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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF RIVERSIDE

11 HANNAH CUELLAR, individually, and on
12 behalf of other members of the general
13 public similarly situated and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

14 Plaintiff,

15 vs.

16 TOWNE PARK, LLC, a Maryland Limited
17 Liability Company; and DOES 1 through
10, inclusive,

18 Defendants.
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Case No.: PSC 1600142

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR
CODE §§ 2698 ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1 and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a) and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7 and 1198 (Failure to Provide Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 2802 (Failure to Reimburse for Necessary Business Expenses)
- (8) Civil Penalties for Violations of the California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (9) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and

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(10) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

1 Plaintiff Hannah Cuellar (“Plaintiff”) individually and on behalf of other members of
2 the general public similarly situated and as an aggrieved employee and on behalf of all other
3 aggrieved employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action and enforcement action is brought pursuant to California Code
6 of Civil Procedure section 382 and under the Labor Code Private Attorneys General Act of
7 2004, California Labor Code section 2698 *et seq.* (“PAGA”) to recover civil penalties and any
8 other available relief on behalf of Plaintiff, the State of California, and other current and
9 former employees who worked for Defendants in California as hourly, non-exempt Valet
10 Attendants, Guest Service Associates, or Guest Service Associate Valets at a Towne Parke
11 business location and against whom one or more violations of any provision in Division 2 Part
12 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the
13 applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth
14 in this complaint.

15 2. The wages, statutory penalties, civil penalties, monetary damages and
16 restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
17 and will be established according to proof at trial. This Court has jurisdiction over this
18 action pursuant to the California Constitution, Article VI, section 10. The statute under
19 which this action is brought does not specify any other basis for jurisdiction.

20 3. This Court has jurisdiction over all Defendants because, on information and
21 belief, Defendants are either citizens of California, have sufficient minimum contacts in
22 California, or otherwise intentionally avail themselves of the California market so as to
23 render the exercise of jurisdiction over them by the California courts consistent with
24 traditional notions of fair play and substantial justice.

25 4. Venue is proper in this Court, because Defendants employ persons in this
26 county and employed Plaintiff in this county, and thus a substantial portion of the transactions
27 and occurrences related to this action occurred in this county.

28 5. The PAGA statute authorizes aggrieved employees to sue directly as the proxy

1 of the State of California for civil penalties for violations of various provisions in the
2 California Labor Code.

3 **THE PARTIES**

4 6. Plaintiff HANNAH CUELLAR is a resident of Beaumont, in Riverside County,
5 California. Defendants have employed Plaintiff as an hourly, non-exempt Valet Attendant
6 from about December 2013 to February 2016. Plaintiff works for Defendants out of Palm
7 Springs, California at the Hyatt Palm Springs Hotel, formerly known as the Hyatt Regency
8 Palm Springs Hotel, on North Palm Canyon Drive. As a Valet Attendant, Plaintiff typically
9 works up to seven (7) to eight (8) hours or more per day, three (3) to five (5) days per week,
10 and approximately 20-40 hours per week.

11 7. Defendant TOWNE PARK, LLC was and is, upon information and belief, a
12 Maryland limited liability company doing business in California, and at all times hereinafter
13 mentioned, an employer whose employees are engaged throughout this county, the State of
14 California, or the various states of the United States of America. Plaintiff is unaware of the
15 true names or capacities of the Defendants sued herein under the fictitious names DOES 1
16 through 10, but will seek leave of this Court to amend the complaint and serve such
17 fictitiously named Defendants once their names and capacities become known.

18 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
19 are the partners, agents, owners, shareholders, managers or employees of TOWNE PARK at
20 all relevant times.

21 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
22 acts and omissions alleged herein was performed by, or is attributable to, TOWNE PARK
23 and/or DOES 1 through 10 (collectively "Defendants"), each acting as the agent for the other,
24 with legal authority to act on the other's behalf. The acts of any and all Defendants were in
25 accordance with, and represent, the official policy of Defendants.

26 10. At all relevant times, Defendants, and each of them, ratified each and every act
27 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
28 and abetted the acts and omissions of each and all the other Defendants in proximately causing

1 the damages herein alleged.

2 11. Plaintiff is informed and believes, and thereon alleges, that each of said
3 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
4 omissions, occurrences, and transactions alleged herein.

5 **CLASS ACTION ALLEGATIONS**

6 12. Plaintiff brings this action on her own behalf, as well as on behalf of each and
7 all other persons similarly situated, and thus seeks class certification under California Code of
8 Civil Procedure section 382.

9 13. All claims alleged herein arise under California law for which Plaintiff seeks
10 relief authorized by California law.

11 14. Plaintiff's proposed class consists of and is defined as follows:

12 All persons who were employed by Defendant as non-exempt
13 Valet Attendants, Guest Services Associates, and Guest Service
14 Associate Valets in California at any time during the period from
January 13, 2012 to the date on which the Court grants
preliminary approval of the Settlement.

15 15. Members of the Class will hereinafter be referred to as "class members."

16 16. Plaintiff reserves the right to redefine the Class and to add additional subclasses
17 as appropriate based on further investigation, discovery, and specific theories of liability.

18 17. There are common questions of law and fact as to class members that
19 predominate over questions affecting only individual members, including, but not limited to:

- 20 (a) Whether Defendants required Plaintiff and class members to work off-
21 the-clock without payment;
- 22 (b) Whether Defendants required Plaintiff and class members to work over
23 eight (8) hours per day, over twelve (12) hours per day, or over forty
24 (40) hours per week and failed to pay all legally required overtime
25 compensation to Plaintiff and class members;
- 26 (c) Whether Defendants failed to pay at least minimum wages for all hours
27 worked by Plaintiff and class members;
- 28 (d) Whether Defendants deprived Plaintiff and class members of meal

1 periods or required Plaintiff and class members to work during meal
2 periods without compensation;

3 (e) Whether Defendants deprived Plaintiff and class members of rest
4 periods or required Plaintiff and class members to work during rest
5 periods without compensation;

6 (f) Whether Defendants provided Plaintiff and class members with
7 complete and accurate wage statements as required by California Labor
8 Code section 226(a);

9 (g) Whether Defendants failed to pay all earned overtime wages, minimum
10 wages, and meal and rest period premiums due to Plaintiff and class
11 members upon their discharge;

12 (h) Whether Defendants failed timely to pay all earned overtime wages,
13 minimum wages, and meal and rest period premiums to Plaintiff and
14 class members during their employment;

15 (i) Whether Defendants failed to compensate Plaintiff and class members
16 for expenditures on necessary business expenses;

17 (j) Whether Defendants engaged in unfair business practices in violation of
18 California Business & Professions Code sections 17200, *et seq.*; and

19 (k) The appropriate amount of damages, restitution, or monetary penalties
20 resulting from Defendants' violations of California law.

21 18. There is a well-defined community of interest in the litigation and the class
22 members are readily ascertainable:

23 (a) Numerosity: The class members are so numerous that joinder of all
24 members would be unfeasible and impractical. The membership of the
25 entire class is unknown to Plaintiff at this time; however, the class is
26 estimated to be greater than one hundred (100) individuals and the
27 identity of such membership is readily ascertainable by inspection of
28 Defendants' employment records.

- 1 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
2 protect the interests of each class member with whom she has a well-
3 defined community of interest, and Plaintiff's claims (or defenses, if
4 any) are typical of all class members as demonstrated herein.
- 5 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
6 protect the interests of each class member with whom she has a well-
7 defined community of interest and typicality of claims, as demonstrated
8 herein. Plaintiff acknowledges that she has an obligation to make
9 known to the Court any relationship, conflicts or differences with any
10 class member. Plaintiff's attorneys, the proposed class counsel, are
11 versed in the rules governing class action discovery, certification, and
12 settlement. Plaintiff has incurred, and throughout the duration of this
13 action, will continue to incur costs and attorneys' fees that have been,
14 are, and will be necessarily expended for the prosecution of this action
15 for the substantial benefit of each class member.
- 16 (d) Superiority: The nature of this action makes the use of class action
17 adjudication superior to other methods. A class action will achieve
18 economies of time, effort and expense as compared with separate
19 lawsuits, and will avoid inconsistent outcomes because the same issues
20 can be adjudicated in the same manner and at the same time for the
21 entire class.
- 22 (e) Public Policy Considerations: Employers in the State of California
23 violate employment and labor laws every day. Current employees are
24 often afraid to assert their rights out of fear of direct or indirect
25 retaliation. Former employees are fearful of bringing actions because
26 they believe their former employers might damage their future
27 endeavors through negative references and/or other means. Class
28 actions provide the class members who are not named in the complaint

with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

GENERAL ALLEGATIONS

19. Defendants are a Maryland limited liability company which provides hospitality, parking, and healthcare staffing solutions. Defendants deliver specialized hospitality services, such as valet parking, to 650 locations nationwide, including California.

20. Upon information and belief, Defendants maintain a centralized Human Resources (“HR”) department at their corporate headquarters in Annapolis, Maryland, which is responsible for conducting Defendants’ recruiting and hiring of new employees, as well as communicating and implementing Defendants’ company-wide policies, including timekeeping policies, to employees throughout California. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies, including, but not limited to an Associate Handbook.

21. On information and belief, Defendants’ corporate records, business records, data, and other information related to TOWNE PARK, including, in particular, HR records pertaining to Defendants’ California employees, are maintained at TOWNE PARK’s corporate headquarters in Annapolis, Maryland.

22. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee’s time of hire. At the time Plaintiff was hired, she received an Associate Handbook informing her that she would be subject to the policies and rules set forth in the Handbook.

23. Upon information and belief, Plaintiff and class members suffered the same meal break violations arising out of Defendants’ maintenance and implementation of meal break policies.

24. Upon information and belief, the usage of standardized documents and/or written policies, including new hire documents, indicate that Defendants dictated policies at the corporate-level and implemented them company-wide, regardless of their employees’ locations or positions.

1 25. Upon information and belief, Defendants maintains a centralized Payroll
2 department at their headquarters in Annapolis, Maryland, which processes payroll for all non-
3 exempt, hourly paid employees working for Defendants at their various locations in
4 California, including Plaintiff and other class members.

5 26. Based upon information and belief, Defendants issue the same formatted wage
6 statements to all non-exempt, hourly paid Valet Attendants, Guest Services Associates, and
7 Guest Service Associate Valets in California, irrespective of their work location. Therefore,
8 Plaintiff has reason to believe that class members throughout California were also affected by
9 Defendants' alleged noncompliance with wage statement reporting requirements.

10 27. Upon information and belief, Defendants process payroll for departing
11 employees in the same manner throughout the State of California, regardless of the manner in
12 which the employees' employment ends.

13 28. Defendants continue to employ non-exempt or hourly Valet Attendants, Guest
14 Services Associates, and Guest Service Associate Valets throughout California.

15 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
17 and advisors knowledgeable about California labor and wage law, employment and personnel
18 practices, and about the requirements of California law.

19 30. Plaintiff is informed and believes, and thereon alleges, that employees were not
20 paid for all hours worked because all hours worked were not recorded.

21 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive certain wages for
23 overtime compensation and that they were not receiving certain wages for overtime
24 compensation.

25 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to be paid at a regular rate
27 of pay, and corresponding overtime rate of pay, that included as eligible income all income
28 derived from incentive pay and/or nondiscretionary bonus pay.

1 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive at least minimum
3 wages for compensation and that they were not receiving at least minimum wages for work
4 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
5 and class members were not paid at least minimum wages for work done off-the-clock.

6 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to receive all meal periods
8 and to payment of one (1) additional hour of pay at Plaintiff's and class members' regular rate
9 of pay when they did not receive a timely uninterrupted meal period, and that they did not
10 receive all meal periods and payment of one (1) additional hour of pay at Plaintiff's and class
11 members' regular rate of pay when they did not receive a timely uninterrupted meal period.

12 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to receive all rest periods
14 and payment of one (1) additional hour of pay at Plaintiff's and class members' regular rate of
15 pay when a rest period was missed, and that they did not receive all rest periods and payment
16 of one (1) additional hour of pay at Plaintiff's and class members' regular rate of pay when a
17 rest period was missed.

18 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that class members were entitled to timely payment of all wages earned
20 upon termination. In violation of the California Labor Code, class members did not receive
21 payment of all wages, including, but not limited to, unpaid overtime wages, unpaid minimum
22 wages, and missed meal and rest period premiums within permissible time periods.

23 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to timely payment of wages
25 during their employment. In violation of the California Labor Code, Plaintiff and class
26 members did not receive payment of all wages, including, but not limited to, unpaid overtime
27 wages, unpaid minimum wages, and missed meal and rest period premiums, within
28 permissible time periods.

1 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive complete and
3 accurate wage statements in accordance with California law. In violation of the California
4 Labor Code, Plaintiff and class members were not provided complete and accurate wage
5 statements. Plaintiff is informed and believes, and thereon alleges that Defendants have
6 issued the same formatted wage statements to all non-exempt, hourly employees in California
7 during the relevant time period.

8 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to receive full
10 reimbursement for all business-related expenses and costs they incurred during the course and
11 scope of their employment, and that they did not receive full reimbursement of applicable
12 business-related expenses and costs they incurred.

13 40. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants knew or should have known that they had a duty to compensate
15 Plaintiff and class members, and that Defendants had the financial ability to pay such
16 compensation, but willfully, knowingly and intentionally failed to do so, and falsely
17 represented to Plaintiff and class members that they were properly denied wages, all in order
18 to increase Defendants' profits.

19 41. At all times herein set forth, PAGA provides that any provision of law under
20 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
21 assessed and collected by the LWDA for violations of the California Labor Code and
22 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
23 civil action brought on behalf of themselves and other current or former employees pursuant
24 to procedures outlined in California Labor Code section 2699.3.

25 42. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
26 person who was employed by the alleged violator and against whom one or more of the
27 alleged violations was committed."

28 43. Plaintiff and other current and former employees of Defendants are "aggrieved

employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former employees and one or more of the alleged violations were committed against them.

44. Pursuant to California Labor Code sections 2699.3 and 2699.5, aggrieved employees, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- (a) The aggrieved employee shall give written notice by certified mail (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within thirty (30) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within thirty-three (33) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

45. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, including Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those listed in Section 2699.5 after the following requirements have been met:

- (a) The aggrieved employee or representative shall give written notice by certified mail to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.

1 (b) The employer may cure the alleged violation within 33 calendar days of
2 the postmark date of the notice. The employer shall give written notice
3 by certified mail within that period of time to the aggrieved employee or
4 representative and the agency if the alleged violation is cured, including
5 a description of actions taken, and no civil action pursuant to Section
6 2699 may commence. If the alleged violation is not cured within the
7 33-day period, the employee may commence a civil action pursuant to
8 Section 2699.

9 46. On December 2, 2015, Plaintiff provided written notice by certified mail to the
10 LWDA and TOWNE PARK of the specific provisions of the California Labor Code alleged to
11 have been violated, including facts and theories to support the alleged violations, in
12 accordance with California Labor Code section 2699.3. A true and correct copy of Plaintiff's
13 written notice to the LWDA and TOWNE PARK, dated December 2, 2015, is attached hereto
14 as "Exhibit 1."

15 47. As of the filing date of this complaint, over 33 days have passed since Plaintiff
16 sent the LWDA Notice described above, and the LWDA has not responded that it intends to
17 investigate Plaintiff's claims and TOWNE PARK has not responded that they have cured the
18 violations.

19 48. Thus, Plaintiff has satisfied the administrative prerequisites under California
20 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
21 addition to other remedies, for violations of California Labor Code sections 201, 202, 203,
22 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

23 49. PAGA provides that, "[n]otwithstanding any other provision of law, a plaintiff
24 may as a matter of right amend an existing complaint to add a cause of action arising under
25 this part at any time within 60 days of the time periods specified in this part."

26 50. Labor Code section 558 (a) provides "[a]ny employer or other person acting on
27 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
28 provision regulating hours and days of work in any order of the Industrial Welfare

Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

51. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

52. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

53. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all aggrieved employees, and the State of California against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against All Defendants)

54. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

55. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . .

1 under conditions of labor prohibited by the order is unlawful.”

2 56. California Labor Code section 1198 and the applicable IWC Wage Order
3 provide that it is unlawful to employ persons without compensating them at a rate of pay
4 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
5 number of hours worked by the person on a daily or weekly basis.

6 57. Specifically, the applicable IWC Wage Order provides that Defendants are and
7 were required to pay Plaintiff and class members working more than eight (8) hours in a day
8 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
9 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
10 workweek.

11 58. The applicable IWC Wage Order further provides that Defendants are and were
12 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
13 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
14 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
15 employee, including nondiscretionary bonuses and incentive pay.

16 59. California Labor Code section 510 codifies the right to overtime compensation
17 at one-and-one-half times the regular rate of pay for hours worked in excess of eight (8) hours
18 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
19 of work, and to overtime compensation at twice the regular rate of pay for hours worked in
20 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
21 of work.

22 60. During the relevant time period, Defendants willfully failed to pay all overtime
23 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
24 class members were not paid overtime premiums for all of the hours they worked in excess of
25 eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of eight (8) hours on
26 the seventh (7th) consecutive day of a work in a workweek, and/or in excess of forty (40)
27 hours in a week, because all hours worked were not recorded.

28 61. During the relevant time period, Defendants had a company-wide policy and/or

1 practice of staffing their locations strictly based on the labor hours allotted by each location's
2 labor or payroll budget, which has resulted in and continues to result in chronic understaffing
3 and a lack of break and shift coverage because there were too few employees on duty to
4 handle the workload and attend to guests and customers. Defendants' company-wide policy
5 and/or practice of understaffing its locations prevented Plaintiff and class members from
6 taking all timely, uninterrupted thirty (30) minute meal periods and led to them working off-
7 the-clock after their shifts to complete their assigned tasks. Defendants also routinely and
8 effectively clocked out Plaintiff and/or class members for a full 30 minutes even when meal
9 breaks were late, short, and/or interrupted. Plaintiff and/or class members did not sign valid
10 meal break waivers on days that they were entitled to meal periods but were not relieved of all
11 duties.

12 62. In addition, Defendants have a company-wide policy and/or practice of refusing
13 to pay for time spent working off-the-clock after the end of an employee's scheduled shift and
14 during meal breaks, even though Plaintiff and class members still performed additional duties
15 and were subject to Defendants' control during those times. For example, Plaintiff was
16 occasionally required to clock out at her scheduled shift end time and continue working
17 because Defendants were short-staffed. At times, Plaintiff had to continue to work for up to
18 20 minutes off-the-clock after her shift ended.

19 63. Defendants knew or should have known that as a result of their policies, that
20 Plaintiff and class members were performing some of their assigned duties off-the-clock and
21 during meal periods, and were suffered or permitted to perform work for which they were not
22 paid. Defendants also knew, or should have known, that they did not compensate Plaintiff and
23 class members for this off-the-clock work.

24 64. Because Plaintiff and class members worked shifts of eight (8) hours a day or
25 more or forty (40) hours a week or more, some of this off-the-clock work qualified for
26 overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages
27 for all of the overtime hours they worked. Defendants' failure to pay Plaintiff and class
28 members the balance of overtime compensation, as required by California law, violates the

1 provisions of California Labor Code sections 510 and 1198.

2 65. Furthermore, Defendants did not pay Plaintiff and class members the correct
3 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
4 wage, Defendants paid Plaintiff and class members various forms of compensation that should
5 have been included in calculating their regular rate of pay, including, but not limited to,
6 incentive pay and/or nondiscretionary bonuses. However, in violation of the California Labor
7 Code, Defendants failed to incorporate all remunerations, including incentive pay, into the
8 calculation of the regular rate of pay for purposes of calculating the overtime wage rate.
9 Therefore, during times when Plaintiff and class members worked overtime and received these
10 other forms of pay, Defendants failed to pay all overtime wages due by paying a lower
11 overtime rate than required.

12 66. During the relevant time period, Defendants paid Plaintiff incentive pay which
13 appears on her wage statement(s) as “false claim awards” and/or “service charges.” The
14 “false claim awards” were awarded to Plaintiff and class members for noting existing damage
15 to customers’ cars upon parking, and then using that information to thwart subsequent false
16 claims of damage by customers. Plaintiff and class members also earned “service charges” for
17 performing services such as assisting guests with luggage. In the same pay periods in which
18 these incentive payments and/or nondiscretionary bonuses were earned, Plaintiff and class
19 members also worked overtime hours for which they were paid overtime wages. However,
20 Defendants failed to incorporate these other forms of pay earned into Plaintiff and class
21 members’ regular rate of pay and, as a result, paid them at an incorrect and lower rate of pay
22 for overtime hours worked. Specifically, for example, Defendants paid Plaintiff at 1.5 times
23 her hourly rate of pay (which was \$9.00 per hour), or \$13.50, instead of at 1.5 times her
24 regular rate of pay. Defendants’ failure to properly calculate the overtime rate of pay based
25 on all remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and
26 class members.

27 67. Pursuant to California Labor Code section 1194, Plaintiff and class members
28 are entitled to recover their unpaid overtime compensation, as well as interest, costs, and

attorneys' fees.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 1194, 1197, 1197.1—Unpaid Minimum Wages (Against All Defendants)

68. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

69. At all relevant times, California Labor Code sections 1182.12, 1194, 1197 and 1197.1 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.

70. As described above, due to Defendants' scheduling practices, staffing practices, and resultant lack of break coverage, Plaintiff and class members were forced to forego meal breaks and/or have their meal breaks interrupted or delayed by work. Moreover, class members were not relieved of all duties such that they could take second 30-minute meal periods on days that they worked in excess of 10 hours in a day. Class members were never provided with second 30-minute meal periods on days they worked over 10 hours while employed with Defendants. In addition, Defendants systematically required Plaintiff and class members to clock out at the end of their shifts, even though they were still performing additional duties and were subject to Defendants' control. Thus, Defendants did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock.

71. Defendants' failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to those sections, Plaintiff and class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees.

72. Pursuant to California Labor Code section 1194.2, Plaintiff and class members

are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

Violations of California Labor Code, §§ 226.7, 512(a) and 1198—Meal Period Violations (Against all Defendants)

73. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

74. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California Labor Code sections 226.7, 512(a) and 1198 were applicable to Plaintiff and class members' employment by Defendants.

75. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

76. At all relevant times herein set forth, California Labor Code section 226.7 and 512(a) provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

77. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

78. During the relevant time period, Defendants systematically scheduled its

1 employees' work in such a way that prevented Plaintiff and class members from taking
2 compliant meal breaks. For example, Defendants regularly required Plaintiff and class
3 members to clock out for meal breaks even when meal breaks were late, short, and/or
4 interrupted. In addition, Defendants have understaffed and continue to understaff their
5 locations, which has resulted in and continues to result in a lack of break coverage. At all
6 times herein mentioned, Defendants knew or should have known that as a result of their labor
7 budget and staffing policies, Plaintiff and class members have been required to perform some
8 of their assigned duties during meal periods and that Defendants did not pay meal period
9 premium wages when meal periods were interrupted. As a result, Plaintiff and class members
10 had to work through some or all of their meal periods, have their meal periods interrupted to
11 return to work, and/or wait extended periods of time before taking meal periods.

12 79. For example, Plaintiff was regularly required to clock out for her meal break
13 after five (5) hours of work, but continue working until she was permitted to take her break, if
14 she was permitted to take a meal break at all. When this occurred, Defendants did not take
15 steps to ensure that Plaintiff was compensated for this off-the-clock work and did not provide
16 Plaintiff with premium pay for the non-compliant meal period. Furthermore, Defendants did
17 not provide class members with second 30-minute meal periods on days that they worked in
18 excess of ten (10) hours in one day. Defendants knew or should have known that its labor
19 budget and staffing policies would result in a failure to provide Plaintiff and class members
20 with full and timely meal periods as required by the applicable IWC Wage Order and Labor
21 Code sections 226.7 and 512(a).

22 80. Moreover, Defendants also engaged in a systematic, company-wide policy to
23 not pay meal period premiums. Alternatively, to the extent that Defendants did pay Plaintiff
24 and class members one (1) additional hour of premium pay for missed meal periods,
25 Defendants did not pay Plaintiff and class members at the correct rate of pay for premium
26 wages because Defendants failed to include all forms of compensation, such as incentive pay
27 and/or nondiscretionary bonuses, in the regular rate of pay. As a result, to the extent
28 Defendants paid Plaintiff and class members premium pay for missed meal periods, it did so

1 at a lower rate than required by law. As a result, Defendants failed to provide Plaintiff and
2 class members compliant meal periods and failed to pay the full meal period premiums due in
3 violation of California Labor Code sections 226.7 and 512.

4 81. Pursuant to the applicable IWC Wage Order(s) and California Labor Code
5 section 226.7(b), Plaintiff and class members are entitled to recover from Defendants one (1)
6 additional hour of pay at the employee's regular hourly rate of compensation for each work
7 day that the meal period was not provided.

8 **FOURTH CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 226.7 and 1198 —Rest Break Violations** 10 **(Against all Defendants)**

11 82. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 83. At all relevant times herein set forth, the applicable IWC Wage Order and
14 California Labor Code section 226.7 were applicable to Plaintiff and class members'
15 employment by Defendants.

16 84. At all relevant times, the applicable IWC Wage Order provides that "[e]very
17 employer shall authorize and permit all employees to take rest periods, which insofar as
18 practicable shall be in the middle of each work period" and that the "rest period time shall be
19 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
20 hours or major fraction thereof" unless the total daily work time is less than three and one-half
21 (3½) hours.

22 85. At all relevant times, California Labor Code section 226.7 provides that no
23 employer shall require an employee to work during any rest period mandated by an applicable
24 order of the California IWC.

25 86. Pursuant to the applicable IWC Wage Order and California Labor Code section
26 226.7(b), Plaintiff and class members were entitled to recover from Defendants one (1)
27 additional hour of pay at their regular rates of pay for each work day that a required rest
28 period was not provided.

1 87. During the relevant time period, Defendants regularly failed to authorize and
2 permit Plaintiff and class members to take ten (10) minute rest period per each four (4) hour
3 period worked or major fraction thereof. As with meal periods, Defendants' labor budget
4 policies, staffing practices, and resultant lack of break coverage prevented Plaintiff and class
5 members from being relieved of all duty in order to take compliant rest periods and forced
6 Plaintiff and class members to forego rest breaks in order to perform assigned duties such as
7 assisting guests and retrieving cars.

8 88. At the same time, Defendants engaged in a systematic, company-wide policy to
9 not pay rest period premiums. Alternatively, to the extent that Defendants did pay Plaintiff
10 and class members one (1) additional hour of premium pay for missed rest periods,
11 Defendants did not pay Plaintiff and class members at the correct rate of pay for premium
12 wages because Defendants failed to include all forms of compensation, such as incentive pay
13 and/or nondiscretionary bonuses, in the regular rate of pay. As a result, to the extent
14 Defendants paid Plaintiff and class members premium pay for missed rest periods, it did so at
15 a lower rate than required by law. As a result, Plaintiff and class members were denied rest
16 periods and failed to pay the full rest period premiums due in violation of Labor Code sections
17 226.7 and 1198 and the applicable IWC Wage Order.

18 89. Pursuant to the applicable IWC Wage Order and California Labor Code section
19 226.7(b), Plaintiff and class members are entitled to recover from Defendants one (1)
20 additional hour of pay at the employee's regular hourly rate of compensation for each work
21 day that the rest period was not provided.

22 **FIFTH CAUSE OF ACTION**

23 **Violation of California Labor Code § 226(a), 1174(d), and 1198—Non-Compliant Wage** 24 **Statements and Failure to Maintain Accurate Payroll Records** 25 **(Against all Defendants)**

26 90. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 91. At all relevant times herein, California Labor Code section 226(a) provides that

every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable hourly rates.

92. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff and class members with uniform, incomplete, and inaccurate wage statements. Specifically, Defendants violated sections 226(a)(1), 226(a)(5), and 226(a)(9). Because Defendants did not calculate Plaintiff and class members' regular rate of pay correctly for purposes of paying overtime, Defendants did not list the correct amount of gross wages earned by Plaintiff and class members in compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages earned by Plaintiff and class members in violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9). For example, Defendants listed an overtime rate of \$13.50 per hour on Plaintiff's paystub dated July 3, 2015, when her correct overtime rate of pay was higher based on her regular rate of pay.

93. The wage statement deficiencies also include, among other things, failing to list total hours worked by employees; failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list 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; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

94. California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours

1 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
2 applicable piece rate paid to, employees employed at the respective plants or
3 establishments...” During the relevant time period, and in violation of Labor Code section
4 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and
5 class members showing the daily hours they worked and the wages paid thereto as a result of
6 failing to record the off-the-clock hours that they worked.

7 95. Because Defendants failed to provide the accurate number of total hours
8 worked, and the correct overtime rates of pay, gross wages earned, and net wages earned on
9 wage statements, Plaintiff and class members have been prevented from verifying, solely from
10 information on the wage statements themselves, that they were paid correctly and in full.
11 Instead, Plaintiff and class members have had to look to sources outside of the wage
12 statements themselves and reconstruct time records to determine whether in fact they were
13 paid correctly and the extent of underpayment, thereby causing them injury.

14 96. Plaintiff and class members are entitled to recover from Defendants the greater
15 of their actual damages caused by Defendants’ failure to comply with California Labor Code
16 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
17 employee.

18 **SIXTH CAUSE OF ACTION**

19 **Violation of California Labor Code §§ 201, 202 and 203 – Wages Not Timely Paid Upon** 20 **Termination**

21 **(Against all Defendants)**

22 97. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

24 98. At all relevant times herein, Labor Code sections 201 and 202 provide that if an
25 employer discharges an employee, the wages earned and unpaid at the time of discharge are
26 due and payable immediately, and that if an employee voluntarily leaves his or her
27 employment, his or her wages shall become due and payable not later than seventy-two (72)
28 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his

1 or her intention to quit, in which case the employee is entitled to his or her wages at the time
2 of quitting.

3 99. During the relevant time period, Defendants willfully failed to pay class
4 members who are no longer employed by Defendants the earned and unpaid wages set forth
5 above, including but not limited to, overtime wages, minimum wages, and meal and rest
6 period premium wages, either at the time of discharge, or within seventy-two (72) hours of
7 their leaving Defendants' employ.

8 100. Defendants' failure to pay those class members who are no longer employed by
9 Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72)
10 hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202.

11 101. California Labor Code section 203 provides that if an employer willfully fails
12 to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee
13 shall continue as a penalty from the due date, and at the same rate until paid or until an action
14 is commenced; but the wages shall not continue for more than thirty (30) days.

15 102. Plaintiff and class members are entitled to recover from Defendants the
16 statutory penalty wages for each day they were not paid, at their regular hourly rate of pay, up
17 to a thirty (30) day maximum pursuant to California Labor Code section 203.

18 SEVENTH CAUSE OF ACTION

19 Violation of California Labor Code § 2802—Failure to Reimburse

20 Necessary Business Expenses

21 (Against all Defendants)

22 103. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

24 104. At all times herein set forth, California Labor Code section 2802 requires
25 employers to pay for all necessary expenditures and losses incurred by the employee in the
26 performance of his or her job. The purpose of Labor Code section 2802 is to prevent
27 employers from passing off their cost of doing business and operating expenses on to their
28 employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

1 The applicable wage order, IWC Wage Order 4-2001, provides that: “[w]hen tools or
2 equipment are required by the employer or are necessary to the performance of a job, such
3 tools and equipment shall be provided and maintained by the employer, except that an
4 employee whose wages are at least two (2) times the minimum wage provided herein may be
5 required to provide and maintain hand tools and equipment customarily required by the trade
6 or craft.”

7 105. During the relevant time period, Plaintiff and class members incurred necessary
8 business-related expenses and costs that were not fully reimbursed by Defendants.
9 Defendants required that Plaintiff and class members utilize their personal cellular phones and
10 cellular phone data plans to carry out their job duties, but Defendants failed to reimburse them
11 for the costs of their cell phone plans or data overage charges. For example, Plaintiff was
12 regularly required to use her personal cellular phone to perform services for hotel guests, such
13 as calling taxis for them or using the GPS functionality to get directions, which would often
14 cause her to incur additional data charges, yet Defendants failed to reimburse her for this cost.
15 Plaintiff and class members were also occasionally required to utilize their own personal
16 vehicles to carry out company business, but Defendants failed to reimburse them for the cost
17 of travel, including mileage. For example, Plaintiff was required to pick up and deliver a
18 suitcase to a hotel guest, a two-hour round-trip, using her own vehicle. Although Defendants
19 required that Plaintiff use her own vehicle and complete this task as part of her job duties,
20 Defendants never reimbursed her for her travel expenses. Defendants could have provided
21 Plaintiff and/or class members with company vehicles to be used for fulfilling guest services
22 tasks. Instead, Defendants passed this operating cost off on to Plaintiff and class members.

23 106. Defendants’ policy and/or practice of passing its operating costs on to Plaintiff
24 and class members by requiring that they use their personal cellular phones and/or vehicles for
25 business is in violation of California Labor Code section 2802. Defendants have intentionally
26 and willfully failed to fully reimburse Plaintiff and class members for necessary business-
27 related expenses and costs.

28 107. Pursuant to California Labor Code section 2802, Plaintiff and class members

1 are entitled to recover their expenditures on necessary business expenses, as well as interest,
2 costs, and attorneys' fees.

3 **EIGHTH CAUSE OF ACTION**

4 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

5 **(Against all Defendants)**

6 108. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
7 and every allegation set forth above.

8 109. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
9 various civil penalties for violation(s) of the Labor Code sections enumerated in Labor Code
10 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
11 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
12 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
13 violations of those Labor Code sections not found in section 2699.5, including section
14 1182.12.

15 110. Defendants' conduct, as alleged herein, violates numerous sections of the
16 California Labor Code, including, but not limited to, the following:

- 17 (a) Violation of Labor Code sections 510 and 1198 for Defendants' failure
18 to compensate Plaintiff and other aggrieved employees with all required
19 overtime pay as alleged herein;
- 20 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1197.1 for
21 Defendants' failure to compensate Plaintiff and other aggrieved
22 employees for all hours worked with at least minimum wages as alleged
23 herein;
- 24 (c) Violation of Labor Code sections 226.7 and 512 for failure to provide
25 meal and rest periods to Plaintiff and other aggrieved employees as
26 alleged herein;
- 27 (d) Violation of Labor Code sections 201, 202, and 203 for failure to timely
28 pay all earned wages to Plaintiff and other aggrieved Employees upon

1 discharge as alleged herein;

2 (e) Violation of Labor Code section 204 for failure to pay all earned wages
3 owed to Plaintiff and other aggrieved employees during employment as
4 set forth more fully below;

5 (f) Violation of Labor Code section 226(a) for failure to provide accurate
6 and complete wage statements to Plaintiff and other aggrieved
7 employees, as alleged herein;

8 (g) Violations of Labor Code section 1174(d) for failure to maintain payroll
9 records as alleged herein; and

10 (h) Violation of Labor Code section 2802 for failure to reimburse
11 Plaintiff and other aggrieved employees for business expenses
12 necessarily incurred, as alleged herein.

13 111. At all relevant times herein, Labor Code section 204 provides that all wages
14 earned by any person in any employment between the 1st and the 15th days, inclusive, of any
15 calendar month, other than those wages due upon termination of an employee, are due and
16 payable between the 16th and the 26th day of the month during which the labor was
17 performed. Labor Code section 204 further provides that all wages earned by any person in
18 any employment between the 16th and the last day, inclusive, of any calendar month, other
19 than those wages due upon termination of an employee, are due and payable between the 1st
20 and the 10th day of the following month.

21 112. At all relevant times herein, Labor Code section 204 provides that all wages
22 earned for labor in excess of the normal work period shall be paid no later than the payday for
23 the next regular payroll period. Alternatively, at all relevant times herein, Labor Code section
24 204 provides that the requirements of this section are deemed satisfied by the payment of
25 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
26 seven (7) calendar days following the close of the payroll period.

27 113. During the relevant time period, Defendants willfully failed to pay Plaintiff and
28 other aggrieved employees all wages due including, but not limited to, overtime wages,

1 minimum wages, and meal and rest period premium wages, within the time periods specified
2 by California Labor Code section 204.

3 114. Plaintiff and other aggrieved employees are entitled to recover all statutory
4 penalties and remedies available for violations of California Labor Code section 204.

5 115. California Labor Code section 210 provides: “In addition to, and entirely
6 independent and apart from, any other penalty provided in this article, every person who fails
7 to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2,
8 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial
9 violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each
10 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
11 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

12 116. Defendants, at all times relevant to this complaint, were employers or persons
13 acting on behalf of an employer(s) who violated Plaintiff and other aggrieved employees’
14 rights by violating various sections of the California Labor Code as set forth above.

15 117. As stated, Defendants have violated numerous provisions of both the Labor
16 Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

17 118. Pursuant to PAGA, and in particular California Labor Code sections 2699(a),
18 2699.3, 2699.5, and section 558, Plaintiff, acting in the public interest as private attorney
19 general, seeks assessment and collection of unpaid wages and civil penalties for herself, all
20 other aggrieved employees, and the State of California against Defendants, in addition to other
21 remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7,
22 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

23 **NINTH CAUSE OF ACTION**

24 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

25 **Unlawful Business Practices**

26 **(Against all Defendants)**

27 119. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

120. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

121. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

122. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law in at least the following respects:

- (a) Requiring non-exempt employees, including Plaintiff and class members, to work overtime without paying them proper compensation and failing to properly calculate the overtime rates, in violation of California Labor Code sections 510 and 1198 and the applicable IWC Order;
- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197 and 1197.1 and the applicable IWC Order;
- (c) Failing to provide uninterrupted meal and rest periods or to pay premium wages for missed meal and rest periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512 and 1198, and the applicable IWC Order;
- (d) Failing to provide Plaintiff and class members with accurate wage statements in violation of California Labor Code section 226(a) and the applicable IWC Order and failing to maintain accurate payroll records in violation of Labor Code section 1174(d) and 1198;
- (e) Failing to timely pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204 and the applicable IWC

Order; and

- (f) Failing to reimburse Plaintiff and class members for necessary business expenses in violation of Labor Code section 2802.

123. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

124. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

Defendants are a "person" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

130. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

131. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premium wages due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to

1 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v.*
2 Superior Court, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
3 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
4 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
5 unfair business practice in violation of California Business & Professions Code sections
6 17200, et seq. (Id.)

7 132. A violation of California Business & Professions Code sections 17200, et seq.
8 may be predicated on any unfair business practice. In the instant case, Defendants' policies
9 and practices have violated the spirit of California's meal and rest break laws and constitute
10 acts against the public policy behind these laws.

11 133. Pursuant to California Business & Professions Code sections 17200 et seq.,
12 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
13 benefits implemented by section 226.7 withheld and retained by Defendants during a period
14 that commences four years prior to the filing of this complaint; a permanent injunction
15 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
16 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
17 Procedure section 1021.5 and other applicable laws; and an award of costs.

18 **REQUEST FOR JURY TRIAL**

19 Plaintiff requests a trial by jury.

20 **PRAYER FOR RELIEF**

21 Plaintiff, individually and on behalf of other members of the general public similarly
22 situated and as an aggrieved employee and on behalf of all other aggrieved employees, prays
23 for relief and judgment against Defendants, jointly and severally, as follows:

24 1. For damages, unpaid wages, civil penalties, statutory penalties, injunctive
25 relief, and attorneys' fees in excess of twenty-five thousand dollars (\$25,000), exclusive of
26 interest and costs. Plaintiff reserves the right to amend her prayer for relief to seek a different
27 amount.

28 **Class Certification**

2. That this case be certified as a class action;
3. That Plaintiff be appointed as the representative of the Class;
4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;
8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and
9. For such other and further relief as the Court may deem equitable and appropriate

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198 by willfully failing to pay minimum wages to Plaintiff and class members;
11. For general unpaid wages and such general and special damages as may be appropriate;
12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;
13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);
14. For liquidated damages pursuant to California Labor Code section 1194.2; and
15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), and 1198 and applicable IWC Wage Order(s) by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

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

19. For premiums pursuant to California Labor Code section 226.7(b);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law; and

21. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

22. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 1198 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and class members;

23. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

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

25. For premiums pursuant to California Labor Code section 226.7(b);

26. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law; and

27. For such other and further relief as the Court may deem equitable and appropriate.

1 **As to the Fifth Cause of Action**

2 28. That the Court declare, adjudge and decree that Defendants violated the
3 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
4 Orders as to Plaintiff and class members, and willfully failed to provide accurate itemized
5 wage statements thereto;

6 29. For all actual, consequential and incidental losses and damages, according to
7 proof;

8 30. For injunctive relief pursuant to California Labor Code section 226(h);

9 31. For statutory penalties pursuant to California Labor Code section 226(e); and

10 32. For such other and further relief as the Court may deem equitable and
11 appropriate.

12 **As to the Sixth Cause of Action**

13 33. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code sections 201, 202 and 203 by willfully failing to pay overtime wages, minimum
15 wages, and meal and rest period premiums owed at the time of termination of the employment
16 of Plaintiff and other terminated class members;

17 34. For all actual, consequential and incidental losses and damages, according to
18 proof;

19 35. For waiting time penalties according to proof pursuant to California Labor
20 Code section 203 for all employees who have left Defendants' employ;

21 36. For pre-judgment interest on any unpaid wages from the date such amounts
22 were due, or as otherwise provided by law; and

23 37. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Seventh Cause of Action**

26 38. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code section 2802 by failing to reimburse Plaintiff and class members for all business
28 expenses necessarily incurred during their employment;

1 39. For unpaid business-related expenses and such general and special damages as
2 may be appropriate;

3 40. For statutory penalties pursuant for Plaintiff and all other class members;

4 41. For pre-judgment interest on any unpaid wages from the date such amounts
5 were due, or as otherwise provided by law; and

6 42. For such other and further relief as the Court may deem equitable and
7 appropriate.

8 **As to the Eighth Cause of Action**

9 43. That the Court declare, adjudge and decree that Defendants violated the
10 following California Labor Code sections: 510 and 1198 (by failing to pay all overtime
11 wages); 1182.12, 1194, 1197, 1197.1 and 1198 (by failing to pay at least minimum wages for
12 all hours worked); 226.7, 512(a) and 1198 (by failing to provide meal or rest periods or the
13 required compensation in lieu thereof); 226(a) and 1198 (by failing to provide accurate and
14 complete wage statements); 1174(d) (by failing to maintain accurate and complete payroll
15 records); 201, 202, 203 (by failing timely to pay all unpaid wages upon termination); 204 (by
16 failing timely to pay all earned wages during employment); 2802 (failure to reimburse for
17 necessary business expenses); and that Defendants committed said violations of the Labor
18 Code against Plaintiff and Defendants' current and former employees;

19 44. For civil penalties pursuant to California Labor Code sections 2699(a) and/or
20 2699(f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 226(a),
21 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

22 45. For unpaid wages pursuant to California Labor Code section 558 for violations
23 of California Labor Code sections 510 and 512(a);

24 46. For attorneys' fees and costs pursuant to California Code of Civil Procedure
25 section 1021.5, California Labor Code section 2699(g)(1), and any and all other relevant
26 statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204,
27 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802; and

28 47. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Ninth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and class members all overtime wages due to them, failing to pay Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal and rest periods, failing to provide accurate wage statements, failing timely to pay all earned wages during employment, and failing to reimburse employees for all expenses necessarily incurred;

49. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

50. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200 *et seq.*;

51. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

52. For pre-judgment and post-judgment interest as provided by law; and

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

54. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

55. For restitution of the statutory benefits under section 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the day such amounts were

1 due and payable;

2 56. For the appointment of a receiver to receive, manage and distribute any and all
3 funds disgorged from Defendants and determined to have been wrongfully acquired by
4 Defendants as a result of violations of California Business & Professions Code sections 17200
5 et seq.;

6 57. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
7 California Code of Civil Procedure section 1021.5;

8 58. For pre-judgment and post-judgment interest as provided by law; and

9 59. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 Dated: September 22, 2017

Respectfully submitted,

Capstone Law APC

14
15 By: 

Arnab Banerjee
Brandon Brouillette
Ruhandy Glezakos

Attorneys for Plaintiff Hannah Cuellar

**PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067. My electronic address is matthew.krout@capstonelawyers.com.

On **September 22, 2017**, I served the documents described as:

**FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR
CODE §§ 2698 ET SEQ.** the interested parties in this action by sending ☐ the original ☒ a true copy thereof ☒ to interested parties as follows ☐ as stated on the attached service list:

Evan R. Moses
Tae Kim
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
400 South Hope Street, Suite 1200
Los Angeles, CA 90071
Telephone: 213-438-5849
Fax: 213-239-9045
tae.kim@ogletreedeakins.com
evan.moses@ogletreedeakins.com

☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

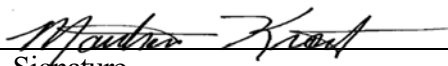
☐ **BY PERSONAL SERVICE:** I caused DDS Legal to deliver the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

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

Executed this **22nd Day of September, 2017** at Los Angeles, California.

Matthew Krout
Type or Print Name


Signature