenses
(By PLAINTIFFS and the Class Members Against all DEFENDANTS)

114. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

115. Pursuant to California Labor Code section 2802, PLAINTIFFS and the Class Members were entitled to be reimbursed for all reasonable expenses associated with carrying out orders by their employer and/or carrying out the duties assigned by their employers.

116. Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. See *Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use.

1 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
2 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
3 and tear on the vehicle. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

4 117. PLAINTIFFS and the Class Members were improperly required to pay for business
5 expenses that are legally the responsibility of the employer, including but not limited to, cell
6 phone/data plan usage and charges, and/or costs associated with the purchase and/or maintenance
7 of uniforms.

8 118. DEFENDANTS' failure to provide PLAINTIFFS and the Class Members with full
9 reimbursement for all reasonable expenses associated with carrying out their duties required that
10 PLAINTIFFS and the Class Members subsidize and/or carry the burden of business expenses in
11 violation of Labor Code section 2802.

12 119. As a result of DEFENDANTS' unlawful conduct, PLAINTIFFS and the Class
13 Members have suffered injury in that they were not completely reimbursed as mandated by
14 California law.

15 120. Pursuant to California Labor Code section 2802, PLAINTIFFS and the Class
16 Members are entitled to recover the full amount of reimbursable expenses due, in addition to
17 reasonable attorneys' fees, and costs of suit.

18
19 **EIGHTH CAUSE OF ACTION**
20 **Violation of the City of Long Beach Municipal Code**
21 **(By PLAINTIFFS, Aggrieved Employees, and the State of California Against All**
22 **DEFENDANTS)**

23 121. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

24 122. The unlawful conduct of DEFENDANTS alleged herein constitutes a violation of
25 Chapter 5.49 of the City of Long Beach, California Municipal Code, entitled "Hotel Working
26 Conditions."

27 123. On information and belief, at all relevant times herein, DEFENDANTS acted as a
28 'Hotel Employer' within the meaning of Chapter 5.49 of the Long Beach, California Municipal
Code.

1 124. Section 5.49.040 of the Long Beach, California Municipal Code,
2 entitled “Humane Workload,” provides limitations on the amount of square feet of floorspace a
3 hotel employer may require employees to clean in one, eight-hour work day and requires that
4 employees be paid twice their regular rate if the maximum amount of square feet of floorspace is
5 exceeded in a single eight hour work day.

6 125. Section 5.49.050 of the Long Beach, California Municipal Code, entitled
7 “Voluntary Overtime,” prohibits hotel employers from requiring hotel employees to work more
8 than 10 hours in any work day unless the hotel employee consents in writing or through electronic
9 means indicating a consent which is particular to the employee.

10 126. Section 5.49.060 of the Long Beach, California Municipal Code, entitled
11 “Preservation of Records” provides that each hotel employer must maintain for at least two years
12 for each room cleaner a record of his or her name, pay rates received, and the rooms each cleaner
13 has cleaned on each workday.

14 127. Based on information and belief, at all relevant times herein, DEFENDANTS failed
15 to comply with the requirements of Chapter 5.49 of the City of Long Beach Municipal Code as to
16 PLAINTIFFS and/or other CLASS MEMBERS who were subject to the conditions set forth
17 above.

18 128. Section 5.49.090 of the Long Beach, California Municipal Code provides that a
19 hotel employee or representative of hotel employees claiming violation of this chapter may bring
20 an action in the Superior Court and shall be entitled to all remedies available under law or in
21 equity appropriate to remedy any such violation, including injunctive relief or other equitable
22 relief, compensatory damages, and statutory penalties in the amount of fifty-dollar (\$50.00) for
23 each day on which a violation of any section of Chapter 5.49 occurred. Therefore, pursuant to
24 Section 5.49.090, PLAINTIFFS and Class Members are entitled to recover the full amount of
25 unpaid wages, applicable statutory penalties, and reasonable attorneys’ fees and costs.

26
27 **NINTH CAUSE OF ACTION**
 Unfair Competition
28 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

1 129. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

2 130. The unlawful conduct of DEFENDANTS alleged herein constitutes unfair
3 competition within the meaning of California Business and Professions Code section 17200 *et seq.*
4 This unfair conduct includes all unlawful conduct alleged herein, including but not limited to:
5 DEFENDANTS' failure to pay minimum and overtime wages by virtue of its illegal policies and
6 practices; DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest
7 periods or pay proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and
8 accurate itemized wage statements; DEFENDANTS' failure to reimburse business expenses;
9 DEFENDANTS' failure to timely pay all wages upon separation of employment; and
10 DEFENDANTS' failure to provide paid sick leave (or paid time off in lieu thereof) at the properly
11 accrued rates (due to, including but not limited to, DEFENDANTS' failure to incorporate all non-
12 discretionary compensation into the sick pay calculation and failure to base the accrued sick leave
13 on the correct number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction
14 policies and practices, payment according to scheduled hours worked and/or other off-the-clock
15 work policies and practices).

16 131. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
17 California Labor Code, DEFENDANTS have gained a competitive advantage over other
18 comparable companies doing business in the State of California that comply with their obligations
19 to authorize or permit rest and meal periods or pay proper meal and rest period premiums in lieu
20 thereof, to properly accrue and pay sick time benefits, to provide complete and accurate itemized
21 wage statements, to reimburse employees for all business expenses, to pay all owed minimum and
22 overtime wages, and to pay all wages due upon separation of employment of their employees.

23 132. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFFS
24 and the Class Members have suffered injury in fact and lost money or property, as described in more
25 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
26 PLAINTIFFS and Class Members are entitled to restitution of all wages and other monies rightfully
27 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of its
28 unlawful and unfair business practices.

1 133. PLAINTIFFS also seek an injunction against DEFENDANTS on behalf of the Class
2 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
3 engaging in each of the unlawful practices and policies set forth herein.

4 134. PLAINTIFFS also seeks an award of attorney's fees pursuant to Code Civ. Proc
5 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
6 by law.

7
8 **TENTH CAUSE OF ACTION**
9 **Violation of the Private Attorneys General Act of 2004**
10 **(By PLAINTIFFS, Aggrieved Employees, and the State of California Against All**
11 **DEFENDANTS)**

12 135. PLAINTIFFS incorporate all preceding paragraphs as if full alleged herein.

13 136. PLAINTIFFS brings this action under the Private Attorneys General Act of 2004,
14 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of
15 California and all Aggrieved Employees, regarding violations of the California Labor Code as set
16 forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

17 All current and former non-exempt employees that worked either directly or
18 via a staffing agency for DEFENDANTS at any one or more locations owned,
19 operated, and/or managed by DEFENDANTS in California, at any time from one
20 year and sixty-five days prior to the filing of the initial complaint through the present
21 ("PAGA Period").

22 137. PLAINTIFFS are "aggrieved employees," as that term is defined under Labor Code
23 section 2699(c), as they were employed by DEFENDANTS during the applicable statutory
24 limitations period and suffered one or more of the Labor Code violations set forth herein.
25 Accordingly, PLAINTIFFS seeks to recover on behalf of PLAINTIFFS, the State of California, and
26 all other Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's
27 fees and costs. PLAINTIFFS have standing to bring a PAGA cause of action on behalf of the State
28 and all Aggrieved Employees, as she was jointly employed by DEFENDANTS and is thereby
affected by one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.*
(2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known

1 violations committed by the employer – regardless of whether that Plaintiff experienced all
2 violations personally. *Id.* at 760-761.

3 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

4 138. On December 6, 2021, PLAINTIFF WHITTAKER, through counsel, gave written
5 notice by online filing with the California Labor and Workforce Development Agency ("LWDA")
6 informing it that DEFENDANTS failed to comply with California's labor laws with regard to the
7 allegations alleged in this Complaint ("PAGA Notice"). The LWDA assigned PLAINTIFF the
8 following case number: LWDA-CM-856083-21. On April 13, 2022, PLAINTIFF WHITTAKER,
9 through her counsel, gave written amended notice by online filing with the LWDA (“Amended
10 PAGA Notice”), to include labor code violations for DEFENDANTS’ failure to produce
11 employment records, as alleged herein. PLAINTIFF WHITTAKER’S PAGA Notice and Amended
12 PAGA Notice were sent to DEFENDANTS via certified mail.

13 139. On March 14, 2023, PLAINTIFF LEMUS, through counsel, gave written notice by
14 online filing with the California Labor and Workforce Development Agency ("LWDA") informing
15 it that DEFENDANTS failed to comply with California's labor laws with regard to the allegations
16 alleged in this Complaint ("PAGA Notice"). The LWDA assigned PLAINTIFF LEMUS the
17 following case number: LWDA-CM-941959-23. On May 31, 2023, PLAINTIFF LEMUS, through
18 his counsel, gave written amended notice by online filing with the LWDA, to clarify that
19 PLAINTIFF LEMUS was also seeking labor code violations based on predicate violations of the
20 City of Long Beach Municipal Code based on the same set of facts as set forth in his original PAGA
21 Notice. The PAGA notice and supplemental clarifying PAGA Notice were sent to DEFENDANTS
22 via certified mail.

23 140. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
24 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
25 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
26 Accordingly, PLAINTIFFS have exhausted the administrative remedies as required by Labor Code
27 section 2699.3. Consequently, PLAINTIFFS’ right to file the instant lawsuit has duly accrued.

28 141. PLAINTIFFS seeks to recover the PAGA civil penalties through a representative

1 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
2 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

3 142. From one year prior to PLAINTIFFS' filing of the required PAGA notice with the
4 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated the California
5 Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 233, 234, 245-248.5, 432, 432.5,
6 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5,
7 and all relevant sections of the applicable Wage Orders, as to PLAINTIFFS and Aggrieved
8 Employees. These violations subject DEFENDANTS to civil penalties as set forth in the
9 foregoing statutes as well as other provisions of the Labor Code, including without limitation,
10 Labor Code sections 203, 210, 225.5, 226, 226.3, 256, 558, 558.1, 1174.5, 1197.1 and 2699.

11 143. As set forth above, DEFENDANTS have committed numerous violations of the
12 California Labor Code due to including but not limited to their failure to pay all owed minimum
13 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation
14 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
15 failure to pay all wages owed upon separation of employment, and failure to comply with the City
16 of Long Beach, California Municipal Code's Hotel Working Conditions Chapter 5.49 et seq.- as
17 alleged above. PAGA penalties are in addition to any other relief available under the Labor Code.

18 144. Additionally, DEFENDANTS have violated the following Labor Code sections and
19 provisions of the applicable Wage Order as to PLAINTIFFS and Aggrieved Employees.

20 145. **Record Keeping Violations.** California Labor Code § 1174 requires employers to
21 keep "accurate and complete" payroll records showing, among other things, the hours worked daily
22 by all non-exempt employees. All applicable Wage Orders § 7 similarly requires employers to keep
23 time records reflecting the times during which all owed meal periods were provided each day.

24 146. Due to DEFENDANTS' automatic meal break deductions, failure to relieve
25 employees of all duties and employer control during meal periods, time rounding, and other off-the-
26 clock work policies and practices described above, DEFENDANTS failed, and continue to fail, to
27 keep accurate and complete records as required by law, including but not limited to the following
28 records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFFS

1 and other Aggrieved Employees began and ended each work period, time records of meal periods,
2 shift start times and end times, and accurate itemized wage statements.

3 147. DEFENDANTS' failure to keep "accurate and complete" payroll records for
4 PLAINTIFFS and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
5 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
6 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
7 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
8 period during which the referenced statutes and Wage Order provisions were violated.²

9 148. **Sick Leave Violations.** DEFENDANTS violated California's paid sick leave laws
10 including, Labor Code section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick
11 leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick
12 leave due to DEFENDANTS' failure to account for actual hours worked (by virtue of
13 DEFENDANTS' meal period auto-deduction, and time rounding practices, and other off-the-clock
14 work described herein), and/or failure to incorporate all forms of non-discretionary remuneration
15 into the sick pay calculation and/or failure to provide paid sick leave at all.

16 149. DEFENDANTS further failed to give PLAINTIFFS and other Aggrieved
17 Employees notice of their paid sick leave rights – or thereby putting their entitlement to sick leave
18 in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate
19 records of used sick leave and the balance of paid sick leave left to the employees, which affected
20 PLAINTIFFS and Aggrieved Employees' intelligent exercise of their paid sick leave.

21 150. But for this failure, PLAINTIFFS and other Aggrieved Employees would have used
22 their paid sick leave at least prior to their respective separations, for as on several occasions
23 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
24 compensation.

25 ² Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "in addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 151. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
2 documenting the hours worked and paid sick days accrued and used by PLAINTIFFS and all
3 Aggrieved Employees, permitting the presumption that PLAINTIFFS and all Aggrieved Employees
4 were entitled to the maximum number of hours accruable.

5 152. Upon information and belief, DEFENDANTS failed and continue to fail to comply
6 with Labor Code section 246, by failing to provide PLAINTIFFS and Aggrieved Employees with a
7 Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
8 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
9 wages.

10 153. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

11 154. On information and belief, PLAINTIFFS allege that all of these practices were
12 experienced and continue to be experienced by other Aggrieved Employees.

13 155. Accordingly, PLAINTIFFS seek all appropriate relief under the PAGA, including
14 but not limited to injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by
15 law.

16 156. **Refusal to Make Payment.** Labor Code section 216 declares unlawful an
17 employer's refusal to pay wages due and payable and/or the denial of the validity of any claim to
18 wages due. DEFENDANTS violated and continue to violate this section by failing to pay
19 PLAINTIFFS and other Aggrieved Employees for all hours worked at the proper wage rate and by
20 failing to pay an additional hour of pay for each meal/rest period not provided or that was otherwise
21 unlawful. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These
22 violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation
23 results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period during which
24 the statute provisions were violated.³

25 157. **Statutory Wage Violations.** California Labor Code section 223 makes it unlawful
26

27 ³ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 for an employer to secretly pay wages lower than required by statute while purporting to pay legal
2 wages. As described above, DEFENDANTS willfully and systematically denied PLAINTIFFS and
3 other Aggrieved Employees of all earned minimum and overtime compensation for all hours worked
4 which resulted in the payment of less than statutorily required wages. DEFENDANTS acted with
5 the intent to deprive them of statutory wages, including, but not limited to, overtime wages and
6 minimum wages, to which they were entitled to under California law. Thus, DEFENDANTS paid
7 PLAINTIFFS and other Aggrieved Employees lower wages than those they were entitled to while
8 purporting that PLAINTIFFS and other Aggrieved Employees were properly paid. As a result,
9 PLAINTIFFS and other Aggrieved Employees are entitled to recover penalties, attorney's fees,
10 costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

11 158. **Standard Conditions of Labor Violations:** Together, Labor Code sections 1198
12 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
13 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
14 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
15 commission. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
16 record keeping provisions, unreimbursed business expenses, minimum and overtime wages result
17 in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties
18 under Labor Code sections 1197.1 and 2699.

19 159. **Unlawful Agreements/ Unlawful Criminal History Inquiries.** Unlawful
20 Agreements. Labor Code section 432.5 provides that "no employer...shall require any employee or
21 applicant for employment to agree, in writing, to any term or condition which is known by such
22 employer...to be prohibited by law." Based on information and belief, DEEFENDANTS required
23 PLAINTIFFS and required/continue to require Aggrieved Employees to agree in writing to submit
24 to unlawful agreements, criminal and/or financial checks as a condition of obtaining and/or
25 continuing employment.

26 160. The California Labor Code places certain procedural and substantive limits on an
27 employers' ability to conduct employee background checks and on how employers can use the
28 information they obtain through those background checks. Labor Code section 1024.5 states that

1 employers, except for financial institutions, may order a credit check only if the individual works
2 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
3 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
4 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
5 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
6 background check, including but not limited to identifying an appropriate reason for the background
7 check, a separate consent form with required disclosures and certain formatting requirements,
8 additional forms such as a summary of rights, a way by which to request a copy of the report, as
9 well as proper notice of adverse actions taken, among other statutory requirements.

10 161. Based on information and belief, DEFENDANTS ordered unlawful financial credit
11 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
12 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
13 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

14 162. Based on information and belief, DEFENDANTS required PLAINTIFFS and
15 Aggrieved Employees to submit and/or agree to submit in writing to unlawful criminal background
16 checks which failed to abide by the requirements set forth in Cal. Civ. Code section 1786 *et. Seq.*,
17 and 15 U.S.C. section 1681, *et. seq.*, as a condition of obtaining and/or holding employment.

18 163. Based on further information and belief, DEFENDANTS also required Aggrieved
19 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
20 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
21 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
22 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

23 164. Based on further information and belief, DEFENDANTS knew that requiring
24 PLAINTIFFS and Aggrieved Employees to agree to unlawful criminal and/or financial background
25 checks as a condition of obtaining and/or holding employment was unlawful.

26 165. By requiring that PLAINTFFS and other Aggrieved Employees sign off on the illegal
27 background and/or financial checks, DEFENDANTS violated Labor Code section 432.5.

28 166. Unlawful Inquires into Criminal History. Labor Code section 432.7 prohibits an

1 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even
2 then, certain limitations apply. Based on information and belief, DEFENDANTS asked
3 PLAINTIFFS and other Aggrieved Employees about arrests not resulting in convictions on its
4 employment application, in violation of California law.

5 167. Upon information and belief, DEFENDANTS, in violation of California law,
6 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
7 (“FEHA”), asked PLAINTIFFS and other Aggrieved Employees about convictions prior to
8 extending an offer of employment and/or otherwise impermissibly inquired into criminal history on
9 its employment application in violation of California law.

10 168. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
11 Code section 432.7. By asking about convictions at the application phase or prior to extending an
12 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
13 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
14 disclose arrests and/or convictions as a condition of employment.

15 169. Under the provisions of PAGA and the following Labor Code sections, 201-203, 204,
16 216, 221-223, 226, 226.7, 233, 234, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5,
17 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all relevant sections of the
18 applicable Wage Orders, as well as all interpretations of these laws by California Courts and
19 administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS
20 are liable for all statutorily-specified penalties recoverable under PAGA as enumerated in the
21 relevant California Labor Code provisions listed herein, or for default PAGA penalties under Labor
22 Code section 2699(f) for any violation of a Labor Code section without a specified civil penalty.
23 Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, PLAINTIFFS are
24 entitled to recover civil penalties, costs, plus reasonable attorney’s fees and costs, all in an amount
25 to be proved.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, PLAINTIFFS pray for relief and judgment on behalf of themselves, the
28 Class Members, the Aggrieved Employees and the State of California, as follows:

1. Certification of the above-described Class as a class action, pursuant to Code of Civil Procedure section 382;
2. Certification of the above-described Class as a representative class under Business and Professions Code section 17200, *et seq.*;
3. An order that PLAINTIFFS be certified as a representatives of the Class;
4. An order that counsel for PLAINTIFFS be confirmed as Class counsel;
5. Provision of Class Notice to all non-exempt employees who worked for DEFENDANTS in California during the Class Period;
6. A declaratory judgment that DEFENDANTS have knowingly and intentionally violated the Business and Professions Code sections 17200-17208, by the conduct set forth above;
7. A declaratory judgment that DEFENDANTS' violations as described above were willful;
8. An equitable accounting to identify, locate, and restore to all Class Members the wages that are due;
9. An award to PLAINTIFFS and the Class Members of damages in the amount of unpaid minimum wages and overtime wages, including interest thereon, subject to proof at trial;
10. An award to PLAINTIFFS and the Class Members of damages in the amount of unpaid meal and rest period premiums, pursuant to Labor Code section 226.7;
11. An award to PLAINTIFFS and the Class Members of statutory penalties because of DEFENDANTS' failure to provide PLAINTIFFS and the Class Members with itemized wage statements that comply with the requirements of Labor Code section 226;
12. An award of payments due to them as waiting time penalties as to those Class Members who are no longer employed by DEFENDANTS, pursuant to Labor Code section 203;
13. An award of damages to PLAINTIFFS and the Class Members for DEFENDANTS'

- 1 failure to reimburse business expenses pursuant to Labor Code section 2802;
- 2 14. An award of damages and penalties to PLAINTIFF and Class members for
- 3 DEFENDANTS' violations of the City of Long Beach, California Municipal Code
- 4 pursuant to code Section 5.49.090.
- 5 15. An award to PLAINTIFFS and the Class Members of reasonable attorneys' fees and
- 6 costs, pursuant to Code of Civil Procedure section 1021.5 and Labor Code sections
- 7 203, 218.5, 226, 226.7, 512, 1194, and/or other applicable laws;
- 8 16. For civil penalties according to proof, including PAGA penalties (75% payable to the
- 9 LWDA and 25% payable to Aggrieved Employees; and
- 10 17. An award to PLAINTIFFS and the Class Members and the Aggrieved Employees of
- 11 such other and further relief as this Court deems just and proper.

12 Dated: June 2, 2023

CROSNER LEGAL, PC

13

14 By: 

Zachary M. Crosner, Esq.

Jamie K. Serb, Esq.

Brandon Brouillette, Esq.

Attorneys for Plaintiffs,

KAILEE WHITTAKER and ARMANDO
LEMUS

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DEMAND FOR JURY TRIAL

PLAINTIFFS demands a trial by jury on all claims so triable.

Dated: June 2, 2023

CROSNER LEGAL, PC

By: 

Zachary M. Crosner, Esq.
Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
Attorneys for Plaintiff,
KAILEE WHITTAKER and ARMANDO
LEMUS

1 PROOF OF SERVICE
2 KAILEE WHITTAKER VS. YHB LONG BEACH, LLC et al.
3 Los Angeles County Superior Court Case No. 22STCV34593

4 At the time of service, I was over 18 years of age and not a party to this action. I am employed in
5 the County of Los Angeles, State of California. My business address is 9440 Santa Monica Blvd.,
6 Ste. 301, Beverly Hills, CA 90210.

7 on June 12, 2023, I served true copies of the following document(s) described as follows:

8 **FIRST AMENDED COMPLAINT**

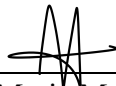
9 on the interested parties in this action as follows:

10 **SEE ATTACHED SERVICE LIST**

11 ☒ BY ELECTRONIC TRANSMISSION. Pursuant to the Court's Order re Electronic
12 Service, I caused the documents described above to be E-Served through Case Anywhere by
13 electronically mailing a true and correct copy through Case Anywhere to the addressee(s) listed

14 I declare under penalty of perjury under the laws of the United States of America that the
15 foregoing is true and correct and that I am employed in the office of a member of the bar of this
16 Court at whose direction the service was made.

17 Executed on June 12, 2023, at Los Angeles, California.

18 
19 _____
20 Maria Monterrey

SERVICE LIST

KAILEE WHITTAKER VS. YHB LONG BEACH, LLC et al.
Los Angeles County Superior Court Case No. 22STCV34593

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