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

ROBERTO AUGUSTO, as an individual and
on behalf of the California Labor
Commissioner as the California Private
Attorney General,

Plaintiff,

vs.

HIOG MANAGEMENT SERVICES, LLC, a
Delaware limited liability company, PRIME
HOSPITALITY, LLC, a California limited
liability company, RADISSON HOTELS
INTERNATIONAL, INC., a Delaware
corporation, CARLSON HOTELS
MANAGEMENT CORPORATION, A New
Jersey corporation, CARLSON HOTELS,
INC., a Minnesota corporation, and DOES 1-
50, inclusive,

Defendant.

Case No.: CIVDS1610431

Assigned for all Purposes to Honorable
Judge Thomas S. Garza

**SECOND AMENDED COMPLAINT
FOR:**

- 1. CLAIM FOR FAILURE TO
PROVIDE AND MAINTAIN
ACCURATE ITEMIZED WAGE
STATEMENTS AND MAINTAIN
RECORDS (LAB. CODE §§
226(a), 1174, & 1198; IWC WAGE
ORDER 5, SECTION 7
“RECORDS”)**
- 2. CLAIM FOR FAILURE TO
PROVIDE PLAINTIFFAL
BREAKS (IWC WAGE ORDER 5,
SECTION 11)**
- 3. CLAIM FOR FAILURE TO
PROVIDE REST PERIODS (IWC
WAGE ORDER 5, SECTION 12)**
- 4. VIOLATION OF THE
CALIFORNIA FAIR
EMPLOYMENT AND HOUSING
ACT (GOV’T CODE, § 12940
(a))—DISABILITY
DISCRIMINATION**
- 5. VIOLATION OF THE
CALIFORNIA FAIR
EMPLOYMENT AND HOUSING**

**ACT (GOV'T CODE, § 12940
(h))—RETALIATION**

- 6. VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT (GOV'T CODE, § 12940(k))—FAILURE TO PREVENT**
- 7. VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT (GOV'T CODE, § 12940 (m))—FAILURE TO ACCOMMODATE**
- 8. VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT (GOV'T CODE, § 12940 (n))—FAILURE TO ENGAGE IN TIMELY GOOD FAITH, , INTERACTIVE PROCESS**
- 9. RETALIATION (LABOR CODE SECTION 1102.5)**
- 10. UNLAWFUL BUSINESS PRACTICES UNDER (BUS. AND PROF. CODE, § 17200, ET SEQ.**
- 11. VIOLATION OF THE CALIFORNIA LABOR CODE PROSTATE ATTORNEYS GENERAL ACT OF 2004 (CAL LAB. CODE §§ 2698, ET SEQ.)**

[JURY DEMAND]

1 Plaintiff, Roberto Augusto (“Plaintiff” or “Mr. Augusto”), makes the following
2 allegations against Defendant HIOG Management Services, LLC (“HIOG”) and Defendant
3 Prime Hospitality, LLC (“Prime”), (Defendants shall be collectively referred to herein as
4 “Defendants” or “Hotel”).

5 **GENERAL ALLEGATIONS**

6 **Parties and Venue.**

7 1. Plaintiff is, and at all relevant times was, a citizen and resident of the in the County of
8 San Bernardino, in the State of California.

9 2. Plaintiff is informed and believes and on that basis alleges that at all relevant times
10 Defendant HIOG Management Services, LLC is a California limited partnership doing business
11 in the State of California with a principal place of business located at 2200 East Holt. Blvd.,
12 Ontario, California 91761.

13 3. Plaintiff is informed and believes and on that basis alleges that at all relevant times
14 Defendant Prime Hospitality, LLC is a California limited liability company doing business in the
15 State of California with a principal place of business located at 3300 E. Guasti Rd., 3rd Floor,
16 Ontario, California 91761.

17 4. In light of the facts that the wrongful acts of this defendant occurred and the causes
18 against them arose in San Bernardino County, State of California, jurisdiction and venue is
19 proper in San Bernardino County Superior Court.

20 **Doe Allegations.**

21 5. Plaintiff does not presently know the true names and capacities of defendant named as
22 Doe 1 through Doe 50, inclusive. Plaintiff will amend this complaint, setting forth the true
23 names and capacities of these fictitious defendants, when they are ascertained. Plaintiff is
24 informed, believes, and on that basis, alleges that each of the fictitious defendants have
25 participated in the acts alleged in this complaint to have been done by the named defendants.

26 **Vicarious Liability.**

27 6. Unless otherwise indicated, each defendant herein sued is the agent, co-conspirator, joint
28 venturer, partner, and/or employee of every other defendant and, as alleged, has been acting

1 within the course and scope of said agency, conspiracy, joint venture, partnership, and/or
2 employment, with the knowledge and/or consent of co-defendants, and each of them. Plaintiff is
3 informed and believes and thereon alleges that each defendant has authorized and/or ratified the
4 wrongful activities of each of the remaining defendants.

5 7. The corporation defendant's conduct was undertaken by its officers, managing agents and
6 other persons responsible for supervision of employees and for the drafting and implementation
7 of policies and other managerial decisions. The conduct of the officers, managing agents, and
8 other individuals was on behalf of the corporate defendant. Further, the corporate defendant had
9 advance knowledge of such conduct of said individuals whose actions and conduct were ratified,
10 authorized, approved and/or known by the corporate defendant's officers and managing agents.

11 **COMMON ALLEGATIONS TO ALL CAUSES OF ACTION**

12 8. Mr. Augusto worked as a non-exempt employee for Defendant HIOG and Defendant
13 Prime (collectively referred to herein as "Hotel" or "Defendants").

14 9. Defendant HIOG is the local management company and Defendant Prime is hotel
15 operator that sets forth the policies, systems, standard, working conditions of the employees like
16 Mr. Augusto that were directly managed by HIOG. Defendants HIOG and Prime were joint
17 employers of Mr. Augusto and aggrieved employees.

18 10. Aggrieved employees shall encompass all California non-exempt employees of the Hotel
19 during the statutory period of time pursuant to the California Private Attorney General Act.

20 **Defendant Does Not Properly Provide Plaintiffal Breaks and Rest Breaks**

21 11. At times, Mr. Augusto's shifts amounted to more than 8 hours per day and more than 40
22 hours per week. During these shifts Mr. Augusto was not provided with any opportunity to take
23 any rest periods or meal breaks as the Hotel did not authorize or permit Mr. Augusto to take his
24 entitled 30 minute uninterrupted meal break or a 10 minute paid rest period. Furthermore, the
25 Hotel did not compensate Mr. Augusto for any of his missed rest periods or meal breaks
26 throughout his entire employment.

27 12. Other hotel employees also worked above 8 hours per day and were not provided with
28 any opportunity to take entitled uninterrupted meal breaks or rest periods.

1 13. Mr. Augusto is informed and, on that basis, believes that all other non-exempt employees
2 of the Hotel were under these same circumstances and conditions of employment as him.

3 **Defendant Provides Inaccurate Wage Statements and Fails to Maintain Records**

4 14. Throughout Mr. Augusto's employment, his paystubs did not accurately reflect: his total
5 hours worked; net wages earned; gross wages earned; total deductions; and actual applicable
6 wage rate, all in violation of California Labor Code Section 226(a), subdivisions 1-2, 4-5, 8 and
7 9. Mr. Augusto's paystubs did not accurately reflect this required information because the Hotel
8 would not compensate Mr. Augusto for wages earned for missed rest periods and meal breaks
9 nor did it have the correct name of the employer on each paystub. Furthermore, Mr. Augusto's
10 paystubs issued by Defendants did not reflect the names of the legal entity that employs Mr.
11 Augusto. Lastly, the Defendants failed to maintain records to reflect when Mr. Augusto took any
12 meal breaks because the Defendants did not authorize or permit Mr. Augusto to take legally
13 entitled meal breaks.

14 15. Mr. Augusto is informed and, on that basis, believes that all other non-exempt employees
15 of Defendant were under these same circumstances and conditions of employment as him.

16 **Defendant Discriminated and Retaliated Against Plaintiff After He Suffered A Work**
17 **Related Injury and Filed and Workers' Compensation Claim**

18 16. Mr. Augusto began working at the Hotel on or around April 2012. Mr. Augusto worked as
19 a Front Desk and Night Auditor. Mr. Augusto's job duties were comprised of checking guests in,
20 making reservations, perform audits, provide the bell man with directions on certain tasks.

21 17. On or around August 31, 2012, Mr. Augusto suffered a work-related injury to his lower
22 back and reported his injury to the Hotel.

23 18. Shortly after this injury on or October 10, 2012, Mr. Augusto retained a workers
24 compensation attorney in order to receive proper medical care.

25 19. Shortly after retaining a workers compensation attorney, Mr. Augusto filed a workers
26 compensation claim. As a result of his injury, Mr. Augusto was prescribed with minor work
27 restrictions. One of the work restrictions required Mr. Augusto to sit down every two hours.
28

1 20. From October 2012 to January 2013, shortly after Mr. Augusto was issued minor work
2 restrictions, and although Mr. Augusto could work his normal work schedule comprising of 5 days
3 a week, 8 hours a day, the Hotel consistently reduced his working days from 5 to averaging
4 approximately to 2 to 3 days a week.

5 21. One of Mr. Augusto's work restriction was to sit down for a period of time and when Mr.
6 Augusto did work his drastically reduced working schedule, the Hotel refused to provide him with
7 a suitable seat as a form of accommodation or discuss any form of accommodation per his work
8 restrictions exacerbating Mr. Augusto's injuries. Mr. Augusto made several requests to the Hotel
9 to provide him with a suitable seat but such seat was never provided. Instead, Mr. Augusto was
10 forced to grab a bar stool that was not in fact a suitable seat but instead exacerbated his injury.

11 22. From January 2013 to the present, the Hotel would drastically reduce Mr. Augusto's
12 schedule either when he requested an accommodation or filed a legal action including this action
13 filed on June 2016 and his most recent workers compensation claim in early 2017.

14 23. Between January 2013 to the present, Mr. Augusto continuously advised all of his
15 scheduling managers, including but not limited to Jesse Hudson and Michael Doe, that he was
16 available to work five days a week as he worked before he reported his August 2012 work-related
17 injury and October 2012 workers' compensation claim, however, each time Mr. Augusto either
18 reported his injury, filed a workers compensation claims or legal action, the Hotel drastically
19 reduced Mr. Augusto's schedule in retaliation to Mr. Augusto engaging in protected activity.

20 24. On several occasions between January 2013 to the present, Mr. Augusto complained to the
21 Hotel about his lack of working hours and the fact he had seniority over others being scheduled
22 for more hours than him. On one occasion, the Hotel's Human Resources Manager Andrea Lopez
23 reaffirmed to Mr. Augusto's scheduling manager that Mr. Augusto has a work schedule
24 questioning Mr. Augusto's manager why he was not being scheduled to work. Ms. Lopez whom
25 was responsible for the Human Resources of the approximately 80 plus employees failed to correct
26 the retaliation and discriminatory treatment that the scheduling managers and managers were doing
27 towards Mr. Augusto and in fact ratified such behavior. To date, the Hotel has continued to
28 sporadically schedule Mr. Augusto and refuse to consistently place him on the schedule like the

1 other similarly situated employees. Furthermore, there was a time the Hotel refused to schedule
2 Mr. Augusto for a total of 8 months although he could perform his essential job duties and had
3 seniority over most if not all of the other employees in his position.

4 25. Meanwhile between January 2013 to the present, the Hotel has hired multiple Front Desk
5 workers and Night Auditors fulfilling the same job duties of Mr. Augusto's position while refusing
6 to offer Mr. Augusto's any additional working hours in retaliation because he filed a workers'
7 compensation claim and/or suffers a disability in connection to his work related injury.

8 26. On August 14, 2017, Prime and HIOG terminated my employment without notice or
9 without cause. The Assistant General Manager Berta Ramirez told me to stop doing what I was
10 doing. Plaintiff received a layoff notice on that same day ending his employment. After speaking
11 with other co-workers, Plaintiff did not observe or discover that anyone else was laid off or
12 terminated in his similar position. Plaintiff believes he was the only employee in his position that
13 was fired.

14 27. Throughout most of my employment, Charlie Prentice was the Regional Director for Prime
15 and HIOG. Based upon my discussions with co-workers and working experience at HIOG and
16 Prime, I knew and understood Mr. Prentice was responsible for employment decisions especially
17 when it involved workers compensation claims and civil lawsuits filed by employees. The
18 Regional Director Charlie Prentice was also responsible for managing HIOG and Prime operations
19 and at least over 80 employees. According to the chain of command, Mr. Prentice made the
20 decision or responsible for ratifying the decision to cut my hours after I filed a workers
21 compensation claim in retaliation for filing a workers' compensation claim. Mr. Prentice was also
22 responsible for making the decision or ratifying the decision to terminate my employment due to
23 my disabling condition, filing a workers' compensation claim and need for an accommodation.

24 28. Consequently, Mr. Augusto has suffered and continues to suffer damages in the form of
25 lost wages, and other employment benefits. As a result of the financial losses and the loss of his
26 employment, Mr. Augusto has suffered and continues to suffer emotional stress, including but
27 not limited to, frustration, loss of confidence, nervousness, humiliation, paranoia and anxiety.

28 **Defendant Reduced Mr. Augusto's Working Hours After He Sent a PAGA Notice**

29. In April 2016 Mr. Augusto sent a PAGA notice to the Hotel notifying the Hotel of the Labor Code violations being committed against its employees.

Exhaustion of Administrative Remedies

30. Before the filing of this lawsuit, Mr. Augusto exhausted his administrative remedies by sending the Hotel a Private Attorney General Act (“PAGA”) letter, notifying the Hotel of its California labor code violations pursuant to California Labor Code section 2698 et seq. and 2699.3. The LWDA did not respond to this letter. After waiting the statutory period of 33 days, Mr. Augusto now files this lawsuit.

31. On June 19, 2016, and September 8, 2017, Mr. Augusto exhausted his administrative remedies by filing a claim with the California Department of Fair Employment and Housing and received a Notice of Case Closure and Right-to-Sue letter.

FIRST CAUSE OF ACTION

(Claim for Failure to Provide and Maintain Accurate

Itemized Wage Statements and Maintain Records

(Labor Code §§ 226(a), 1174, and 1198 and IWC Wage Order 5, Section 7 “Records” by Plaintiff on Behalf of Himself Against All Defendants and DOES 1-50)

32. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs above and below by reference as though set forth in full in this cause of action.

33. Plaintiff brings this claim on behalf of himself.

34. Labor Code section 226(a) states in pertinent part “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing:

(1) Gross wages earned;

(2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- (4) All deductions;
- (5) Net wages earned;
- (6) The inclusive dates of the period for which the employee is paid;
- (7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) The name and address of the legal entity that is the employer;
- (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. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

.....”

35. Labor Code section 1174 requires employers to maintain records containing the information specified in Section 1174, including, but not limited to, employees' total hours worked and when employees begin and end each work period.

36. Through the Defendant’s conduct during the applicable statutory period, including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendant knowingly and intentionally failed to provide accurate wage statements to Plaintiff, including but not limited to as a result of its failure to disclose provide Plaintiff with accurate gross and net wages earned, and failed to maintain the records required by Section 1174.

37. Labor Code section 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

1 38. The “Records” section of Wage Order 5 provides that an employer must provide and
2 maintain accurate wage statements to its employees and maintain records.

3 39. Through Defendants conduct during the applicable statutory period, including, but not
4 limited to, the conduct alleged herein, including that alleged on information and belief,
5 Defendants failed to provide Plaintiff accurate itemized wage statements, and maintain records
6 all in violation of Labor Code sections 226(a) and 1198, specifically failed to adhere to Labor
7 Code 226(a) Sections 1-2, 4-5 and 8-9. Specifically:

- 8 a. In violation of Labor Code 226 (a) 1: Defendant failed to include the required
9 accurate actual gross wages section on Plaintiff’s paystubs by virtue of excluding
10 hours worked and wages earned and failing to incorporate meal breaks and rest
11 periods that should have been paid;
- 12 b. In violation of Labor Code 226 (a) 2: Defendant failed to include the accurate
13 actual hours worked on Plaintiff’s paystubs by virtue of excluding hours worked
14 and wages earned and failing to incorporate meal breaks and rest periods of hours
15 actually worked by Mr. Augusto;
- 16 c. In violation of Labor Code 226 (a) 4: Defendant failed to assert the actual
17 deductions that should have been taken out by virtue of excluding hours worked
18 and wages earned and failing to incorporate meal breaks and rest periods that
19 should have been paid;
- 20 d. In violation of Labor Code 226 (a) 5: Defendant failed to include the accurate
21 actual net wages earned on Plaintiff’s pay stubs by virtue of excluding hours
22 worked and wages earned and failing to incorporate meal breaks and rest periods
23 that should have been paid;
- 24 e. In violation of Labor Code 226 (a) 8: Defendant failed to place the true name and
25 address of the legal entity that employed Plaintiff and instead only included
26 information regarding HIOG but failed to include Prime as a joint employer.
- 27 f. In violation of Labor Code 226 (a) 9: Defendant failed to include all applicable
28 hourly rates in effect during the pay period and the corresponding number of

1 hours worked at each hourly rate by the employee because Defendant excluded
2 hours worked and wages earned by failing to provide an uninterrupted meal break
3 and rest break and incorrectly excluded hours worked for meal breaks and rest
4 periods that should have been paid.

5 40. Pursuant to California Labor Code 226(e)(B), employee is deemed to have suffered an
6 injury if the Employer fails to provide accurate and complete information. Defendants failed to
7 provide complete and accurate information on Plaintiff's paystubs causing an injury.

8 41. At all material times, Defendant was Plaintiff's employer and/or persons acting on behalf
9 of Defendant within the meaning of Labor Code section 558, who violated or caused to be
10 violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating
11 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
12 subject to penalties for each underpaid employee as set forth in Labor Code section 558
13 including the payment of the underpaid wages to affected employees.

14 42. Plaintiff suffered injury as a result of Defendant knowing and intentional failure to
15 provide him with accurate wage and hour statements required by law, which injury shall exceed
16 the jurisdictional minimums of the superior court. The exact amount of the applicable penalties is
17 an amount to be shown according to proof at trial and within the jurisdictional limits of the Court
18 but no less than \$4,000.00.

19 **SECOND CAUSE OF ACTION**

20 **(Claim for Failure to Provide Plaintiff Meal Breaks – Lab. Code 226.7 and Wage Order 5,**
21 **Section 11 by Plaintiff Against All Defendants and DOES 1-50)**

22 43. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
23 above and below by reference as though set forth in full in this cause of action.

24 44. Plaintiff brings this claim on behalf of himself.

25 45. Defendants were required to authorize and permit employees to take uninterrupted meal
26 breaks pursuant to Industrial Welfare Commission Wage Order 5-2001, Section 11(A).
27 Defendants failed to do so by not allowing such uninterrupted meal breaks. Plaintiff is entitled to
28 civil penalties as a consequence of this failure.

1 46. Defendants were required to pay the plaintiff one (1) hour of pay at their regular rate of
2 compensation for each workday that the compliant meal breaks is not provided pursuant to
3 Industrial Welfare Commission Wage Order 5-2001, section 11(B). It failed to do so. Plaintiff is
4 entitled to civil penalties and owed wages as a consequence.

5 47. As a direct result of Defendants violations alleged herein, Plaintiff has suffered and
6 continues to suffer substantial losses related to the use and enjoyment of such wages, including
7 lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to
8 fully perform its obligation under state law, all to their respective damage in amounts according
9 to proof at trial and within the jurisdictional limitations of this Court.

10 48. Plaintiff is entitled to recover the penalties set forth in Wage Order 5 and the Labor Code.

11 49. As a result of the violations alleged herein, Plaintiff seeks all civil penalties and wages
12 available pursuant to the Labor Code and Wage Order 5, and an award of reasonable attorney's
13 fees and costs. The exact amount of the applicable penalties is an amount to be shown according
14 to proof at trial and within the jurisdictional limits of the Court but no less than \$10,000.00.

15 **THIRD CAUSE OF ACTION**

16 **(Claim for Failure to Provide Rest Periods – Lab. Code 226.7 and Wage Order 5, Section**
17 **12 by Plaintiff Against All Defendants and DOES 1-50)**

18 50. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
19 above and below by reference as though set forth in full in this cause of action.

20 51. Plaintiff brings this claim on behalf of himself.

21 52. Defendant was required to authorize and permit employees to take uninterrupted rest
22 periods pursuant to Industrial Welfare Commission Wage Order 5-2001, Section 12(A). It failed
23 to do so by not allowing such uninterrupted rest periods. Plaintiff is entitled to civil penalties as a
24 consequence of this failure.

25 53. Defendants were required to pay the employees one (1) hour of pay at their regular rate of
26 compensation for each workday that the legally compliant rest period is not provided, pursuant to
27 Industrial Welfare Commission Wage Order 5-2001, section 12(B). Defendant's failed to do so
28

1 by not allowing such interrupted rest periods. Plaintiff is entitled to civil penalties as a
2 consequence of this failure.

3 54. Plaintiff is entitled to recover the penalties set forth in Wage Order 5, Section 12 (B) and
4 Labor Code.

5 55. As a direct result of Defendants violations alleged herein, Plaintiff has suffered and
6 continues to suffer substantial losses related to the use and enjoyment of such wages, including
7 lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to
8 fully perform its obligation under state law, all to their respective damage in amounts according
9 to proof at trial and within the jurisdictional limitations of this Court. The exact amount of the
10 applicable penalties is an amount to be shown according to proof at trial and within the
11 jurisdictional limits of the Court but no less than \$10,000.00.

12 56. As a result of the violations alleged herein, Plaintiff seeks all civil penalties available
13 pursuant to the Labor Code and Wage Order 5, and an award of reasonable attorney's fees and
14 costs.

15 **FOURTH CAUSE OF ACTION**

16 **(Violation of FEHA - California Government Code §12940 (a) [Disability Discrimination] By Plaintiff Against All Defendants and DOES 1-50)**

17 57. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
18 above and below by reference as though set forth in full in this cause of action.

19 58. The California Fair Employment and Housing Act ("FEHA") declares as a matter of
20 public policy that it is necessary to protect and safeguard the right and opportunity of all persons
21 to seek, obtain, and hold employment without discrimination or abridgment on account of
22 physical disability and medical condition. (Cal. Gov't Code, § 12920.) The stated purpose of
23 the FEHA is to provide effective remedies that will eliminate these types of discriminatory
24 practices. (Id.)

25 59. Under the FEHA an employer may not discharge any person from employment, or
26 discriminate against the person in compensation or in terms, conditions, or privileges of
27 employment because of a physical disability or medical condition. (Cal. Gov't Code, § 12940,
28 subd. (a).)

60. As alleged above in paragraphs 16 through 28, Defendants discriminated against Mr. Augusto because of an actual or perceived physical disability. More specifically, Defendants violated the FEHA by discriminating against Mr. Augusto by drastically reducing Mr. Augusto's work hours and refusing to schedule him for work for extended periods of time because he returned to work with work restrictions and filed a workers' compensation claim although he can perform the essential functions of his job with a reasonable accommodation. Mr. Augusto made it clear to Defendants that he could perform his job duties and desired working hours but since Mr. Augusto suffered a work-related injury, retained workers compensation counsel and filed a workers compensation claim, Defendant refused to provide Mr. Augusto with his normal amount of working hours.

61. As a result of Defendants' discriminatory conduct Mr. Augusto has suffered the injuries described in Paragraph 28. The exact amount of the applicable damages is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

62. Defendants' wrongful conduct was intended to cause injury to Mr. Augusto and was despicable conduct carried out with a willful and conscious disregard of Mr. Augusto's rights. Defendants revealed its willingness to place profit over the health and welfare of its employees and its discriminatory animus towards employees injured on the job. Defendants revealed how far they are willing to go to with avoiding their legal obligation of making reasonable accommodations for their employees who are injured on the job such as Mr. Augusto. Defendants' company practices subjected Mr. Augusto to cruel and unjust hardship, was done with reckless disregard, all with the intent to deprive Mr. Augusto of his property, legal rights, or to otherwise cause injury, such as to constitute malice, oppression and/or fraud under Civil Code section 3294. Mr. Augusto is therefore entitled to recover punitive damages in an amount sufficient to punish or to set an example of Defendants to prevent such conduct by others.

FIFTH CAUSE OF ACTION

(Violation of FEHA—California Government Code, § 12940 (h) [Retaliation] by Plaintiff Against All Defendants, and DOES 1-50)

63. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs above and below by reference as though set forth in full in this cause of action.

64. Under the FEHA an employer cannot discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part. (Cal. Gov't Code, § 12940, subd. (h).)

65. As alleged above in paragraphs 16 through 28, Defendants retaliated against Mr. Augusto because of an actual or perceived physical disability and because he filed a worker's compensation claim. More specifically, soon after Mr. Augusto sustained his work-related injury, his work environment changed for the worse. Each time after Defendants became aware of the fact that either Mr. Augusto retained a workers compensation attorney, was entitled to workers compensation benefits, filed a workers' compensation claim, filed a legal action or had an actual or perceived physical disability and a work restriction, Defendants either refused to schedule or drastically reduce the schedule of Mr. Augusto for extended periods of time although Mr. Augusto expressed his desire to work and was ready, willing and able to return to work with an accommodation. The close temporal nexus between the filing of the worker's compensation claim, the work restrictions, filing a legal action, the retaining of legal counsel and Mr. Augusto's physical injury, and adverse employment actions from the reduction in working hours is undeniable.

66. As a result of Defendants' conduct Mr. Augusto has suffered the injuries described in Paragraph 28. The exact amount of the applicable damages is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

67. Ms. Lopez as the Human Resources Manager and Managing Agent for Prime and HIOG operations and Mr. Prentice as Regional Director and Managing Agent for Prime and HIOG operations and responsible for managing at least over 80 employees for Prime and HIOG made the decision or responsible for ratifying the decision to cut Plaintiff's hours in retaliation for filing a workers' compensation claim, refusing to provide Plaintiff with a proper accommodation, and terminating Plaintiff's employment. Thus, Prime and HIOG are subject to punitive damages. (See *White v. Ultramar, Inc.* 21 Cal. 4th 563, 567 (1999). Furthermore, Defendants' wrongful conduct was intended to cause injury to Mr. Augusto and was despicable

1 conduct carried out with a willful and conscious disregard of Mr. Augusto's rights. Defendants
2 revealed its willingness to place profit over the health and welfare of its employees and its
3 discriminatory animus towards employees injured on the job. Defendants revealed how far they
4 are willing to go to with avoiding their legal obligation of making reasonable accommodations
5 for their employees who are injured on the job such as Mr. Augusto. Defendants company
6 practices subjected Mr. Augusto to cruel and unjust hardship, was done with reckless disregard,
7 all with the intent to deprive Mr. Augusto of his property, legal rights, or to otherwise cause
8 injury, such as to constitute malice, oppression and/or fraud under Civil Code section 3294. Mr.
9 Augusto is therefore entitled to recover punitive damages in an amount sufficient to punish or to
10 set an example of Defendant's to prevent such conduct by others.

11 **SIXTH CAUSE OF ACTION**

12 **(Violation of FEHA—California Government Code, § 12940 (k) 13 [Failure to Prevent] By Plaintiff Against All Defendants and DOES 1-50)**

14 68. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
15 above and below by reference as though set forth in full in this cause of action.

16 69. Under the FEHA it is unlawful for an employer to fail to take all reasonable steps
17 necessary to prevent discrimination, harassment and retaliation from occurring. (Cal. Gov't
18 Code, § 12940, subd. (k)(h))

19 70. As alleged above in paragraphs 16 through 28 Defendants failed to prevent
20 discrimination and retaliation from occurring. More specifically, Mr. Augusto was an employee
21 of Defendants, and as such, Defendants had a duty to take all steps necessary to prevent
22 discrimination and retaliation from occurring. Defendants breached its duty to Mr. Augusto when
23 it failed to take all reasonable steps necessary to prevent discrimination and retaliation from
24 occurring by allowing management at Defendants to refuse to allow Mr. Augusto to return to
25 work for lengthy periods of time given his seniority and drastically reduced Mr. Augusto's
26 scheduled work hours, all because he suffered a work-related injury, became entitled to workers
27 compensation benefits, retained a workers compensation attorney and filed a workers
28 compensation claim.

1 71. Although Mr. Augusto repeatedly expressed his interest in working his normal amount of
2 hours, and his ability to work, Defendants failed to engage with Mr. Augusto to determine
3 whether he was able to work his normal amount of hours. In fact, Defendants Human Resources
4 Department questioned Mr. Augusto's scheduling manager as to why Mr. Augusto was not being
5 scheduled and the Hotel refused to address the issue as the Hotel has continued to engage in
6 discriminatory and retaliatory treatment towards Mr. Augusto. Defendants treated Mr. Augusto
7 differently than all other employees because he suffered a work-related injury, became entitled to
8 workers compensation benefits, retained a workers' compensation attorney and filed a workers'
9 compensation claim. Furthermore, Defendants terminated Plaintiff's employment in a purported
10 lay off but retained other employees that worked in Plaintiff's position.

11 72. As a result of Defendants' conduct Mr. Augusto has suffered the injuries described in
12 Paragraph 28. The exact amount of the applicable damages is an amount to be shown according
13 to proof at trial.

14 73. Ms. Lopez as the Human Resources Manager and Managing Agent for Prime and HIOG
15 operations and Mr. Prentice as Regional Director and Managing Agent for Prime and HIOG
16 operations and responsible for managing at least over 80 employees for Prime and HIOG made
17 the decision or responsible for ratifying the decision to cut Plaintiff's hours in retaliation for
18 filing a workers' compensation claim, refusing to provide Plaintiff with a proper
19 accommodation, and terminating Plaintiff's employment. Thus, Prime and HIOG are subject to
20 punitive damages. (See *White v. Ultramar, Inc.* 21 Cal. 4th 563, 567 (1999). Defendants'
21 wrongful conduct was intended to cause injury to Mr. Augusto and was despicable conduct
22 carried out with a willful and conscious disregard of Mr. Augusto's rights. Defendants revealed
23 its willingness to place profit over the health and welfare of its employees and its discriminatory
24 animus towards employees injured on the job. Defendants revealed how far they are willing to
25 go to with avoiding their legal obligation of making reasonable accommodations for their
26 employees who are injured on the job such as Mr. Augusto. Defendants company practices
27 subjected Mr. Augusto to cruel and unjust hardship, was done with reckless disregard, all with
28 the intent to deprive Mr. Augusto of his property, legal rights, or to otherwise cause injury, such

as to constitute malice, oppression and/or fraud under Civil Code section 3294. Mr. Augusto is therefore entitled to recover punitive damages in an amount sufficient to punish or to set an example of Defendants to prevent such conduct by others.

SEVENTH CAUSE OF ACTION

**(Violation of FEHA—California Government Code, § 12940 (m)
[Failure to Accommodate] Against All Defendants and DOES 1-50)**

74. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs above and below by reference as though set forth in full in this cause of action.

75. Under the FEHA it is unlawful for an employer to fail to provide reasonable accommodation from an employee that is an otherwise qualified individual who can perform the essential functions of the position. (Cal. Gov't Code, § 12940, subd. (m).)

76. As alleged above in paragraphs 16 through 27 Defendants failed to make reasonable accommodations for Mr. Augusto's actual or perceived physical disability. More specifically, Defendants were aware that Mr. Augusto had been injured and prescribed with work restrictions. Defendants were absolutely unwilling to discuss with Mr. Augusto his work restrictions or ability to work more hours as originally scheduled and desired. Defendants refused to consider any alternatives and did nothing and instead reduced Mr. Augusto's working hours to a point where they believed would force Mr. Augusto to quit so they did not have to employ a disabled employee. Furthermore, the Hotel refused to provide Mr. Augusto with a suitable seat that would have allowed Mr. Augusto to comply with his work restrictions. Moreover, after Mr. Augusto's August 2012 work-related injury, October 2012 workers compensation claim, and issued work restrictions, the Hotel switched Mr. Augusto's working hours from the Night Auditor to the day shift where Mr. Augusto had to perform more strenuous lifting duties that would have been more likely to violate his work restrictions.

77. As a result of Defendants' conduct Mr. Augusto has suffered the injuries described in Paragraph 28. The exact amount of the applicable damages is an amount to be shown according to proof at trial and within the jurisdictional limits of the.

1 78. Ms. Lopez as the Human Resources Manager and Managing Agent for Prime and HIOG
2 operations and Mr. Prentice as Regional Director and Managing Agent for Prime and HIOG
3 operations and responsible for managing at least over 80 employees for Prime and HIOG made
4 the decision or responsible for ratifying the decision to cut Plaintiff's hours in retaliation for
5 filing a workers' compensation claim, refusing to provide Plaintiff with a proper
6 accommodation, and terminating Plaintiff's employment. Thus, Prime and HIOG are subject to
7 punitive damages. (See *White v. Ultramar, Inc.* 21 Cal. 4th 563, 567 (1999). Defendants'
8 wrongful conduct was intended to cause injury to Mr. Augusto and was despicable conduct
9 carried out with a willful and conscious disregard of Mr. Augusto's rights. Defendants revealed
10 its willingness to place profit over the health and welfare of its employees and its discriminatory
11 animus towards employees injured on the job. Defendants revealed how far they are willing to
12 go to with avoiding their legal obligation of making reasonable accommodations for their
13 employees who are injured on the job such as Mr. Augusto. Defendants company practices
14 subjected Mr. Augusto to cruel and unjust hardship, was done with reckless disregard, all with
15 the intent to deprive Mr. Augusto of his property, legal rights, or to otherwise cause injury, such
16 as to constitute malice, oppression and/or fraud under Civil Code section 3294. Mr. Augusto is
17 therefore entitled to recover punitive damages in an amount sufficient to punish or to set an
18 example of Defendants to prevent such conduct by others.

19 **EIGHTH CAUSE OF ACTION**

20 **(Violation of FEHA—California Government Code, § 12940 (n)**
21 **[Failure to Engage in Interactive Process] By Plaintiff Against All Defendants and DOES**
22 **1-50)**

23 79. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
24 above and below by reference as though set forth in full in this cause of action.

25 80. Under the FEHA an employer must engage in a timely, good faith, interactive process
26 with the employee to determine effective reasonable accommodations, if any, in response to a
27 request for reasonable accommodation by an employee with a known physical disability or
28 medical condition. (Cal. Gov't Code, § 12940, subd. (n).)

1 81. As alleged above in paragraphs 16 through 28 Defendants failed to engage in a timely
2 good faith interactive process with Mr. Augusto. More specifically, even though Mr. Augusto
3 insisted on working more hours as he normally did because he could perform work within his
4 restrictions with an accommodation, Defendants refused to discuss with Mr. Augusto his work
5 restrictions, whether any of his work restrictions were being violated, or any possible increase in
6 working hours as the other employees enjoyed. Defendants repeatedly refused to discuss any
7 alternative with Mr. Augusto because they wanted to force him to quit so that they did not have
8 to deal with an employee that suffered a work-related injury and filed a workers' compensation
9 claim.

10 82. As a result of Defendants' conduct Mr. Augusto has suffered the injuries described in
11 Paragraph 28. The exact amount of the applicable damages is an amount to be shown according
12 to proof at trial.

13 83. Ms. Lopez as the Human Resources Manager and Managing Agent for Prime and HIOG
14 operations and Mr. Prentice as Regional Director and Managing Agent for Prime and HIOG
15 operations and responsible for managing at least over 80 employees for Prime and HIOG made
16 the decision or responsible for ratifying the decision to cut Plaintiff's hours in retaliation for
17 filing a workers' compensation claim, refusing to provide Plaintiff with a proper
18 accommodation, and terminating Plaintiff's employment. Thus, Prime and HIOG are subject to
19 punitive damages. (See *White v. Ultramar, Inc.* 21 Cal. 4th 563, 567 (1999)). Defendants'
20 wrongful conduct was intended to cause injury to Mr. Augusto and was despicable conduct
21 carried out with a willful and conscious disregard of Mr. Augusto's rights. Defendants revealed
22 its willingness to place profit over the health and welfare of its employees and its discriminatory
23 animus towards employees injured on the job. Defendants revealed how far they are willing to
24 go to with avoiding their legal obligation of making reasonable accommodations for their
25 employees who are injured on the job such as Mr. Augusto. Defendants company practices
26 subjected Mr. Augusto to cruel and unjust hardship, was done with reckless disregard, all with
27 the intent to deprive Mr. Augusto of his property, legal rights, or to otherwise cause injury, such
28 as to constitute malice, oppression and/or fraud under Civil Code section 3294. Mr. Augusto is

1 therefore entitled to recover punitive damages in an amount sufficient to punish or to set an
2 example of Defendants to prevent such conduct by others.

3 **NINTH CAUSE OF ACTION**

4 **(For Retaliation Under Cal. Lab. Code § 1102.5 By Plaintiff Against All Defendants and**
5 **DOES 1-50)**

6 84. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
7 above and below by reference as though set forth in full in this cause of action.

8 85. Pursuant to Cal. Lab. Code § 1102.5, (b) an employer shall not “retaliate against an
9 employee for disclosing information, or because the employer believes that the employee
10 disclosed information or may disclose information, to a government or law enforcement agency,
11 to a person with authority over the employee or any other employee who has authority to
12 investigate, discover, or correct the violation or noncompliance... if the employee has a
13 reasonable cause to believe that the information discloses a violation of state, or federal law or a
14 violation of noncompliance with a local, state, or federal rule or regulation...”

15 86. In April 2016, Mr. Augusto lodged a complaint with Defendants concerning their
16 violations of the Labor Code.

17 87. Mr. Augusto was not scheduled for an extended period of time after making the
18 complaint to Defendant regarding its Labor Code violations.

19 88. Mr. Augusto’s complaint about Defendants’ violation of the Labor was the direct cause
20 of his termination from employment with Defendants in violation of Cal. Lab. Code § 1102.5.

21 89. Defendants’ termination of Plaintiff was the legal cause of his damages. As a result of
22 Defendants’ conduct Plaintiff has suffered the injuries described in Paragraph 28.

23 90. As a result of the violation of Cal. Lab. Code § 1102.5(b) and (d) Mr. Augusto is entitled
24 to lost wages and lost work benefits resulting from Defendants’ unlawful actions, in an amount
25 that will be subject to proof at the time of trial but which will exceed the jurisdictional
26 minimums of this court. Defendants are also subject to a civil penalty up to \$10,000 for each
27 violation payable to Mr. Augusto for each retaliatory action. Cal. Lab. Code 1102.5(f).

1 91. Ms. Lopez as the Human Resources Manager and Managing Agent for Prime and HIOG
2 operations and Mr. Prentice as Regional Director and Managing Agent for Prime and HIOG
3 operations and responsible for managing at least over 80 employees for Prime and HIOG made
4 the decision or responsible for ratifying the decision to cut Plaintiff's hours in retaliation for
5 filing a workers' compensation claim and a civil claim, refusing to provide Plaintiff with a
6 proper accommodation, and terminating Plaintiff's employment. Thus, Prime and HIOG are
7 subject to punitive damages. (See *White v. Ultramar, Inc.* 21 Cal. 4th 563, 567 (1999).
8 Defendants' wrongful conduct was intended to cause injury to Mr. Augusto and was despicable
9 conduct carried out with a willful and conscious disregard of Mr. Augusto's rights. Defendant
10 revealed its willingness to place profit over the health and welfare of its employees and its
11 retaliatory animus towards employees who complained about Labor Code violations.
12 Defendants revealed how far they are willing to go to with avoiding their legal obligation of
13 authorizing and permitting meal and rest breaks for its employees. Defendants' company
14 practices subjected Mr. Augusto to cruel and unjust hardship, was done with reckless disregard,
15 all with the intent to deprive Mr. Augusto of his property, legal rights, or to otherwise cause
16 injury, such as to constitute malice, oppression and/or fraud under Civil Code section 3294. Mr.
17 Augusto is therefore entitled to recover punitive damages in an amount sufficient to punish or to
18 set an example of Defendants to prevent such conduct by others. Plaintiff seeks punitive
19 damages in an amount that will be subject to proof at the time of trial but which will exceed the
20 jurisdictional minimums of this court.

21 92. Pursuant to Code of Civil Procedure section 1021.5 Mr. Augusto seeks an award of
22 attorney fees upon prevailing on this cause of action.

23 **TENTH CAUSE OF ACTION**

24 **(For Unlawful Business Practices-Bus. & Prof. Code § 17200 et seq.)**

25 **By Plaintiff Against All Defendants and DOES 1-50)**

26 93. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
27 above and below by reference as though set forth in full in this cause of action.
28

1 94. Business & Professions Code section 17200 states: “As used in this chapter, unfair
2 competition shall mean and include any unlawful, unfair or fraudulent business act or practice
3 and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
4 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions
5 Code.”

6 95. Through Defendants conduct during the applicable statutory period including, but not
7 limited to, the conduct alleged herein, including that alleged on information and belief, the
8 defendant has engaged in business practices in California by practicing, employing, and utilizing,
9 the employment practices outlined in the preceding paragraphs all in violation of California law
10 and the applicable Industrial Welfare Commission Wage Order. Defendant’s use of such
11 practices constitutes an unfair business practice, unfair competition, and provides an unfair
12 advantage over Defendants competitors doing business in the State of California that comply
13 with their obligations to properly provide employment conditions in compliance with the law and
14 pay employees for all earned wages and compensation as required by law.

15 96. Defendants’ violations of the California Civil Code, Labor Code and the applicable Wage
16 Order and their scheme to lower payroll costs as alleged herein constitute unlawful business
17 practices because these actions were done in a systematic manner over a period of time to the
18 detriment of Plaintiff. The acts complained of herein occurred within the last four (4) years
19 preceding the filing of this complaint and include, but are not limited to, failure to (i) include the
20 gross wages earned, total hours worked, net wages earned and applicable hourly rates into the
21 employee paystubs to allow them to ascertain the hourly rate in which they could expect to be
22 paid; (ii) provide Plaintiffal breaks and rest periods; (iii) maintain accurate records and provide
23 and maintain accurate itemized wage statements reflecting the amount of hours worked and
24 applicable hourly rates; (iv) accommodate injured or disabled employees; (v) refrain from
25 retaliating against employees who complain about state or federal law violations committed by
26 Defendant or filing workers compensation claims.

27 97. Plaintiff is informed and believes and on that basis alleges that, at all times herein
28 mentioned, Defendants engaged in the above-mentioned acts of unlawful, deceptive, and unfair

1 business practices prohibited by California Business and Professions Code sections 17200 et
2 seq., including those set forth in the preceding paragraphs, thereby depriving Plaintiff of the
3 minimum working condition standards and conditions due, including those under the California
4 Fair Employment and Housing Act, California Labor Code and Wage Order.

5 98. As a result of Defendants unfair competition as alleged herein, Plaintiff has suffered
6 injury in fact and lost money or property. Plaintiff has been deprived of the rights to accurate and
7 itemized wage statements, wages and benefits due including those as alleged herein.

8 99. Pursuant to California Business & Professions Code section 17203, Plaintiff is entitled to
9 seek restitution of all wages and other monies owed on behalf of themselves and Aggrieved
10 Employees belonging to them, including interest thereon, which Defendant wrongfully withheld
11 from them and retained for itself by means of its unlawful and unfair business practices.

12 100. Plaintiff is entitled to an injunction and other declaratory and equitable relief against such
13 practices to prevent future damage for which there is no adequate remedy at law, and to avoid a
14 multiplicity of lawsuits.

15 101. Plaintiff is informed, believes and, on that basis, alleges that the illegal conduct alleged
16 herein is continuing and there is no indication that Defendants will not continue such activity
17 into the future. Plaintiff alleges that if Defendants is not enjoined from the conduct set forth in
18 this Complaint, they will continue to fail to pay the wage and compensation required to be paid
19 and will fail to comply with other requirements of the Labor Code and Wage Order.

20 102. As a direct and proximate result of Defendants conduct, Defendants have received and
21 will continue to receive monies that rightfully belong to members of the general public who have
22 been adversely affected by Defendants conduct, as well as to Plaintiff by virtue of any unpaid
23 wages and other monies or penalties associated therewith.

24 103. Plaintiff is entitled and seeks any and all available remedies including but not limited to
25 restitution and recovery of reasonable attorney's fees and costs pursuant to California Code of
26 Civil Procedure section 1021.5, Business and Professions Code section 17200 et seq., the
27 substantial benefit doctrine, and/or the common fund doctrine.

28 **ELEVENTH CAUSE OF ACTION**

(For Violation of the Labor Code Private Attorneys General Act)

(Labor Code §§ 2698, et seq. By Plaintiff Against All Defendants and DOES 1-50)

104. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs above and below by reference as though set forth in full in this cause of action.

105. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

106. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

107. Defendants’ conduct violates numerous Labor Code sections including, but not limited to the following:

(a) Violation of Labor Code §§ 226.7, 512, 1198 and Wage Order 5, Section 11 for Defendants failure to provide Plaintiff and other aggrieved employees all required meal periods, and Defendants’ failure to provide Plaintiff and other aggrieved employees with one hour of pay of Plaintiff’s and other aggrieved employees’ regular rate of compensation for each meal period that was not provided, as herein alleged;

(b) Violation of Labor Code §§ 226.7, 512, 1198 and Wage Order 5, Section 12 for Defendants failure to provide Plaintiff and other aggrieved employees all required rest periods, and Defendants’ failure to provide Plaintiff and other aggrieved employees with one hour of pay of Plaintiff’s and other aggrieved employees’ regular rate of compensation for each rest period that was not provided, as herein alleged;

1 (c) Violation of Labor Code §§ 226(a), 226.3, 1198 and Wage Order 5, Section 7 for failure
2 to maintain records showing when its employees take meal periods and provide accurate
3 itemized wage statements to Plaintiff and other aggrieved employees causing injury as
4 herein alleged; and

5 (d) Violation of Labor Code § 203 for failure to timely pay all earned wages owed to
6 Plaintiff and other aggrieved employees during employment and upon separation of
7 employment as herein alleged.

8 108. Further, Labor Code § 558(a) provides “any employer or other person acting on behalf of
9 an employer who violates, or causes to be violated, a section of this chapter or any provisions
10 regulating hours and days of work in any order of the IWC shall be subject to a civil penalty as
11 follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each pay
12 period for which the employee was underpaid in addition to an amount sufficient to recover
13 underpaid wages, (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was underpaid in addition to an
15 amount sufficient to recover unpaid wages. (3) Wages recovered pursuant to this section shall be
16 paid to the affected employee.” Labor Code § 558(c) provides “the civil penalties provided for in
17 this section are in addition to any other civil or criminal penalty provided by law.”

18 109. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator
19 and had or ore more of the alleged violations committed against him, and therefore is properly
20 suited to represent the interests of all other aggrieved employees.

21 110. On April 15, 2016 and May 1, 2016, Plaintiff sent Defendants by certified mail notice of
22 its Labor Code violations. Plaintiff has waited the statutory time period before filing this claim
23 and therefore exhausted the procedural requirements under Labor Code § 2699.3 as to
24 Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other
25 aggrieved employees under PAGA.

26 111. Labor Code §§ 2698, et seq. imposes upon Defendants, a penalty of one hundred dollars
27 (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred
28

1 dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in
2 which Defendants violated the Labor Code.

3 112. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff on behalf of all other
4 aggrieved employees is entitled to recover civil penalties against Defendants for violations of the
5 Labor Code sections cited above.

6 113. The California Supreme Court has held that a representative action does not need to meet
7 the class certification requirements because it is strictly a state enforcement action. *Arias v.*
8 *Superior Court*, 46 Cal.4th 969, 970-75 (2009).

9 114. Defendants' conduct as alleged herein, has been and continues to be unfair, unlawful
10 and harmful to Plaintiff and the general public. Plaintiff seeks to enforce important rights
11 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

12 **TWELFTH CAUSE OF ACTION**
13 **(Wrongful Termination in Violation of Public Policy**
14 **Against All Defendants and DOES 1-50)**

15 115. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
16 above and below by reference as though set forth in full in this cause of action.

17 116. In California an employer's authority to terminate an at-will employee is limited by
18 statute and by considerations of public policy. (*Tameny v. Atlantic Richfield* (1980) 27 Cal.3d
19 167, 172.) While an at-will employee may be terminated, there can be no right to terminate for
20 an unlawful reason or a purpose that contravenes fundamental public policy. This theory extends
21 to any adverse employment action taken in violation of fundamental public policy.

22 117. Plaintiff and Defendants were in an employer-employee relationship at all relevant times.

23 118. Mercury's wrongful termination of Plaintiff's employment as described herein was in
24 violation of public policy in that it constituted unlawful discrimination and retaliation prohibited
25 by the Fair Employment and Housing Act set forth in Government Code section 12940 et seq.,
26 including, but not limited to sections 12940(a), 12940(h), 12940(k), 12940 (m), and 12940(n).

27 119. As a result of Plaintiff's wrongful discharge in violation of public policy, Plaintiff has
28 suffered damages as set forth in paragraph 28 above.

1 120. Ms. Lopez as the Human Resources Manager and Managing Agent for Prime and HIOG
2 operations and Mr. Prentice as Regional Director and Managing Agent for Prime and HIOG
3 operations and responsible for managing at least over 80 employees for Prime and HIOG made
4 the decision or responsible for ratifying the decision to cut Plaintiff's hours in retaliation for
5 filing a workers' compensation claim and a civil claim, refusing to provide Plaintiff with a
6 proper accommodation, and terminating Plaintiff's employment. Thus, Prime and HIOG are
7 subject to punitive damages. (See *White v. Ultramar, Inc.* 21 Cal. 4th 563, 567 (1999).
8 Defendants' wrongful conduct was intended to cause injury to Mr. Augusto and was despicable
9 conduct carried out with a willful and conscious disregard of Mr. Augusto's rights. Defendant
10 revealed its willingness to place profit over the health and welfare of its employees and its
11 retaliatory animus towards employees who complained about Labor Code violations.
12 Defendants revealed how far they are willing to go to with avoiding their legal obligation of
13 authorizing and permitting meal and rest breaks for its employees. Defendants' company
14 practices subjected Mr. Augusto to cruel and unjust hardship, was done with reckless disregard,
15 all with the intent to deprive Mr. Augusto of his property, legal rights, or to otherwise cause
16 injury, such as to constitute malice, oppression and/or fraud under Civil Code section 3294. Mr.
17 Augusto is therefore entitled to recover punitive damages in an amount sufficient to punish or to
18 set an example of Defendants to prevent such conduct by others. Plaintiff seeks punitive
19 damages in an amount that will be subject to proof at the time of trial but which will exceed the
20 jurisdictional minimums of this court.

21 121. Pursuant to Code of Civil Procedure section 1021.5 Plaintiff seeks an award of attorney
22 fees upon prevailing on this cause of action.

23
24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment against defendant, and each of them, as
26 follows:

27 **First Cause of Action:**

28 1. For penalties to recover the greater of actual damages of fifty dollars (\$50) for the initial pay

1 period in which a violation occurs and one hundred dollars (\$100) per employee for each
2 subsequent violation pursuant to Labor Code section 226(e). The exact amount of the applicable
3 damages is an amount to be shown according to proof at trial and within the jurisdictional limits
4 of the Court but no less than \$4,000.00.

5 2. For costs and reasonable attorney's fees pursuant to Labor Code section 226(e).

6 **Second Cause of Action:**

7 3. For compensation under Labor Code section 226.7 (c).

8 4. The exact amount of the applicable damages is an amount to be shown according to proof at
9 trial and within the jurisdictional limits of the Court but no less than \$10,000.

10 **Third Cause of Action:**

11 5. For compensation under Labor Code section 226.7 (c).

12 6. The exact amount of the applicable damages is an amount to be shown according to proof at
13 trial and within the jurisdictional limits of the Court but no less than \$10,000.

14 **Fourth, Fifth, Sixth, Seventh, Eighth and Twelfth Causes of Action:**

15 7. For general and special damages arising out of the violation of FEHA and the wrongful
16 termination of Mr. Augusto, which amount necessarily includes lost wages, lost commissions,
17 lost benefits, emotional distress and other such damages in an amount exceeding the "unlimited"
18 jurisdictional limits of this court, such amount to be subject to proof at the time of trial. The
19 exact amount of the applicable damages is an amount to be shown according to proof at trial and
20 within the jurisdictional limits of the;

21 8. For attorney's fees Mr. Augusto has incurred to enforce her rights pursuant to California
22 Code of Civil Procedures sections 1021.5 and 226(g), and Government Code section 12965,
23 subdivision (b), and other statutory basis for attorney's fees;

24 9. For prejudgment interest on that amount at the legal rate;

25 10. For a declaration from this court pursuant to California Government Code section
26 12965(c)(3) as follows:

- 27 a. Defendants' conduct in terminating Mr. Augusto was an unlawful practice as
28 provided in the Fair Employment and Housing Act;

- 1 b. Defendants' conduct in allowing Mr. Augusto to be retaliated against was an
2 unlawful practice as provided in the Fair Employment and Housing Act; and
3 c. Defendants failed to protect Mr. Augusto against unlawful discrimination and
4 retaliation in violation of the Fair Employment and Housing Act, and is
5 hereby ordered to undertake all reasonable measures necessary to prevent
6 unlawful discrimination and retaliation, as required by the Fair Employment
7 and Housing Act, from this day forward.

8 11. Punitive damages in an amount sufficient to punish Defendants and/or to deter further
9 malicious, fraudulent and oppressive conduct;

10 12. For injunctive relief arising under FEHA;

11 13. For costs of suit herein, and;

12 14. For such other relief as the Court deems just and proper.

13 **Ninth Cause of Action**

14 15. For general, incidental, and consequential damages including but not limited to lost wages,
15 lost benefits, emotional distress, and other such damages in an amount exceeding the
16 unlimited jurisdictional limits of this court, such amount to be subject to proof at the time of
17 trial.

18 16. For punitive damages in an amount sufficient to punish the defendants and/or to deter further
19 malicious, fraudulent and oppressive conduct such amount to be subject to proof at the time
20 of trial. For civil penalties up to \$10,000 for each violation pursuant to Cal. Lab. Code.

21 17. For prejudgment interest at the legal rate.

22 18. For costs of suit herein pursuant Code of Civil Procedure section 1021.5.

23 19. For reasonable attorneys' fees pursuant Code of Civil Procedure section 1021.5.

24 20. For such other relief as the Court deems just and proper.

25 **Tenth Case of Action**

26 21. For a temporary restraining order, a preliminary injunction, and a permanent injunction
27 enjoining Defendant and its agents, servants and employees, and all persons acting under, in
28

concert with, or for Defendant from engaging in the unlawful, unfair, and fraudulent acts and business practices described in Paragraphs 93 through 103 above;

22. For restitution, lost wages and penalties therewith;

23. For pre-judgment and post-judgment interest to the extent permitted by law;

24. For an award of attorneys' fees and costs incurred in the investigation, filing and prosecution of this action pursuant to Code of Civil Procedure section 1021.5, Business and Professions Code sections 17200, et seq., Labor Code section 1194 and any other applicable provision of law; and

25. For such other relief as the Court deems just and proper.

Eleventh Cause of Action:

26. For civil penalties pursuant to Labor Code section 2699(f). The exact amount of the applicable penalties is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

27. For attorney's fees and costs to the extent permitted by Labor Code section 2699(g).

As to All Causes of Action:

28. For reasonable attorneys' fees and costs incurred; and

29. For such other and further relief as this Court may deem just and proper.

Dated: September 8, 2017

Jackson Law, APC

By: 
Armond M. Jackson
Attorneys for Plaintiff Roberto Augusto

DEMAND FOR JURY TRIAL

Plaintiff Roberto Augusto demands a jury trial in the above captioned matter.

1 Dated: September 8, 2017

Jackson Law, APC

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3 By: 
4 Armond M. Jackson
5 Attorneys for Plaintiff Roberto Augusto
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