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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONTEREY**

GREGORIO NARCISO ROMERO
ROSA, an individual, on his own behalf
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

EMBASSY SUITES MANAGEMENT
LLC DBA EMBASSY SUITES BY
HILTON MONTEREY BAY SEASIDE,
a Delaware limited liability company;
ATRIUM HOSPITALITY LP, a
Delaware limited partnership; and DOES
1 through 100, inclusive,

Defendants.

CASE NO.: 25CV002526

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY OVERTIME (Cal. Labor Code §§ 510, 558, 1194, 1194.3, 1198; Wage Order No. 5);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§ 1194, 1197, 1197.1, 1198, 119; IWC Wage Order No. 5);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 5);**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 5);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; Wage Order No. 5);**
- 6. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. Labor Code §§201-203; Wage Order No. 5);**
- 7. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5); and**
- 8. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.)**

DEMAND FOR A JURY TRIAL

1 All allegations in this Complaint are based upon information and belief except for those
2 allegations which pertain to the Plaintiff named herein and his counsel. Each allegation has ev-
3 identitary support or is likely to have evidentiary support after a reasonable opportunity for fur-
4 ther investigation and discovery.

5 Gregorio Narciso Romero Rosa ("Plaintiff") alleges the following:

6 1. This is a class action brought under California law by an individual who was
7 employed by Embassy Suites Management LLC dba Embassy Suites by Hilton Monterey Bay
8 Seaside ("Embassy Suites") and Atrium Hospitality LP ("AH") (along with DOES 1 through
9 100, collectively "Defendants"). Plaintiff brings this action on behalf of himself and others
10 similarly situated to recover wages from Defendants due to Defendants' systematic failure to:
11 pay overtime wages, pay minimum wages, provide meal and rest breaks (or pay the statutory
12 compensation due), issue accurate wage statements, pay wages on termination of employment
13 and provide personnel records.

14 2. Plaintiffs have worked as Bartenders/Servers and other employees for
15 Defendants in California. While working, Plaintiffs have been forced to endure stressful and
16 illegal workplace conditions created by Defendants' efforts to maximize profits and tightly
17 control labor costs.

18 3. Plaintiff, like his co-workers whom Defendants also employed during the
19 applicable limitations period, spend their workdays as Bartenders/Servers and other employees,
20 under illegal and highly regimented circumstances. That regimen results from Defendants'
21 insistence to strictly monitor and curtail labor costs, which Defendants accomplish by not
22 paying for all labor costs, failing to pay overtime wages due, failing to pay minimum wages,
23 failing to provide meal and rest breaks (or pay the statutory compensation due), failing to issue
24 accurate wage statements, failing to pay wages on termination of employment, and by using
25 other unlawful stratagems to ensure that labor costs remain artificially low.

26 4. Plaintiff brings this class action to recover, among other things, wages and
27 penalties from unpaid wages earned and due, including but not limited to, overtime wages,
28 minimum wages, premium pay for failure to afford proper meal/rest breaks, penalties for

1 failure to provide accurate itemized wage statements, wages owed on termination and interest,
2 attorneys' fees, costs, and expenses.

3 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
4 himself and all members of the Class, to compensate these workers for the unpaid wages and to
5 protect current and future workers of Defendants from being subjected to similar wage theft
6 and otherwise unlawful working conditions.

7 6. Plaintiff also brings an action seeking relief for Defendants' violations of
8 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
9 disgorgement of all compensation retained by Defendants as a result of their unlawful and
10 unfair business practices, as well as injunctive relief.

11 7. Pursuant to the California Labor Code, on or about May 14, 2025, Plaintiff filed
12 a notice with the Labor and Workforce Development Agency (LWDA) of his intent to pursue
13 claims against Defendants under the Private Attorney General Act (PAGA). As such, Plaintiff
14 reserves the right to amend this Complaint. Plaintiff intends to amend this Complaint to add a
15 cause of action pursuant to PAGA under Labor Code §§2699 *et seq.*

16 JURISDICTION AND VENUE

17 8. This Court has jurisdiction over this Complaint under Code of Civil Procedure
18 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
19 *Professions Code* §§ 17200 *et seq.* Plaintiff Gregorio Narciso Romero Rosa brings this
20 Complaint on his own behalf and on behalf of all persons in the Class as defined in paragraph
21 18 below.

22 9. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
23 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
24 herein, occurred in the County of Monterey and because Defendants owned and operated their
25 businesses in the County of Monterey.

26 THE PARTIES

27 PLAINTIFF

28 10. At all times relevant hereto, Plaintiff was:

- 1 (a) An individual over age 18 and a resident of Greenfield, California;
2 (b) Employed as an hourly employee for Defendants in Seaside, California;
3 (c) Did not receive overtime wages in violation of *Labor Code* §§510, 1198
4 and IWC Wage Order No. 5;
5 (d) Did not receive minimum wages as required by *Labor Code* §§1194,
6 1194.2, 1997, 1197.1, 1198 and IWC Wage Order No. 5;
7 (e) Did not receive the meal periods as required by *Labor Code* §266.7 and
8 IWC Wage Order No. 5;
9 (f) Did not receive the rest periods required by *Labor Code* §266.7 and IWC
10 Wage Order No. 5;
11 (g) Did not receive accurate wage statements as mandated by *Labor Code*
12 §226;
13 (h) Was not paid all wages owed on termination of employment as required
14 by *Labor Code* §§201-203; and
15 (i) Was not provided his personnel records. Each of these was a violation of
16 the *Labor Code*.

17 **DEFENDANTS**

18 11. Plaintiff is informed and believes, and based on that information and belief,
19 alleges, Defendant Embassy Suites is, and at all times mentioned herein was:

- 20 (a) A Delaware limited liability company, with a principal place of business
21 at 7930 Jones Ranch Drive, Mclean, Virginia 22102. Defendant
22 Embassy Suites has been authorized to do business and has been doing
23 business in the County of Monterey;
24 (b) The former employer of Plaintiff and the current and former employer of
25 the putative Class members;
26 (c) Paid Plaintiff and all Class members on an hourly basis;
27 (d) Failed to pay Plaintiff and all putative Class members overtime wages;
28 (e) Failed to pay Plaintiff and all putative Class members minimum wages;

- 1 (f) Failed to provide Plaintiff and all putative Class members with meal and
2 rest periods, failed to provide Plaintiff and all putative Class members
3 with accurate itemized wage statements;
4 (g) Failed to pay wages on termination and/or resignation of employment to
5 Plaintiff and all putative Class members; and
6 (h) Failed to provide Plaintiff with his requested personnel records. Each of
7 these was a violation of the *Labor Code*.

8 12. Plaintiff is informed and believes, and based on that information and belief,
9 alleges, Defendant AH is, and at all times mentioned herein was:

- 10 (a) A Delaware limited partnership, with a principal place of business at
11 2398 E. Camelback Road, Suite 935 Phoenix, Arizona 85016.
12 Defendant AH has been authorized to do business and has been doing
13 business in the County of Monterey;
14 (b) The former employer of Plaintiff and the current and former employer of
15 the putative Class members;
16 (c) Paid Plaintiff and all Class members on an hourly basis;
17 (d) Failed to pay Plaintiff and all putative Class members overtime wages;
18 (e) Failed to pay Plaintiff and all putative Class members minimum wages;
19 (f) Failed to provide Plaintiff and all putative Class members with meal and
20 rest periods, failed to provide Plaintiff and all putative Class members
21 with accurate itemized wage statements;
22 (g) Failed to pay wages on termination and/or resignation of employment to
23 Plaintiff and all putative Class members; and
24 (h) Failed to provide Plaintiff with his requested personnel records. Each of
25 these was a violation of the *Labor Code*.

26 13. The true names and capacities, whether individual, corporate, subsidiary,
27 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
28 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*

1 *Civil Procedure* § 474. Plaintiff will seek leave to amend his Complaint to allege the true
2 names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

3 14. Plaintiff is informed and believes, and based on that information and belief
4 alleges, that Defendants DOES 1 through 100 are persons, corporations or other entities which
5 reside in or are authorized to do, or are otherwise doing, business in the State of California.
6 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
7 conduct business in the County of Monterey. Each of the Defendants DOES 1 through 100 was
8 the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter
9 ego and/or representative of one or more of the other Defendants named herein, and acting with
10 permission, authorization, and/or ratification and consent of the other Defendants.

11 15. Plaintiff is informed and believes, and based on that information and belief
12 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
13 inclusive, are responsible in some manner for one or more of the events and happenings that
14 proximately caused the injuries and damages hereinafter alleged.

15 16. Plaintiff is informed and believes, and based on that information and belief
16 alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive,
17 are, and at all times mentioned herein were, the agents, servants, and/or employees of each of
18 the other Defendants and that each Defendant was acting within the course and scope of his,
19 hers or its authority as the agent, servant and/or employee of each of the other Defendants.
20 Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the
21 Class, for the damages sustained as a proximate result of their conduct.

22 17. Plaintiff is informed and believes, and based on that information and belief
23 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
24 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
25 themselves and entered into a combination and systemized campaign of activity to *inter alia*
26 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
27 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
28 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their

1 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
2 belief, and to all appearances, Defendants, and each of them, represented a unified body so that
3 the actions of one Defendant were accomplished in concert with, and with the knowledge,
4 ratification, authorization and approval of each of the other Defendants.

5 6 **CLASS ALLEGATIONS**

7 8 **A. The Definition of the Class**

9 18. The Class ("the Class") is defined as follows:

10 (a) "All current and former employees who were hourly paid employees of
11 Defendants and worked for Defendants in California at any time during the
12 period commencing on the date that is four (4) years prior to the filing of this
13 Complaint and continuing through the present date (the "Class Period")."

14 (b) "All persons who were hourly paid employees of Defendants and worked for
15 Defendants in California and left the employ of Defendants at any time during
16 the period commencing on the date that is within one (1) year prior to the filing
17 of this Complaint and continuing through the present date (the "Class Period")."

18 19. Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
19 amend or modify the Class description with greater specificity or further division into
20 subclasses or limitation to particular issues.

21 22 **B. Maintenance of the Action**

23 20. Plaintiff brings this action individually and on behalf of himself and as
24 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
25 and 17204 and *Code of Civil Procedure* § 382.

26 27 **C. The Class Requisites**

28 21. At all material times, Plaintiff was a member of the Class.

1 22. The Class action meets the statutory prerequisites for maintaining a class action
2 under Code of Civil Procedure § 382 in that:

- 3 (a) The persons who comprise the Class are so numerous that the joinder of all
4 those persons is impracticable and the disposition of their claims as a Class
5 will benefit the parties and the Court;
- 6 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
7 that are raised in this Complaint are common to the Class and will apply
8 uniformly to every Class member;
- 9 (c) The claims of the representative Plaintiff are typical of the claims of each
10 Class member. Plaintiff, like all Class members, has sustained damages
11 arising from Defendants' violations of the laws of the State of California.
12 Plaintiff, and the Class members, were and are similarly or identically
13 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
14 pattern of misconduct engaged in by the Defendants;
- 15 (d) The representative Plaintiff has, and will continue to, fairly and adequately
16 represent and protect the interests of the Class and has retained counsel
17 who are competent and experienced in class action litigation. There are no
18 material conflicts between the claims of the representative Plaintiff and the
19 Class members that would make class certification inappropriate. Counsel
20 for the Class will vigorously assert the claims of all Class members.

21 23. The persons who comprise the Class are so numerous that joining all of them is
22 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
23 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
24 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
25 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for
26 Plaintiff are experienced, qualified and generally able to conduct complex class action
27 litigation.

1 24. The Court should permit the action to be maintained as a class action under
2 *Code of Civil Procedure* § 382 because:

- 3 (a) The questions of law and fact common to the Class predominate over any
4 question affecting only individual members;
- 5 (b) A class action is superior to any other available method for fairly and
6 efficiently adjudicating the claims of the Class;
- 7 (c) The Class members are so numerous that it is impractical to bring all of
8 them before the Court;
- 9 (d) Plaintiff and other Class members will not be able to obtain effective and
10 economic legal redress unless the action is maintained as a class action;
- 11 (e) There is a community of interest in obtaining appropriate legal and
12 equitable relief for the statutory violations, and in obtaining adequate
13 compensation for the damages and injuries for which Defendants are
14 responsible in an amount sufficient to adequately compensate the Class
15 members;
- 16 (f) Without Class certification, the prosecution of separate actions by
17 individual Class members would create a risk of:
- 18 i. Inconsistent or varying adjudications for individual Class members
19 that would establish incompatible standards of conduct for
20 Defendants; and/or,
- 21 ii. Adjudication for individual Class members that would, as a
22 practical matter, dispose of other non-party members' interests, or
23 that would substantially impair or impede the non-parties' ability
24 to protect their interests, by, for example, potentially exhausting
25 the funds available from Defendants, and
- 26 (g) Defendants have acted or refused to act on grounds generally applicable
27 to the Classes, making final injunctive relief appropriate for the Class, as
28 a whole.

25. Plaintiff contemplates eventually issuing notice to the proposed Class Members that would set forth the subject and nature of the action. The Defendants' own business records may be utilized for assisting to prepare and issue the contemplated notice. To the extent that any further notices may be required, Plaintiff would contemplate using additional media and/or mailing.

GENERAL ALLEGATIONS

26. At all times material hereto, Defendant Embassy Suites has been and is, a company that owns and operates hotels.

27. At all times material hereto, Defendant AH has been and is, a hotel and asset management company.

28. Plaintiff and members of the Class were employed as Bartenders/Servers and other non-exempt employees in California at various times during the Class Period.

THE CONDUCT

29. Plaintiff seeks relief from Defendants' uniform policies and practices of denying Plaintiff and members of the Class wages and compensation owed under California law.

30. Starting on or about August 1, 2016 and continuing to November 20, 2024, Defendants employed Plaintiff on an hourly basis as a Bartender/Server in Seaside, California.

31. While employed by Defendants as a Bartender/Server, Plaintiff was paid \$16.50 per hour.

32. The employment by Defendants of the Class members, and each them, is governed by Industrial Welfare Commission Wage Order No. 5, which covers those persons employed in the public housekeeping industry.

OFF-THE-CLOCK WORK

33. Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 585.

1 34. Defendants required Plaintiff and the Class to regularly perform compensable
2 tasks off-the-clock for which they did not receive any compensation. Specifically, at all times
3 relevant, Plaintiff and Class members consistently worked hours for which they were not paid
4 because Plaintiff and the Class members were required to arrive early for their shifts and start
5 working, but not clock in.

6 35. As a result, and because they improperly treated such off the clock work as not
7 compensable, Defendants failed to compensate Plaintiff and the Class for such time.

8 **FAILURE TO PAY OVERTIME WAGES**

9 36. Under California law, non-exempt employees as defined by Wage Order No. 5,
10 are entitled to premium wages for overtime worked. Under California law, an hourly paid
11 employee is entitled to overtime pay when they exceed eight hours of work in a single day,
12 exceed 40 hours of work in a week or work seven days in a row.

13 37. At all times during the relevant time period, Plaintiff and the Class routinely
14 worked schedules such that they were due pay at the overtime rate due to off the clock work
15 and overtime for which they were not paid. During this period, it was the practice and policy
16 of Defendants to not pay employees overtime wages. Monies for unpaid overtime remain due
17 and owing.

18 **FAILURE TO PAY MINIMUM WAGES**

19 38. Under California law, non-exempt employees as defined by IWC Wage Order
20 No. 5 are entitled to minimum wages. Labor Code Section 1197 states the California
21 requirement that employees must be paid at least the minimum wage fixed by the Commission
22 or by any applicable state or local law, and any payment of less than the minimum wage is
23 unlawful. Similarly, Labor Code Section 1194 entitles “any employee receiving less than the
24 legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full
25 amount of this minimum wage.” IWC Wage Order No. 5, obligates employers to pay each
26 employee minimum wages for all hours worked.

27 39. These minimum wage standards apply to each hour employees worked or were
28 subject to control by the employer for which they were not paid. Therefore, an employer’s

1 failure to pay for any particular hour of time worked by an employee or subject to the
2 employer's control is unlawful, even if averaging an employee's total pay over all hours
3 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
4 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

5 40. Plaintiff and the Class were not paid minimum wages due to Defendants' failure
6 to afford compliant meal/rest breaks and requiring off the clock work.

7 41. At all times during the relevant time period, Plaintiff and the Class routinely
8 worked schedules such that they were due pay at minimum wage rates. During this period, it
9 was the practice and policy of Defendants to not pay employees' minimum wages. Monies for
10 unpaid minimum wages remain due and owing.

11 **LATE AND/OR NOT AFFORDED MEAL BREAKS**

12 42. Plaintiff and the Class members were routinely not afforded complaint meal
13 breaks. Plaintiff and Class members' meal breaks were afforded late and/or not afforded at all.

14 **REST BREAKS NOT AFFORDED**

15 43. Plaintiff and Class members were not afforded any rest breaks.

16 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

17 44. As a result of Defendants failure to pay employees required overtime wages,
18 minimum wages and failure to afford compliant meal/rest breaks, the wage statements issued to
19 the employees did not comply with *Labor Code* §226 and California Industrial Welfare
20 Commission ("IWC") Wage Order No. 5 in that they did not accurately reflect all wages earned
21 and due and owing.

22 **FAILURE TO PAY WAGES OWED ON TERMINATION**

23 45. Defendants failed to pay Plaintiff and Class members all wages owed on
24 termination and/or resignation of employment.

25 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

26 46. Defendants failed to allow Plaintiff to timely inspect his personnel records and
27 payroll file.

28

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

3 **(Labor Code §§ 510, 558, 1194, 1194.3, 1198, IWC Wage Order No. 5 By Plaintiffs**

4 **Against Defendants and Does 1 through 100)**

5 47. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this Complaint.

7 48. During Plaintiff's entire employment with Defendants, pursuant to Cal. Lab.
8 Code §§510, 1194, and 1198, and IWC Wage Order No. 5, Defendants were required to
9 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
10 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
11 hours on the seventh (7th) consecutive day of any work week.

12 49. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
13 who had not been paid overtime compensation could recover the unpaid balance of the full
14 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
15 fees and costs of suit.

16 50. Pursuant to IWC Wage Order No. 5-2001, § 3, "Employment beyond eight (8)
17 hours in any workday is permissible provided the employee is compensated for such overtime
18 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
19 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
20 workday...

21 51. California Labor Code section 558 provides in pertinent part:

22 (a) Any employer or other person acting on behalf of an employer who
23 violates, or causes to be violated, a section of this chapter or any
24 provision regulating hours and days of work in any order of the
25 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

26 (1) For any initial violation, fifty dollars (\$50) for each underpaid
27 employee for each pay period for which the employee was underpaid in
28 addition to an amount sufficient to recover underpaid wages.

1 (2) For each subsequent violation, one hundred dollars (\$100) for each
2 underpaid employee for each pay period for which the employee was
3 underpaid in addition to an amount sufficient to recover underpaid
wages.

4 (3) Wages recovered pursuant to this section shall be paid to the affected
5 employee...

6 (c) The civil penalties provided for in this section are in addition to any
7 other civil or criminal penalty provided by law.

8 52. As alleged above, Defendants required Plaintiff and the Class to regularly
9 perform compensable tasks pre-shift off-the-clock. Plaintiff and Class members were required
10 to arrive early for their shifts and begin working, but were not permitted to clock in until the
11 start of their shift times. Plaintiff and Class members did not receive any compensation for their
off the clock work.

12 53. Further, Plaintiff and Class members worked overtime hours, but were not paid
13 for their overtime work.

14 54. Throughout Plaintiff's employment, Defendants failed and refused to pay and
15 properly calculate overtime compensation to Plaintiff and Class members as required by law.

16 55. The foregoing overtime compensation is owed and unpaid. As a direct and
17 proximate result of Defendants' failure and refusal to pay overtime, Plaintiff and Class
18 members suffered damages in an amount to be proven at trial.

19 56. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
20 counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover Plaintiff's
21 attorneys' fees, costs and interest.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY MINIMUM WAGES**

24 **(IWC Wage Order No. 5; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs**
25 **Against Defendants and Does 1 through 100)**

26 57. Plaintiff and the Class reallege and incorporate by reference all of the allegations
27 set forth in this Complaint.
28

1 58. Labor Code §§ 1194(a) states: “Notwithstanding any agreement to work for a
2 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
3 compensation applicable to the employee is entitled to recover in a civil action the unpaid
4 balance of the full amount of this minimum wage or overtime compensation, including interest
5 thereon, reasonable attorney's fees, and costs of suit.”

6 59. *Labor Code* § 1197 states the California requirement that employees must be
7 paid at least the minimum wage fixed by the Commission, and any payment of less than the
8 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
9 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
10 the full amount of this minimum wage.” IWC Wage Order No. 5-2001 also obligates
11 employers to pay each employee minimum wages for all hours worked. These minimum wage
12 standards apply to each hour employees worked for which they were not paid. Therefore, an
13 employer’s failure to pay for any particular hour of time worked by an employee is unlawful,
14 even if averaging an employee’s total pay over all hours worked, paid or not, results in an
15 average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314,
16 324 (2005).

17 60. Pursuant to IWC Wage Order No. 5, Defendants are required to pay the
18 members of the Class for all hours worked, meaning the time during which an employee is
19 subject to the control of an employer, including all the time the employee is suffered or
20 permitted to work, whether or not required to do so.

21 61. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work
22 and the standard conditions of labor fixed by the commission shall be the maximum hours of
23 work and the standard conditions of labor for employees. The employment of any employee for
24 longer hours than those fixed by the order or under conditions of labor prohibited by the order
25 is unlawful.”

26 62. Defendants failed to satisfy minimum wage requirements because they
27 improperly failed to pay Plaintiff and Class members for off the clock work and failed to afford
28

1 compliant meal/rest breaks in violation of *Labor Code* §§ 226.7, 1197, 1198 and IWC Wage
2 Order No. 5.

3 63. Defendants' pattern, practice and uniform administration of corporate policy
4 regarding illegal employee compensation as described herein is unlawful and creates an
5 entitlement, pursuant to Labor Code § 218, to recovery by Plaintiff and the members of the
6 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
7 the appropriate rate.

8 64. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
9 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
10 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
11 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
12 the time associated with the overtime for which they received no compensation. *See Sillah v.*
13 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
14 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
15 showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*,
16 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

17 65. Plaintiff and the other Class members suffered and continue to suffer losses
18 related to the use and enjoyment of compensation due and owing to them as a direct result of
19 Defendants' unlawful acts and Labor Code violations in an amount to be shown according to
20 proof at trial and within the jurisdictional limitations of this Court.

21 66. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
22 Class are entitled to recover the unpaid balances of the minimum wages Defendants owe them,
23 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
24 proof.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO PAY FOR MEAL BREAKS**

27 **(Labor Code § 226.7 and IWC Wage Order No. 5 By Plaintiffs Against Defendants and**
28 **Does 1 through 100)**

1 67. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this Complaint.

3 68. California Labor Code §226.7(a) prohibits an employer from requiring an
4 employee to work during any meal period mandated by an applicable Industrial Wage Order.
5 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
6 employee to work during a meal or rest break or recovery period mandated pursuant to an
7 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
8 Commission..."

9 69. California Labor Code §1198 makes unlawful the employment of an employee
10 under conditions the IWC prohibits.

11 70. IWC Order No. 5-2001(11)(A) provides, in relevant part: "No employer shall
12 employ any person for a work period of more than five (5) hours without a meal period of not
13 less than 30-minutes, except that when a work period of not more than six (6) hours will
14 complete the day's work the meal period may be waived by mutual consent of the employer and
15 the employee."

16 71. IWC Order No. 5-2001 (11)(c) further provides, in relevant part: "Unless the
17 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
18 considered an 'on duty' meal period and counted as time worked."

19 72. Section 512(a) of the California Labor Code provides, in relevant part, that:

20 An employer may not employ an employee for a work period of more than five
21 hours per day without providing the employee with a meal period of not less
22 than 30-minutes, except that if the total work period per day of the employee is
23 no more than six hours, the meal period may be waived by mutual consent of
24 both the employer and employee. An employer may not employ an employee
25 for a work period of more than 10 hours per day without providing the
26 employee with a second meal period of not less than 30-minutes, except that if
the total hours worked is no more than 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.

27 73. The Labor Code and Wage Order provisions cited above require California
28 employers to provide employees with off-duty 30-minute meal periods on or before the fifth

1 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
2 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
3 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
4 the fifth hour of their shifts.

5 74. As alleged herein, Plaintiff and the members of the Class's meal breaks were
6 afforded late, after the fifth hour of work, and/or not afforded at all, at the direction of
7 Defendants and/or with their endorsement, encouragement, knowledge and acquiescence.

8 75. Under California law, employers must also record their employees' meal
9 periods: "Every employer shall keep accurate information with respect to each employee,
10 including the following: ... Meal periods ... shall also be recorded. Meal periods during which
11 operations cease ... need not be recorded." IWC Order No. 5, § (7)(A)(3). Where the employer
12 has failed to keep records required by statute, the consequences of such failure should fall on
13 the employer, not the employee. In such a situation, imprecise evidence by the employee can
14 provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727
15 (1988). Inasmuch as Defendants had an obligation under the record-keeping requirements of
16 the Wage Order to track meal periods unless "all work ceases", Defendants knew or should
17 have known its employees were regularly not afforded proper meal periods during the Class
18 Period.

19 76. Defendants have a policy or practice of failing to ensure that Plaintiff and
20 members of the Class take the meal periods required by California Labor Code §226.7 and
21 IWC Wage Order No. 5-2001 §11.

22 77. By their actions in not affording Plaintiff and Class Members compliant meal
23 periods, Defendants violated Cal. Lab. Code §226.7(b) and section 11 of IWC Wage Order No.
24 5 in the amount of one additional hour of pay at the employee's regular rate of compensation
25 for each work period during each day in which Defendants failed to provide employees with
26 statutory compliant meal periods.

27 //

28 //

1 78. Defendants also have a policy or practice of failing to pay each of their
2 employees who was not provided with a meal period as required an additional one hour of
3 compensation at each employee's regular rate of pay.

4 79. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to
5 bring a private right of action to recover wages due based on the deprivation of timely meal
6 periods under Cal. Labor Code § 226.7(b).

7 80. As a direct and proximate result of Defendants' unlawful conduct as alleged
8 herein, Plaintiff and members of the Class have sustained economic damages, including but not
9 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled
10 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
11 relief due to Defendants' violations of the California Labor Code and IWC Wage Order No. 5.

12 **FOURTH CAUSE OF ACTION**

13 **FOR FAILURE TO PROVIDE REST PERIODS**

14 **(Labor Code § 226.7 and IWC Wage Order No. 5 By Plaintiffs Against Defendants and**
15 **Does 1 through 100)**

16 81. Plaintiff and the Class reallege and incorporate by reference all of the allegations
17 set forth in this Complaint.

18 82. Labor Code § 226.7 and IWC Wage Order No. 5 provide that employers shall
19 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
20 per four hours of work, or major fraction thereof.

21 83. Labor Code § 226.7 and IWC Wage Order No. 5 provide that if an employer
22 fails to provide an employee with rest periods in accordance with those provisions, the
23 employer shall pay the employee one hour of pay at the employee's regular rate of
24 compensation for each workday that the rest periods were not so provided.

25 84. Defendants have intentionally and improperly denied uninterrupted rest periods
26 to Plaintiff and the Class in violation of Labor Code § 226.7 and IWC Wage Order No. 5.

27 85. Plaintiff and members of the Class were not afforded any rest periods.
28

1 86. At all times relevant hereto, Defendants failed to provide rest periods as required
2 by Labor Code § 226.7 and IWC Wage Order No. 5.

3 87. By virtue of Defendants' unlawful failure to provide compliant rest periods to
4 Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer,
5 damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed
6 the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

7 **FIFTH CAUSE OF ACTION**
8 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**
9 **ITEMIZED STATEMENTS**

10 **(Labor Code §226 By Plaintiffs Against Defendants and Does 1 through 100)**

11 88. Plaintiff and the Class reallege and incorporate by reference all of the allegations
12 set forth in this Complaint.

13 89. Pursuant to IWC Wage Order No. 5, Defendants were the employers of Plaintiff
14 and the Class.

15 90. Pursuant to California Labor Code sections 226, and Wage Order No. 5-2001
16 section 7, Defendants are required to maintain and provide accurate records relating to
17 employee compensation including all formulas and production records used to calculate wages
18 due.

19 91. Defendants are further required to provide, *inter alia*, semimonthly or at the time
20 of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2)
21 all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which
22 the employee is being paid; (5) the name of the employee; and (6) the name and address of the
23 legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

24 92. Section 226(e) provides that an employee is entitled to recover \$50 for the
25 initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay
26 period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay
27 periods in which the employer knowingly and intentionally failed to provide accurate itemized
28 statements to the employee causing the employee to suffer injury.

1 93. Notwithstanding these provisions, Defendants have engaged in a uniform
2 practice of refusing to maintain and provide the accurate records and wage statements required
3 by California law.

4 94. Throughout the Class Period, Defendants intentionally and knowingly provided
5 Plaintiff and other members of the Class with weekly itemized wage statements containing
6 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
7 that the payments owed to Plaintiff and the members of the Class for overtime wages,
8 minimum wages, premium pay for meal/rest breaks, wages owed on termination of
9 employment, were not included in gross wages earned by Plaintiff and members of the Class.
10 Further, Defendants failed to furnish Plaintiff and the Class, upon payment of wages, itemized
11 statements accurately showing the number of hours worked and the rates paid.

12 95. As a result, Plaintiff and members of the Class have been injured by having been
13 deprived of the true facts pertaining to their compensation and employment.

14 96. Plaintiff and members of the Class were damaged by these failures because,
15 among other things, the failures led them to believe that they were not entitled to overtime
16 wages, minimum wages, premium pay for meal/rest breaks not properly afforded, wages owed
17 on termination of employment, even though they were so entitled and these failures hindered
18 them from determining the amounts of wages owed to them.

19 97. Plaintiff and members of the Class are entitled to the amounts provided in Labor
20 Code §226(e), plus attorneys' fees and costs.

21 98. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
22 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are
23 provided by law for Defendants' improper conduct.

24 **SIXTH CAUSE OF ACTION**

25 **FAILURE TO PAY WAGES UPON TERMINATION**

26 **(Cal. Labor Code §§201-203 By Plaintiffs Against Defendants and Does 1 through 100)**

27 99. Plaintiff and the Class reallege and incorporate by reference all of the allegations
28 set forth in this Complaint.

1 100. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
2 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
3 from employment, unpaid wages are due and payable within 72 hours of resignation.

4 101. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
5 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
6 paid, not to exceed thirty days.

7 102. Plaintiff and the Class were discharged and/or resigned from Defendants'
8 employ and Defendants willfully failed to pay Plaintiff and the Class wages due them for
9 overtime, minimum wages, meal/rest breaks, and on termination of employment, not properly
10 paid.

11 103. Plaintiff was terminated by Defendants on November 20, 2024. However,
12 Plaintiff and Class members were not paid all wages that they were due.

13 104. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's
14 wages for each day he or she was not timely paid, not to exceed 30 days' wages.

15 **SEVENTH CAUSE OF ACTION**

16 **(Failure to Allow Inspection of Employment Records in Violation of *Labor Code* §1198.5**

17 **By Plaintiffs against Defendants and Does 1 through 100)**

18 105. Plaintiff and the Class reallege and incorporate by reference all of the allegations
19 set forth in this Complaint.

20 106. California Labor Code Section 1198.5 provides:

21 (a) Every current and former employee, or his or her representative, has the
22 right to inspect and receive a copy of the personnel records that the
23 employer maintains relating to the employee's performance or to any
grievance concerning the employee.

24 (b) The employer shall make the contents of those personnel records available
25 for inspection to the current or former employee, or his or her
26 representative, at reasonable intervals and at reasonable times, but not later
27 than 30 calendar days from the date the employer receives a written request,
28 unless the current or former employee, or his or her representative, and the
employer agree in writing to a date beyond 30 calendar days to inspect the
records, and the agreed-upon date does not exceed 35 calendar days from
the employer's receipt of the written request to inspect the records. Upon a

1 written request from a current or former employee, or his or her
2 representative, the employer shall also provide a copy of the personnel
3 records,..... later than 30 calendar days from the date the employer receives
4 the request...

5 (k) If an employer fails to permit a current or former employee, or his or her
6 representative, to inspect or copy personnel records within the times specified I
7 this section... the current or former employee may recover a penalty of seven
8 hundred fifty dollars (\$750) from the employer.

9 (1) A current or former employee may also bring an action for injunctive relief
10 to obtain compliance with this section, and may recover costs and reasonable
11 attorney's fees in such an action.

12 107. Additionally, pursuant to Wage Order No. 5, at section 7 re: Records, employers
13 are required to keep accurate payroll records on each employee, and such records must be
14 made readily available for inspection by the employee upon reasonable request. The employer
15 must also maintain accurate production records.

16 108. On or about May 14, 2025, Plaintiff' counsel issued a written request to
17 Defendants for copies of his personnel records.

18 109. Under California Labor Code Sections 226, 432 and 1198.5, such records were
19 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
20 Plaintiff's counsel and Defendants did not enter into an agreement to enlarge the time for
21 Defendants' compliance, and Defendants have failed and refused to permit Plaintiff copies of
22 his records.

23 110. As a direct result and consequence of Defendants' failure and refusal to permit
24 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or
25 decree mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a
26 result of Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
27 penalty of \$750 based upon Defendants' violation of §1198.

28 **EIGHTH CAUSE OF ACTION**

**(Unfair Competition in Violation of Business & Professions Code §§ 17200 *et seq.* By
Plaintiffs Against Defendants and Does 1 through 100)**

1 111. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this Complaint.

3 112. Pursuant to IWC Wage Order No. 5, Defendants were the employers of Plaintiff
4 and the Class. Defendants are also "person(s)" as that term is defined in Business & Professions
5 Code §17021.

6 113. The Business & Professions Code defines unfair competition as any unlawful,
7 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
8 described herein, Defendants have engaged in unfair and unlawful practices by failing to (1)
9 pay overtime wages; (2) pay minimum wages (3) pay premium pay for meal breaks not
10 properly afforded; (4) pay premium pay for rest breaks not properly afforded; (5) furnish
11 Plaintiff and the Class with accurate itemized wage statements, (5) pay wages on termination of
12 employment, and (6) provide and allow inspection of personnel records, all in violation of
13 Business & Professions Code §§ 17200 *et seq.*

14 114. By and through the unfair and unlawful business practices described herein,
15 Defendants have obtained valuable property, money and services from the Plaintiff and the
16 Class and have deprived them of valuable rights and benefits guaranteed by law all to the
17 detriment of Plaintiff and the Class.

18 115. All the acts described herein are violations of, among other things, the Labor
19 Code and the Industrial Commission Wage Order No. 5, are unlawful and in violation of public
20 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
21 constitute unfair and unlawful business practices in violation of Business & Professions Code
22 §§ 17200 *et seq.*

23 116. Plaintiff and the Class are entitled to, and do, seek such relief as may be
24 necessary to restore to them the money and property which Defendants have acquired, or of
25 which Plaintiff and the Class have been deprived by means of the above-described unfair and
26 unlawful business practices.

27 117. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
28 above-described business practices are unfair and unlawful and that injunctive relief should be

1 issued restraining Defendants from engaging in any of the above described unfair and unlawful
2 business practices in the future.

3 118. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
4 redress the injuries which they have suffered as a consequence of the unfair and unlawful
5 business practices of Defendants. As a result of the unfair and unlawful business practices
6 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable
7 harm unless Defendants are restrained from continuing to engage in these unfair and unlawful
8 business practices. In addition, Defendants should be required to disgorge the unpaid moneys
9 to Plaintiff and the Class.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
12 and against Defendants, and each of them, as follows:

13 1. For compensatory damages in the amount of overtime wages due to Plaintiff and
14 Class members, according to proof;

15 2. For compensatory damages in the amount of minimum wages due to Plaintiff
16 and Class members, according to proof;

17 3. For one (1) hour of pay at the regular rate of compensation for Plaintiff and
18 Class members for each workday that a meal and/or rest period was not provided;

19 4. For an award of consequential damages in Plaintiff and Class members' favor
20 and against Defendants, in an amount to be proven at trial;

21 5. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

22 6. For payment to Plaintiff and Class Members of waiting time penalties pursuant
23 to *Cal. Lab. Code* §203, in an amount equal to her and Class members' respective daily rates of
24 pay at the time of termination or layoff, multiplied by the total amount of days elapsed between
25 the date of the involuntary termination, and/or 72 hours after notice of the voluntary
26 termination, up to a maximum of 30 days' pay, according to proof;

27 7. For specific relief enforcing waiting time penalties of 30 days of per diem wages
28 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

1 8. For prejudgment interest accrued on all due and unpaid overtime and minimum
2 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
3 1194(a), according to proof;

4 9. For injunctive relief requiring Defendants to comply with Labor Code
5 1198.5(b)(1);

6 10. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order No. 5-
7 2001(14);

8 11. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5,
9 according to proof;

10 12. For reasonable costs, including attorneys' fees, in an amount according to proof
11 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 1198.5 and/or *Cal. Code of Civ. Proc.*
12 §1021.5;

13 13. For an award of restitution of wages to Plaintiff and Class members in an
14 amount equal to the amount of wages owed and unpaid, according to proof;

15 14. For injunctive relief ordering the continuing unfair business acts and practices to
16 cease, as the Court deems just and proper;

17 15. For other injunctive relief ordering Defendants to notify Plaintiff and Class
18 members that they have not been paid the proper amounts in accordance with California law;

19 16. For punitive and exemplary damages in a sum to be determined at trial; and

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

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff Gregorio Narciso Romero Rosa hereby respectfully requests a trial by jury for
23 all claims and issues raised in his Complaint that may be entitled to a jury trial.

24
25 LIPELES LAW GROUP, APC

26 Date: May 14, 2025

27 By: _____

28 Thomas H. Schelly
 Attorneys for Plaintiff
 Gregorio Narciso Romero Rosa