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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA**

CHRISTOPHER RAILSBACK, an individual,  
on behalf of himself, the State of California, as a  
private attorney general, and on behalf of all  
others similarly situated,

Plaintiff,

v.

THE INN GROUP, LLC D/B/A PEA SOUP  
ANDERSEN'S INN, a California Limited  
Liability Company; KING FREDERIK MOTEL,  
LLC, a California Limited Liability Company;  
KING FREDERIK INN, a Business of Unknown  
Formation; DARYL NIELSEN BARTLETT &  
PRING, a Business of Unknown Formation;  
TERRY NIELSEN, an Individual; and DOES 1  
TO 50,

Defendants.

Case Number: 25CV01931

**Second Amended Class and Representative  
Action Complaint For:**

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Pay Accrued Vacation Wages,
4. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
5. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
6. Failure to Maintain Accurate Employment Records,
7. Failure to Pay Wages Timely during Employment,
8. Failure to Pay All Wages Earned and Unpaid at Separation,
9. Failure to Indemnify All Necessary Business Expenditures,
10. Failure to Furnish Accurate Itemized Wage Statements,

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- 11. Failure to Pay Sick Leave, and
  - 12. Violations of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210).
  - 13. Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”) for Violations of California Labor Code Sections 142.3, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 233, 246, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407, and Other Provisions of the Labor Code.

**Demand for Jury Trial**

Plaintiff Christopher Railsback (“Plaintiff”), on behalf of himself and all other similarly situated employees within the State of California, complains and alleges of defendants The Inn Group, LLC d/b/a Pea Soup Andersen's Inn, King Frederik Motel, LLC, King Frederik Inn, Daryl Nielsen Bartlett & Pring, Terry Nielsen, and Does 1 to 50 (collectively, “Defendants”), and each of them, as follows:

**I. INTRODUCTION**

1. This is a class action complaint brought pursuant to California Code of Civil Procedure section 382.

2. The “Class Period” as used herein, is defined as the period from four years prior to the filing of this action and continuing into the present and ongoing. Defendants’ violations of California’s laws as described more fully below have been ongoing throughout the Class Period and are still ongoing.

3. Plaintiff brings this class action on behalf of himself and the following class: *All individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

4. Plaintiff brings this action on behalf of himself and the Class Members, as a class action, against Defendants for:

- A. Failure to pay all minimum wages,
- B. Failure to pay all overtime wages,
- C. Failure to pay accrued vacation wages,
- D. Failure to provide rest periods and pay missed rest period premiums,
- E. Failure to provide meal periods and pay missed meal period premiums,
- F. Failure to maintain accurate employment records,
- G. Failure to pay wages timely during employment,
- H. Failure to pay all wages earned and unpaid at separation,
- I. Failure to indemnify all necessary business expenditures,
- J. Failure to furnish accurate itemized wage statements,
- K. Failure to fully pay all sick leave wages, and

1 L. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.  
2 Code, §§ 17200–17210).

3 5. This action is also a representative action brought pursuant to the California Labor Code  
4 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698  
5 through 2699.6.

6 6. The “PAGA Period” as used herein, is defined as the period from March 27, 2024 and  
7 continuing into the present and ongoing.

8 7. This PAGA action is brought on behalf of Plaintiff, the State of California as private  
9 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*  
10 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the  
11 “Aggrieved Employees”).

12 8. Plaintiff is informed and believes and thereon alleges that the California Industrial  
13 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order 5-  
14 2001 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of Regs.,  
15 tit. 8, § 11050.) Plaintiff reserves the right to amend or modify the definition of “Applicable Wage  
16 Order” with greater specificity or add additional IWC Wage Orders if additional applicable wage orders  
17 are discovered in litigation.

## 18 **II. JURISDICTION & VENUE**

19 9. This Court has subject matter jurisdiction over all causes of action asserted herein  
20 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section  
21 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds  
22 \$25,000, and because each cause of action asserted arises under the laws of the State of California or  
23 is subject to adjudication in the courts of the State of California.

24 10. This Court has personal jurisdiction over Defendants because Defendants have caused  
25 injuries in the County of Santa Barbara and the State of California through their acts, and by their  
26 violation of the California Labor Code and California state common law. Defendants transact millions  
27 of dollars of business within the State of California. Defendants own, maintain offices, transact  
28 business, have an agent or agents within the County of Santa Barbara, and/or otherwise are found within

1 the County of Santa Barbara, and Defendants are within the jurisdiction of this Court for purposes of  
2 service of process.

3 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the  
4 Code of Civil Procedure. Defendants operate within California and do business within Santa Barbara  
5 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of  
6 Defendants' employees identified above within Santa Barbara County and surrounding counties where  
7 Defendants may remotely operate.

8 12. This matter is not appropriate for removal under the Class Action Fairness Act (28  
9 U.S.C. § 1332) as the amount in controversy for Plaintiff's and the Class Members' claims, in  
10 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of  
11 California. As such, even if the amount in controversy did exceed \$5 million this matter would still not  
12 be appropriate for removal under the "local controversy" exception to the Class Action Fairness Act.  
13 (28 U.S.C. § 1332, subd. (d)(4)(A).)

14 **III. THE PARTIES**

15 **A. PLAINTIFF**

16 13. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen  
17 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly  
18 employee in the County of Santa Barbara.

19 14. Plaintiff brings this action on behalf of himself and the following class pursuant to  
20 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*  
21 *Defendants as non-exempt employees in California during the Class Period* (the "Class Members").

22 15. Plaintiff also brings this action on behalf of himself and the State of California, as a  
23 private attorney general, and on behalf of the following group of aggrieved employees: *All individuals*  
24 *who are or were employed by Defendants as non-exempt employees in California during the PAGA*  
25 *Period* (the "Aggrieved Employees").

26 16. The Class Members and the Aggrieved Employees, at all times pertinent hereto, are or  
27 were employees of Defendants during the relevant statutory period.  
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1           **B.       DEFENDANTS**

2           17.     Plaintiff is informed and believes and thereon alleges that Defendants were authorized  
3 to and doing business in Santa Barbara County and is and/or was the legal employer and/or other person  
4 acting on behalf of an employer of Plaintiff, the other Aggrieved Employees, and the other Class  
5 Members during the applicable statutory periods. Plaintiff, the other Aggrieved Employees and the  
6 other Class Members were, and are, subject to Defendants' policies and/or practices complained of  
7 herein and have been deprived of the rights guaranteed to them by: California Labor Code sections  
8 142.3, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 233, 246, 510, 512, 1174, 1185, 1194, 1194.2,  
9 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407  
10 and others that may be applicable; California Business and Professions Code sections 17200 through  
11 17210 ("UCL"); sections 3202, 3203, 3273, 3345, 3380, 3382, 3384 of Title 8 of the California Code  
12 of Regulations and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11050).

13          18.     Plaintiff is informed and believes, and based thereon alleges, that during the Class  
14 Period, Defendants did (and continue to do) business in the State of California, County of Santa  
15 Barbara.

16          19.     Plaintiff does not know the true names or capacities, whether individual, partner, or  
17 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants  
18 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this  
19 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and  
20 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were  
21 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff,  
22 the other Aggrieved Employees, and the other Class Members to be subject to the unlawful employment  
23 practices, wrongs, injuries, and damages complained of herein.

24          20.     Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned  
25 herein, Defendants were and/or are the employers and/or other person acting on behalf of an employer  
26 of Plaintiff, the other Aggrieved Employees, and the other Class Members. At all times herein  
27 mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have  
28 been done by the named Defendants. Furthermore, the Defendants, and each of them, were the agents,

1 representatives, and employees of each and every one of the other Defendants, and at all times herein  
2 mentioned were acting within the course and scope of said agency, representation, and employment.  
3 Defendants, and each of them, approved of, condoned, or otherwise ratified every one of the acts or  
4 omissions complained of herein.

5         21. Plaintiff is informed and believes, and based thereon alleges, that Defendant Terry  
6 Nielsen is an owner, officer or managing agent of Defendants. Defendant Terry Nielsen is listed in  
7 Defendants' directory available to Plaintiff, the other Aggrieved Employees, and Class Members as  
8 "Owner/General Manager." As Owner/General Manager, Defendant Terry Nielsen was and is  
9 responsible for direct supervision and control of Defendants' operations. Plaintiff is informed and  
10 believes that Defendant Terry Nielsen violated or caused the violations alleged herein within the  
11 meaning of Labor Code section 558, 558.1 and 1197.1, including the failure to pay for all hours worked,  
12 failure to comply with the minimum and overtime wage laws, failure to provide wage statements and  
13 sick pay, failure to provide rest and meal periods or premiums in lieu thereof, failure to pay all wages  
14 owed timely upon termination of the employment relationship, and failure to reimburse expenses.

15         22. Plaintiff is further informed, and believes, and thereon alleges, that at all times  
16 mentioned herein, that Defendants, and each of them, are the alter egos of one another and that there  
17 existed and now exists a unity of interest and ownership between them such that the individuality and  
18 separateness of each of them has ceased. Plaintiff is further informed, and believes, and thereon alleges,  
19 that at all times mentioned herein, that Defendants, and each of them, have been and now are mere  
20 shells and naked frameworks that their principal uses for the conduct of that Defendant's own business,  
21 property, and affairs, for which Defendants, and each of them, have concealed and misrepresented their  
22 identities as the entities responsible for their ownership, management, and financial interests.

23         23. Plaintiff is further informed, and believes, and thereon alleges, that at all times  
24 mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture,  
25 partnership, and common enterprise, and acting within the course and scope of and in pursuance of said  
26 joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and believes, and  
27 thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff, the other  
28 Aggrieved Employees, and the other Class Members.

1 **IV. COMMON FACTS & ALLEGATIONS**

2 24. Plaintiff and the other Class Members (collectively, the “Class Members”) are, and were  
3 at all relevant times, employed by the Defendants within the State of California.

4 25. Likewise, Plaintiff and the other Aggrieved Employees (collectively, the “Aggrieved  
5 Employees”) are, and were at all relevant times, employed by the Defendants within the State of  
6 California.

7 26. The Class Members and the Aggrieved Employees are, and were, at all relevant times,  
8 non-exempt employees for the purposes of minimum wages, overtime, rest breaks, meal periods, and  
9 the other claims alleged in this complaint.

10 27. Specifically, Plaintiff was employed by Defendants within the statutory Class Period  
11 and PAGA period, working as an hourly, non-exempt maintenance worker for Defendants at the Pea  
12 Soup Andersen's Inn, and King Frederik Inn. Plaintiff's duties included cleaning and maintaining  
13 sleeping room accommodations by promptly responding to maintenance requests, troubleshooting and  
14 diagnosing issues with hotel rooms, systems and equipment, conducting routine inspections of hotel  
15 rooms, system and equipment, performing preventative maintenance tasks, including cleaning and  
16 coordinating repairs of hotel rooms, systems and equipment with staff, management and external  
17 vendors as necessary.

18 **A. MINIMUM WAGE VIOLATIONS**

19 28. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed  
20 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code  
21 section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a  
22 civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable  
23 Wage Order also obligates employers to pay each employee minimum wages for all hours worked.  
24 (Cal. Code of Regs., tit. 8, § 11050.) Labor Code section 1198 makes unlawful the employment of an  
25 employee under conditions that the IWC Wage Orders prohibit.

26 29. These minimum wage standards apply to each hour that employees work. Therefore, an  
27 employer's failure to pay for any particular time worked by an employee is unlawful, even if averaging  
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1 an employee's total pay over all hours worked, paid or not, results in an average hourly wage above  
2 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

3 30. Here, Defendants failed to fully conform their pay practices to the requirements of the  
4 law during the relevant statutory periods. The Class Members and the Aggrieved Employees were not  
5 compensated for all hours worked including, but not limited to, all hours they were subject to the control  
6 of Defendants and/or suffered or permitted to work under the California Labor Code and the Applicable  
7 Wage Order. Among other violations, the Class Members and the Aggrieved Employees were subject  
8 to the control of Defendants while off-the-clock and did not receive minimum wage for each hour  
9 worked.

10 31. Additionally, the Class Members and the Aggrieved Employees were not paid all wages  
11 for all hours worked due to Defendants' uniform payroll policies and practices that unfairly rounded  
12 employees' wages to the detriment of the Members and the Aggrieved Employees. This rounding  
13 policy routinely failed to capture the entirety of the hours the Class Members and the Aggrieved  
14 Employees worked and was structured in a way that in favored underpayment. (See *See's Candy Shops,*  
15 *Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907.) As a result, the Class Members and the  
16 Aggrieved Employees suffered periodic shortages in the hours for which they were compensated. This  
17 uncompensated time violated California's requirement that employees be compensated for all hours  
18 worked. As a result of this practice, the Class Members and the Aggrieved Employees were not  
19 compensated their minimum wages for all hours worked.

20 32. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an  
21 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees  
22 the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages  
23 due and interest thereon.

24 33. When employees, such as the Class Members, are not paid for all hours worked under  
25 Labor Code section 1194, they are entitled to recover minimum wages for the time which they received  
26 no compensation. (See *Sillah v. Command International Security Services* (N.D. Cal. 2015) 154  
27 F.Supp.3d 891 [employees suing for failure to pay overtime could recover liquidated damages under  
28 Labor Code section 1194.2 if they also showed they were paid less than minimum wage].)

1           34. Labor Code section 1197.1 authorizes employees who are paid less than the minimum  
2 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other  
3 damages, as follows:

4                   (1) “For any initial violation that is intentionally committed, one  
5 hundred dollars (\$100) for each underpaid employee for each pay period  
6 for which the employee is underpaid.”

7                   (2) “For each subsequent violation for the same specific offense, two  
8 hundred fifty dollars (\$250) for each underpaid employee for each pay  
9 period for which the employee is underpaid regardless of whether the  
10 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.

11                   (a).)

12           35. As set forth above, Defendants failed to fully compensate the Class Members and the  
13 Aggrieved Employees for all minimum wages. Accordingly, the Class Members are entitled to recover  
14 liquidated damages for violations of Labor Code section 1197.1.

15           36. Based upon these same factual allegations, the Class Members are likewise entitled to  
16 penalties under Labor Code sections 1199.

17           **B. OVERTIME VIOLATIONS**

18           37. Labor Code section 510 requires employers to compensate employees who work more  
19 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on  
20 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.  
21 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate  
22 employees at no less than twice the regular rate of pay when an employee works more than twelve  
23 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,  
24 subd. (a).) These rules are also reflected in the Applicable Wage Order.

25           38. In accordance with Labor Code section 1194 and the Applicable Wage Order, the Class  
26 Members and the Aggrieved Employees could not then agree and cannot now agree to work for a lesser  
27 wage than the amount provided by Labor Code sections 510 or the Applicable Wage Order.  
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1           39.     Here, Defendants violated their duty to accurately and completely compensate the Class  
2 Members and the Aggrieved Employees for all overtime worked. The Class Members periodically  
3 worked hours that entitled them to overtime compensation under the law but were not fully  
4 compensated for those hours.

5           40.     Defendants also had a policy and practice of denying the Class Members and the  
6 Aggrieved Employees meal breaks, but nevertheless deducting meal break time from the Class  
7 Members' pay. As a result, the Class Members' and the Aggrieved Employees' on-the-clock hours  
8 were unlawfully reduced below what was actually worked and, by extension, overtime hours were also  
9 reduced below what was actually worked. The Class Members and the Aggrieved Employees were thus  
10 periodically shorted the full amount of overtime pay lawfully owed.

11           41.     These actions were and are in clear violation of California's overtime laws as set forth  
12 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of Regs., tit. 8, §  
13 11050.) As a result of Defendants' faulty policies and practices, the Class Members and the Aggrieved  
14 Employees were not compensated for all hours worked or paid accurate overtime compensation.

15           **C.     UNPAID ACCRUED VACATION TIME**

16           42.     California Labor Code section 227.3 states that:

17                   "[W]henever a contract of employment or employer policy provides for paid  
18 vacations, and an employee is terminated without having taken off his vested  
19 vacation time, all vested vacation shall be paid to him as wages at his final rate  
20 in accordance with such contract of employment or employer policy respecting  
21 eligibility or time served; provided, however, that an employment contract or  
22 employer policy shall not provide for forfeiture of vested vacation time upon  
23 termination."

24           43.     Thus, when an employer has a vacation policy, it must pay out all accrued but unused  
25 vacation time upon termination. An employer may not adopt policies that require forfeiture of vested  
26 vacation time without compensation. (*Rhea v. General Atomics* (2014) 227 Cal.App.4th 1560, 1571  
27 ["California law prohibits an employer from requiring the forfeiture of vacation time"].)  
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1           44.     Here, Defendants had a vacation policy, and the Class Members and the Aggrieved  
2 Employees had completed all prerequisites and/or necessary limitations of service required by  
3 Defendants' vacation policy to accumulate vested vacation pay. Despite that fact, many of the Class  
4 Members and the Aggrieved Employees were denied all accrued but unused vacation time at  
5 termination in violation of California law.

6           45.     By failing to pay accrued vacation time at termination of employment, Defendants have  
7 violated California Labor Code provisions including, but not limited to, sections 201, 202, and 227.3.

8           **D.     REST BREAK VIOLATIONS**

9           46.     Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants were  
10 and are required to provide the Class Members and the Aggrieved Employees with compensated, duty-  
11 free rest periods of not less than ten minutes for every major fraction of four hours worked. Under the  
12 Applicable Wage Order, an employer must authorize and permit all employees to take ten minute duty  
13 free rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, § 11050.)

14          47.     Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an  
15 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,  
16 or applicable regulation, standard, or order of the Industrial Welfare Commission . . . .” (Lab. Code, §  
17 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one  
18 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery  
19 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must  
20 factor in all nondiscretionary payments for work performed by the employee, including non-  
21 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base  
22 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage  
23 Orders set when and for how long the rest period must take place and the Labor Code establishes that  
24 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay  
25 their employees when employers fail to provide rest periods.

26          48.     The California Supreme Court has held that, during required rest periods, “employers  
27 must relieve their employees of all duties and relinquish any control over how employees spend their  
28 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing

1 control over employees during rest periods requires that employees be “free to leave the employer’s  
2 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court  
3 explained in the context of rest breaks that employer liability attaches from adopting an unlawful  
4 policy:

5 “An employer is required to authorize and permit the amount of rest break time  
6 called for under the wage order for its industry. If it does not—if, for example,  
7 it adopts a uniform policy authorizing and permitting only one rest break for  
8 employees working a seven-hour shift when two are required—it has violated  
9 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53  
10 Cal.4th 1004, 1033.)

11 49. Here, Defendants periodically did not permit the Class Members and the Aggrieved  
12 Employees to take compliant duty-free rest breaks, free from Defendants’ control as required by Labor  
13 Code section 226.7, the Applicable Wage Order, and applicable precedent. (See *Augustus v. ABM*  
14 *Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must  
15 relieve employees of all duties and relinquish control over how employees spend their time.”].) At all  
16 relevant times, the Class Members and the Aggrieved Employees were periodically not provided with  
17 legally-compliant and timely rest periods of at least ten minutes for each four hour work period, or  
18 major fraction thereof due to Defendants’ unlawful rest period policies/practices. The Class Members  
19 and the Aggrieved Employees were often expected and required to continue working through rest  
20 periods to meet the expectations Defendants and finish the workday. In some cases when the Class  
21 Members and the Aggrieved Employees worked more than ten hours in a shift, Defendants failed to  
22 authorize and/or permit a third mandated rest period. As a result, the Class Members and the Aggrieved  
23 Employees were periodically unable to take compliant rest periods.

24 50. In such cases where Defendants did not offer the Class Members and the Aggrieved  
25 Employees the opportunity to receive a compliant off-duty rest period, “the court may not conclude  
26 employees voluntarily chose to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015)  
27 241 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide legally compliant meal or rest  
28 breaks, the court may not conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest.*

1 *Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break  
2 that was required by law but never authorized; if a break is not authorized, an employee has no  
3 opportunity to decline to take it.”].)

4 51. In addition to failing to authorize and permit compliant rest periods, the Class Members  
5 and the Aggrieved Employees were not compensated with one hour’s worth of pay at their regular rate  
6 of compensation when they were not provided with a compliant rest period in accordance with Labor  
7 Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the  
8 Applicable Wage Order.

9 52. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-  
10 exempt employees, rest period premiums and penalties.

11 **E. MEAL BREAK VIOLATIONS**

12 53. Labor Code section 512 and the Applicable Wage Order require employers to provide  
13 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of  
14 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of  
15 more than five hours per day without providing the employee with a meal period of not less than 30  
16 minutes . . . .”]; Cal. Code of Regs., tit. 8, § 11050 [“No employer shall employ any person for a work  
17 period of more than five (5) hours without a meal period of not less than 30 minutes . . . .”].)  
18 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-  
19 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not  
20 employ an employee for a work period of more than 10 hours per day without providing the employee  
21 with a second meal period of not less than 30 minutes . . . .”].)

22 54. “An on-duty meal period is permitted only when the nature of the work prevents an  
23 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal  
24 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must  
25 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California  
26 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts  
27 have “found that the nature of the work exception applies: (1) where the work has some particular  
28 external force that requires the employee to be on duty at all times, and (2) where the employee is the

1 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*  
2 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation  
3 to determine whether the nature of the work prevents an employee from being relieved before requiring  
4 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at  
5 p. 946.)

6 55. Here, the Class Members and the Aggrieved Employees were never asked to sign any  
7 enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of their  
8 work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The*  
9 *Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not  
10 provide compliant off-duty meal periods within the first five hours of work for the Class Members and  
11 the Aggrieved Employees.

12 56. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*  
13 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s  
14 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal  
15 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend  
16 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under  
17 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit  
18 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable  
19 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*  
20 *Court*, *supra*, 53 Cal.4th at p. 1033.)

21 57. During the applicable statutory periods here, the Class Members and the Aggrieved  
22 Employees were periodically denied legally-compliant and timely off-duty meal periods of at least  
23 thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of Defendants’  
24 uniform meal period policies and practices, the Class Members and the Aggrieved Employees were  
25 often not permitted to take compliant first meal periods before the end of the fifth hour of work. The  
26 Class Members and the Aggrieved Employees were also periodically not permitted to take second meal  
27 periods for shifts in excess of ten hours. Defendants thus violated Labor Code section 512 and the  
28

1 Applicable Wage Order by failing to advise, authorize, or permit the Class Members and the Aggrieved  
2 Employees to receive thirty-minute, off-duty meal periods within the first five hours of their shifts.

3 58. Labor Code section 226.7 provides that “[a]n employer shall not require an employee  
4 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or  
5 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,  
6 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Order further obligate  
7 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation  
8 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of  
9 Regs., tit. 8, § 11050 [“If an employer fails to provide an employee a meal period in accordance with  
10 the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the  
11 employee’s regular rate of compensation for each workday that the meal period is not provided.”].)  
12 The “regular rate” for these purposes must factor in all nondiscretionary payments for work performed  
13 by the employee, including non-discretionary bonuses, commissions, and other forms of wage  
14 payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021)  
15 11 Cal.5th 858, 878.)

16 59. Accordingly, for each day that the Class Members and the Aggrieved Employees did  
17 not receive compliant meal periods, they were and are entitled to receive meal period premiums  
18 pursuant to Labor Code section 226.7 and the Applicable Wage Order. Defendants, however, failed to  
19 pay the Class Members and the Aggrieved Employees applicable meal period premiums for many  
20 workdays that the employees did not receive a compliant meal period. Thus, Defendants have violated  
21 Labor Code section 226.7 and the Applicable Wage Order.

22 60. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-  
23 exempt employees, meal period premiums and penalties.

#### 24 **F. UNTIMELY WAGES DURING EMPLOYMENT**

25 61. Labor Code section 204 expressly requires employers who pay employees on a weekly,  
26 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the  
27 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate  
28 Labor Code section 204 subject to a penalty of:

1 “(1) For any initial violation, one hundred dollars (\$100) for each  
2 failure to pay each employee.

3 “(2) For each subsequent violation, or any willful or intentional  
4 violation, two hundred dollars (\$200) for each failure to pay each  
5 employee, plus 25 percent of the amount unlawfully withheld.” (Lab.  
6 Code, § 210, subd. (a).)

7 62. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and  
8 entirely independent and apart from, any other penalty provided in this article . . . .” (Lab. Code, § 210,  
9 subd. (a).)

10 63. Due to Defendants’ failure to pay the Class Members and the Aggrieved Employees the  
11 wages described above, along with rest and meal break premiums, Defendants failed to timely pay the  
12 Class Members and the Aggrieved Employees within seven calendar days following the close of payroll  
13 in accordance with Labor Code section 204 on a regular and consistent basis. (See *Parson v. Golden*  
14 *State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. \*3–5, 2016  
15 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period premiums can support claims under  
16 Labor Code sections 203 and 204].)

17 **G. UNTIMELY WAGES AT SEPARATION**

18 64. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages  
19 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”  
20 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result  
21 of Defendants’ failure to pay the Class Members and the Aggrieved Employees for the wages described  
22 above, along with rest and meal break premiums, Defendants violated and continue to violate Labor  
23 Code section 203.

24 65. Due to Defendants’ faulty pay policies, those Class Members and the Aggrieved  
25 Employees whose employment with Defendants concluded were not compensated for each and every  
26 hour worked at the appropriate rate. Defendants have failed to pay formerly-employed Class Members  
27 and the Aggrieved Employees whose sums were certain at the time of termination within at least  
28 seventy-two hours of their resignation and have failed to pay those sums for thirty days thereafter.

1           **H.       FAILURE TO REIMBURSE BUSINESS EXPENSES**

2           66.     At all relevant times herein, Defendants were subject to Labor Code section 2802, which  
3 states that “an employer shall indemnify his or her employees for all necessary expenditures or losses  
4 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her  
5 obedience to the directions of the employer.” The purpose of this section is to “prevent employers from  
6 passing along their operating expenses onto their employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.*  
7 (2007) 42 Cal.4th 554, 562.)

8           67.     At all relevant times herein, Defendants were subject to Labor Code section 2804, which  
9 states that “any contract or agreement, express or implied, made by any employee to waive the benefits  
10 of this article or any part thereof, is null and void, and this article shall not deprive any employee or his  
11 personal representative of any right or remedy to which he is entitled under the laws of this State.”

12          68.     Thus, the Class Members and the Aggrieved Employees were and are entitled to  
13 reimbursement for the expenses they incurred during the course of their duties. The duty to reimburse  
14 even extends to the use of equipment the employee may already own and would be required to pay for  
15 anyway. (*Cochran v. Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold  
16 question in this case is this: Does an employer always have to reimburse an employee for the reasonable  
17 expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to  
18 the situation in which the employee incurred an extra expense that he or she would not have otherwise  
19 incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer  
20 would receive a windfall because it would be passing its operating expenses on to the employee.”].)

21          69.     Here, Defendants failed to fully reimburse the Class Members and the Aggrieved  
22 Employees for necessary expenditures incurred as a direct consequence and requirement of performing  
23 their job duties, including the costs associated with their personal cell phone they required to perform  
24 their work. Consequently, Defendants failed to comply with Labor Code section 2802.

25           **I.       WAGE STATEMENT VIOLATIONS**

26          70.     Defendants also failed to provide accurate itemized wage statements in accordance with  
27 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision  
28

1 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage  
2 statement in writing showing:

- 3 (1) The gross wages earned;
- 4 (2) The total hours worked by the employee;
- 5 (3) The number of piece-rate units earned and any applicable piece  
6 rate if the employee is paid on a piece rate basis;
- 7 (4) All deductions, provided that all deductions made on written  
8 orders of the employee may be aggregated and shown as one item;
- 9 (5) The net wages earned;
- 10 (6) The inclusive dates of the period for which the employee is paid;
- 11 (7) The name of the employee and only the last four digits of his or  
12 her social security number or an employee identification number other  
13 than a social security number;
- 14 (8) The name and address of the legal entity that is the employer; and
- 15 (9) All applicable hourly rates in effect during the pay period and the  
16 corresponding number of hours worked at each hourly rate by the  
17 employee.

18 71. Due to Defendants' failure to pay the Class Members and the Aggrieved Employees  
19 properly as described above, the wage statements issued do not indicate the correct amount of gross  
20 wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in effect  
21 during the pay period and the corresponding number of hours worked at each hourly rate. Thus,  
22 Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

23 72. Defendants also failed to include the accrued sick hours on the wage statements  
24 provided to the Class Members and the Aggrieved Employees as required by Labor Code section 246,  
25 subdivision (i).

26 73. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and  
27 intentionally failed to provide the Class Members and the Aggrieved Employees with accurate itemized  
28 wage statements in violation of Labor Code section 226, subdivision (e). Defendants knew that they

1 were not providing the Class Members and the Aggrieved Employees with wage statements required  
2 by California law but nevertheless failed to correct their unlawful practices and policies. (See *Garnett*  
3 *v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and  
4 intentionally violated Labor Code section 226 because the “[d]efendant knew that it was not providing  
5 total hours worked to plaintiff or other employees paid on commission” even though it believed that  
6 employees paid solely on commission or commission and salary “are exempt and therefore we do not  
7 record hours on a wage statement.”].)

8 **J. RECORDKEEPING VIOLATIONS**

9 74. Labor Code section 226, subdivision (a), requires employers to keep an accurate record  
10 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent  
11 part, as follows:

12 “Any employer who violates subdivision (a) of Section 226 shall be subject to a  
13 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per  
14 violation in an initial citation and one thousand dollars (\$1,000) per employee  
15 for each violation in a subsequent citation, for which the employer fails to  
16 provide the employee a wage deduction statement or fails to keep the records  
17 required in subdivision (a) of Section 226. The civil penalties provided for in  
18 this section are in addition to any other penalty provided by law.” (Lab. Code, §  
19 226.3, emphasis added.)

20 75. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including  
21 Defendants, to:

22 “Keep, at a central location in the state or at the plants or establishments at which  
23 employees are employed, payroll records showing the hours worked daily by  
24 and the wages paid to, and the number of piece-rate units earned by and any  
25 applicable piece rate paid to, employees employed at the respective plants or  
26 establishments. These records shall be kept in accordance with rules established  
27 for this purpose by the commission, but in any case shall be kept on file for not  
28 less than three years. An employer shall not prohibit an employee from

maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

76. As explained in detail above, Defendants failed to provide the Class Members and the Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part, because they failed to accurately track hours worked by the Class Members and the Aggrieved Employees. Defendants have thus failed to keep accurate records of the “total hours worked by the employee[s]” in violation of Labor Code section 226, subdivision (a), and are therefore subject to the penalties provided by Labor Code section 226.3. These penalties are “in addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

77. The failure to accurately track hours worked also resulted in a failure of Defendants to keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees, including Plaintiff and the other Class Members, in violation of Labor Code section 1174, subdivision (d).

#### **K. SICK PAY VIOLATIONS**

78. Labor Code section 246 provides that every employee who works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. (Lab. Code, § 246, subd. (a).) These paid sick days generally accrue at a rate of not less than one hour per every 30 hours worked, and must be paid out using the employees’ regular rate of pay. (Lab. Code, § 246, subds. (b), (l).) The “regular rate of pay” for these purposes must factor in all nondiscretionary payments for work performed by the employee, including non-discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base hourly rate. (Lab. Code, § 246, subds. (l)(1), (2); see, e.g., *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Labor Code section 246 further mandates that an employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken. (Lab. Code, § 246, subds. (n).)

79. Pursuant to California Labor Code section 233 an employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner

1 discriminate against an employee for using, or attempting to exercise the right to use sick leave, or for  
2 any other reason specified in subdivision (a) of Section 246.5.

3 80. Here, Defendants employed the Class Members and the Aggrieved Employees for 30  
4 or more days within a year from the commencement of employment. Defendants nevertheless failed to  
5 fully and/or timely pay the Class Members and the Aggrieved Employees for all sick pay that was  
6 lawfully earned and accrued. Defendants also discriminated against Plaintiff for using, or attempting  
7 to exercise the right to use sick leave in violation of California Labor Code 233. On information and  
8 belief, Defendants denied, discharged, threatened to discharge, demoted, suspended, or in another  
9 manner discriminated against Class Members and the Aggrieved Employees, for using, or attempting  
10 to exercise the right to use, sick leave in violation of California Labor Code section 233.

11 81. By failing to fully and/or timely pay accrued sick time, Defendants have underpaid the  
12 Class Members and the Aggrieved Employees and have violated California Labor Code provisions  
13 including, but not limited to, section 246.

14 82. By violating California Labor Code section 233, Plaintiff may also recover penalties  
15 pursuant to Labor Code section 233 and/or California's Labor Code Private Attorneys General Act of  
16 2004. (Lab. Code, §§ 2698–2699.8.)

17 **L. FAILURE TO PROVIDE SAFE WORKING CONDITIONS**

18 83. The California Labor Code requires employers to take steps to protect workers from any  
19 safety hazard. Applicable provisions with which Defendants did not comply, as described in further  
20 detail infra, include:

21 A. Labor Code section 6400 which requires that every employer shall furnish  
22 employment and a place of employment that is safe and healthful for the employees therein.  
23 (Lab. Code, § 6400, sub. (a).)

24 B. Labor Code section 6401, which requires every employer to provide safety  
25 devices and safeguards and to adopt “practices, means, methods, operations, and processes  
26 which are reasonably adequate to render such employment and place of employment safe and  
27 healthful.” (Lab. Code, § 6401.)  
28

1 C. Labor Code section 6401.7, which requires every employer to provide safety  
2 devices and safeguards and to adopt “practices, means, methods, operations, and processes  
3 which are reasonably adequate to render such employment and place of employment safe and  
4 healthful.” Section 6401.7 further mandates every employer “shall establish, implement, and  
5 maintain an effective injury prevention program” in writing and to “correct unsafe and  
6 unhealthy conditions and work practices in a timely manner based on the severity of the  
7 hazard.” (Lab. Code, § 6401.7, subds. (a), (b).)

8 D. Labor Code section 6402, which requires that no employer shall require, or  
9 permit any employee to go or be in any employment or place of employment which is not safe  
10 and healthful. (Lab. Code, § 6402.)

11 E. Labor Code section 6403, which prohibits employers from failing or neglecting  
12 to do any of the following: 1) To provide and use safety devices and safeguards reasonably  
13 adequate to render the employment and place of employment safe; 2) To adopt and use methods  
14 and processes reasonably adequate to render the employment and place of employment safe; or  
15 3) To do every other thing reasonably necessary to protect the life, safety, and health of  
16 employees. (Lab. Code, § 6403.)

17 F. Labor Code section 6404, which requires that no “employer shall occupy or  
18 maintain any place of employment that is not safe and healthful.” (Lab. Code, § 6404.)

19 G. Labor Code section 6407, which requires that every employer must comply with  
20 the occupational safety and health standards, within section 25910 of the Health and Safety  
21 Code, and with all rules, regulations, and orders pursuant to this division, which are applicable  
22 to his own actions and conduct. (Lab. Code, § 6407.)

23 H. Labor Code section 142.3 further authorizes the California Occupational Safety  
24 and Health Standards Board (“OSHSB”) to adopt occupational safety and health standards and  
25 orders. (Lab. Code, § 142.3.)

26 I. General Safety Orders propagated by Cal/OSHA establish minimum standards  
27 and apply to all employments and places of employment as defined by California Labor Code  
28 section 6303. (Cal. Code Regs., tit. 8, § 3202.)

1           84. Defendants' policies and practices described in further detail *infra*, violated the  
2 following Safety and Health Standards set forth by Cal/OSHA in the California Code of Regulations,  
3 title 8:

4           A. Section 3203, which requires employers to "establish, implement, and maintain  
5 an effective Injury and Illness Prevention Program (Program). The Program shall be in writing  
6 and, shall at a minimum: (1) Identify the person or persons with authority and responsibility for  
7 implementing the Program. (2) Include a system for ensuring that employees comply with safe  
8 and healthy work practices." (Cal. Code Regs., tit. 8, § 3203.)

9           B. Section 3345, which requires hotel and other lodging establishment employers  
10 to establish, implement, and maintain an effective, written, musculoskeletal injury prevention  
11 program ("MIPP") for employees employed as housekeepers. (Cal. Code Regs., tit. 8, § 3345,  
12 sub. (a).) Cal. Code Reg. section § 3345(b) defines "Housekeeper" is as an employee who  
13 performs housekeeping tasks. (*Id.* at sub. (b).) Section 3345(b) defines "housekeeping tasks" to  
14 mean tasks related to cleaning and maintaining sleeping room accommodations including  
15 bedrooms, bathrooms, kitchens, living rooms, and balconies." The MIPP must be in writing and  
16 may be incorporated into the written IIPP, or may be maintained as a separate program, and  
17 must be readily accessible during each work shift to employees when they are in the lodging  
18 establishment where they work. (Cal. Code Regs., tit. 8, § 3345, subd. (c).) C.C.R. Section  
19 3345(c) further provides that the MIPP is required to include: 1) Names or job titles of the  
20 persons with authority and responsibility for implementing the MIPP at each worksite; 2) A  
21 system for ensuring that supervisors and housekeepers comply with the MIPP, follow the  
22 employer's safe workplace housecleaning practices, and use the housekeeping tools or  
23 equipment deemed appropriate for each housekeeping task; 3) A system for communicating  
24 with housekeepers in a form readily understandable by all housekeepers on matters relating to  
25 occupational safety and health, as required by Section 3203, including provisions designed to  
26 encourage housekeepers to inform the employer of hazards at the worksite, and injuries or  
27 symptoms that may be related to such hazards without fear of reprisal. (Cal. Code Regs., tit. 8,  
28 § 3345, subd. (c).)

1 C. Section 3380 requires employers ensure that these protective materials and  
2 equipment provide adequate protection against the hazards for which they are designed and are  
3 maintained in a safe and sanitary condition. (Cal. Code Regs., tit. 8, § 3380.)

4 D. Section 3382 was adopted to protect employees “eyes, requiring employers to  
5 “provide and ensure that employees use protections suitable for the exposure” when “there is a  
6 risk of receiving eye injuries such as punctures, abrasions, contusions, or burns as a result of  
7 contact with flying particles, hazardous substances, projections or injurious light rays which are  
8 inherent in the work or environment . . . .” (Cal. Code Regs., tit. 8, § 3382, subd. (a).)

9 E. Section 3384 requires employers to “select, provide and require employees to  
10 use appropriate hand protection when employee’s hands are exposed to hazards such as those  
11 from skin absorption of harmful substances, cuts or lacerations, abrasions, punctures, chemical  
12 burns, thermal burns, radioactive materials, and harmful temperature extremes.” (Cal. Code  
13 Regs., tit. 8, § 3384, subd. (a).)

14 F. Section 3273 mandates permanent floors and platforms “be free of dangerous  
15 projections or obstructions, maintained in good repair, and reasonably free of oil, grease, or  
16 water. Section 3273 further requires implementation of safeguards to protect employees from  
17 falling objects, including, but not limited to, fencing, barricades or other equivalent means or  
18 methods, to prevent entry into the area to which objects could fall. (Cal. Code Regs., tit. 8, §  
19 3273 subd. (a),(e).)

20 85. Here, Plaintiff, Class Members and the Aggrieved Employees were required by  
21 Defendants to manipulate pool chemicals that can burn their skin. Plaintiff and the Class Members are  
22 not, however, provided with equipment sufficient to protect their lungs, hands, or eyes, in violation of  
23 OSHSB’s health and safety regulations. Plaintiff, Class Members and the Aggrieved Employees are  
24 not, for example, provided with safety gloves or safety goggles. Not only did Defendants fail to provide  
25 proper protective equipment to Plaintiff, Class Members and the Aggrieved Employees, Defendants do  
26 not require Plaintiff and Class Members to use appropriate personal protective equipment when  
27 working with pool chemicals. Similarly, Defendants do not provide training to Plaintiff, Class Members  
28 and the Aggrieved Employees regarding use of pool chemicals during maintenance and repair or advise

1 Plaintiff, Class Members and the Aggrieved Employees regarding pool chemical storage and handling  
2 thereby causing unsafe treatment and unsafe cleaning practices. Defendants also allow employees who  
3 had never been trained in safe chemical storage and handling practices to use pool chemicals. These  
4 practices not only subjected Plaintiff, Class Members and the Aggrieved Employees to unsafe working  
5 conditions but also the public at large. Additionally, during Plaintiff's employment, Plaintiff discovered  
6 that the awning style roof located over the main entrance of Defendants lodging establishment and the  
7 staircase leading to guest rooms, had not been properly maintained and both were in a state of disrepair.  
8 Plaintiff repeatedly complained to Defendants that the roof and stairs imposed a serious health and  
9 safety risk as both were structurally compromised and could collapse on Plaintiff, Class Members and  
10 the Aggrieved Employees and guests. On information and belief, a third-party has also taken legal  
11 action against Defendants regarding the unsafe condition of the stairs. Despite multiple complaints  
12 regarding the safety risks imposed by the stairs and awning style roof, instead of preventing entry into  
13 the area where objects could fall and/or cause serious injury to Plaintiff, Class Members, Aggrieved  
14 Employees and the public, Defendants condoned use of the stairs and entrance under the awning style  
15 roof located over the main entrance, which based upon information and belief was infested with  
16 termites. Plaintiff, Class Members and the Aggrieved Employees are also required to work in an  
17 unhealthy work environment as there is toxic mold caused by water buildup in the walls of Defendants  
18 lodging establishments. Plaintiff, again, brought this health and safety concern to Defendants attention.  
19 In response, Defendants again refused to authorize the recommended and necessary repairs to remove  
20 the mold and health risks imposed. Instead, Defendants opted to cover up the mold with new drywall.  
21 Defendants' failure to respond adequately to the health risk imposed by toxic mold caused Plaintiff to  
22 suffer health symptoms, including, but not limited to, respiratory issues, dizziness and headaches from  
23 being exposed to toxic mold. Again, this not only subjected Plaintiff, Class Members and the Aggrieved  
24 Employees to unsafe conditions but also the public at large. At all relevant times, Defendants failed to  
25 implement, establish and maintain a program that will prevent Plaintiff, Class Members and the  
26 Aggrieved Employees from injuries as well as other health and safety hazards in the workplace.  
27 Specifically, Defendants failed to establish, implement, and/or maintain an effective injury prevention  
28 program that conveyed Defendants' system for identifying and evaluating workplace hazards, such as

1 the safety risks imposed by the stairs and awning style roof, toxic mold and improper handling of pool  
2 chemicals or that conveyed Defendants' methods and procedures for correcting the unsafe or unhealthy  
3 conditions and work practices in a timely manner. Further, Plaintiff alleges that any program  
4 Defendants may have does not comply with the subparts of §) 6401.7(a)(1)-(6). Moreover, Plaintiff  
5 alleges that he was not trained in a compliant injury prevention program, as required by Labor Code  
6 section 6401.7(c) and that Defendants have failed to keep track of appropriate records of steps taken to  
7 implement and maintain the program as required by section 6401.7(d). Additionally, Defendants failed  
8 to implement a written, musculoskeletal injury prevention program (MIPP) that addresses hazards  
9 specific to housekeeping as required by C.C.R. section 3345. (Cal. Code Regs., tit. 8, § 3345.)  
10 Specifically, Defendants failed to establish, implement, and/or maintain an effective MIPP that  
11 conveyed Defendants' system for ensuring that supervisors and housekeepers comply with the MIPP,  
12 follow safe workplace housecleaning practices, and use the housekeeping tools or equipment deemed  
13 appropriate for each housekeeping task or that conveyed a system. Further, Defendants failed to convey  
14 a system for communicating with housekeepers on matters relating to safety and health and that  
15 encourages housekeepers to inform Defendants of hazards at the worksite, and injuries or symptoms  
16 that may be related to such hazards without fear of reprisal as required by section 3345(c). (Cal. Code  
17 Regs., tit. 8, § 3345.)

18 86. Defendants' failure to furnish employment and a place of employment that is safe and  
19 healthful by, inter alia, (1) failing to maintain and repair the stairs and awning style roof; (2) allowing  
20 use of the stairs and entrance under the awning style roof located over the main entrance before  
21 adequate repairs are completed; (3) failing to provide appropriate personal protective equipment to  
22 employees when working with pool chemicals; (4) allowing employees who had never been trained in  
23 safe chemical storage and handling practices to use pool chemicals; (5) failing to provide training  
24 regarding use of pool chemicals during maintenance and repair; (6) failing to provide training regarding  
25 pool chemical storage; (7) failing to make repairs that adequately address toxic mold at the worksite;  
26 (8) allowing access to work areas contaminated with toxic mold; and (8) failing to respond adequately  
27 to complaints violates Labor Code Sections 6400, 6401, 6402, 6403, 6404, 6406, and 6407, and  
28 sections 3202, 3203, 3273, 3345, 3380, 3382, and 3384 of Title 8 of the California Code of Regulations.

1           87. By failing to provide adequate protections, adequate safety equipment, and adequate  
2 protective gear, Defendants have violated Labor Code sections 142.3, 6401, 6401.7, 6403, and sections  
3 3202, 3203, 3273, 3345, 3380, 3382, and 3384 of Title 8 of the California Code of Regulations.

4           88. By failing to establish, implement, and maintain an effective injury prevention program  
5 and musculoskeletal injury prevention program Defendants violated Labor Code section Labor Code  
6 section 6401.7 and section 3345 of Title 8 of the California Code of Regulations.

7           89. Labor Code sections 6427 and 6428 authorize the assessment of a civil penalty of up to  
8 \$25,000 for each violation of “any occupational safety or health standard, order, or special order . . . .”  
9 Repeated and willful violations are subject to a civil penalty of up to \$124,709, upwardly adjusted  
10 annually based on the Consumer Price Index for All Urban Consumers. (Lab. Code, § 6429, subd. (a).)  
11 Plaintiff may also recover penalties pursuant to California’s Labor Code Private Attorneys General Act  
12 of 2004. (Lab. Code, §§ 2698–2699.8.)

13 **V. CLASS ACTION ALLEGATIONS**

14           90. As mentioned above, Plaintiff brings this action on behalf of himself and the Class  
15 Members pursuant to section 382 of the Code of Civil Procedure.

16           91. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all  
17 members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiff  
18 at this time; however, it is estimated that the number of Class Members is greater than 100 individuals.  
19 The identity of such membership is readily ascertainable via inspection of Defendants’ employment  
20 records.

21           92. **Common Questions of Law and Fact Predominate/Well Defined Community of**  
22 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated  
23 non-exempt employees, which predominate over questions affecting only individual members  
24 including, without limitation to:

25           A. Whether Defendants’ pay policies/practices resulted in a failure to pay the Class  
26 Members for all hours worked, including all minimum wages;

27           B. Whether Defendants’ pay policies/practices resulted in a failure to pay the Class  
28 Members for all required overtime wages at the Class Members’ regular rate of pay;

1 C. Whether Defendants' pay policies/practices resulted in a failure to pay out all  
2 accrued vacation time to the Class Members at termination of employment;

3 D. Whether Defendants' rest period policies and practices afforded legally  
4 compliant rest periods or compensation in lieu thereof;

5 E. Whether Defendants' meal period policies and practices afforded legally  
6 compliant meal periods or compensation in lieu thereof;

7 F. Whether Defendants maintained accurate employment records;

8 G. Whether Defendants timely paid all wages during employment;

9 H. Whether Defendants timely paid all wages earned and unpaid at separation;

10 I. Whether Defendants indemnified their employees for all necessary business  
11 expenditures;

12 J. Whether Defendants furnished legally-compliant wage statements to the Class  
13 Members pursuant to Labor Code section 226;

14 K. Whether Defendants fully paid all sick pay wages as required by Labor Code  
15 section 246; and

16 L. Whether Defendants' violations of the Labor Code and the Applicable Wage  
17 Order amounted to a violation of California's UCL.

18 93. **Predominance of Common Questions:** Common questions of law and fact  
19 predominate over questions that affect only individual Class Members. The common questions of law  
20 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices  
21 applicable to each individual class member, such as Defendants' uniform policy and practice of failing  
22 to pay for all hours worked, Defendants' uniform policies and practices which failed to provide  
23 compliant rest periods, Defendants' uniform policies and practices which failed to provide compliant  
24 meal periods, Defendants' failure to provide accurate itemized wage statements, Defendants' uniform  
25 policies and practices which failed to provide complete and accurate sick pay, and others. As such, the  
26 common questions predominate over individual questions concerning each individual class member's  
27 showing as to his or her eligibility for recovery or as to the amount of his or her damages.  
28

1           94.     **Typicality:** The claims of Plaintiff are typical of the claims of the Class Members  
2 because Plaintiff was employed by Defendants as a non-exempt employee in California during the  
3 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,  
4 Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime wages  
5 because of Defendants' unlawful timekeeping policies and practices, was deprived of rest periods and  
6 premium wages in lieu thereof, was deprived of meal periods and premium wages in lieu thereof, was  
7 subject to Defendants' uniform rest period policies and practices, was subject to Defendants' uniform  
8 meal period policies and practices, was not provided accurate itemized wage statements, was not paid  
9 all wages in full and on time, was not paid all sick pay wages as required by law, and was subject to  
10 other similar policies and practices to which the Class Members were subject.

11           95.     **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to  
12 represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's attorneys are  
13 ready, willing, and able to fully and adequately represent the Class Members and Plaintiff. Plaintiff's  
14 attorneys have prosecuted numerous wage-and-hour class actions in state and federal court in the past  
15 and are committed to vigorously prosecuting this action on behalf of the Class Members.

16           96.     **Superiority:** The California Labor Code is broadly remedial in nature and serves an  
17 important public interest in establishing minimum working conditions and standards in California.  
18 These laws and labor standards protect the average working employee from exploitation by employers  
19 who have the responsibility to follow the laws and who may seek to take advantage of superior  
20 economic and bargaining power in setting onerous terms and conditions of employment. The nature of  
21 this action and the format of laws available to Plaintiff and the Class Members make the class action  
22 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each  
23 employee were required to file an individual lawsuit, Defendants would necessarily gain an  
24 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of  
25 each individual plaintiff with their vastly superior financial and legal resources.

26           97.     Moreover, requiring each Class Member to pursue an individual remedy would also  
27 discourage the assertion of lawful claims by employees who would be disinclined to file an action  
28 against their former or current employer for real and justifiable fear of retaliation and permanent

1 damages to their careers at subsequent employment. Further, the prosecution of separate actions by the  
2 individual Class Members, even if possible, would create a substantial risk of inconsistent or varying  
3 verdicts or adjudications with respect to the individual Class Members against Defendants herein, and  
4 which would establish potentially incompatible standards of conduct for Defendants or legal  
5 determinations with respect to individual Class Members which would, as a practical matter, be  
6 dispositive of the interest of the other Class Members not parties to adjudications or which would  
7 substantially impair or impede the ability of the Class Members to protect their interests.

8 98. Further, the claims of the individual Class Members are not sufficiently large to warrant  
9 vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As  
10 such, the Class Members identified above are maintainable as a class under section 382 of the Code of  
11 Civil Procedure.

## 12 **VI. EXHAUSTION OF REMEDIES**

13 99. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior  
14 to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online with  
15 the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants  
16 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by PAGA.  
17 (Lab. Code, §§ 2698–2699.6.)

18 100. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by  
19 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by  
20 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the  
21 postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil  
22 action pursuant to Labor Code section 2699.

## 23 **VII. CAUSES OF ACTION**

### 24 **First Cause of Action**

25 *Failure to Pay All Minimum Wages*

26 *(Against All Defendants)*

27 101. Plaintiff realleges and incorporates by reference all previous paragraphs.  
28

1           102. Section 4 of the Applicable Wage Order and Labor Code section 1197 establish the right  
2 of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab. Code,  
3 § 1197; Cal. Code of Regs., tit. 8, § 11050.) Labor Code sections 1194, subdivision (a), and 1194.2,  
4 subdivision (a), provide that an employee who has not been paid the legal minimum wage as required  
5 by Labor Code section 1197 may recover the unpaid balance, together with attorneys' fees and costs  
6 of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued  
7 thereon.

8           103. Here, Defendants failed to fully conform their pay practices to the requirements of the  
9 law during the relevant statutory periods. Plaintiff and the other Class Members were not compensated  
10 for all hours worked including, but not limited to, all hours they were subject to the control of  
11 Defendants and/or suffered or permitted to work under the Labor Code and the Applicable Wage Order.

12           104. Labor Code section 1198 makes unlawful the employment of an employee under  
13 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2,  
14 subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage  
15 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages  
16 in an amount equal to the wages due and interest thereon.

17           105. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,  
18 Plaintiff and the other Class Members have sustained economic damages, including but not limited to  
19 unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover  
20 economic and statutory damages and penalties and other appropriate relief because of Defendants'  
21 violations of the Labor Code and Applicable Wage Order.

22           106. Defendants' practices and policies regarding illegal employee compensation are  
23 unlawful and create an entitlement to recovery by Plaintiff and the other Class Members in a civil  
24 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,  
25 statutory penalties, attorneys' fees, and costs of suit according to Labor Code sections 204, 218.5, 1194,  
26 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

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1 policy that provides for forfeiture of vested vacation pay if not used within a designated time, such as  
2 before termination, is impermissible. (*Boothby v. Atlas Mechanical, Inc.* (1992) 6 Cal.App.4th 1595,  
3 1602.)

4 112. As explained above, Plaintiff and other Class Members accrued vested vacation pay  
5 under a “contract of employment,” for purposes of Labor Code section 227.3. When they ended their  
6 employment with Defendants, Defendants failed to pay their vested vacation pay in violation of Labor  
7 Code sections 201, 202, and 227.3. Accordingly, pursuant to section 227.3 of the California Labor  
8 Code, Plaintiff and other Class Members are entitled to recover their accrued, vested, and unpaid  
9 vacation time.

10 113. Pursuant to sections 218.5 and 227.3 of the Labor Code, Plaintiff and the other Class  
11 Members are also entitled to recover interest, costs, and attorneys’ fees associated with this cause of  
12 action.

#### 13 **Fourth Cause of Action**

##### 14 *Failure to Provide Rest Periods and Pay Missed Rest Period Premiums* 15 *(Against All Defendants)*

16 114. Plaintiff realleges and incorporates by reference all previous paragraphs.

17 115. Section 12 of the Applicable Wage Order, and Labor Code section 226.7 establish the  
18 right of employees to be provided with a rest period of at least ten minutes for each four hour period  
19 worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, § 11050.)

20 116. Due to Defendants’ unlawful rest period policies and practices described in detail above,  
21 Defendants did not authorize and permit Plaintiff and the other Class Members to take all rest periods  
22 to which they were legally entitled. Despite Defendants’ violations, Defendants have not paid an  
23 additional hour of pay to Plaintiff and the other Class Members at their respective regular rates of pay  
24 for each violation, in accordance with California Labor Code section 226.7.

25 117. The foregoing violations create an entitlement to recovery by Plaintiff and the other  
26 Class Members in a civil action for the unpaid amount of rest period premiums owing, including interest  
27 thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Order, and California  
28 Labor Code section 226.7.

1 **Fifth Cause of Action**

2 *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums*

3 *(Against All Defendants)*

4 118. Plaintiff realleges and incorporates by reference all previous paragraphs.

5 119. Plaintiff is informed and believes and thereon alleges, that Defendants failed in their  
6 affirmative obligation to provide their hourly non-exempt employees, including Plaintiff and the other  
7 Class Members, with all required meal periods in accordance with the mandates of the Labor Code and  
8 the Applicable Wage Order, for the reasons set forth herein above. Despite Defendants' violations,  
9 Defendants have not paid an additional hour of pay to Plaintiff and the other Class Members at their  
10 respective regular rates of pay for each violation, in accordance with California Labor Code section  
11 226.7.

12 120. As a result, Defendants are responsible for paying premium compensation for meal  
13 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the  
14 Applicable Wage Order and Labor Code sections 226.7 and 512, and Civil Code sections 3287,  
15 subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, § 11050.)

16 **Sixth Cause of Action**

17 *Failure to Maintain Accurate Employment Records*

18 *(Against All Defendants)*

19 121. Plaintiff realleges and incorporates by reference all previous paragraphs.

20 122. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall keep  
21 at a central location in the state or at the plants or establishments at which employees are employed,  
22 payroll records showing the hours worked daily by and wages paid to employees employed at the  
23 respective plants or establishments. These records must be kept in accordance with rules established  
24 for this purpose by the commission, but in any case shall be kept on file for not less than two years.

25 123. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to  
26 maintain accurate and complete records.

27 124. Defendant has intentionally and willfully failed to keep accurate and complete records  
28 showing the hours worked daily and wages paid to Plaintiff and the other Class Members. Thus,

1 Plaintiff and the other Class Members have been denied their legal right and protected interest in having  
2 available at a central location at the plant or establishment where they are employed, accurate and  
3 complete payroll records showing the hours worked daily by, and the wages paid to, employees at those  
4 respective locations pursuant to Labor Code 1174.

5 **Seventh Cause of Action**

6 *Failure to Pay Wages Timely during Employment*

7 *(Against All Defendants)*

8 125. Plaintiff realleges and incorporates by reference all previous paragraphs.

9 126. Labor Code section 200 provides that “wages” include all amounts for labor performed  
10 by employees of every description, whether the amount is fixed or ascertained by the standard of time,  
11 task, pieces, commission basis, or other method of calculation. Labor Code section 204 states that all  
12 wages earned by any person in any employment are payable twice during the calendar month and must  
13 be paid not more than seven days following the close of the period when the wages were earned. Labor  
14 Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a  
15 penalty of \$100 for any initial failure to timely pay each employee’s full wages and \$200 for each  
16 subsequent violation, plus 25% of the amount unlawfully withheld.

17 127. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards  
18 to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with intent to  
19 secure himself, his employer or other person, any discount upon such indebtedness, or with intent to  
20 annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.”

21 128. Defendants as a matter of established company policy and procedure in the State of  
22 California, scheduled, required, suffered, and/or permitted Plaintiff and the other Class Members, to  
23 work without full compensation, to work without legally-compliant off-duty meal periods, to work  
24 without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff and the other  
25 Class Members within seven days of the close of payroll, as required by law.

26 129. Defendants, as a matter of established company policy and procedure in the State of  
27 California, falsely deny they owe Plaintiff and the other Class Members these wages, with the intent of  
28

1 securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay,  
2 and/or defraud Plaintiff and the other Class Members.

3 130. Defendants' pattern, practice, and uniform administration of its corporate policy of  
4 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff and  
5 the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of the  
6 compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest  
7 owed to them pursuant to Labor Code sections 210 and 218.5.

8 **Eighth Cause of Action**

9 *Failure to Pay All Wages Earned and Unpaid at Separation*

10 *(Against All Defendants)*

11 131. Plaintiff realleges and incorporates by reference all previous paragraphs.

12 132. The actionable period for this cause of action is three years prior to the filing of this  
13 complaint through the present, and ongoing until the violations are corrected or the class is certified.  
14 (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions,*  
15 *Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and  
16 202 of the California Labor Code require Defendants to pay all compensation due and owing to its  
17 former employees (including the formerly-employed Class Members) during the actionable period for  
18 this cause of action at or around the time that their employment is or was terminated, or ended.

19 133. Section 203 of the Labor Code provides that if an employer willfully fails to pay  
20 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the  
21 employer is liable for penalties in the form of continued compensation up to thirty workdays.

22 134. Due to Defendants' faulty pay policies, those Class Members whose employment with  
23 Defendants has concluded were not compensated for each and every hour worked at the appropriate  
24 rate. Defendants have willfully failed to pay those formerly-employed Class Members whose sums  
25 were certain at the time of termination within seventy-two hours of their resignation and have failed to  
26 pay those sums for thirty days thereafter as required by Labor Code sections 201 through 203.

27 135. As a result, Defendants are liable to the formerly-employed Class Members for waiting  
28 time penalties amounting to thirty days wages for the formerly-employed Class Members pursuant to

1 Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon  
2 termination entitles an employee to recover waiting time penalties].)

3 **Ninth Cause of Action**

4 *Failure to Indemnify All Necessary Business Expenditures*

5 *(Against All Defendants)*

6 136. Plaintiff realleges and incorporates by reference all previous paragraphs.

7 137. California Labor Code Section 2802 states that employers must “indemnify” an  
8 employee for “all necessary expenditures or losses incurred by the employee in direct consequence of  
9 the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Likewise,  
10 Labor Code section 2804 states that “any contract or agreement, express or implied, made by any  
11 employee to waive the benefits of this article or any part thereof, is null and void, and this article shall  
12 not deprive any employee or his personal representative of any right or remedy to which he is entitled  
13 under the laws of this State.”

14 138. Here, Plaintiff and the other Class Members paid out of pocket for necessary business  
15 expenditures incurred as a direct consequence and requirement of performing their job duties, including  
16 the costs associated with their personal cell phone they required to perform their work. Despite knowing  
17 that Plaintiff and the other Class Members incurred these necessary business expenses, and requiring  
18 Plaintiff and the other Class Members to use such items, Defendants did not reimburse them.

19 139. Thus, Plaintiff and the other Class Members are entitled to recover the cost of such  
20 necessary business expenses, plus interest from the date each incurred such business expenses, plus  
21 fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

22 **Tenth Cause of Action**

23 *Failure to Furnish Accurate Itemized Wage Statements*

24 *(Against All Defendants)*

25 140. Plaintiff realleges and incorporates by reference all previous paragraphs.

26 141. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the  
27 time of each payment to furnish an itemized wage statement in writing showing:

28 (1) The gross wages earned;

- (2) The total hours worked by the employee;
- (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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) The 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; 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.

142. As set forth above, Defendants issued and continues to issue wage statements to its non-exempt employees including Plaintiff and the other Class Members that are inadequate under Labor Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members properly as described above, Defendants failed to include required information on their wage statements, including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226, subdivision (a).

143. Defendants also failed to include the accrued sick hours on the wage statements provided to Plaintiff and the other Class Members as required by Labor Code section 246, subdivision (i).

144. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

145. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiff and the other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of

1 \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class  
2 Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and  
3 reasonable attorneys' fees.

4 **Eleventh Cause of Action**

5 *Failure to Pay Sick Leave*

6 *(Against All Defendants)*

7 146. Plaintiff realleges and incorporates by reference all previous paragraphs.

8 147. Labor Code section 246 provides that an employee who works for the same employer  
9 for 30 or more days within a year from the commencement of employment is entitled to paid sick days.  
10 (Lab. Code, § 246, subd. (a).) These paid sick days generally accrue at a rate of not less than one hour  
11 per every 30 hours worked. (Lab. Code, § 246, subd. (b).)

12 148. The employer must calculate paid sick leave by using one of two calculations: **(1)** "Paid  
13 sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay  
14 for the workweek in which the employee uses paid sick time, whether or not the employee actually  
15 works overtime in that workweek," or **(2)** "Paid sick time for nonexempt employees shall be calculated  
16 by dividing the employee's total wages, not including overtime premium pay, by the employee's total  
17 hours worked in the full pay periods of the prior 90 days of employment." (Lab. Code, § 246, subds.  
18 (l)(1), (2).)

19 149. "An employer shall provide payment for sick leave taken by an employee no later than  
20 the payday for the next regular payroll period after the sick leave was taken." (Lab. Code, § 246, subds.  
21 (m).)

22 150. Here, Defendants employed Plaintiff and the other Class Members for 30 or more days  
23 within a year from the commencement of employment. Defendants nevertheless failed to fully and/or  
24 timely pay Plaintiff and the other Class Members for all sick pay that was lawfully earned and accrued.  
25 This resulted in Plaintiff and the other Class Members being untimely paid and/or underpaid for their  
26 lawfully-accrued sick leave, and resulted in derivative violations including, among others, of Labor  
27 Code section 201, 202, and 203, because Defendants did not pay, Plaintiff and the other Class Members  
28

1 all owing and unpaid wages for work performed by them during their employment and at the end of  
2 their employment.

3 151. As a consequence for violating Labor Code section 246, Plaintiff and the other Class  
4 Members are have sustained damages in an amount to be established at trial, are entitled to attorneys'  
5 fees and costs of suit, and Defendants are subject to all applicable penalties.

6 **Twelfth Cause of Action**

7 *Violations of California's Unfair Competition Law*

8 *(Against All Defendants)*

9 152. Plaintiff realleges and incorporates by reference all previous paragraphs.

10 153. Defendants have engaged and continue to engage in unfair and/or unlawful business  
11 practices in California in violation of California Business and Professions Code section 17200 through  
12 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and  
13 unlawful business practices deprived and continue to deprive Plaintiff and the other Class Members of  
14 compensation to which they are legally entitled. These practices constitute unfair and unlawful  
15 competition and provide an unfair advantage over Defendants' competitors who have been and/or are  
16 currently employing workers and attempting to do so in honest compliance with applicable wage and  
17 hour laws.

18 154. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein,  
19 Plaintiff for himself and on behalf of the Class Members, seeks full restitution of monies, as necessary  
20 and according to proof, to restore any and all monies withheld, acquired and/or converted by  
21 Defendants pursuant to Business and Professions Code sections 17203 and 17208.

22 155. The acts complained of herein occurred within the four years prior to the initiation of  
23 this action and are continuing into the present and ongoing.

24 156. Plaintiff was compelled to retain the services of counsel to file this Court action to  
25 protect his interests and those of the Class Members, to obtain restitution and injunctive relief on behalf  
26 of Defendants' current non-exempt employees and to enforce important rights affecting the public  
27 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff  
28 is entitled to recover under Code of Civil Procedure section 1021.5.

**Thirteenth Cause of Action**

*Penalties Pursuant to PAGA for Violations of California Labor Code Sections 142.3, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 233, 246, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407, and Other Provisions of the Labor Code*  
*(Against All Defendants)*

157. Plaintiff realleges and incorporates by reference all previous paragraphs.

158. Based on the above allegations incorporated by reference, Defendants violated Labor Code sections 142.3, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 233, 246, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407, and others that may be applicable; and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11050), and others that may be applicable.

159. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections 2698 through 2699.6 because of Defendants' violation of Labor Code sections 142.3, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 233, 246, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407, and others that may be applicable; and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11050), and others that may be applicable.

160. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation, Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

A. \$100 for the initial violation per employee per pay period; and

B. \$200 for each subsequent violation per employee per pay period.

161. Under Labor Code Sections 2699.3 and 2699.5, Plaintiff may seek civil penalties for any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1)

1 to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1,  
2 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section  
3 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5,  
4 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5,  
5 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153,  
6 subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision  
7 (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296,  
8 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695,  
9 subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5,  
10 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771,  
11 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2,  
12 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,  
13 6399.7, 6400, 6401, 6401.7, 6402, and 6403.

14 162. These penalties must be allocated sixty-five percent to the Labor and Workforce  
15 Development Agency (“LWDA”) and thirty-five percent to the affected employees. In addition, to the  
16 extent permitted by law, these penalties may be stacked separately for each of Defendants violations  
17 of the California Labor Code.

18 163. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all  
19 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section  
20 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code  
21 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at pp.  
22 780, 788.)

23 164. For violations of Labor Code section 226, Plaintiff and all Aggrieved Employees are  
24 entitled to recover penalty amounts established by California Labor Code Section 2699(f)(2)(A)(i) and  
25 California Labor Code Section 226.3. Accordingly, through PAGA and to the extent permitted by law  
26 Plaintiff and the Aggrieved Employees seek PAGA penalties for each of Defendants’ numerous  
27 violations of Labor Code section 226.  
28

1           165. Labor Code section 210 provides that “in addition to, an entirely independent and apart  
2 from, any other penalty provided in this article, every person who fails to pay the wages of each  
3 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any  
4 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each  
5 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure  
6 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty  
7 compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover  
8 penalties under Labor Code section 210 through PAGA.

9           166. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and  
10 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is  
11 intentionally committed for each underpaid employee for each pay period for which the employee is  
12 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific  
13 offense for each underpaid employee for each pay period for which the employee is underpaid  
14 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and  
15 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant  
16 to Labor Code section 1197.1.

17           167. Pursuant to Labor Code Sections 2699(a), 2699.3, and 2699.5, Plaintiff is entitled to  
18 recover civil penalties, in addition to other remedies, for violations of the Labor Code Sections cited  
19 above.

20           168. Plaintiff was compelled to retain the services of counsel to file this action to protect his  
21 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed  
22 by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which Plaintiff is also entitled  
23 to recover under Labor Code section 2699, subdivision (g)(1).

24 **VIII. DEMAND FOR JURY TRIAL**

25           169. Plaintiff hereby demands trial by jury of Plaintiff’s and the Class Members’ claims  
26 against Defendants.  
27  
28

1 **IX. PRAYER FOR RELIEF**

2 Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought  
3 against Defendants, as follows:

- 4 **1.** For an order certifying the proposed class;
- 5 **2.** For an order appointing Plaintiff as representative of the class;
- 6 **3.** For an order appointing Plaintiff's counsel as counsel for the class;
- 7 **4.** For the failure to pay all minimum wages, compensatory, consequential, general, and  
8 special damages according to proof pursuant to Labor Code sections 1194, 1194.2,  
9 1197, and others as may be applicable;
- 10 **5.** For the failure to pay all overtime wages, compensatory, consequential, general, and  
11 special damages according to proof pursuant to Labor Code sections 204, 510, 1194,  
12 1198, and others as may be applicable;
- 13 **6.** For the failure to pay all accrued vacation, compensatory damages in the amount of the  
14 unpaid vacation accrued and owed, as may be proven;
- 15 **7.** For the failure to provide rest periods and pay missed rest period premiums,  
16 compensatory, consequential, general, and special damages according to proof pursuant  
17 to Labor Code section 226.7;
- 18 **8.** For the failure to provide meal periods and pay missed meal period premiums,  
19 compensatory, consequential, general, and special damages according to proof pursuant  
20 to Labor Code sections 226.7 and 512;
- 21 **9.** For the failure to maintain accurate employment records, penalties pursuant to Labor  
22 Code sections 226.3, 1174.5, and others that may be applicable;
- 23 **10.** For the failure to pay wages timely during employment, the unpaid balance of the  
24 compensation owed to Plaintiff and the other Class Members and any applicable  
25 penalties owed to them pursuant to Labor Code section 210;
- 26 **11.** For the failure to pay all wages earned and unpaid at separation, statutory waiting time  
27 penalties pursuant to Labor Code sections 201 through 203, for the Class Members who  
28

quit or were fired in an amount equal to their daily wage multiplied by thirty days, as may be proven;

**12.** For the failure to indemnify all necessary business expenditures, all unreimbursed business expenses, and interest thereon, that are owed, pursuant to Labor Code section 2802, and attorney fees, pursuant to Labor Code section 2802, subdivision (c);

**13.** For the failure to pay all sick time wages due and owed, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code section 246, and others as may be applicable;

**14.** For the violations of California's Unfair Competition Law, restitution to Plaintiff and the other Class Members of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code sections 17200 through 17210;

**15.** For the claim of penalties pursuant to PAGA and other provisions of the California Labor Code, a civil penalty as specified in Labor Code section 2699, in the representative action brought on behalf of Plaintiff and the Aggrieved Employees pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties available under Labor Code section 210;

**16.** For the claim of injunctive relief pursuant to PAGA and other provisions of the California Labor Code, injunctive relief as specified in Labor Code section 2699, in the representative action brought on behalf of Plaintiff and the Aggrieved Employees pursuant the Labor Code Private Attorneys General Act of 2004;

**17.** Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;

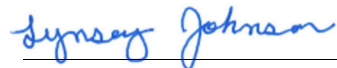
**18.** On all causes of action for which attorneys' fees may be available, for attorneys' fees and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section 1021.5, and others as may be applicable;

1       **19.**     For an order enjoining Defendants, and each of them, and their agents, servants, and  
2             employees, and all persons acting under, in concert with, or for them, from acting in  
3             derogation of any rights or duties adumbrated in this complaint; and

4       **20.**     For such other and further relief, this Court may deem just and proper.

5     Dated: June 3, 2025

**MELMED LAW GROUP P.C.**

7             

8             **LYNSEY D. JOHNSON**

9             Attorneys for Plaintiff, the Putative Class, and the  
10            Aggrieved Employees