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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

Troy Hay; Evette Duran; Patrick
Ryan; and Jefferey Hettsmansperger,
individually, and on behalf all others
similarly situated,

Plaintiff,

v.

Mark Hunter's Palm Springs, Ltd.;
Jennifer Seymour; Mark Seymour;
Mark Hunter; and Does 1 to 10,
inclusive,

Defendants.

Case No. **CVRI 2300738**

CLASS ACTION COMPLAINT

1. Failure to Pay Overtime
2. Failure to Pay Minimum Wage
3. Failure to Provide Meal Periods
4. Failure to Provide Rest Periods
5. Improper Wage Statements
6. Waiting Time Penalties
7. Failure to Pay Business Expenses
8. Improper Deductions from Wages
9. Unfair Competition
10. PAGA, Labor Code Section 2698
11. Failure to Maintain Records
12. Failure to Provide Records

Demand for Jury Trial

1 Plaintiffs Troy Hay (“Hay”), Patrick Ryan (“Ryan”), Jeffery Hettsmansperger
2 (“Hettsmansperger”) and Evette Duran (“Duran”) (hereinafter, “Plaintiff(s)”), on behalf
3 of each as an individual and all other similarly situated, by and through their undersigned
4 attorneys, alleges as follows:

5 **INTRODUCTION:**

6 1. Mark Hunter’s Palm Springs, Ltd. (“MHPS”) owns and operates a restaurant
7 called “Hunters Palm Springs” (“Hunters”) located at 302 E. Arenas Road, Palm Springs,
8 CA 92262. According to its website, Hunters is a popular restaurant and bar which operates
9 daily from 10 am to 2:00 am without interruption.¹ Hunters offers food, drinks, event
10 hosting, bottle service, catering and parties, accepting a significant percentage of its sales in
11 cash payments, rather than by credit cards. Id.

12 2. Plaintiffs are informed and believed and thereon allege that MHPS has
13 employed a workforce of over 150 waitstaff, hosts, cooks, dishwashers, bartenders, bussers
14 and managers during the Class Period who perform hourly, non-exempt manual duties.²

15 3. MHPS has company-wide policies and procedures that control virtually every
16 facet of the Class Members jobs, including the uniforms they wear, the materials they use,
17 and the jobs they perform, including when and where they perform them.

18 4. Plaintiffs were employed as non-exempt employees for MHPS. Each is
19 bringing this suit to recover damages against MHPS due to their illegal employment
20 practices as more fully described herein.

21 5. Each Plaintiff is bringing this suit on behalf of himself and a class of MHPS
22 employees in California during the period four years prior to the filing of this Complaint
23 (plus the time period extended by Emergency Rule 9 of the Judicial Council of California)
24 and ending on such date as may be determined by the Court (the “Class Period”).

25
26 ¹ <https://hunterspalm springs.com/> (accessed February 1, 2023).

27 ² MHPS received a Paycheck Protection Program (“PPP”) loan of up to \$350,000 in 2020. *See*
28 <https://pppreport.org/location/CA/PALM+SPRINGS>.

The self-reported public disclosure states that the company “retained” 24 jobs based upon the loan.
<https://pppreport.org/company/mark+hunters+palm+springs+1+t+d>. (last accessed February 1, 2023).

1 6. Emergency Rule 9 as promulgated by the Judicial Council of California
2 and amended May 29, 2020, provides: “Notwithstanding any other law, the statutes of
3 limitations and repose for civil causes of action that exceed 180 days are tolled from
4 April 6, 2020, until October 1, 2020.” The Advisory Committee Comment notes that:
5 “Emergency rule 9 is intended to apply broadly to toll any statute of limitations on the
6 filing of a pleading in court asserting a civil cause of action. The term “civil causes of
7 action” includes special proceedings. (See Code Civ. Proc., §§ 312, 363 [“action,” as
8 used in title 2 of the code (Of the Time of Commencing Civil Actions), is construed
9 “as including a special proceeding of a civil nature”) The rule also applies to
10 statutes of limitations on filing of causes of action in court found in codes other than
11 the Code of Civil Procedure.”

12 7. In addition to the tolling for which provision was made by Emergency Rule
13 9, the applicable statutes were tolled by reason of a tolling agreement of the Parties,
14 entered as of November 10, 2022.

15 **JURISDICTION AND VENUE**

16 8. This is a civil action seeking unpaid wages, continuing wages, damages, and
17 attorneys’ fees and costs, including such reasonable reimbursement of fees and costs as
18 may be required by Section 218.5 of the California Labor Code. MHPS has a policy,
19 practice and history of labor law violations including not providing meal and rest breaks
20 to its employees. Neither, does MHPS pay meal premiums to its employees. Class
21 Members are forced to work off the clock, e.g. they are required to attend Monday
22 morning staff meeting without pay. Employees do not receive rest break penalties as
23 required. The wage statements do not contain the legally required information.
24 Employees did not receive all earned tips, as MHPS illegally deducted gratuities.

25 9. Venue as Defendants is proper in this judicial district, pursuant to California
26 Code of Civil Procedure section 395. Defendants maintain an office, transact business,
27 have an agent or are otherwise found in the County of Riverside and are within the
28

jurisdiction of this court for the purpose of service of process. The unlawful acts alleged herein had a direct effect on and were committed within the State of California.

10. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant is either a resident of California, has minimum contacts in California, or otherwise intentionally avails itself of the protections of California so as to render California's exercise of jurisdiction over Defendants consistent with traditional notions of fair play and substantial justice.

PARTIES

11. Each of Plaintiff is an individual. At all times relevant hereto, each Plaintiff worked in Riverside County. Each Plaintiff was employed by MHPS during the Class Period.

12. Defendant MHPS is a California corporation and at all times relevant hereto, MHPS conducted substantial and regular business in Riverside County, California. MHPS's business is owning and operating Hunters.

13. Plaintiffs are informed and believed that Defendants Jennifer Seymour and Mark Seymour are the owner/operators of MHPS, along with Defendant Mark Hunter ("Hunter").

14. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believe, and based thereon allege, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

10. Plaintiff is informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out

1 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
2 Defendant are legally attributable to the other Defendants. The Defendants named herein
3 as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with,
4 Defendants, who violated, or caused to be violated, one or more provisions of the California
5 Labor Code as alleged herein.

6 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

7 11. MHPS operates Hunters in Palm Springs, California.

8 12. Each Plaintiff was a non-exempt employee within the meaning of the
9 California Labor Code and the implementing rules and regulations of the IWC Wage
10 Orders, and, in particular, Industrial Welfare Commission Wage Order 5-2001 and
11 California Labor Code §515. Employee's primary job duties – including the tasks
12 described in the preceding paragraph – involved tasks that were performed pursuant to an
13 established protocol. The job duties involved a variety of physical demands, including
14 standing, bending, lifting, drilling, and moving equipment. This type of work is non-
15 exempt work.³

16 13. In order to meet the requirements of their job duties, employees typically
17 work more than 40 hours per week and more than eight hours per day, and sometimes
18 have to work seven days per week at the direction of MHPS . Employees are also not
19 provided meal and rest periods as required by the California Labor Code.

20 14. MHPS pays compensation to the employees based solely on the number of
21 each type of service performed by the employees at the customers' premises. Contrary to
22 federal and California law, including the provisions of Section 510 of the California Labor
23 Code, MHPS does not keep proper time records and does not pay proper overtime.

25 ³ Alleged "managers" were, in fact, a faux supervisor who was expected to perform manual labor.
26 Therefore, Hay was not an exempt employee under the law. Hay's primary duties did not include the
27 exercise of discretion and independent judgment with respect to matters of significance. Hay did not
28 perform office or non-manual work that directly related to the employer's management policies or general
business operations; and Hay did not customarily and regularly use discretion and independent judgment in
performing the job. See Taylor v. United Parcel Service, Inc. (2010) 190 Cal.App.4th 1001, 1014
["Because the exemption uses conjunctive language, [the employer] was required to establish all of the
elements."].

1 15. Plaintiffs are informed and believed and thereon allege that MHPS
2 implemented a system to pay some of its employees an hourly rate plus bonuses e.g.
3 employees were paid extra if they worked on Karaoke night. However, MHPS often failed
4 to properly pay bonuses and MHPS failed to utilize the bonuses to paid to employees in
5 order to compute overtime. Defendant paid commissions as bonuses i.e. “money promised
6 to an employee in addition to the monthly salary, hourly wage, commission or piece rate
7 usually due as compensation”. Division of Labor Standards Enforcement, Enforcement
8 Policies and Interpretations Manual § 2.5.5. Bonuses are in addition to any other
9 remuneration rate and may be predicated on performance over and above that which is paid
10 for hours worked, pieces made, or sales completed. Id. A bonus may be in the form of a
11 gratuity where there is no promise for their payment, for example, a holiday bonus at the
12 end of the year. Additionally, a bonus may be a contractually required payment where a
13 promise is made that a bonus will be paid in return for a specific result, such as exceeding a
14 minimum sales figure or piece quota, or as an inducement to remain in the employ of the
15 employer for a certain period of time.⁴ Defendant failed to utilize the commissions in
16 computation of overtime for Aggrieved Employees. Further, Defendant failed to pay the
17 hourly wages due when commission payments exceeded the hourly wages.

18 16. When Plaintiffs became aware of the unpaid wages and questioned
19 representatives of MHPS regarding the wages that were withheld, MHPS repeatedly
20 refused to pay the outstanding wages.

21 17. In performing their job duties, MHPS and MHPS required employees to use
22 uniforms, shoes and other work clothes. Employees had to purchase and maintain their
23 safety equipment and tools with their own money, and they were not reimbursed by
24

25 ⁴ The word has been defined as: “An addition to salary or wages normally paid for extraordinary
26 work. An inducement to employees to procure efficient and faithful service.” Duffy Bros. v. Bing &
27 Bing, 217 App.Div.10, 215 N.Y.S. 755, 758 (1939). Bonuses may be in the form of a gratuity where
28 there is no promise for their payment; or they may be a contractually required payment where a promise
is made that a bonus will be paid in return for a specific result (i.e., exceeding a minimum sales or piece
quota). (See detailed discussion of Bonuses at Section 35 of this Manual). Division of Labor Standards
Enforcement, Enforcement Policies and Interpretations Manual § 2.5.5. Sums earned as bonuses
are wages under the definition found in California Labor Code §200.

1 MHPS.

2 18. Employees also had to use cell phones and/or computers to access emails and
3 schedules for work. MHPS has not provided proper expense reimbursement for required
4 computer and cell phone usage.

5 19. MHPS and Kelly failed to comply with the California Labor Code and
6 Wage Order 5-2001(6) by failing to maintain time records showing when Plaintiffs began
7 and ended each work and meal break period, and total daily hours worked. Defendants
8 also failed to provide Plaintiffs with itemized wage statements that reflect all deductions
9 from payment of wages.

10 20. At all relevant times mentioned herein, section 201 of the California Labor
11 Code provided that “wages earned and unpaid at the time of discharge are due and payable
12 immediately.” Cal. Lab. Code § 201. Similarly, section 202 of the California Labor Code
13 provided:

14 If an employee not having a written contract for a definite period quits his or
15 him employment, his or him wages shall become due and payable not later
16 than 72 hours thereafter, unless the employee has given 72 hours previous
17 notice of his or him intention to quit, in which case the employee is entitled
to his or him wages at the time of quitting.

18 Id. § 202(a).

19 21. Defendants did not compensate Plaintiff and the Class Members as required
20 by sections 201 and/or 202 of the California Labor Code, as the “final” paycheck
21 Plaintiffs received did not fully compensate Plaintiffs, as Defendants failed to pay
22 overtime to Plaintiffs for hours worked in excess of eight per day.

23 22. Furthermore, at all relevant times mentioned herein, section 203 of the
24 California Labor Code provided:

25 If an employer willfully fails to pay, without abatement or reduction, in
26 accordance with Sections 201, 201.5, 202 and 202.5, any wages of an
27 employee who is discharged or who quits, the wages of the employee shall
28 continue as a penalty from the due date thereof at the same rate until paid or
until action therefor is commenced; but the wages shall not continue for more
than 30 days.

1 Id. § 203.

2 23. Plaintiffs contend that Defendants failure to pay him and the Class Members
3 within the time provided by sections 201 and/or 202 of the California Labor Code has
4 been and is “willful” within the meaning of section 203 of the California Labor Code and
5 that, accordingly, Plaintiffs are entitled to the “continuing wages” provided for by section
6 203.

7 24. Defendants also violated section 204 of the California Labor Code by failing to
8 regularly pay all wages earned to those of its workers who had not quit or been fired.

9 25. At all relevant times mentioned herein, section 1198 of the California Labor
10 Code provided:

11 The maximum hours of work and the standard conditions of labor fixed by
12 the [Industrial Welfare Commission] shall be the maximum hours of work
13 and the standard conditions of labor for employees. The employment of any
14 employee for longer hours than those fixed by [an] order or under conditions
of labor prohibited by [an] order is unlawful.

15 Cal. Lab. Code § 1198.

16 26. At all relevant times mentioned herein, Wage Order Number 16 (as
17 periodically amended) applied to Plaintiff and the Class Members.

18 27. Wage Order Number 16 requires a one-hour wage premium for each day
19 that an employee is not provided with a mandated ten-minute rest period per four-hour
20 work period. Additionally, Wage Order Number 16 requires a one-hour wage premium
21 for each day that an employee is not provided with a mandated thirty-minute meal period
22 for any shift that is longer than five hours. Finally, Wage Order Number 16 requires that
23 those who are employed more than eight hours in any workday or more than forty hours in
24 any workweek receive overtime compensation.

25 28. The right to rest periods and meal periods has been codified in sections
26 226.7 and 512 of the California Labor Code. At all relevant times mentioned herein,
27 section 512 provided:

28 An employer may not employ an employee for a work period of more than
five hours per day without providing the employee with a meal period of not

1 less than 30 minutes, except that if the total work period per day of the
2 employee is no more than six hours, the meal period may be waived by
3 mutual consent of both the employer and employee. An employer may not
4 employ an employee for a work period of more than 10 hours per day without
5 providing the employee with a second meal period of not less than 30
6 minutes, except that if the total hours worked is no more than 12 hours, the
7 second meal period may be waived by mutual consent of the employer and
8 the employee only if the first meal period was not waived.

9 Cal. Lab. Code § 512(a).

10 28. At all relevant times mentioned herein, section 226.7 provided:

11 If an employer fails to provide an employee a meal period or rest period in
12 accordance with an applicable order of the Industrial Welfare Commission,
13 the employer shall pay the employee one additional hour of pay at the
14 employee's regular rate of compensation for each work day that the meal or
15 rest period is not provided.

16 Cal. Lab. Code § 226.7(b).

17 29. During their employment with Defendants, Plaintiff and the Class Members
18 were not provided ten-minute rest breaks and thirty-minute meal breaks. Neither Plaintiff
19 nor the Class Members were provided the required rest and meal breaks.

20 30. Compensation for missed rest and meal breaks constitutes wages within the
21 meaning of section 201 of the California Labor Code.

22 31. At all relevant times herein, section 226 of the Labor Code provided:

23 (a) Every employer shall, semimonthly or at the time of each payment of
24 wages, furnish each of his or her employees, either as a detachable part of
25 the check, draft, or voucher paying the employee's wages, or separately when
26 wages are paid by personal check or cash, an itemized statement in writing
27 showing (1) gross wages earned, (2) total hours worked by the employee,
28 except for any employee whose compensation is solely based on a salary and
who is exempt from payment of overtime under subdivision (a) of Section
515 or any applicable order of the Industrial Welfare Commission, (3) the
number of piece-rate units earned and any applicable piece rate if the
employee is paid on a piece-rate basis, (4) all deductions, provided, that all
deductions made on written orders of the employee may be aggregated and
shown as one item, (5) net wages earned, (6) the inclusive dates of the period
for which the employee is paid, (7) the name of the employee
and his or her social security number, except that by January 1, 2008, only
the last four digits of his or her social security number or an employee
identification number other than a social security number may be shown on
the itemized statement, (8) the name and address of the legal entity that is the
employer, and (9) all applicable hourly rates in effect during the pay period
and the corresponding number of hours worked at each hourly rate by the

employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

....

(e) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

....

(h) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

Id. § 226.

32. Defendants employed Plaintiff and the Class Members but failed to provide them with the data required by section 226 of the California Labor Code.

33. At all relevant times mentioned herein, section 204(a) of the California Labor Code provided:

All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

Id. § 204(a).

34. At all relevant times mentioned herein, section 510 of the California Labor Code provided:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of at least one and one-half times the regular rate of pay for an employee. Any work in excess of 12

1 hours in one day shall be compensated at the rate of no less than twice the
2 regular rate of pay for an employee. In addition, any work in excess of eight
3 hours on any seventh day of a workweek shall be compensated at the rate of
4 no less than twice the regular rate of pay of an employee. Nothing in this
5 section requires an employer to combine more than one rate of overtime
6 compensation in order to calculate the amount to be paid to an employee for
7 any hour of overtime work. The requirements of this section do not apply to
8 the payment of overtime compensation to an employee working pursuant to
any of the following: (1) An alternative workweek schedule adopted
pursuant to Section 511. (2) An alternative workweek schedule adopted
pursuant to a collective bargaining agreement pursuant to Section 514.

9 Id. § 510(a).

10 35. In regard to the employment of Plaintiff and the Class , the provisions of
11 subparagraphs (1) and (2) of section 510 of the California Labor Code were inapplicable
12 in that no alternative workweek schedule had been adopted pursuant to section 511 and
13 Plaintiff's employment was not governed by any collective bargaining agreement.
14 Similarly members of the Class were not members of any union nor was their work for
15 MHPS governed by any collective bargaining agreement.

16 36. At all relevant times mentioned herein, section 1194 of the California Labor
17 Code provided:

18 Notwithstanding any agreement to work for a lesser wage, any employee
19 receiving less than the legal minimum wage or the legal overtime
20 compensation applicable to the employee is entitled to recover in a civil
21 action the unpaid balance of the full amount of this . . . overtime
compensation, including interest thereon, reasonable attorney's fees, and
costs of suit.

22 Id. § 1194. At all relevant times mentioned herein, section 1194.2 of the California Labor
23 Code provided that, "[I]n any action under . . . Section 1194 to recover wages because of
24 the payment of a wage less than the minimum wage fixed by an order of the commission
25 or by statute, an employee shall be entitled to recover liquidated damages in an amount
26 equal to the wages unlawfully unpaid and interest thereon." Id. § 1194.2.

27 Section 1197.1 (a) of the California Labor Code provides:

28 Any employer or other person acting either individually or as an officer,
agent, or employee of another person, who pays or causes to be paid to any

employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty as follows:

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

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Cal. Lab. Code § 1197.1.

37. IWC Wage Order 5, provides, in part:

2. DEFINITIONS

(D) —"Employ" means to engage, suffer, or permit to work.

(E) —"Employee" means any person employed by an employer.

(F) —"Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

...

3. HOURS AND DAYS OF WORK

(A) Daily Overtime- General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime as follows:

(a) Employees may be employed up to a maximum of 16 hours including meal periods in any one day from the time they are required and do report until dismissed, provided the employee is compensated for such overtime at not less than:

(i) For daily employees and weekly employees, excluding weekly employees guaranteed more than 40 hours a workweek and —on call employees, one and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any one

workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(ii) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday, and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

...

(iv) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

...

4. MINIMUM WAGES

(A) Every employer shall pay to each employee wages not less than nine dollars (\$13.00) per hour for all hours worked, effective January 1, 2021. . . .

7. RECORDS

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of

1 employment or at a central location within the State of California. An
2 employee's records shall be available for inspection by the employee upon
reasonable request.

3 (D) Clocks shall be provided in all major work areas or within reasonable
4 distance thereto insofar as practicable.

5 . . .

6 **11. MEAL PERIODS**

7 (A) No employer shall employ any person for a work period of more than six
8 (6) hours without a meal period of not less than 30 minutes, nor more than
one (1) hour. Subsequent meal period for all employees shall be called not
later than six (6) hours after the termination of the preceding meal period.

9 (B) Unless the employee is relieved of all duty during a 30 minute meal
10 period, the meal period shall be considered an on-duty meal period and
11 counted as time worked. An on-duty meal period shall be permitted only
12 when the nature of the work prevents an employee from being relieved of all
duty and when by written agreement between the parties an on-the-job paid
meal period is agreed to. The written agreement shall state that the employee
may, in writing, revoke the agreement at any time.

13 (C) If an employer fails to provide an employee a meal period in accordance
14 with the applicable provisions of this Order, the employer shall pay the
15 employee one (1) hour of pay at the employee's regular rate of compensation
for each work day that the meal period is not provided.

16 (D) In all places of employment where employees are required to eat on the
premises, a suitable place for that purpose shall be designated.

17 **12. REST PERIODS**

18 (A) Every employer shall authorize and permit all employees to take rest
19 periods, which insofar as practicable shall be in the middle of each work
20 period. The authorized rest period time shall be based on the total hours
worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
21 major fraction thereof. However, a rest period need not be authorized for
employees whose total daily work time is less than three and one-half (3 1/2)
22 hours. Authorized rest period time shall be counted as hours worked for
which there shall be no deduction from wages.

23 (B) If an employer fails to provide an employee a rest period in accordance
24 with the applicable provisions of this Order, the employer shall pay the
25 employee one (1) hour of pay at the employee's regular rate of compensation
for each work day that the rest period is not provided.

26 . . .

27 **20. PENALTIES**

28 (See Labor Code, Section 1199)

(A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

(1) Initial Violation — \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

(2) Subsequent Violations — \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

(3) The affected employee shall receive payment of all wages recovered.

IWC Wage Order 5.

38. At all relevant times mentioned herein, section 558 of the California Labor Code provided:

Any employer or other person acting 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 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

Cal. Lab. Code § 558.

39. At all relevant times herein, California Labor Code section 2802 provided, in relevant part:

(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or duties

(b) All awards made by a court . . . for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

(c) For purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing rights granted by this section.

Cal. Lab. Code § 2802.

1 40. At all relevant times herein, California Labor Code section 221 provided:

2 It shall be unlawful for any employer to collect or receive from an employee
3 any part of wages theretofore paid by said employer to said employee.

4 Cal. Lab. Code § 221. “[Labor Code] section 221 has long been held to prohibit
5 deductions from an employee’s wages for cash shortages, breakage, loss of equipment,
6 and other business losses that may result from the employee’s simple negligence.”
7 Hudgins v. Neiman Marcus Group, Inc., 34 Cal.App.4th 1109, 1118 (1995). An employer
8 can lawfully withhold amounts from an employee’s wages only: (1) when required or
9 empowered to do so by state or federal law, or (2) when a deduction is expressly
10 authorized in writing by the employee to cover insurance premiums, benefit plan
11 contributions or other deductions not amounting to a rebate on the employee’s wages, or
12 (3) when a deduction to cover health, welfare, or pension contributions is expressly
13 authorized by a wage or collective bargaining agreement. Labor Code Sections 221 and
14 224.

15 41. Notwithstanding the foregoing requirements of law, Plaintiff and the Class
16 Members were not timely paid the minimum wages and/or overtime to which they were
17 entitled. Plaintiffs and the Class Members were denied reimbursement, meal breaks, rest
18 breaks and payment of overtime wages although they often worked in excess of eight
19 hours per day and forty hours per week.

20 42. At all relevant times mentioned herein, section 226.8 of the Code provided in
21 pertinent part:

22 (a) It is unlawful for any person or employer to engage in any of the
23 following activities:

24 (1) Willful misclassification of an individual as an independent
25 contractor.

26 (2) Charging an individual who has been willfully misclassified as an
27 independent contractor a fee, or making any deductions from compensation,
28 for any purpose, including for goods, materials, space rental, services,
 government licenses, repairs, equipment maintenance, or fines arising from
 the individual's employment where any of the acts described in this paragraph
 would have violated the law if the individual had not been misclassified.

 (b) If the Labor and Workforce Development Agency or a court issues
 a determination that a person or employer has engaged in any of the
 enumerated violations of subdivision (a), the person or employer shall be

1 subject to a civil penalty of not less than five thousand dollars (\$5,000) and
2 not more than fifteen thousand dollars (\$15,000) for each violation, in
addition to any other penalties or fines permitted by law.

3 (c) If the Labor and Workforce Development Agency or a court issues
4 a determination that a person or employer has engaged in any of the
enumerated violations of subdivision (a) and the person or employer has
5 engaged in or is engaging in a pattern or practice of these violations, the
person or employer shall be subject to a civil penalty of not less than ten
6 thousand dollars (\$10,000) and not more than twenty-five thousand dollars
(\$25,000) for each violation, in addition to any other penalties or fines
permitted by law.

7 Code § 226.8. Defendants violated Code § 226.8 by willfully misclassifying many of its
8 employees, past and present, including Plaintiffs and Aggrieved Employees, as
9 independent contractors.

10 43. Defendants have engaged in a pattern and practice of misclassifying their
11 employees as independent contractors to avoid taxes, insurance and other costs that
12 accompany employee status. Section 2753 of the Code provides, in part:

13 (a) A person who, for money or other valuable consideration, knowingly
14 advises an employer to treat an individual as an independent contractor to
avoid employee status for that individual shall be jointly and severally liable
15 with the employer if the individual is found not to be an independent
contractor.

16 Code § 2753(a).

17 43. All of the foregoing was intentional misconduct of Defendants that injured
18 Plaintiff and putative Class Members insofar as they were subjected to confusion and
19 deprived of information to which they were legally entitled.

20 **CLASS ACTION ALLEGATIONS**

21 44. Each Plaintiff brings this action on behalf of himself and all others similarly
22 situated pursuant to Code of Civil Procedure section 382. Each Plaintiff seeks to represent
23 a Class which is defined as: all non-exempt MHPS employees who provided services in
24 California during the period four years and ten months prior to the filing of this Complaint
25 and ending on such date as may be determined by the Court (the "Class Period").

26 45. The Class includes all persons who performed work for MHPS, even if they
27 were paid by commission, salary, piece rate, or any combination thereof.

28 46. Each Plaintiff reserves the right under Rule 3.765 of the California Rules of

1 Court to amend or modify the class descriptions with greater specificity or to further divide
2 the class into subclasses.

3 47. This action is properly brought as a class action pursuant to Code of Civil
4 Procedure 382 because there is a well-defined community of interest in the litigation and
5 the proposed Class is easily ascertainable.

6 48. Numerosity: The potential members of the Class are so numerous that joinder
7 is impracticable. Plaintiff is informed and believes, and on that basis alleges, that during the
8 relevant time periods MHPS employed more than 100 employees. Nevertheless the Class
9 does not consist of so many individuals as to make this case unmanageable.

10 49. Commonality: There are questions of law and fact common to the Class that
11 predominate over any questions affecting only individual Class members. Common
12 questions include, but at not limited to: (a) whether MHPS provided proper wage
13 statements to its workers; (b) whether MHPS failed to pay Class members proper overtime
14 compensation; (c) whether MHPS failed to provide meal and rest periods (d) whether
15 MHPS reimbursed class members for expenses and mileage; (e) whether MHPS provided
16 accurate itemized wage statements; and (f) whether MHPS and/or MHPS and/or other
17 MHPS Contractors acted intentionally when classifying the “installment managers” as
18 independent contractors. Moreover, there are very few questions of law or fact that are not
19 common to the class.

20 50. Typicality: The claims of each Plaintiff are typical of the claims of the Class.

21 51. Adequacy of representation: Each Plaintiff will fairly and adequately represent
22 and protect the interests of the members of the Class . Counsel for Plaintiff are competent
23 and experienced in litigating employment class action cases.

24 52. Superiority of Class Action: A class action is superior to other available means
25 for the fair and efficient adjudication of this controversy. The unlawful conduct described in
26 this complaint are based on MHPS ’s company-wide policies regarding its treatment of
27 employees. Moreover, class action treatment will allow people similarly situated as Plaintiff
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1 to litigate their claims in the manner that is most efficient and economical for all parties and
2 for the judicial system.

3 **FIRST CAUSE OF ACTION**

4 (Failure To Pay Overtime California Labor Code §§ 510 and 1194; Wage Order 5)

5 (By Plaintiffs individually and on behalf of the Class against all Defendants)

6 53. Each Plaintiff realleges and incorporates herein by reference the allegations
7 contained in this Complaint as though fully set forth herein.

8 54. Defendants failed to pay each Plaintiff and the members of the Class for all
9 hours worked. Plaintiff and the members of the Class worked more than 40 hours per week
10 and/or more than 8 hours per day, but they did not receive compensation for this time at
11 their regularly hourly rate or did they receive overtime compensation.

12 55. As a result of MHPS 's failure to pay overtime, MHPS willfully violated the
13 provisions of Labor Code §§ 510 and 1194.

14 56. Each Plaintiff and the Class members have been deprived of wages in an
15 amount to be determined at trial, and are entitled to recovery of such amounts, plus interest
16 and penalties.

17 **SECOND CAUSE OF ACTION**

18 (Failure To Pay Minimum Wage)

19 (By Plaintiffs individually and on behalf of the Class against all Defendants)

20 57. Each Plaintiff realleges and incorporates herein by reference the allegations
21 contained in this Complaint as though fully set forth herein.

22 58. Under both state and federal law, employees may not agree to waive their
23 entitlement to the minimum wage. Moreover, contrary to the federal averaging method,
24 California workers must receive the minimum wage for each hour worked during the
25 payroll period.

26 59. Each Plaintiff is informed and believes, and thereon alleges, that Plaintiff and
27 members of the Class were not compensated in an amount greater than or equal to the
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1 minimum wage while employed as employees by defendant.

2 60. As a proximate result of the aforementioned violations, each Plaintiff has been
3 damaged in an amount according to proof at time of trial.

4 **THIRD CAUSE OF ACTION**

5 (Failure To Provide Meal Periods Labor Code §226.7)

6 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

7 61. Each Plaintiff realleges and incorporates herein by reference the allegations
8 contained in this Complaint as though fully set forth herein.

9 62. Labor Code section 226.7 requires an employer to pay an additional hour of
10 compensation for each meal period the employer fails to provide a compliant meal period.
11 Employees are entitled to meal period of at least thirty 30 minutes per five hour work
12 period.

13 63. Plaintiffs and the Class members consistently worked more than 5 hour shifts,
14 but Plaintiffs and the Class members were not provided with additional compensation for
15 meal periods which were missed, truncated or tardy due to the failure of one or more of the
16 Defendants to provide a compliant meal period. Plaintiffs and the Class members
17 consistently worked more than 10 hour shifts, but Plaintiffs and the Class members were
18 not provided with additional compensation for second meal periods which were missed,
19 truncated or tardy due to the failure of one or more of the Defendants to provide a compliant
20 meal period. Pursuant to Labor Code section 226.7, Plaintiff and the Class members are
21 entitled to damages in an amount equal to one hour of wages per missed meal break, in an
22 amount to be proven at trial.

23 **FOURTH CAUSE OF ACTION**

24 (Failure To Provide Proper Rest Periods Labor Code §226.7)

25 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

26 64. Each Plaintiff realleges and incorporates herein by reference the allegations
27 contained in this Complaint as though fully set forth herein.
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65. Labor Code Section 226.7 requires an employer to pay an additional hour of compensation for each rest period the employer fails to provide a compliant rest period. Employees are entitled to a rest period of ten minutes for every four hours worked or major fraction thereof.

66. Each Plaintiff and the Class members consistently worked over four hour shifts, but defendant failed to provide them with the requisite ten minute rest period. Pursuant to Labor Code section 226.7, Plaintiff and the Class members are entitled to damages in an amount equal to one hour of wages per missed rest period, in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

(Failure To Provide Itemized Wage Statements Labor Code § 226)

(By Plaintiffs individually and on behalf of the Class and against all Defendants)

67. Each Plaintiff realleges and incorporates herein by reference the allegations contained in this Complaint as though fully set forth herein.

68. Defendants knowingly and intentionally failed to comply with Labor Code section 226(a), which requires Defendants to provide the name of the legal entity which is the employer, itemize in wage statements all deductions from payment of wages and accurately report total hours worked by each Plaintiff and members of the Class.

69. Wage Order 5-2001(7) requires Defendants to maintain time records showing, among other things, when the employee begins and ends each work period and total daily hours worked in an itemized wage statement. Time records must also show all deductions from payment of wages and accurately report total hours worked by Plaintiff and members of the Class. The wage statements fail to identify the name of the legal entity which is the employer. (The wage statements list two different entities, but do not identify the employer.) Further, under Naranjo, there are derivative violations for failure to pay meal penalties.

70. An employee suffering injury as a result of a knowing and intentional failure

1 by an employer to comply with Labor Code section 226(a) is entitled to recover the greater
2 of all actual damages of \$50 for the initial pay period in which a violation occurs and \$100
3 per employee for each violation in a subsequent pay period, not exceeding an aggregate
4 penalty of \$4,000 dollars.

5 **SIXTH CAUSE OF ACTION**

6 (Waiting Time Penalties Labor Code § 203)

7 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

8 71. Each Plaintiff realleges and incorporates herein by reference the allegations
9 contained in this Complaint as though fully set forth herein.

10 72. Defendants' failure to pay wages, as alleged above, was willful in that MHPS
11 knew wages were due but failed to pay them. This entitles Plaintiff and members of the
12 Class who are no longer working as employees to penalties under Labor Code § 203, which
13 provides that an employee's wages shall continue as penalty until paid for a period of up to
14 30 days from the time they were due. Under the Naranjo decision, each Plaintiff is also
15 entitled to continuing wages for missed meal and rest breaks.

16 73. Defendants failed to pay each Plaintiff and relevant members of the Class a
17 sum certain at the time of termination or within 72 hours of their resignation, and have
18 failed to pay those sums for 30 days thereafter. Pursuant to Labor Code section 203,
19 Plaintiff and relevant members of the Class are entitled to a penalty in the amount of their
20 respective daily wage multiplied by 30 days.

21 **SEVENTH CAUSE OF ACTION**

22 (Failure To Provide Indemnification of Business Expenses Labor Code §2802)

23 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

24 74. Each Plaintiff realleges and incorporates herein by reference the allegations
25 contained in this Complaint as though fully set forth herein.

26 75. Labor Code section 2802 requires Defendants to reimburse each Plaintiff and
27 members of the Class for the expenses incurred by them in the performance of their job
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1 duties, including but not limited to, expenses incurred by the use of their vehicles,
2 insurance, rental fees, mileage, cell phone usage, uniforms, equipment purchases, and
3 telephone usage resulting from the performance of their job duties. For example, Plaintiff
4 Duran was required to drive his own car to job sites.

5 76. Defendants violated Labor Code section 2802 because it required each
6 Plaintiff and members of the Class to incur and pay for such expenses in the discharge of
7 their employment duties and without reimbursement.

8 77. As a proximate result, Plaintiff and members of the Class have been
9 damaged in an amount according to proof at trial.

10 **EIGHTH CAUSE OF ACTION**

11 (Improper Deductions From Wages, Labor Code § 221)

12 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

13 78. Each Plaintiff realleges and incorporates herein by reference the allegations
14 contained in this Complaint as though fully set forth herein.

15 79. Labor Code section 221 prohibits Defendants from deducting from employee
16 wages paid toward employee compensation.

17 80. Each Plaintiff is informed and believed, and on that basis alleges, that
18 Defendants improperly deducted portions of Plaintiff's wages and the wages of members
19 of the Class, in violation of Labor Code section 221. For example, Class Members were
20 not provided with proper meal breaks, but they had 30 minutes of work time deducted
21 from their paychecks each day.

22 81. As a proximate result, Plaintiff and members of the Class have been
23 damaged in an amount according to proof at trial.

24 **NINTH CAUSE OF ACTION**

25 (Unfair Competition Business and Professions Code Section 17200)

26 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

27 82. Each Plaintiff realleges and incorporates herein by reference the allegations
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1 contained in this Complaint as though fully set forth herein.

2 83. The conduct of Defendants as alleged in this Complaint has been, and
3 continues to be, unfair, unlawful, deceptive, and harmful to Plaintiffs, the Class , and the
4 public in general. Plaintiff seeks to enforce important rights affecting the public interest
5 within the meaning of code of Civil Procedure section 1021.5.

6 84. Each Plaintiff is a “person” within the meaning of Business & Professions
7 Code section 17204, and, therefore, has standing to bring this cause of action for
8 injunctive relief, restitution, and other appropriate equitable relief.

9 85. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
10 business practices.

11 86. California’s wage and hours laws, including the laws described in this
12 Complaint, reflect public policies that are fundamental in the State of California. The
13 FLSA reflects a public policy that is fundamental in the United States. These public
14 policies include the importance of providing employees with proper compensation, meal
15 periods, and rest periods.

16 87. Through the conduct alleged in this Complaint, Defendants have acted
17 contrary to these public policies, have violated the California Labor Code, and have
18 engaged in other unlawful, unfair, and deceptive business practices in violation of
19 California's Business & Professions Code. As a result, Plaintiff, and all persons similarly
20 situated (including the Class members alleged in this Complaint) have been deprived of
21 rights, benefits, and privileges guaranteed to employees by law.

22 88. Defendants, by engaging in the conduct described in this Complaint, either
23 knew or should have known that its conduct was unlawful.

24 89. As a proximate result of Defendants’ conduct, Plaintiff and Class members
25 alleged herein have been damaged in a sum to be proven at trial.

26 90. This Court should therefore make such orders and/or judgments as may be
27 necessary to require Defendants to pay to Plaintiff and the members of the Class the
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1 money Defendants have heretofore unlawfully failed to pay them.

2 **TENTH CAUSE OF ACTION**

3 (California Labor Code - Private Attorneys General Act)

4 (By Plaintiffs individually and on behalf of the Class and against all Defendants)

5 91. Each Plaintiff realleges and incorporates herein by reference the allegations
6 contained in this Complaint as though fully set forth herein.

7 92. Pursuant to section 2699.3(a)(1) of the Labor Code, on approximately
8 November 4, 2022, Plaintiffs gave written notice by certified mail to the California Labor
9 and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor
10 Code alleged to have been violated by MHPS , including the theories set forth in the
11 Complaint. Also on that day, Plaintiffs gave written notice by certified mail to MHPS of
12 the specific provisions of the Labor Code alleged to have been violated by them.

13 93. After the appropriate passage of time, Plaintiffs “may as a matter of right
14 amend [the] existing [C]omplaint to add a cause of action arising under [the Labor Code
15 Private Attorney General Act (“LCPAGA”)].” Cal. Lab. Code § 2699.3(a)(2)(C). The
16 LCPAGA establishes civil penalties for violations of the Labor Code, including the
17 violations alleged in this Complaint.

18 94. Each Plaintiff contends that section 2698 et seq. of the Labor Code enables
19 him to recover civil penalties under the LCPAGA, as well as attorney’s fees and costs,
20 from MHPS and MHPS through a civil action on behalf himself and other aggrieved
21 employees.

22 95. Each Plaintiff will seek to recover the PAGA penalties through a
23 representative action permitted by PAGA and the California Supreme Court in *Arias v.*
24 *Superior Court*, 46 Cal. 4th 969 (2009). Plaintiff will seek civil penalties pursuant to
25 PAGA for violations of the following Labor Code provisions:

- 26 a. failure to pay overtime wages to Employees in violation of Wage Order No.
27 16 and Labor Code §§510, 558, 1194 and 1198;

- 1 b. failure to pay minimum wages to Employees in violation of Wage Order No.
2 16 and Labor Code §§1182.12, 1194, and 1197;
- 3 c. failure to provide meal and rest periods to Employees in violation of Wage
4 Order No. 16 and Labor Code §§ 226.7, 512, and 558;
- 5 d. failure to provide itemized wage statements to Employees in violation of
6 Labor Code §§ 226(a), 1174, and 1174.5;
- 7 e. failure to provide prompt payment of wages upon termination and/or
8 resignation of Employees in violation of Labor Code §§ 201, 202, 203;
- 9 f. failure to reimburse Employees for all reasonably necessary expenditures
10 and losses incurred by Employees in direct consequence of the discharge of their
11 duties, including but not limited costs of their vehicles, insurance, rental fees,
12 mileage, cell phone usage, unions, equipment purchases, and telephone usage in
13 violation of Labor Code § 2802;
- 14 g. improper deductions from wages in violation of Labor Code §§ 221 and
15 225.5.
- 16 h. willful misclassification of Employees as Independent Contractors in
17 violation of Labor Code §226.8;
- 18 i. failure to keep required payroll records in violation of Wage Order No. 16
19 and Labor Code §§ 1174 and 1174.5.
- 20 j. failure to promptly pay owed wages in violation of Labor Code §§ 201.3,
21 204.
- 22 k. With respect to violations of Labor Code §§ 510, 512, Labor Code § 558
23 imposes a civil penalty in addition to any other penalty provided by law of fifty
24 dollars (\$50) for initial violations for each underpaid employee for each pay period
25 for which the employee was underpaid in addition to an amount sufficient to
26 recover unpaid wages, and one hundred dollars (\$100) for subsequent violations for
27 each underpaid employee for each pay period for which the employee was
28 underpaid in addition to an amount sufficient to recover underpaid wages.
Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages owed to
Aggrieved Employees pursuant to Labor Code § 558(a)(3).
- l. With respect to violations of Labor Code § 226(a), Labor Code § 226.3

1 imposes a civil penalty in addition to any other penalty provided by law of two
2 hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one
3 thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of
4 Labor Code § 226(a).

5 m. With respect to violations of Labor Code § 204, Labor Code § 210 imposes a
6 civil penalty of \$100, and for subsequent violations \$200.

7 n. With respect to violations of Labor Code § 1174, Labor Code § 1174.5
8 imposes a civil penalty of \$500.

9 o. Labor Code § 2699 *et seq.* imposes a civil penalty of one hundred dollars
10 (\$100) per pay period, per aggrieved employee for initial violations, and two
11 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent
12 violations for all Labor Code provisions for which a civil penalty is not specifically
13 provided, including the applicable Wage Order and Labor Code §§ 201, 201.3, 202,
14 203, 221, 226(a), 226.7, 226.8, 510, 1174, 1182.12, 1194, 1197, 1198, and 2802.

15 **ELEVENTH CAUSE OF ACTION**

16 (Failure to maintain Accurate Payroll Time Records,
17 Labor Code section 1174, IWC Wage Order No. 16)

18 (On Behalf of Plaintiffs and the Class Against Defendant)

19 96. Each Plaintiff repleads, realleges, and incorporates by reference each and
20 every allegation set forth in the Complaint.

21 97. Defendant MHPS has violated California Labor Code section 1174 and IWC
22 Wage Order No. 16 by willfully failing to keep required payroll records showing the
23 actual hours and/or the begin and end time worked each day by Plaintiff. Indeed, the IWC
24 Wage Order requires that the employer maintain “[t]ime records showing when the
25 employee begins and ends each work period.” 8 Cal. Code Regs. § 11160(6)(A)(1).
26 Defendant MHPS failed to properly maintain such records.

27 98. As a direct and proximate result of Defendant’s failure to maintain payroll
28 records, Plaintiff suffered actual economic harm as he has been precluded from accurately

1 monitoring the number of hours worked and thus seeking all accrued pay.

2 99. Plaintiffs also request relief as described below.

3 **TWELFTH CAUSE OF ACTION**

4 (Cal. Lab. Code §§ 226 & 1198.5—Failure to Provide Employment Records Upon
5 Request)

6 (On Behalf of Plaintiffs Only Against Defendant MHPS)

7 100. Each Plaintiff repleads, realleges, and incorporates by reference each and
8 every allegation set forth in this Complaint.

9 101. Pursuant to Labor Code section 226(b), an employer shall afford current and
10 former employees the right to inspect or copy the records pertaining to that current or
11 former employee, upon reasonable request to the employer.

12 102. Each Plaintiff has requested that Defendant MHPS permit inspection or
13 copying of each Plaintiff's employment records pursuant to Labor Code section 226(b).
14 Defendant MHPS has failed to provide each Plaintiff with all of his employment records
15 within 21 days of her request.

16 103. Pursuant to Labor Code section 1198.5 "has the right to inspect and receive a
17 copy of the personnel records that the employer maintains relating to the employee's
18 performance or to any grievance concerning the employee." Cal. Lab. Code § 1198.5.

19 104. Each Plaintiff requested that Defendant MHPS permit inspection or copying
20 of his employment records pursuant to Labor Code section 1198.5. Defendant MHPS has
21 failed to provide Plaintiff with an opportunity to inspect or copy all of his employment
22 records within 30 days of her request.

23 105. Pursuant to Labor Code section 1198.5(k) Plaintiff is entitled, and hereby
24 seeks to recover from Defendant MHPS a seven-hundred-fifty dollar (\$750) penalty,
25 reasonable attorney's fees, and the cost of bringing this cause of action.

26 106. Pursuant to Labor Code section 226(f) and (g), Plaintiff is entitled, and
27 hereby seeks to recover from Defendant MHPS a seven-hundred-fifty dollar (\$750)
28 penalty, reasonable attorneys' fees, and the cost of bringing this cause of action.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For an Order that this action may proceed and be maintained as a class action, with an appropriate subclass or subclasses; that the named plaintiff be appointed class representative, and that plaintiff's counsel be named class counsel;

2. That, under the First Cause of Action for unpaid overtime wages, this Court enter judgment in favor of award Plaintiff and other aggrieved former and current employees their wages, damages, liquidated damages, penalties, civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section 218.5 and other relevant sections of the Labor Code.

3. That, under the Second Cause of Action for unpaid minimum wages, this Court enter judgment in favor of award Plaintiff and other aggrieved former and current employees their wages, damages, liquidated damages, penalties, civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section 218.5 and other relevant sections of the Labor Code.

4. That, under the Third Cause of Action for failing to properly provide meal periods, this Court enter judgment in favor of Plaintiff, and other aggrieved former and current employees, their wages, damages, liquidated damages, penalties, civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section 218.5 and other relevant sections of the Labor Code.

5. That, under the Fourth Cause of Action for failing to properly provide rest periods, this Court enter judgment in favor of award Plaintiff and other aggrieved former and current employees their wages, damages, liquidated damages, penalties, civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section 218.5 and other relevant sections of the Labor Code.

6. That, under the Fifth Cause of Action for failing to provide proper itemized wage statements, this Court enter judgment in favor of award Plaintiff and other aggrieved

1 former and current employees their wages, damages, liquidated damages, penalties, civil
2 penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section
3 218.5 and other relevant sections of the Labor Code.

4 7. That, under the Sixth Cause of Action for failing to properly provide final
5 wages upon termination of employment, this Court enter judgment in favor of Plaintiff
6 and other aggrieved former and current employees and award them their wages, damages,
7 liquidated damages, penalties, civil penalties, attorney's fees, and costs of suit, all
8 according to proof, pursuant to section 218.5 and other relevant sections of the Labor
9 Code.

10 8. That, under the Seventh Cause of Action for failing to properly indemnify
11 employees for their out of pocket expenses in violation of section 2802 of the California
12 Labor Code, this Court enter judgment in favor of Plaintiff and other aggrieved former
13 and current employees and award them their wages, damages, liquidated damages,
14 penalties, civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant
15 to section 218.5 and other relevant sections of the Labor Code.

16 9. That, under the Eighth Cause of Action for taking improper deductions from
17 wages, this Court enter judgment in favor of Plaintiff and other aggrieved former and
18 current employees and award them their wages, damages, liquidated damages, penalties,
19 civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section
20 218.5 and other relevant sections of the Labor Code.

21 10. That, under the Ninth Cause of Action for violation of the California
22 Business and Professions Code, this Court enter judgment in favor of Plaintiff and other
23 aggrieved former and current employees and award them their wages, damages, liquidated
24 damages, attorney's fees, and costs of suit, all according to proof, pursuant to the relevant
25 sections of the Business and Professions Code, deterring employment by Defendants or its
26 agents and employees of any future unlawful, unfair, or deceptive practice.

27 11. That, under the Tenth Causes of Action, this Court enter judgment in favor of
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1 Plaintiffs and award them their wages, damages, liquidated damages, penalties, interest,
2 attorney's fees, and costs of suit, all according to proof, pursuant to the relevant sections
3 of the Labor Code.

4 12. That, under the Eleventh Causes of Action, this Court enter judgment in favor
5 of Plaintiffs and award them their wages, damages, liquidated damages, penalties, interest,
6 attorney's fees, and costs of suit, all according to proof, pursuant to the relevant sections
7 of the Labor Code.

8 13. That, under the Twelfth Causes of Action, this Court enter judgment in favor
9 of Plaintiffs and award them their wages, damages, liquidated damages, penalties, interest,
10 attorney's fees, and costs of suit, all according to proof, pursuant to the relevant sections
11 of the Labor Code.

12 14. For statutory attorney's fees pursuant to Labor Code sections 218.5, 227(e),
13 1194 and 29 U.S.C. section 216.

14 15. For costs of suit.

15 16. For prejudgment interest; and

16 17. For such other and further relief as this Court may deem proper and just.
17 Plaintiff demands a trial by jury as to all counts.

18
19 DATED: February 9, 2023

HARRIS & RUBLE



Alan Harris

David Garrett

Attorney for Plaintiff