

MESSRELIAN LAW INC.

Harout Messrelian, Esq., SB# 272020
500 N. Central Ave., Suite 840
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983
Email: hm@messrelianlaw.com

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By /s/ Salote Alipate
Deputy Clerk

Attorneys for Plaintiffs ANGEL GUTIERREZ and JESUS MARTINEZ-ARISCETA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ANGEL GUTIERREZ; JESUS) CASE NO.: 23-CIV-01088
MARTINEZ-ARISCETA,)
) **COMPLAINT FOR DAMAGES FOR:**
Plaintiffs,)
) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
vs.) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**
) **3) FAILURE TO PAY OVERTIME;**
) **4) FAILURE TO PROVIDE ACCURATE**
RHR CALIFORNIA SERVICES, L.L.C.) **ITEMIZED WAGE STATEMENTS;**
and DOES 1 to 25, inclusive,) **5) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
Defendants.) **6) FAILURE TO GIVE REST BREAKS;**
) **7) FAILURE TO GIVE MEAL BREAKS;**
) **8) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) **9) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS**
) **10) FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES**
) **11) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiffs ANGEL GUTIERREZ (“Gutierrez”) and JESUS MARTINEZ-ARISCETA (“Martinez”) (hereinafter collectively “Plaintiff(s)” unless otherwise noted as Plaintiff Gutierrez or Plaintiff Martinez), and allege:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of San Mateo in this judicial district because Defendants RHR CALIFORNIA SERVICES, L.L.C. and DOES 1 to 25, inclusive, (collectively “Defendant(s)” or “RHR”) do business in the County of San Mateo, and because Defendants’ obligations and liabilities arise therein. Moreover, Plaintiffs’ damages sought herein exceed \$25,000.

2. Plaintiff Gutierrez is a male resident of the State of California.

3. Plaintiff Martinez is a male resident of the State of California

4. Plaintiffs are informed and believe that at all times herein mentioned, Defendant RHR CALIFORNIA SERVICES, L.L.C. (“RHR”) was and is a domestic California limited liability company, operating Rosewood Sand Hill Hotel in the County of San Mateo, State of California, and which employed Plaintiff Gutierrez and Plaintiff Martinez.

5. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiffs sue them by these fictitious names. Plaintiffs are informed and believe that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiffs will amend this complaint to show the true names and capacities of these fictitiously named defendants. Unless otherwise alleged in this complaint, Plaintiffs are informed, and on the basis of that information and belief, allege that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter

1 alleged, were acting within the course, scope, and under the authority of their agency,
2 employment, or representative capacity, with the consent of his/her codefendants.

3 **GENERAL ALLEGATIONS**

4 6. Plaintiff Gutierrez started working for RHR on or around 2012. During his employment
5 tenure, Plaintiff Gutierrez was classified as an hourly, non-exempt employee. Plaintiff
6 Gutierrez's last rate of pay was approximately \$29.45 per hour. During his employment,
7 Plaintiff Gutierrez worked in the restaurant called "Madera". Plaintiff Gutierrez's employment
8 at RHR ended on or around early November 2022.

9 7. Plaintiff Martinez started working for RHR on or around 2009. During his employment
10 tenure, Plaintiff Martinez was classified as an hourly, non-exempt employee. Plaintiff
11 Martinez's last rate of pay was approximately \$30.90 per hour. During his employment,
12 Plaintiff Martinez worked in the restaurant called "Madera". Plaintiff Martinez's employment
13 at RHR ended on or around early November 2022.

14 8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
15 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
16 Security Services USA, Inc., an onsite security provider. After about a year of employment,
17 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
18 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
19 termination of employment and weekly payment of wages to temporary employees. The trial
20 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
21 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
22 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
23 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
24 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
25 PAGA representative to sue for violations that the representative has personally suffered. The
26 PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves
27 and others. The statute also states that an "aggrieved employee" is "any person who was
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1 employed by the alleged violator and against whom one or more of the alleged violations was
2 committed.” Because at least one of the violations that Huff had alleged had affected him
3 personally, the Court of Appeal denied Securitas’ motion.

4 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
5 other employees, it allows for suits broader than the specific violations the named employee
6 experienced. Therefore, even if the employee did not personally experience the Labor Code
7 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiffs’
8 position that Plaintiff Gutierrez and Plaintiff Martinez can equivocally bring the following
9 labor code violations on behalf of all other employees, including hourly, non-exempt
10 employees and even salaried employees who worked for RHR at any of their locations in the
11 state of California during the PAGA period.

12 10. It is Plaintiffs’ position that RHR has committed the numerous labor code violations
13 against Plaintiff Gutierrez, Plaintiff Martinez, and other hourly, non-exempt employees who
14 worked at any of RHR’s locations in the state of California during the PAGA period.

15 11. RHR did not provide Plaintiffs and other aggrieved employees with compensation for
16 all hours worked and did not pay Plaintiffs and others the minimum wages to which they were
17 entitled for work performed pursuant to California Labor Code sections 1194, 1197 and
18 1197.1. This is so because RHR had a policy of rounding down the hours worked by Plaintiffs
19 and other aggrieved employees which translated to Plaintiffs and others not being paid for all
20 hours worked, including minimum wages. Furthermore, and to the extent that Plaintiffs and
21 others’ meal periods were interrupted due to work obligations, Plaintiffs and others were not
22 compensated for that “off the clock” work in violation of California’s minimum wage laws.

23 12. Due to the above “off the clock” hours, RHR also violated Labor Code §510 because it
24 failed to pay Plaintiffs and other aggrieved employees overtime even though they worked
25 more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their
26 employment. Plaintiffs and other aggrieved employees’ actual work hours entitled them to
27 overtime compensation, however, RHR did not compensate its hourly, non-exempt employees
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1 with the correct amount of overtime. Moreover, the company did not include bonuses/incentive
2 pay in calculating the regular rate of pay of employees for purposes of deciphering the
3 overtime rate of pay. Additionally, the incentive and bonus payments were also not factored
4 into Plaintiffs' regular rate for purposes of receiving meal and rest break premiums per the
5 Ferra v. Loews case.

6 13. RHR also violated Labor Code § 226.7 and the appropriate Industrial Welfare
7 Commission Wage Order no. 5 because it failed to provide Plaintiffs and others with 10-minute
8 rest periods for every four hours of work, or majority portion thereof, throughout their
9 employment. RHR did not completely relieve Plaintiffs and others of all duty during said rest
10 periods. RHR did not pay to Plaintiffs and others one additional hour of pay at Plaintiffs'
11 regular rate of compensation for each workday that one or more statutory rest periods was not
12 provided. It was not part of the company policy for employees such as Plaintiffs and others to
13 take timely, uninterrupted rest breaks every 4 hours worked. In fact, Plaintiffs and others did
14 not ever receive any rest breaks. As such, the culture at RHR did not lend itself to the
15 employees receiving statutory rest breaks wherein they were relieved of all work duties. As
16 such, the environment at RHR was not conducive to receiving statutory rest breaks under
17 California law and timely, statutory rest breaks were not authorized or enforced.

18 14. RHR violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission
19 Wage Order no. 5 because it failed to provide hourly, non-exempt employees, including
20 Plaintiffs and others, the requisite 30-minute, uninterrupted meal periods for every five (5)
21 hours of work throughout their employment. RHR did not completely relieve employees of all
22 duty during said meal periods. RHR did not pay to Plaintiffs and its hourly, non-exempt
23 employees one additional hour of pay at their regular rate of compensation for each workday
24 that one or more statutory meal periods was not provided. Like the rest breaks, receiving a
25 timely, uninterrupted thirty-minute meal break was not part of the company culture and was
26 not enforced by RHR. As such, it was the normal practice and custom of RHR not to
27 authorize, permit, and enforce timely, uninterrupted statutory meal periods. If RHR had
28 Plaintiffs sign a meal period waiver, it would not be valid and enforceable since Plaintiffs and

1 others generally worked more than a 6-hour shift. If RHR had Plaintiffs sign an on-duty meal
2 period agreement wherein Plaintiffs agreed to work through their meal period, it would also be
3 invalid and unenforceable because the nature of Plaintiffs' job does not prevent them from
4 taking a meal period. As was the case with rest periods, timely, uninterrupted meal breaks were
5 definitively not part of the RHR's culture as Plaintiffs and others would take their meal periods
6 late and after the 5th hour worked or the meal periods would be interrupted by work
7 obligations. The meal periods were not authorized and were not enforced. To the extent that
8 RHR argues that employees receive meal break premium pay for missed meal periods, that
9 argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the
10 violations themselves, irrespective of whether an employee received the premium payment for
11 a missed, short, or interrupted meal period. In Kirby v. Immoos Fire Protection, Inc., the Court
12 stated, "section 226.7 does not give employers a lawful choice between providing either meal
13 and rest breaks or an additional hour of pay." See Kirby v. Immoos Fire Protection, Inc.,
14 (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not
15 excuse the violation; the employer has still committed a violation even if the remedy for the
16 violation has been paid. See Wert v. U.S. Bancorp, (S.D. Cal. Mar. 22, 2016, 2016 WL
17 1110302 at *4). As such, the work environment and culture at RHR was not conducive to
18 receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal
19 or rest break premiums paid were not compensated at the weighted average regular rate,
20 inclusive of bonuses and/or incentive payments.

21 15. Furthermore, during the relevant time period, and due to the labor code violations cited
22 above, RHR failed to pay Plaintiffs and others all wages due to them within any time period
23 specified by California Labor Code section 204. RHR was also in violation of California Labor
24 Code section 226(a), by failing to include pertinent information on the wage statements,
25 including but not limited to, the full and correct name of the legal employer along with the
26 employer's address, all hours worked (including "off the clock" hours and overtime), all
27 applicable hourly rates, gross wages earned, net wages earned, the correct start and end time of
28 the pay period, all deductions, the employee's identifying information, and premium pay for

1 the missed meal and rest breaks. As such, RHR did not provide Plaintiffs and other similarly
2 situated aggrieved employees with complete, accurate itemized wage statements.

3 16. During the relevant time period, RHR also failed to keep accurate and complete payroll
4 records showing the actual hours worked per day and the wages paid to Plaintiffs and others
5 pursuant to California Labor Code sections 1174(d).

6 17. RHR also violated Labor Code § 203 because it willfully failed to pay Plaintiffs and
7 other similarly situated aggrieved employees earned and due wages upon separation of
8 employment, either immediately upon involuntary termination, or within 72 hours of
9 resignation. These earned but unpaid wages include payment for all hours worked (including
10 the minimum wage), overtime compensation, and premium pay for missed meal and rest
11 breaks.

12 18. Also, during the relevant time period, Plaintiffs and other aggrieved employees incurred
13 necessary, business-related expenses and costs that were not reimbursed by RHR. These costs
14 include, but are not limited to, use of personal cell phones for work purposes. Moreover,
15 Plaintiffs had to buy their own shoes and bring their own knives to the workplace.
16 Accordingly, RHR was in violation of California Labor Code sections 2800 and 2802.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

19 **(California Industrial Welfare Commission Order 5-2001, California Code of**
20 **Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

21 **(Plaintiffs against all named defendants and all DOE defendants)**

22 19. Plaintiffs re-allege and incorporate by reference each and every allegation in
23 paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

24 20. At all times relevant herein, Defendants were required to compensate its employees for
25 all hours worked upon reporting for work at the appointed time stated by the employer
26 pursuant to Industrial Welfare Commission Order 5-2001, California Code of Regulations,
27 Title 8, Section 11050.
28

1 21. For the three (3) years preceding filing of this action, Defendants failed to compensate
2 Plaintiffs for all hours worked.

3 22. Under the aforementioned wage order and regulations, Plaintiffs are to recover
4 compensation for all hours worked but not paid by Defendants for the three (3) years
5 preceding the filing of this Complaint.

6 23. As a proximate result of the aforementioned violations, Plaintiffs have been damaged in
7 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
8 this Court.

9 24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
10 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiffs are
11 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
12 reasonable attorney's fees and costs of suit.

13 25. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
14 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
15 amount known to Plaintiffs once they have obtained all of their payroll records from
16 Defendants.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PAY MINIMUM WAGES**

19 **(California Labor Code Sections 1194, 1194.2, 1197)**

20 **(Plaintiffs against all named defendants and all DOE defendants)**

21 26. Plaintiffs re-allege and incorporate by reference each and every allegation in
22 paragraphs 1 through 25, inclusive, of this Complaint as though fully set forth herein.

23 27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
24 to suffer or permit a California employee to work without paying wages at the minimum wage
25 rate for all hours worked as required by the applicable Industrial Welfare Commission
26 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title
27 8, Section 11050, subdivision 4.
28

1 28. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K), at all relevant times, “hours
2 worked” included “the time during which an employee is subject to the control of an employer,
3 and includes all the time the employee is suffered or permitted to work, whether or not required
4 to do so...”

5 29. During their employment, Plaintiffs were regularly required as a matter of uniform
6 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiffs
7 was paid less than the minimum wage rate by Defendants for hours worked in violation of
8 California Labor Code Section 1197 and the applicable California Industrial Wage
9 Commission wage order(s).

10 30. Plaintiffs were, at all relevant times, under the control of Defendants and suffered or
11 permitted to work by Defendants. Defendants’ acts or omissions in failing to adequately
12 compensate Plaintiffs were not in good faith nor were there reasonable grounds for Defendants
13 to believe that their acts or omissions were not contrary to California law.

14 31. For all hours worked by Plaintiffs for which they were paid less than the minimum
15 wage rate by Defendants, Plaintiffs are entitled to not less than the applicable California
16 minimum wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an
17 amount equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section
18 1194, Plaintiffs are also entitled to attorney’s fees, costs and interests according to proof.

19 32. Under this cause of action, Plaintiffs prays for penalties due under the statutes alleged
20 along with any allowable interest, penalties, attorney’s fees, and costs according to proof at
21 trial.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME**

24 **(California Industrial Welfare Commission Order 5-2001, California Code of**
25 **Regulations Title 8 Section 11050)**

26 **(Plaintiffs against all named defendants and all DOE defendants)**
27
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1 33. Plaintiffs re-allege and incorporate by reference each and every allegation in
2 paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein.

3 34. Pursuant to Industrial Welfare Commission Order No. 5-2001, California Code of
4 Regulations, Title 8, Section 11050, for the period of Plaintiffs' employment, Defendants were
5 required to compensate Plaintiffs for all overtime, which is calculated at one and one-half (1.5)
6 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
7 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
8 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
9 week.

10 35. Plaintiffs were non-exempt employees entitled to the protections of the California
11 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
12 Section 11050.

13 36. Plaintiffs worked more than eight (8) hours in a single workday, more than twelve (12)
14 hours in a single day, or forty (40) hours in a single workweek on numerous occasions.

15 37. Plaintiffs were entitled to the above overtime premiums.

16 38. Defendants did not pay Plaintiffs premium wages of at least one and one-half times
17 Plaintiffs' regular rate of pay for hours worked past eight (8) in a day or two times Plaintiffs'
18 regular rate of pay for hours worked past twelve (12) in a day.

19 39. Defendants did not pay Plaintiffs premium wages of at least one and one-half times
20 Plaintiffs' regular rate of pay for hours worked past forty (40) in a week.

21 40. Plaintiffs worked at least one pay period in which they were not properly paid overtime
22 within the three (3) years prior to the initiation of this lawsuit.

23 41. Defendants know or should know the actual dates of overtime worked, the amount of
24 overtime worked, and the amount of unpaid overtime due.

25 42. As a proximate result of Defendants' violations, Plaintiffs have been damaged in an
26 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
27 Court.
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1 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
2 Regulations, Title 8, Sections 11050, Plaintiffs are entitled to recover damages for the
3 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
4 reasonable attorney's fees and costs of suit.

5 44. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
7 trial.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

10 **(California Labor Code Section 226)**

11 **(Plaintiffs against all named and all DOE defendants)**

12 45. Plaintiffs re-allege and incorporate by reference each and every allegation in
13 paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

14 46. Pursuant to California Labor Code Section 226, every employer must furnish each
15 employee an itemized statement of wages and deductions at the time of payment of wages.

16 47. Defendants knowingly and intentionally did not furnish Plaintiffs with any pay stubs
17 that accurately reflected all information required by Labor Code Section 226, including but not
18 limited to, gross wages earned, including overtime, net wages earned, total hours worked by
19 the employee, all deductions, correct employee identifying information, the correct name and
20 address of the legal employing entity, the correct start and end of the pay periods, and premium
21 pay for missed meal breaks and rest breaks, among others. Therefore, Defendants failed to
22 maintain and provide accurate itemized wage statements to Plaintiffs in accordance with
23 California Labor Code Section 226(a).

24 48. Pursuant to California Labor Code Section 226(e), Plaintiffs are entitled to recover the
25 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
26 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
27 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
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reasonable attorney's fees.

49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiffs are entitled to recover penalties, in an amount to be established at trial, as well as costs and attorney's fees pursuant to statute.

50. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES OWED EVERY PAY PERIOD

(California Labor Code Section 204)

(Plaintiffs against all named defendants and all DOE defendants)

51. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

52. California Labor Code Section 204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

53. At all times relevant during the liability period, Defendants failed to pay Plaintiffs the full amount of all owed wages when due as required by California Labor Code Section 204.

54. Defendants failed to pay Plaintiffs all wages earned each pay period. Plaintiffs are informed, believe, and thereon allege, that all times relevant during the liability period, Defendants maintained a policy or practice of not paying Plaintiffs wages for all hours worked, including overtime hours and the minimum wage along with premiums for missed meal breaks and rest breaks.

55. As a result of Defendants' unlawful conduct, Plaintiffs have suffered damages in an amount, subject to proof, to the extent they were not paid all wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiffs but can be determined

1 directly from Defendants' records or indirectly based on information from Defendants'
2 records.

3 56. Under this cause of action, Plaintiffs prays for penalties due under the statutes alleged
4 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
5 trial.

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO GIVE REST BREAKS**

8 **(Plaintiffs against all named defendants and all DOE defendants)**

9 57. Plaintiffs re-allege and incorporate by reference each and every allegation in
10 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.
11

12 58. Plaintiffs bring this cause of action under the following laws, for the following reasons:

- 13 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which
14 provides that every employer shall authorize and permit all employees to take rest
15 periods, which insofar as practicable shall be in the middle of each work period.
16 The authorized rest period time shall be based on the total hours worked daily at the
17 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
18
- 19 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which
20 provides that if an employer fails to provide an employee a rest period in
21 accordance with the applicable provisions of this order, the employer shall pay the
22 employee one (1) hour of pay at employee's regular rate of compensation for each
23 workday that the rest period is not provided;
- 24 c. Title 8 of the California Code of Regulations sections 11050(20)(A), which
25 penalizes the employer \$50.00 for each initial violation, per employee, of any
26 provision of the Wage Order, and \$100.00 for each additional violation thereafter
27 per employee; and
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1 d. California Labor Code section 226.7, which states that (a) no employer shall require
2 any employee to work during any rest period mandated by an applicable order of
3 the Industrial Welfare Commission, and (b) if an employer fails to provide an
4 employee a rest period in accordance with an applicable order of the Industrial
5 Welfare Commission, the employer shall pay the employee one (1) additional hour
6 of pay at employee's regular rate of compensation for each work day that the rest
7 period is not provided.
8

9 59. Plaintiffs allege that they were not authorized and permitted to take a ten (10) minute
10 rest break after every four (4) hours of work or major fraction thereof, as required by California
11 law.

12 60. Under this cause of action, Plaintiffs pray for wages due to them under the statutes,
13 regulations, and wage orders alleged in this cause of action along with any allowable interest,
14 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiffs pray for
15 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
16

17 61. Plaintiffs also pray for Labor Code section 218.5 recovery of costs and attorney's
18 fees as well as interest under Labor Code section 218.6.

19 62. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
20 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
21 trial.

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO GIVE MEAL BREAKS**

24 **(Plaintiffs against all named defendants and all DOE defendants)**

25 63. Plaintiffs re-allege and incorporate by reference each and every allegation in
26 paragraphs 1 through 62, inclusive, of this Complaint as though fully set forth herein.
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1 64. Plaintiffs bring this cause of action under the following laws, for the following
2 reasons:

- 3 a. California Labor Code section 512(a), which requires that employees be given a 30-
4 minute uninterrupted meal break after five (5) hours of work, and a second
5 uninterrupted meal break after ten (10) hours of work;
- 6 b. California Labor Code section 226.7, which states that (a) no employer shall require
7 any employee to work during any meal period mandated by an applicable order of
8 the Industrial Welfare Commission, and (b) if any employer fails to provide an
9 employee a meal period in accordance with an applicable order of the Industrial
10 Welfare Commission, the employer shall pay the employee one (1) additional hour
11 of pay at the employee's regular rate of compensation for each workday that the
12 meal period is not provided;
- 13 c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified
14 under Title 8 of the California Code of Regulations Section 11050, which states that
15 if an employer fails to provide an employee a meal period in accordance with the
16 applicable provisions of the Wage Order, the employer shall pay the employee one
17 (1) hour of pay at the employee's regular rate of compensation for each workday
18 that the meal period is not provided;
- 19 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
20 codified under Title 8 of the California Code of Regulations Section 11050, which
21 requires an employer to maintain records documenting its employees' meal periods;
- 22 e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as
23 codified under California Code of Regulations Section 11050, which penalizes the
24 employer \$50.00 for each initial violation, per employee, of any provision of the
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Wage Order, and \$100.00 for each additional violation thereafter per employee; and

- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5) as enforceable law.

65. Plaintiffs allege that they were not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiffs further allege that they were not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11050 requires that if the employer fails to provide the employee with an uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each work day that the meal period is not given.

66. Under this cause of action, Plaintiffs pray for wages due to them under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiffs pray for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

67. Plaintiffs also pray for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

68. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

EIGHTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Individual and Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802)

(Plaintiffs Against all Named Defendants and all DOE Defendants)

69. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 68, inclusive, of this Complaint as though fully set forth herein.

70. Pursuant to law, Plaintiffs provided the required written notice to the LWDA and Defendants of the specific violations of the California Labor Code that Defendants and DOE defendants have violated and continue to violate.

71. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

72. Plaintiffs therefore have exhausted all administrative remedies required of them under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

73. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

74. Plaintiffs are "aggrieved employees" because Plaintiffs were employed by the alleged violator and had one or more of the alleged violations committed against them, and therefore are properly suited to represent the interests of other current and former hourly, non-exempt employees who worked for RHR at all locations in the state of California during the

relevant PAGA Period.

75. Based on the acts alleged above, Plaintiffs, on behalf of themselves and others, seek penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations of numerous provisions of the California Labor Code as alleged in this Complaint.

76. Plaintiffs therefore have exhausted all administrative remedies required of them under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

77. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants for violating the Labor Code.

78. California Labor Code section 558 establishes a civil penalty as follows: Any employer or other person action on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission (including the "Hours and Days of Work" section of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid...

79. Plaintiffs seek penalties for Defendants' misconduct as alleged herein as permitted by law, but only those penalties that are required to be shared with the LWDA as Plaintiffs are not seeking individual/victim specific relief or underpaid wages for Plaintiffs or other aggrieved employees in this specific cause of action under the Private Attorneys General Act.

80. Specifically, Plaintiffs seek penalties under California Labor Code section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order Provisions (no. 5) violated based on the facts alleged in this Complaint.

1 81. Pursuant to Labor Code section 2698 et seq., Plaintiffs seek to recover attorney's fees,
2 costs, and civil penalties on behalf of Plaintiffs and other current and former aggrieved
3 employees as alleged herein in an amount to be shown according to proof at trial and within the
4 jurisdictional limits of this Court.

5 **NINTH CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

7 **(California Labor Code Sections 201, 202, 203)**

8 **(Plaintiffs against all named defendants and all DOE defendants)**

9 82. Plaintiffs re-allege and incorporate by reference each and every allegation in
10 paragraphs 1 through 81, inclusive, of this Complaint as though fully set forth herein.

11 83. Pursuant to California Labor Code Section 201(a), an employer who discharges an
12 employee must immediately pay for all compensation due and owing.
13

14 84. Pursuant to California Labor Code Section 202, when an employee resigns, the
15 employer must pay all compensation due and owing within 72 hours of resignation, or on the
16 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

17 85. Pursuant to California Labor Code Section 203, if an employer willfully fails to
18 pay, without abatement or reduction, any wages of an employee whose employment ends, the
19 wages of the employee shall continue as a penalty from the due date at the same rate until paid
20 or until an action is commenced; however, the wages shall not continue for more than 30 days
21 for failure to pay an employee owed wages.

22 86. After Plaintiffs' employment with Defendants ended, Defendants willfully
23 refused and continue to refuse to pay Plaintiffs their unpaid wages as required by Labor Code
24 Section 203.

25 87. Under this cause of action, Plaintiffs pray for penalties due under the statutes
26 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
27 proof at trial.
28

1 88. Under this cause of action, Plaintiffs also pray for attorney's fees and costs
2 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
3 as set forth herein. Plaintiffs also pray for interest under California Labor Code Section 218.6.

4 89. Under this cause of action, Plaintiffs pray for penalties due under the statutes
5 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
6 proof at trial.

7 **TENTH CAUSE OF ACTION**

8 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

9 **(Plaintiffs against all Defendants and DOE Defendants, and each of them)**

10 90. Plaintiffs re-allege and incorporate by reference each and every allegation in
11 paragraphs 1 through 89, inclusive, of this Complaint as thought fully set forth herein.

12 91. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
13 employee for all necessary expenditures or losses incurred by the employee in direct
14 consequence of the discharge of his or her duties."

15 92. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
16 their duties for Defendant, Plaintiffs incurred reasonable and necessary expenses in the course
17 of completing his job duties, which were not reimbursed by Defendant. These expenses
18 include, but are not limited to, use of personal cell phones for work purposes. Moreover,
19 Plaintiffs had to buy their own shoes and bring their own knives to the workplace.

20 93. Plaintiffs are entitled to reimbursement for these necessary expenditures, plus interest
21 and attorney's fees and costs, under Labor Code section 2802.

22 **ELEVENTH CAUSE OF ACTION**

23 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

24 **(California Business and Professions Code Section 17200)**

25 **(Plaintiffs against All Named Defendants and all DOE defendants)**

26 94. Plaintiffs re-allege and incorporate by reference each and every allegation in
27
28

1 paragraphs 1 through 93, inclusive, of this Complaint as though fully set forth herein.

2 95. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
3 constitutes unfair and unlawful business practices under California Business and Professions
4 Code Section 17200, et seq.

5 96. Defendant's violations of California labor laws and the Labor Code constitutes a
6 business practice because it was done repeatedly over a significant period of time in a
7 systematic manner that was detrimental to Plaintiffs and others.

8 97. For the four years preceding the filing of this action, Plaintiffs have suffered damages
9 and request damages and/or restitution of all monies and profits to be disgorged from
10 corporate defendant RHR in an amount according to proof at time of trial, but in excess of the
11 jurisdiction of this Court.

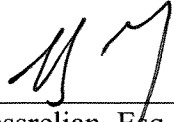
12 WHEREFORE, Plaintiffs pray for Judgment against Defendants, and each of them, as
13 follows:

- 14 1. For compensatory damages including lost past and future wages, regular wages,
15 overtime, and all other sums of money, including employment benefits, together
16 with interest on said amounts, and any other economic injury to Plaintiffs, according to
17 proof;
- 18 2. For special and consequential damages to the extent allowed by law;
- 19 3. For damages for wages and overtime not paid to Plaintiffs in an amount subject to proof
20 at trial;
- 21 4. For damages and penalties under Labor Code Section 226 for Plaintiffs in an amount
22 subject to proof at trial;
- 23 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
24 proof at trial;
- 25 6. For restitution and disgorgement for all unfair business practices by corporate
26 Defendants against Plaintiffs in an amount subject to proof at trial;
- 27
- 28

7. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
8. For one hour of wages due to Plaintiffs for each work period of more than five (5) hours when Plaintiffs did not receive an uninterrupted thirty (30) minute meal period;
9. For one hour of wages due to Plaintiffs for each work period of four (4) hours or major fraction thereof when Plaintiffs did not receive a ten (10) minute rest break;
10. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claim;
11. For all remedies available to Plaintiffs under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law via PAGA;
12. For the imposition of civil penalties and/or statutory penalties;
13. For all interest as allowed by law;
14. For all costs and disbursements incurred in this suit;
15. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., the Labor Code generally; and/or other applicable laws; and
16. For such other and further relief as this Court may deem proper.

DATED: March 9, 2023

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiffs

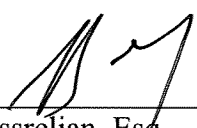
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand, as a matter of right, a trial by jury in this case.

DATED: March 9, 2023

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiffs