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Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ELIZABETH MORA, on behalf of herself, the
state of California, and the Aggrieved Employees

Plaintiff,

vs.

IHG MANAGEMENT (MARYLAND) LLC;
InterContinental Hotels Group Resources, LLC;
Intercontinental Hotels of San Francisco, Inc.;
Inter-Continental Hotels Corporation; Six
Continents Hotels, Inc.; KHRG Huntington
Beach LLC; KHRG Argyle LLC; KHRG
Wilshire LLC; KHRG Westwood LLC; KHRG
NPC LLC; KHRG Sacramento LLC; KHRG
Employer, LLC; KHRG SF Wharf LLC;
Kimpton Hotel & Restaurant Group, LLC;
KHRG Canary LLC; KHRG La Peer LLC;
KHRG SFD LLC; KHRG SF Wharf U2 LLC;
KHRG Sutter LLC; KHRG Sutter Union LLC;
Holiday Inn Los Angeles Gateway – Torrance;
Holiday Inn Express and Suites - San Francisco
Fisherman Wharf; Hotel Indigo – Los Angeles
Downtown; Hotel Indigo - San Diego Gaslamp
Quarter; InterContinental - Los Angeles
Downtown; InterContinental - San Diego;
InterContinental - San Francisco;
InterContinental - Mark Hopkins; Regent - Santa
Monica; Kimpton Shorebreak Huntington Beach
Resort; Kimpton Everly Hotel; Kimpton Hotel
Wilshire; Kimpton Hotel Palomar Los Angeles
Beverly Hills; Kimpton Rowan Palm Springs
Hotel; Kimpton Sawyer Hotel; Kimpton Alma;
Kimpton Alton Hotel; Kimpton Hotel Enso;
Kimpton Canary Hotel; and Kimpton La Peer
Hotel,

Case No. 23STCV13726

**FIRST AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT FOR:**

**1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEY'S GENERAL ACT
(LABOR CODE § 2698 ET SEQ.)**

Action Filed: June 14, 2023

Trial Date: None Set

1 Defendants.

2 Plaintiff Elizabeth Mora (“Plaintiff”), on behalf of herself, the state of California, and all
3 other aggrieved employees, bring this first amended complaint (“Complaint”) under the Private
4 Attorney’s General Act, Labor Code § 2698 *et seq.*, against IHG Management (Maryland) LLC;
5 InterContinental Hotels Group Resources, LLC; Intercontinental Hotels of San Francisco, Inc.; Inter-
6 Continental Hotels Corporation; Six Continents Hotels, Inc.; KHRG Huntington Beach LLC; KHRG
7 Argyle LLC; KHRG Wilshire LLC; KHRG Westwood LLC; KHRG NPC LLC; KHRG Sacramento
8 LLC; KHRG Employer, LLC; KHRG SF Wharf LLC; Kimpton Hotel & Restaurant Group, LLC;
9 KHRG Canary LLC; KHRG La Peer LLC; KHRG SFD LLC; KHRG SF Wharf U2 LLC; KHRG
10 Sutter LLC; KHRG Sutter Union LLC; Holiday Inn Los Angeles Gateway – Torrance; Holiday Inn
11 Express and Suites - San Francisco Fisherman Wharf; Hotel Indigo – Los Angeles Downtown; Hotel
12 Indigo - San Diego Gaslamp Quarter; InterContinental - Los Angeles Downtown; InterContinental
13 - San Diego; InterContinental - San Francisco; InterContinental - Mark Hopkins; Regent - Santa
14 Monica; Kimpton Shorebreak Huntington Beach Resort; Kimpton Everly Hotel; Kimpton Hotel
15 Wilshire; Kimpton Hotel Palomar Los Angeles Beverly Hills; Kimpton Rowan Palm Springs Hotel;
16 Kimpton Sawyer Hotel; Kimpton Alma; Kimpton Alton Hotel; Kimpton Hotel Enso; Kimpton
17 Canary Hotel; and Kimpton La Peer Hotel (collectively, “Defendants” or “IHG Entities”) and alleges
18 as follows:

19 **INTRODUCTION**

20 1. This is a PAGA representative action brought pursuant to the California Labor Code
21 Private Attorneys General Act of 2004 (“PAGA”), codified as California Labor Code sections 2698
22 through 2699.6.

23 2. The “PAGA Period” as used herein, is defined as the period from February 7, 2022,
24 and continuing into the present and ongoing.

25 3. Plaintiff is informed and believes and thereon alleges that the California Industrial
26 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order
27 5-2001 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of
28 Regs., tit. 8, § 11050.) Plaintiff reserves the right to amend or modify the definition of “Applicable

1 Wage Order” with greater specificity or add additional IWC Wage Orders if additional applicable
2 wage orders are discovered in litigation.

3
4 **JURISDICTION & VENUE**

5 4. This Court has subject matter jurisdiction over all causes of action asserted herein
6 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure
7 section 410.10 because this is a civil action in which the matter in controversy, exclusive of interest,
8 exceeds \$35,000, and because each cause of action asserted arises under the laws of the State of
9 California or is subject to adjudication in the courts of the State of California.

10 5. This Court has personal jurisdiction over Defendants because Defendants have
11 caused injuries in the County of Los Angeles and the State of California through their acts, and by
12 their violation of the California Labor Code and California state common law. Defendants transact
13 millions of dollars of business within the State of California. Defendants own, maintain offices,
14 transact business, have an agent or agents within the County of Los Angeles, and/or otherwise are
15 found within the County of Los Angeles, and Defendants are within the jurisdiction of this Court
16 for purposes of service of process.

17 6. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of
18 the Code of Civil Procedure. Defendants operate within California and do business within Los
19 Angeles County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and
20 all of Defendants’ employees identified above within Los Angeles County and surrounding
21 counties where Defendants may remotely operate.

22 **THE PARTIES**

23 7. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a
24 citizen of California residing in the State of California. Defendants employed Plaintiff as a non-
25 exempt hourly employee in the County of Los Angeles.

26 8. The Aggrieved Employees, at all times pertinent hereto, are or were employees of
27 Defendants during the relevant statutory period.

28 9. Plaintiff is informed and believes and thereon alleges that Defendants were
authorized to and doing business in Los Angeles County and is and/or was the legal employer of

1 Plaintiff and the other Class Members during the applicable statutory periods. The Aggrieved
2 Employees were, and are, subject to Defendants' policies and/or practices complained of herein
3 and have been deprived of the rights guaranteed to them by: California Labor Code sections 201-
4 204, 208, 210, 212, 216, 218.5, 221, 222, 223, 224, 225.5, 226, 226.3, 226.6, 226.7, 227.3, 233,
5 234, 245-248.6, 256, 351, 353, 432, 432.5, 432.6, 432.7, 510, 512, 516, 551-553, 558, 558.1,
6 1024.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198-1199, 2698-2699, 2699.3, 2802,
7 2804, 2810.5, and others that may be applicable; California Business and Professions Code sections
8 17200 ("UCL"); and the applicable Industrial Welfare Commission Wage Orders (Cal. Code of
9 Regs., tit. 8, § 11050).

10 10. Plaintiff is informed and believes, and based thereon alleges, that during the PAGA
11 Period, Defendants did (and continue to do) business in the State of California, County of Los
12 Angeles.

13 11. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
14 herein, Defendants were and/or are the employers of the Aggrieved Employees. At all times herein
15 mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have
16 been done by the named Defendants. Furthermore, the Defendants, and each of them, were the
17 agents, servants, and employees of each and every one of the other Defendants, as well as the agents
18 of all Defendants, and at all times herein mentioned were acting within the course and scope of said
19 agency and employment. Defendants, and each of them, approved of, condoned, or otherwise
20 ratified every one of the acts or omissions complained of herein.

21 12. At all relevant times, Defendants, and each of them, were members of and engaged
22 in a joint venture, partnership, and common enterprise, and acting within the course and scope of
23 and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is
24 informed, and believes, and thereon alleges, that all Defendants were joint employers for all
25 purposes of Plaintiff and the other Aggrieved Employees.

26 **GENERAL ALLEGATIONS**

27 13. Plaintiff started working at IHG on or around 2022 at La Boucherie restaurant located
28 at 900 Wilshire Blvd. inside of the InterContinental Hotel in downtown Los Angeles. During her

1 employment tenure, Plaintiff was classified as an hourly, non-exempt employee. Plaintiff's
2 employment ended on or around February 2023.

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

19 15. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
20 other employees, it allows for suits broader than the specific violations the named employee
21 experienced. Therefore, even if the employee did not personally experience the Labor Code
22 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's position
23 that Plaintiff can equivocally bring the following labor code violations on behalf of all other
24 employees, including ALL hourly, non-exempt employees, irrespective of job title or job duty, who
25 worked at any of Defendants' locations in the state of California during the relevant PAGA period.

26 16. It is Plaintiff's position that Defendants have violated numerous Labor Code Sections
27 and other provisions against Plaintiff and other similarly situated aggrieved employees, who
28

1 include all non-exempt, hourly employees who worked for Defendants at their various locations in
2 the State of California during the relevant PAGA period.

3 17. Defendants violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed
4 to pay Plaintiff and other similarly situated aggrieved employees for all hours worked including the
5 statutory minimum wage for all hours worked and for “off the clock” work. For example,
6 Defendants had a company policy wherein they would disproportionately round down the number
7 of hours worked, resulting in “time shaving” and/or auto deducting time, further resulting in
8 aggrieved employees not being paid for all hours worked. Furthermore, and to the extent that
9 Plaintiff and others worked through their meal periods while “off the clock,” or were required to
10 engage in any other work-related activities, such as donning and doffing, COVID screening,
11 performing pre-shift or post-shift duties, they were not compensated for all hours worked, which
12 would be akin to a minimum wage violation. This includes without limitation, requirements to
13 unlock the doors, turn on the lights, deactivate alarms, and set up work stations before clocking in;
14 and locking the doors, turning off the lights, cleaning/breaking down work stations, and activating
15 alarms after clocking out. The timekeeping system also malfunctioned frequently, causing delay
16 in recording work time and resulting in off-the-clock time that was not paid.

17 18. Additional required off-the-clock work that went unpaid includes, without limitation:
18 time spent responding to phone/text messages outside of scheduled shifts; travelling between
19 locations (travel time); and completing paperwork and attending required meetings, trainings,
20 testings, and certifications.

21 19. Due to the above “off the clock” violations, Defendants also violated Labor Code
22 §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even
23 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
24 throughout their employment. Plaintiff’s and other aggrieved employees’ actual work hours entitled
25 them to overtime compensation, however, Defendants did not compensate its hourly, non-exempt
26 employees with the correct amount of overtime due to the “off the clock” work and time shaving
27 as described above. Furthermore, Defendants failed to include bonuses/incentive payments in
28 calculating employees’ regular rate of pay for use in deciphering the correct overtime rate of pay

1 and sick pay rate of pay. Additionally, the incentive and bonus payments were also not factored
2 into employees' regular rate for purposes of receiving meal and rest break premiums per the *Ferra*
3 *v. Loews* case.

4 20. Moreover, Defendants failed to pay Plaintiff and/or other Aggrieved Employees split
5 shift premium wages when they worked split shifts during the relevant period. Defendants
6 required Plaintiff and/or other Aggrieved Employees to work two separate shifts in the same day.
7 Defendants failed to pay Plaintiff and/or other Aggrieved Employees split shift compensation when
8 their work schedules were interrupted by non-paid non-working periods, which resulted in a
9 violation of the applicable Wage Order (See section 4 of all applicable Wage orders, "When an
10 employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to
11 the minimum wage for that workday...). See, also, Cal. Code Regs. Tit. 8, § 11050 (when an
12 employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to
13 the minimum wage for that workday, except when the employee resides at the place of employment).
14 Defendants also failed to separately itemize these split shift premium wages on wage statements, in
15 violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders. See,
16 https://www.dir.ca.gov/dlse/split_shift.htm.

17 21. Defendants also failed to pay Plaintiff and other Aggrieved Employees reporting
18 time wages, in accordance with California law including but not limited to the applicable IWC
19 Wage Order. For example, Plaintiff and/or Aggrieved Employees reported to work for a scheduled
20 shift but were sent home and/or were not put to work and were not paid all owed reporting time
21 pay wages in accordance with California law.

22 22. Defendants have a policy and practice of failing to pay all reporting time wages to
23 Plaintiff and other Aggrieved Employees, in violation of California law, including but not limited
24 to, the applicable IWC Wage Order, Section 5. Defendants' failure to pay all reporting time wages
25 violated and continues to violate the applicable Wage Order, and the California Labor Code,
26 including but not limited to section 1198.

27 23. Defendants also violated Labor Code § 226.7 and the appropriate Industrial Welfare
28 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated

1 aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion
2 thereof, throughout their employment. Defendants did not completely relieve Plaintiff and others
3 of all duty during said rest periods. Defendants did not pay to Plaintiff and others one additional
4 hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory
5 rest periods was not provided. It was not part of the company policy for employees such as Plaintiff
6 to take at least two rest breaks per shift. The concept of rest breaks was not consistently
7 implemented as it was not company policy. Moreover, it would not have been possible for
8 employees such as Plaintiff and others to take such rest breaks due to being understaffed and due
9 to a heavy workload, especially in the fast-paced restaurant industry. As such, the culture as well
10 as the policies and procedures of Defendants did not lend itself to the employees receiving
11 consistent statutory rest breaks wherein they were relieved of all work duties. The environment at
12 Defendants' locations was not conducive to receiving multiple statutory rest breaks under
13 California law and timely, statutory rest breaks were not authorized or enforced.

14 24. Defendants violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
15 Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees,
16 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five
17 (5) hours of work throughout their employment. Defendants did not completely relieve Plaintiff
18 and other employees of all duty during said meal periods. Defendants did not pay to Plaintiff and
19 its hourly, non- exempt employees one additional hour of pay at their regular rate of compensation
20 for each workday that one or more statutory meal periods was not provided. The hourly, non-
21 exempt employees would often not be able to consistently receive any meal breaks. Moreover, even
22 if aggrieved employees were able to take meal breaks, the meal breaks would be late and after the
23 5th hour worked or they would be interrupted. The latter was due to the workload and due to being
24 in a fast-paced restaurant environment. Like the rest breaks, receiving a thirty-minute uninterrupted
25 and timely meal break was not part of the company culture and was not enforced by Defendants.
26 Consequently, it was the normal practice and custom of Defendants not to authorize, permit, and
27 enforce timely statutory meal periods. If Defendants had Plaintiff sign a meal period waiver, it
28 would not be valid and enforceable since Plaintiff and others generally worked more than a 6-hour

1 shift. If Defendants had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed
2 to work through the meal periods, it would be invalid and unenforceable because the nature of
3 Plaintiff's job does not and did not prevent her from taking a meal period and the company could
4 have hired "breakers" to relieve Plaintiff of her job duties so that she can actually take a timely,
5 uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for
6 Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff and others did not
7 always receive statutory, timely meal periods during their employment. To the extent that
8 Defendants 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 a
11 missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated,
12 "section 226.7 does not give employers a lawful choice between providing either meal and rest
13 breaks or an additional hour of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th
14 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the
15 employer has still committed a violation even if the remedy for the violation has been paid. See
16 *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work
17 environment and culture at Defendants' locations were not conducive to receiving consistent,
18 timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums
19 paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or
20 incentive payments as well as overtime compensation.

21 25. Furthermore, during the relevant time period, and due to the above labor code
22 violations, Defendants failed to pay Plaintiff and other similarly situated aggrieved employees all
23 wages due to them within any time period specified by California Labor Code section 204.
24 Defendants was also in violation of California Labor Code section 226(a) by failing to include
25 pertinent information on the wage statements, including but not limited to, the correct hourly rate,
26 all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages
27 earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of
28 the pay period, all employee identifying information, the correct and complete name and address

1 of the legal employer, and reimbursement for business expenses, among others. As such,
2 Defendants did not provide Plaintiff and other similarly situated aggrieved employees with
3 complete, accurate itemized wage statements.

4 26. During the relevant time period, Defendants also failed to keep accurate and
5 complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff
6 and others pursuant to California Labor Code sections 1174(d), 1198, 1199, and Wage Order
7 section 7. Defendants failed and continue to fail to keep accurate and complete records showing
8 total hours worked by virtue of Defendants' unlawful practices detailed herein.

9 27. Defendants also violated Labor Code § 203 because they willfully failed to pay
10 Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation
11 of employment, either immediately upon involuntary termination, or within 72 hours of resignation.
12 These earned but unpaid wages include compensation for all hours worked, including minimum
13 wages, overtime compensation, and premium pay for missed meal and rest breaks.

14 28. During the relevant time period, Plaintiff and aggrieved employees incurred
15 necessary, business-related expenses and costs that were not reimbursed by Defendants. These costs
16 include, but are not limited to, those relating to uniforms including a chef's hat, work clothing,
17 work shoes, and safety/protective gear; work tools; work-related use of personal cell phones; work-
18 related use of personal vehicles; and other work-related expenses. Accordingly, Defendants were
19 in violation of California Labor Code sections 2800 and 2802. Additionally, Defendants violated
20 Labor Code Section 351 and 353 by taking some of the tips meant for employees and also deducting
21 the tips from aggrieved employees earned wages. Defendants also deducted the credit card fee from
22 aggrieved employees' tips and did not timely provide the credit card and even cash tips to aggrieved
23 employees. As such, the aggrieved employees were not given accurate tips to which they were
24 entitled.

25 29. Defendants' conduct, act, and/or omissions described throughout this Complaint
26 were willful.

27 30. **Failure to Compensate for All Hours Worked:** For the three (3) years preceding
28 filing of this action, Defendants failed to compensate Plaintiff and other Aggrieved Employees for

1 all hours worked. Under the aforementioned wage order and regulations, Plaintiff and other
2 Aggrieved Employees are to recover compensation for all hours worked but not paid by Defendants
3 for the three (3) years preceding the filing of this Complaint.

4 **31. Failure to Pay Minimum Wages:** During her employment, Plaintiff and other
5 Aggrieved Employees were regularly required as a matter of uniform policy and practice to work,
6 and in fact worked, as an employee of Defendants and Plaintiff and other Aggrieved Employees
7 were 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 Commission
9 wage order(s). Plaintiff and other Aggrieved Employees were, at all relevant times, under the
10 control of Defendants and suffered or permitted to work by Defendants. Defendants' acts or
11 omissions in failing to adequately compensate Plaintiff and other Aggrieved Employees were not
12 in good faith nor were there reasonable grounds for Defendants to believe that their acts or
13 omissions were not contrary to California law.

14 **32. Failure to Pay Overtime:** Pursuant to Industrial Welfare Commission Order No. 5-
15 2001, Cal. Code of Regs., Title 8, Section 11050, for the period of Plaintiff's and other Aggrieved
16 Employees' employment, Defendants were required to compensate Plaintiff and other Aggrieved
17 Employees for all overtime, which is calculated at one and one-half (1.5) times the regular rate of
18 pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week, and two (2) times
19 the regular rate of pay for hours worked in excess of twelve (12) hours in a day or hours worked in
20 excess of eight (8) on the seventh consecutive work day in a week. Plaintiff and other Aggrieved
21 Employees are non-exempt employee entitled to the protections of the California Industrial Welfare
22 Commission Order No. 5-2001, California Code of Regulations, Title 8, Section 11050. Plaintiff
23 and other Aggrieved Employees worked more than eight (8) hours in a single workday, twelve (12)
24 hours in a single workday or forty (40) hours in a single workweek on numerous occasions. Plaintiff
25 and other Aggrieved Employees were entitled to the above overtime premiums. Defendants did not
26 pay Plaintiff and other Aggrieved Employees premium wages of at least one and one-half times
27 Plaintiff's and other Aggrieved Employees' regular rate of pay for hours worked past eight (8) in a
28 day. Defendants did not pay Plaintiff and other Aggrieved Employees premium wages of at least

1 twice Plaintiff's regular rate of pay for hours worked past twelve (12) in a day. Defendants did not
2 pay Plaintiff premium wages of at least one and one-half times Plaintiff's regular rate of pay for
3 hours worked past forty (40) in a week. Defendants knew or should have known the actual dates of
4 overtime worked, the amount of overtime worked, and the amount of unpaid overtime due.

5 **33. Unlawful Deductions.** Labor Code section 221 prohibits an employer from
6 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
7 to said employee." Defendants made unlawful deductions to Plaintiff's and other Aggrieved
8 Employees' paychecks during the relevant period including but not limited to, deducting costs of
9 uniforms and/or other business costs and/or deducting wages for purported overpayments from
10 previous pay periods and/or unlawfully deducting wages for negligently damaged property. Such
11 practice violates, among other things, Labor Code Sections 221-222 which subjects Defendants to
12 civil penalties under Labor Code Section 2699.

13 **34. Failure to Provide Accurate Itemized Wage Statements:** Pursuant to California
14 Labor Code Section 226, every employer must furnish each employee an itemized statement of
15 wages and deductions at the time of payment of wages. Defendants knowingly and intentionally
16 did not furnish Plaintiff and other Aggrieved Employees with any pay stubs that accurately reflected
17 all information required by Labor Code Section 226, including but not limited to, gross wages
18 earned, including overtime, minimum wages, and premium pay for missed meal and rest breaks,
19 net wages earned, total hours worked by the employee, and all deductions. Therefore, Defendants
20 failed to maintain and provide accurate itemized wage statements to Plaintiff and other Aggrieved
21 Employees in accordance with California Labor Code Section 226(a). Pursuant to California Labor
22 Code Section 226(e), Plaintiff and other Aggrieved Employees are entitled to recover the greater
23 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
24 one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
25 exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and reasonable
26 attorney's fees. Plaintiff and other Aggrieved Employees only claim damages under this cause of
27 action pursuant to the 1-year period immediately preceding the date the lawsuit was filed.
28

1 **35. Failure to Pay Wages Owed Every Pay Period:** California Labor Code Section
2 204 establishes the fundamental right of all employees in the State of California to be paid wages
3 in a timely fashion for their work. At all times relevant during the liability period, Defendants failed
4 to pay Plaintiff and other Aggrieved Employees the full amount of all owed wages when due as
5 required by California Labor Code Section 204. Defendants failed to pay Plaintiff and other
6 Aggrieved Employees all wages earned each pay period. Plaintiff is informed, believes, and thereon
7 alleges, that all times relevant during the liability period, Defendants maintained a policy or practice
8 of not paying Plaintiff and other Aggrieved Employees wages for all hours worked, including
9 overtime hours, the minimum wage, and premium pay for missed meal and rest breaks.

10 **36. Failure to Pay Wages When Employment Ends:** Plaintiff and other Aggrieved
11 Employees did not receive payment of all wages owed upon separation within the permissible time
12 period due to, *inter alia*, Defendants' failure to pay all wages, Defendants' failure to pay meal and
13 rest premiums, Defendants' failure to reimburse business expenses, and Defendants' failure to pay
14 all gratuities.

15 **37. Failure to Provide Personnel File:** Defendants failed to provide Plaintiff and other
16 Aggrieved Employees with an opportunity to inspect or copy their records within 30 days. As a
17 direct result of Defendants' violations alleged herein, Plaintiff and other Aggrieved Employees
18 suffered and continue to suffer substantial losses related to Defendants' failure to provide personnel
19 records.

20 **38. Failure to Give Meal Breaks:** During the PAGA Period, Plaintiff and other
21 Aggrieved Employees were subject to the same policies, practices, and procedures governing the
22 provision and scheduling of meal periods. Defendants have a pattern and practice of not providing
23 Plaintiff and other Aggrieved Employees with legally compliant 30-minute off-duty meal periods
24 prior to the end of their fifth hour of work during their shifts, even though they worked more than
25 five (5) hours during their workday. As a result of Defendants' policies and due to understaffing
26 and Defendants' fast-paced environment, Plaintiff and other Aggrieved Employees' meal periods
27 were regularly on-duty, late, short, or not provided. For example, Defendants' illegal policies
28 required Plaintiff and other Aggrieved Employees to remain on duty during their meal periods. In

1 addition, when Aggrieved Employees were able to take a meal period, Defendants regularly
2 interrupted them and instructed Aggrieved Employees to return to work. Plaintiff and other
3 Aggrieved Employees were also regularly provided with meal periods that occurred after the end
4 of their fifth hour of work.

5 39. Independently, Defendants were required to pay Plaintiff and other Aggrieved
6 Employees one additional hour of pay at their regular rate of compensation for each day that
7 Defendants did not provide Plaintiff and other Aggrieved Employees with a 30-minute, duty-free
8 meal period no later than the end of an Aggrieved Employee's fifth hour of work, and a second
9 meal period of at least 30 minutes no later than the end of an Aggrieved Employee's 10th hour of
10 work. Despite this obligation, Defendants did not pay Plaintiff and other Aggrieved Employees one
11 additional hour of pay at each Aggrieved Employee's regular rate of compensation for each day
12 that Defendants did not provide Plaintiff and other Aggrieved Employees with a compliant meal
13 period. Instead, Defendants have a common policy and practice of failing to compensate Plaintiff
14 and other Aggrieved Employees with an hour of pay at their regular rate of pay for the times that
15 Defendants did not provide Plaintiff and other Aggrieved Employees with a 30-minute, duty-free
16 meal period no later than the end of an Aggrieved Employee's fifth hour of work, and a second
17 meal period of at least 30 minutes no later than the end of an Aggrieved Employee's 10th hour of
18 work, as required by Labor Code section 226.7(b) and the applicable IWC Wage Order.

19 40. **Failure to Give Rest Breaks:** During the PAGA Period, Plaintiff and other
20 Aggrieved Employees were subject to the same policies, practices, and procedures governing the
21 provision and scheduling of rest periods. During the PAGA Period, Defendants failed to authorize
22 and permit and/or make available ten minute rest periods for every four (4) hours or major fraction
23 thereof worked. Plaintiff and other Aggrieved Employees were not authorized and permitted to take
24 compliant rest periods because they were regularly required to remain on-duty at all times, or
25 because such rest periods were frequently interrupted. Even though Plaintiff and other Aggrieved
26 Employees were not authorized and permitted to take off-duty rest periods of at least 10 minutes
27 for each four-hour work period or major fraction thereof, Defendants did not pay Plaintiff and other
28 Aggrieved Employees appropriate rest period premium wages for each day in which Defendants

1 did not authorize and permit Plaintiff and other Aggrieved Employees to take compliant rest
2 periods, in violation of Labor Code Section 226.7 and the applicable IWC Wage Order.

3 **41. Failure to Reimburse for Business Expenses:** Labor Code section 2802 provides
4 that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses
5 incurred by the employee in direct consequence of the discharge of his or her duties.” Beginning at
6 least 3 years prior to the filing of this complaint, in order to discharge their duties for Defendants,
7 Plaintiff and other Aggrieved Employees incurred reasonable and necessary expenses in the course
8 of completing their job duties, which were not reimbursed by Defendants. These costs include, but
9 are not limited to, those relating to uniforms including a chef’s hat, work clothing, work shoes, and
10 safety/protective gear; work tools; work-related use of personal cell phones; work-related use of
11 personal vehicles; and other work-related expenses.

12 **42. Failure to Provide Suitable Seating.** Based on information and belief, Defendants
13 failed to provide Plaintiff and other Aggrieved Employees with suitable seating, and when such
14 employees were not engaged in duties which required them to stand, no seating was placed in
15 reasonable proximity to their workstations.

16 **43.** Moreover, based on information and belief, the nature of the work reasonably
17 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
18 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties
19 of their employment, yet there were no suitable seats in reasonable proximity to the work area and
20 use of seats would not interfere with the performance of their duties.

21 **44.** Suitable seating is one of the worker protections covered by California’s Wage
22 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
23 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
24 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012). Defendants violated these
25 requirements

26 **45. Sick Leave Violations.** Throughout the relevant time period, Defendants failed to
27 provide proper paid sick leave to Plaintiff and other Aggrieved Employees. Defendants either failed
28 to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave

1 rate of pay owed to Plaintiff and other Aggrieved Employees by failing to base the accrued sick
2 leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction
3 policies and practices for meal periods and/or shift start and end times/other required off-the-clock
4 work including but not limited to unpaid meal periods) and by failing to incorporate multiple rates
5 of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary
6 bonuses, shift differential pay, and/or other non-discretionary compensation into the sick leave pay
7 rate calculation.

8 46. Upon information and belief, Defendants further failed to place Plaintiff and
9 Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their entitlement
10 to sick leave in a Labor Code section 2810.5 notice. Based on information and belief, Defendants
11 failed to provide notice of the correct sick leave amount balance available to Plaintiff and other
12 Aggrieved Employees on their wage statements or other written statement. Moreover, based on
13 information and belief, Defendants failed to maintain accurate records of used sick leave and the
14 balance of paid sick leave

15 47. Based on information and belief, throughout the relevant time period, Defendants
16 failed to provide notice of the balance of sick leave pay left for Plaintiff and all Aggrieved
17 Employees, thus affecting their intelligent exercise of their paid sick leave. But for this failure,
18 Plaintiff and all Aggrieved Employees would have used their paid sick leave at least prior to their
19 respective separations, for as on several occasions thereafter, he or she would have been entitled to
20 use the banked sick leave and earn appropriate compensation.

21 48. Upon information and belief, Defendants failed and continue to fail to comply with
22 Labor Code section 246, by failing to provide Plaintiff and all Aggrieved Employees with a Labor
23 Code section 226 wage statement, or separate writing containing the amount of paid sick leave
24 available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

25 49. As such, Defendants have violated California's paid sick leave laws and unlawfully
26 retained and continue to retain paid sick leave that should have been paid and was not as a result of
27 Defendants' failure to properly institute a lawful paid sick leave program. These unlawful practices
28 and polices violate Labor Code sections 245-248.5.

1 **50. Failure to Provide Suitable Resting Facilities.** Defendants could have provided
2 Plaintiff and other Aggrieved Employees with a resting facility within Defendants'
3 facilities/locations with reasonable or no modification, but instead denied and continues to deny,
4 employees with suitable areas to rest (e.g. a breakroom). As a result, Plaintiff and other Aggrieved
5 Employees were forced to adjust to areas not conducive to resting, including but not limited to
6 leaning up against the wall, or search for facilities outside of Defendants' premises which are not
7 designated or reserved for their rest, such as their personal vehicles.

8 **51.** Defendants' failure to provide suitable resting facilities to Plaintiff and other
9 Aggrieved Employees violated and continues to violate the applicable Wage Order, section 13(B)
10 and the California Labor Code, including but not limited to section 1198

11 **52. Violation of California Day of Rest Law.** Under California law, every employee in
12 California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" its
13 employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552.
14 Defendants have and continue to have a uniform policy and practice of requiring Plaintiff and other
15 Aggrieved Employees to work at least seven days consecutively in a workweek, in violation of
16 including but not limited to, Labor Code Section 551.

17 **53. Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
18 Defendants have and continue to have a uniform policy and practice of failing to allow Plaintiff
19 and other Aggrieved Employees to use their earned vacation/paid time off during their employment
20 and/or failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation
21 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
22 limited to, shift differentials) to Plaintiff and other Aggrieved Employees upon separation of
23 employment, in violation of California law, including but not limited to, Labor Code section 227.3.

24 **54. Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every
25 employee who is discharged shall be paid at the place of discharge, and every employee who quits
26 shall be paid at the office or agency of the employer in the county where the employee has been
27 performing labor. All payments shall be made in the manner provided by law. Based on information
28 and belief, Defendants have a policy and practice of failing to provide Plaintiff and other Aggrieved

Employees who are terminated with their final paychecks at the place of discharge and/or of failing to provide Plaintiff and other Aggrieved Employees with their final paychecks at the office or agency of Defendants in the county where the work was performed, in violation of Labor Code Section 208.

55. **Unlawful Agreements and Unlawful Background Inquiries.** Defendants required Plaintiff and other Aggrieved Employees to agree in writing to unlawful conditions of employment including but not limited to unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful meal period waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful background, criminal, and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code sections 432.5, 432.6, 432.7, and 1024.5

FIRST CAUSE OF ACTION

Penalties Pursuant to the California Private Attorneys General Act of 2004

(“PAGA”) and Other Provisions of the California Labor Code

(Against All Defendants)

56. Plaintiff incorporates by reference all previous paragraphs of this complaint.

57. Based on the above allegations incorporated by reference, Defendants violated California Labor Code §§ 201-204, 208, 210, 212, 216, 218.5, 221, 222, 223, 224, 225.5, 226, 226.3, 226.6, 226.7, 227.3, 233, 234, 245-248.6, 256, 351, 353, 432, 432.5, 432.6, 432.7, 510, 512, 516, 551-553, 558, 558.1, 1024.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198-1199, 2698-2699, 2699.3, 2802, 2804, 2810.5, and others that may be applicable; California Business and Professions Code sections 17200 (“UCL”); and the applicable Industrial Welfare Commission Wage Orders (Cal. Code of Regs., tit. 8, § 11050).. As a result of the acts alleged above, Plaintiff seeks penalties on behalf of the Aggrieved Employees under California Labor Code §§ 2698-2699.6 because of Defendants’ violation of the California Labor Code and applicable IWC Wage Orders.

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

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

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

3 59. These penalties shall be allocated seventy-five percent (75%) to the Labor and
4 Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected
5 employees. These penalties may be stacked separately for each of Defendants' violations of the
6 California Labor Code. *See e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx)
7 2021 U.S.Dist. LEXIS 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that although the
8 plaintiff did not seek stacked PAGA penalties, that "PAGA penalties can be 'stacked,' *i.e.*, multiple
9 PAGA penalties can be assessed for the same pay period for different Labor Code violations."); *see*
10 *Lopez v. Friant & Assoc., LLC* No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sept. 26,
11 2017) ("hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code
12 section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of
13 section 266(e)(1) and acknowledging a Plaintiff could recover separately under PAGA for
14 violations of Labor Code §§ 226(a) and 226(e)).

15 60. In addition, to the extent permitted by law, Defendants failed to provide all
16 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code §§
17 226(a), Plaintiff seeks on behalf of the Aggrieved Employees separate PAGA penalties for
18 Defendants' violations of Labor Code §§ 226(a) and 226(e).

19 61. For violations of Labor Code § 226(a), Plaintiff seeks on behalf of the Aggrieved
20 Employees the default penalty provided by Labor Code § 226.3. Labor Code § 226.3 provides that
21 "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in
22 the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation
23 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for
24 which the employer fails to provide the employee a wage deduction statement or fails to keep the
25 required in subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted
26 by law the Aggrieved Employees are entitled to recover penalties for violations of Labor Code §
27 226.3 and seeks default PAGA penalties for each of Defendants' numerous violations of Labor
28 Code § 226(e).

1 62. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that
2 Defendants' conduct in refusing to provide accurate and itemized wage statements was knowing,
3 intentional, or willful.

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

12 64. Plaintiff has complied with the procedures for bringing suit specified in California
13 Labor Code § 2699.3 and has fully exhausted her administrative remedies under PAGA prior to
14 proceeding with the PAGA claim. On or about February 17, 2023, and as amended on April 17,
15 2024 , Plaintiff filed notices online with the Labor Workforce Development Agency ("LWDA")
16 and sent copies of same by certified mail to Defendants, setting forth the facts and theories of the
17 violations alleged against Defendant, as prescribed by Labor Code § 2698, *et seq.* As required by
18 PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by regular mail. Pursuant to Labor
19 Code § 2699.3(a)(2)(A), no notice was and/or will have been received by Plaintiff from the LWDA
20 evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of
21 the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil action
22 pursuant to Labor Code § 2699.

23 65. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
24 violator and had one or more of the alleged violations committed against her, and therefore is
25 properly suited to represent the interests of other current and former employees, including all
26 current and former hourly, non-exempt employees who worked for Defendants in the State of
27 California during the applicable PAGA Period.

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

PRAYER FOR RELIEF

Plaintiff, on behalf of herself, all other Aggrieved Employees, and the State of California, prays for judgment against Defendants, jointly and severally, as follows:

1. For an award of civil penalties payable to Plaintiff, other Aggrieved Employees, and the State of California under PAGA for each violation of the Labor Code and IWC Wage Orders described in this Complaint, including but not limited to penalties under Labor Code sections 210, 226.3, 256, 350 *et seq.*, 558, 1174.5, 1197.1, 2699(a), 2699(f), and other provisions described in this Complaint;

2. For an award of reasonable attorneys' fees and costs of suit to the extent permitted by law, including under Labor Code Sections 2699(g) and 2802(c), and California Code of Civil Procedure Section 1021.5; and

3. For such other relief the Court deems just and proper.

DATED: April 16, 2024

MESSRELIAN LAW INC.

By: 

Harout Messrelia, Esq.
Attorney for Plaintiff Elizabeth Mora and
the Aggrieved Employees