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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

TANNIA AYALA, individually, and on  
behalf of other members of the general  
public similarly situated, and as an  
aggrieved employee pursuant to the Private  
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

RHR CALIFORNIA SERVICES, L.L.C., a  
California limited liability company;  
ROSEWOOD HOTELS AND RESORTS,  
LLC, a Delaware limited liability company;  
SHR HOTEL LLC, a California limited  
liability company; MIRAMAR  
ACQUISITION CO., LLC, a California  
limited liability company; and DOES 2  
through 10, inclusive,

Defendants.

Case No.: 22CV04921

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California

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- Labor Code, Pursuant to PAGA, §§ 2698,  
*et seq.*;
- (10) Violation of California Business &  
Professions Code §§ 17200, *et seq.*  
(Unlawful Business Practices); and
- (11) Violation of California Business &  
Professions Code §§ 17200, *et seq.* (Unfair  
Business Practices)

**Jury Trial Demanded**

1 Plaintiff Tannia Ayala, individually and on behalf of all other members of the public  
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,  
3 alleges as follows:

#### 4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure  
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil  
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other  
8 current and former employees who worked for Defendants in California as non-exempt,  
9 hourly paid employees and received at least one wage statement and against whom one or  
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any  
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission  
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,  
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the  
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction  
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes  
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s  
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either  
19 citizens of California, have sufficient minimum contacts in California, or otherwise  
20 intentionally avail themselves of the California market so as to render the exercise of  
21 jurisdiction over them by the California courts consistent with traditional notions of fair play  
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action  
23 because there is no complete diversity, and this case falls within the statutory exceptions to  
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).  
25 Upon information and belief, two-thirds or more of the class members and Defendants are  
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens  
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant  
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed  
2 within the past three (3) years on behalf of the same proposed class against Defendants  
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants employ persons within the  
5 County of Santa Barbara, and have violated the requirements of the California Labor Code  
6 and applicable Wage Order in this county which give rise to the penalties sought in this  
7 action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of  
8 the California Labor Code and applicable Wage Order in at least one location within the  
9 County of Santa Barbara, including Defendants' hotel location in Montecito (1759 South  
10 Jameson Lane, Montecito, California 93108). Pursuant to California Civil Code of Procedure  
11 section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in  
12 the county in which the cause, or some part of the cause, arose. Because Defendants have  
13 employees in Santa Barbara County and Plaintiff could bring this action to recover penalties  
14 in Santa Barbara County, venue is proper.

#### 15 **THE PARTIES**

16 4. Plaintiff Tannia Ayala is a resident of Redwood City, in San Mateo County,  
17 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from  
18 approximately April 2009 to October 2022. Plaintiff worked as a Line Cook at Defendants'  
19 Rosewood Sand Hill hotel location in Menlo Park, California. During her employment,  
20 Plaintiff typically worked eight (8) or more hours per day and five (5) or more days per week.  
21 Plaintiff's primary job duties included, without limitation, preparing and presenting cold food  
22 buffet displays such as meat and cheese boards, sandwich platters, and salad arrangements for  
23 hotel events; maintaining and overseeing kitchen ingredient inventory; and making food  
24 preparation lists and schedules to correspond with guests' events.

25 5. RHR CALIFORNIA SERVICES, L.L.C. was and is, upon information and  
26 belief, a California limited liability company, and at all times hereinafter mentioned, an  
27 employer whose employees are engaged throughout this county and the State of California.

28 6. ROSEWOOD HOTELS AND RESORTS, LLC was and is, upon information

1 and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an  
2 employer whose employees are engaged throughout this county and the State of California.

3 7. SHR HOTEL LLC was and is, upon information and belief, a California limited  
4 liability company, and at all times hereinafter mentioned, an employer whose employees are  
5 engaged throughout this county and the State of California.

6 8. MIRAMAR ACQUISITION CO., LLC was and is, upon information and  
7 belief, a California limited liability company, and at all times hereinafter mentioned, an  
8 employer whose employees are engaged throughout this county and the State of California.

9 9. Plaintiff is unaware of the true names or capacities of the Defendants sued  
10 herein under the fictitious names DOES 2 through 10, but will seek leave of this Court to  
11 amend the complaint and serve such fictitiously named Defendants once their names and  
12 capacities become known.

13 10. Plaintiff is informed and believes, and thereon alleges, that DOES 2 through 10  
14 were the partners, agents, owners, or managers of RHR CALIFORNIA SERVICES, L.L.C.;  
15 ROSEWOOD HOTELS AND RESORTS, LLC; SHR HOTEL LLC; and MIRAMAR  
16 ACQUISITION CO., LLC at all relevant times.

17 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the  
18 acts and omissions alleged herein was performed by, or is attributable to, RHR CALIFORNIA  
19 SERVICES, L.L.C.; ROSEWOOD HOTELS AND RESORTS, LLC; SHR HOTEL LLC;  
20 MIRAMAR ACQUISITION CO., LLC; and/or DOES 2 through 10 (collectively,  
21 “Defendants” or “RHR”), each acting as the agent, employee, alter ego, and/or joint venturer  
22 of, or working in concert with, each of the other co-Defendants and was acting within the  
23 course and scope of such agency, employment, joint venture, or concerted activity with legal  
24 authority to act on the others’ behalf. The acts of any and all Defendants were in accordance  
25 with, and represent, the official policy of Defendants.

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

1 the damages herein alleged.

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

5 14. Under California law, Defendants are jointly and severally liable as employers  
6 for the violations alleged herein because they have each exercised sufficient control over the  
7 wages, hours, working conditions, and employment status of Plaintiff and class members.  
8 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and  
9 controlled their work schedule and/or conditions of employment, determined their rate of pay,  
10 and maintained their employment records. Defendants suffered or permitted Plaintiff and  
11 class members to work and/or “engaged” Plaintiff and class members so as to create a  
12 common-law employment relationship. As joint employers of Plaintiff and class members,  
13 Defendants are jointly and severally liable for the civil penalties and all other relief available  
14 to Plaintiff and class members under the law.

15 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,  
16 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class  
17 members because Defendants have:

- 18 (a) jointly exercised meaningful control over the work performed by  
19 Plaintiff and class members;
- 20 (b) jointly exercised meaningful control over Plaintiff’s and class members’  
21 wages, hours, and working conditions, including the quantity, quality  
22 standards, speed, scheduling, and operative details of the tasks  
23 performed by Plaintiff and class members;
- 24 (c) jointly required that Plaintiff and class members perform work which is  
25 an integral part of Defendants’ businesses; and
- 26 (d) jointly exercised control over Plaintiff and class members as a matter of  
27 economic reality in that Plaintiff and class members were dependent on  
28 Defendants, who shared the power to set the wages of Plaintiff and class

1 members and determined their working conditions, and who jointly  
2 reaped the benefits from the underpayment of their wages and  
3 noncompliance with other statutory provisions governing their  
4 employment.

5 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times  
6 there has existed a unity of interest and ownership between Defendants such that any  
7 individuality and separateness between the entities has ceased.

8 17. RHR CALIFORNIA SERVICES, L.L.C.; ROSEWOOD HOTELS AND  
9 RESORTS, LLC; SHR HOTEL LLC; MIRAMAR ACQUISITION CO., LLC; and DOES 2  
10 through 10 are therefore alter egos of each other.

11 18. Adherence to the fiction of the separate existence of Defendants would permit  
12 an abuse of the corporate privilege, and would promote injustice by protecting Defendants  
13 from liability for the wrongful acts committed by them under the name RHR.

14 19. Plaintiff further alleges, upon information and belief, that Defendants RHR  
15 CALIFORNIA SERVICES, L.L.C.; ROSEWOOD HOTELS AND RESORTS, LLC; SHR  
16 HOTEL LLC; and MIRAMAR ACQUISITION CO., LLC are alter egos of each other for the  
17 following reasons:

- 18 (a) On the California Secretary of State's website  
19 (<https://bizfileonline.sos.ca.gov/>), RHR CALIFORNIA SERVICES,  
20 L.L.C. and ROSEWOOD HOTELS AND RESORTS, LLC have the  
21 same mailing address, which is "9220 W. SUNSET BLVD. WEST  
22 HOLLYWOOD, CA 90069";
- 23 (b) According to "Statement of Information" forms filed with the California  
24 Secretary of State, RHR CALIFORNIA SERVICES, L.L.C. and  
25 ROSEWOOD HOTELS AND RESORTS, LLC share common officers  
26 and/or managers, including, but not limited to, Radha Arora, who serves  
27 as President for RHR CALIFORNIA SERVICES, L.L.C. and  
28 ROSEWOOD HOTELS AND RESORTS, LLC;

- 1 (c) According to “Statement of Information” forms filed with the California  
2 Secretary of State, ROSEWOOD HOTELS AND RESORTS, LLC  
3 serves as the manager and/or member of RHR CALIFORNIA  
4 SERVICES, L.L.C.;
- 5 (d) According to “Statement of Information” forms filed with the California  
6 Secretary of State, RHR CALIFORNIA SERVICES, L.L.C. and  
7 ROSEWOOD HOTELS AND RESORTS, LLC share the same agent for  
8 service of process, “CORPORATION SERVICE COMPANY WHICH  
9 WILL DO BUSINESS IN CALIFORNIA AS CSC – LAWYERS  
10 INCORPORATING SERVICE [(C1592199)]”; and
- 11 (e) On information and belief, RHR CALIFORNIA SERVICES, L.L.C.;  
12 ROSEWOOD HOTELS AND RESORTS, LLC; SHR HOTEL LLC;  
13 and MIRAMAR ACQUISITION CO., LLC utilize the same  
14 standardized employment forms and issue the same employment  
15 policies.

16 **GENERAL ALLEGATIONS**

17 20. Defendants manage and operate a global collection of luxury hotels, resorts,  
18 and residences, with at least two (2) locations in California. Upon information and belief,  
19 Defendants maintain a single, centralized Human Resources (“HR”) department at their  
20 company headquarters in West Hollywood, Los Angeles, or Redwood City, California, which  
21 is responsible for the recruiting and hiring of new employees, and communicating and  
22 implementing Defendants’ company-wide policies, including timekeeping policies and meal  
23 and rest period policies, to employees throughout California.

24 21. In particular, Plaintiff and class members, on information and belief, received  
25 the same standardized documents and/or written policies. Upon information and belief, the  
26 usage of standardized documents and/or written policies, including new-hire documents,  
27 indicate that Defendants dictated policies at the corporate level and implemented them  
28 company-wide, regardless of their employees’ assigned locations or positions. Upon

1 information and belief, Defendants set forth uniform policies and procedures in several  
2 documents provided at an employee's time of hire.

3       22. Upon information and belief, Defendants maintain a centralized Payroll  
4 department at their company headquarters in West Hollywood, Los Angeles, or Redwood  
5 City, California, which processes payroll for all non-exempt, hourly paid employees working  
6 for Defendants at their various locations and jobsites in California, including Plaintiff and  
7 class members. Based upon information and belief, Defendants issue the same formatted  
8 wage statements to all non-exempt, hourly paid employees in California, irrespective of their  
9 work locations. Upon information and belief, Defendants process payroll for departing  
10 employees in the same manner throughout the State of California, regardless of the manner in  
11 which each employee's employment ends.

12       23. Defendants continue to employ non-exempt or hourly paid employees in  
13 California.

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

18       25. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class  
19 members were not paid for all hours worked because all hours worked were not recorded.

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

24       27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
25 should have known that Plaintiff and class members were entitled to be paid at a regular rate  
26 of pay, and corresponding rates of pay for overtime wages and/or meal and rest period  
27 premiums, that included as eligible income all remuneration required by law, including but not  
28 limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other

1 forms of compensation, but failed to include all forms of remuneration in calculating the  
2 regular rate of pay for Plaintiff and class members.

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

8 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
9 should have known that Plaintiff and class members were entitled to meal periods in  
10 accordance with the California Labor Code and applicable IWC Wage Order or payment of  
11 one (1) additional hour of pay at their regular rates of pay when they were not provided with  
12 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members  
13 were not provided with all meal periods or payment of one (1) additional hour of pay at their  
14 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal  
15 period.

16 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
17 should have known that Plaintiff and class members were entitled to rest periods in  
18 accordance with the California Labor Code and applicable IWC Wage Order or payment of  
19 one (1) additional hour of pay at their regular rates of pay when they were not authorized and  
20 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff  
21 and class members were not authorized and permitted to take compliant rest periods, nor did  
22 Defendants provide Plaintiff and class members with payment of one (1) additional hour of  
23 pay at their regular rates of pay when they were not authorized and permitted to take a  
24 compliant rest period.

25 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
26 should have known that Plaintiff and class members were entitled to receive complete and  
27 accurate wage statements in accordance with California law. In violation of the California  
28 Labor Code, Plaintiff and class members were not provided complete and accurate wage

1 statements.

2 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
3 should have known that they had a duty to maintain accurate and complete payroll records in  
4 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,  
5 knowingly, and intentionally failed to do so.

6 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
7 should have known that Plaintiff and class members were entitled to timely payment of all  
8 wages earned upon termination of employment. In violation of the California Labor Code,  
9 Plaintiff and class members did not receive payment of all wages due, including, but not  
10 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within  
11 permissible time periods.

12 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
13 should have known that Plaintiff and class members were entitled to timely payment of wages  
14 during their employment. In violation of the California Labor Code, Plaintiff and class  
15 members did not receive payment of all wages, including, but not limited to, overtime wages,  
16 minimum wages, and/or meal and rest period premiums, within permissible time periods.

17 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
18 should have known that Plaintiff and/or class members were entitled to receive sick leave  
19 benefits to be paid at a regular rate of pay, that included, as eligible income, all income  
20 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation,  
21 but failed to include all forms of remuneration in calculating the regular rate of pay for sick  
22 leave pay.

23 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
24 should have known that Plaintiff and/or class members were entitled to suitable seating and/or  
25 were entitled to sit when it did not interfere with the performance of their duties and also have  
26 seats nearby to use during a lull in tasks that do require moving about or standing. In  
27 violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to  
28 provide Plaintiff and/or class members with suitable seating.

1           37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
2 should have known that Plaintiff and class members were entitled to receive full  
3 reimbursement for all business-related expenses and costs they incurred during the course and  
4 scope of their employment and that they did not receive full reimbursement of applicable  
5 business-related expenses and costs incurred.

6           38. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
7 mentioned, Defendants knew or should have known that they had a duty to compensate  
8 Plaintiff and class members for all hours worked, and that Defendants had the financial ability  
9 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and  
10 falsely represented to Plaintiff and class members that they were properly denied wages, all in  
11 order to increase Defendants' profits.

#### 12                           **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

22           41. Plaintiff and other current and former employees of Defendants are "aggrieved  
23 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current  
24 or former employees and one or more of the alleged violations were committed against them.

25           42. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved  
26 employee, including Plaintiff, may pursue a civil action arising under PAGA after the  
27 following requirements have been met:

28                   (a) The aggrieved employee or representative shall give written notice by

1 online filing with the LWDA and by certified mail to the employer of  
2 the specific provisions of the California Labor Code alleged to have  
3 been violated, including the facts and theories to support the alleged  
4 violation.

5 (b) An aggrieved employee's notice filed with the LWDA pursuant to  
6 2699.3(a) and any employer response to that notice shall be  
7 accompanied by a filing fee of seventy-five dollars (\$75).

8 (c) The LWDA shall notify the employer and the aggrieved employee or  
9 representative by certified mail that it does not intend to investigate the  
10 alleged violation ("LWDA Notice") within sixty (60) calendar days of  
11 the postmark date of the aggrieved employee's notice. Upon receipt of  
12 the LWDA Notice, or if no LWDA Notice is provided within sixty-five  
13 (65) calendar days of the postmark date of the aggrieved employee's  
14 notice, the aggrieved employee may commence a civil action pursuant  
15 to California Labor Code section 2699 to recover civil penalties.

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

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

25 (b) An aggrieved employee's notice filed with the LWDA pursuant to  
26 2699.3(c) and any employer response to that notice shall be  
27 accompanied by a filing fee of seventy-five dollars (\$75).

28 (c) The employer may cure the alleged violation within thirty-three (33)

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

9 44. On February 17, 2023, Plaintiff provided written notice by online filing to the  
10 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor  
11 Code alleged to have been violated, including facts and theories to support the alleged  
12 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written  
13 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The  
14 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned  
15 Plaintiff PAGA Case Number LWDA-CM-937041-23. A true and correct copy of Plaintiff's  
16 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

17 45. As of the filing date of this complaint, over 65 days have passed since Plaintiff  
18 sent the notice described above to the LWDA, and the LWDA has not responded that it  
19 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

20 46. Thus, Plaintiff has satisfied the administrative prerequisites under California  
21 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for  
22 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),  
23 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

24 47. Labor Code section 558(a) provides "[a]ny employer or other person acting on  
25 behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
26 provision regulating hours and days of work in any order of the Industrial Welfare  
27 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty  
28 dollars (\$50) for each underpaid employee for each pay period for which the employee was

1 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each  
2 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor  
3 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition  
4 to any other civil or criminal penalty provided by law.”

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

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

11 50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),  
12 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a  
13 private attorney general, seeks assessment and collection of civil penalties for herself, all other  
14 aggrieved employees, and the State of California against Defendants for violations of  
15 California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d),  
16 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

### 17 **CLASS ACTION ALLEGATIONS**

18 51. Plaintiff brings this action on her own behalf, as well as on behalf of each and  
19 all other persons similarly situated, and thus seeks class certification under California Code of  
20 Civil Procedure section 382.

21 52. All claims alleged herein arise under California law for which Plaintiff seeks  
22 relief authorized by California law.

23 53. Plaintiff’s proposed class consists of and is defined as follows:

24 All persons who worked for Defendants as non-exempt, hourly  
25 paid employees in California, at any time from February 24, 2019,  
until the date of trial (“Class”).

26 54. Plaintiff’s proposed subclass consists of and is defined as follows:

27 All persons who worked for Defendants as non-exempt, hourly  
28 paid employees in California and who received at least one wage  
statement within one (1) year prior to the filing of the initial

complaint until the date of trial (“Subclass”).

55. Members of the Class and Subclass are referred to herein as “class members.”

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

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

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to include all forms of remuneration in the “regular rate” of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members;
- (c) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (d) Whether Defendants failed to provide Plaintiff and class members with meal periods;
- (e) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;
- (f) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (h) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiff and class

members upon their discharge;

- (i) Whether Defendants failed timely to pay overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiff and class members during their employment;
- (j) Whether Defendants failed to properly calculate the “regular rate” of pay upon which Plaintiff’s and/or class members’ sick leave rate of pay was based;
- (k) Whether Defendants failed to provide Plaintiff and/or class members with suitable seating;
- (l) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (m) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (n) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants’ violations of California law.

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

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest, and Plaintiff’s claims (or defenses, if

any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

3 **(Against all Defendants)**

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

6 60. Labor Code section 1198 makes it illegal to employ an employee under  
7 conditions of labor that are prohibited by the applicable wage order. California Labor Code  
8 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall  
9 be the . . . standard conditions of labor for employees. The employment of any employee . . .  
10 under conditions of labor prohibited by the order is unlawful.”

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

15 62. Specifically, the applicable IWC Wage Order provides that Defendants are and  
16 were required to pay Plaintiff and class members working more than eight (8) hours in a day  
17 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all  
18 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a  
19 workweek.

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

25 64. California Labor Code section 510 codifies the right to overtime compensation  
26 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)  
27 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the  
28 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate

1 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours  
2 in a day on the seventh (7th) day of work.

3 65. During the relevant time period, Defendants willfully failed to pay all overtime  
4 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and  
5 class members were not paid overtime premiums for all of the hours they worked in excess of  
6 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)  
7 hours in a week, because all hours worked were not recorded.

8 66. First, Defendants had, and continue to have, a company-wide policy and/or  
9 practice requiring Plaintiff and class members to perform various work-related tasks while  
10 off-the-clock after their shifts. For example, several times per week, Plaintiff would clock out  
11 at the end of her shift, but Defendants' managers required her to stay to discuss work-related  
12 matters, such as kitchen inventory needs or plans for upcoming guest events, before she could  
13 leave for the day, which could take up to 15 minutes per instance. As a further example, after  
14 clocking out or on her days off, Plaintiff was required to answer work-related phone calls and  
15 text messages from management approximately twice per week. Thus, Defendants failed to  
16 track all of the time that employees spent performing work-related tasks outside of their shifts,  
17 and Plaintiff and class members received no compensation for this time.

18 67. Second, during the relevant period, Defendants implemented, on a company-  
19 wide basis, an employer-imposed requirement that Plaintiff and class members undergo  
20 mandatory COVID-19 temperature checks and/or health screenings before clocking in for  
21 their scheduled shifts. For example, Plaintiff was required to spend approximately four (4)  
22 minutes per instance undergoing a temperature check, answering questions related to  
23 symptoms, and signing a health screening attestation form, before being permitted to clock in  
24 for her shift. Even though Defendants required these temperature checks and/or health  
25 screenings, Defendants did not provide Plaintiff and class members a mechanism to record  
26 this time worked so they could be compensated for the time spent undergoing mandatory  
27 temperature checks and/or health screenings.

28 68. Third, during the relevant period, Defendants had, and continue to have, a

1 company-wide policy and/or practice of understaffing their locations while assigning heavy  
2 workloads, resulting in a failure to provide Plaintiff and class members with adequate meal  
3 period coverage. As a result of this lack of meal period coverage, Plaintiff and class members  
4 were not always afforded uninterrupted 30-minute meal periods during shifts when they were  
5 entitled to receive a meal period. For example, Plaintiff's meal periods would be interrupted  
6 by her managers or coworkers asking her work-related questions or requiring that she return to  
7 the kitchen to assist with food preparation. Additionally, Defendants, on a company-wide  
8 basis, had a practice of failing to schedule meal periods which, in conjunction with the  
9 assignment of heavy workloads, further caused Plaintiff and class members to not be relieved  
10 of their duties for compliant meal periods. Thus, Plaintiff and class members worked through  
11 their meal periods or had them interrupted in order to complete their assigned workloads.  
12 Defendants did not pay Plaintiff and class members for the time they continued to perform  
13 tasks during meal periods.

14 69. Further, on information and belief, because Defendants frowned upon  
15 employees accruing meal period penalties, Defendants' managers adjusted Plaintiff's and  
16 class members' time records to reflect compliant meal periods, even when they did not receive  
17 a compliant meal period. Furthermore, Defendants' company-wide timekeeping system  
18 prevented Plaintiff and class members from recording all hours worked when their meal  
19 periods were shortened or interrupted, because the system locked out Plaintiff and class  
20 members once they clocked out for a meal period, and would not permit them to clock back in  
21 from a meal period before 30 minutes had elapsed. Thus, Defendants did not record all hours  
22 worked during meal periods and Plaintiff and class members performed work during meal  
23 periods for which they were not paid.

24 70. Defendants knew or should have known that as a result of these company-wide  
25 practices and/or policies, Plaintiff and class members were performing their assigned duties  
26 off-the-clock before and after their shifts and during meal periods, and were suffered or  
27 permitted to perform work for which they were not paid. Because Plaintiff and class members  
28 sometimes worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more,

1 some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and  
2 class members were not paid overtime wages for all of the overtime hours they actually  
3 worked.

4 71. Moreover, in addition to an hourly wage, Defendants paid Plaintiff and class  
5 members incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.  
6 However, in violation of the California Labor Code, Defendants failed to incorporate all  
7 compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of  
8 remuneration, into the calculation of the regular rate of pay for purposes of calculating the  
9 overtime wage rate. Therefore, during times when Plaintiff and class members worked  
10 overtime and received these other forms of pay, Defendants failed to pay all overtime wages  
11 by paying a lower overtime rate than required.

12 72. For example, Defendants paid Plaintiff and class members nondiscretionary  
13 bonuses which were listed on Plaintiff's and class members' wage statements as "Bonus."  
14 During pay periods that Plaintiff and class members were paid overtime wages, Defendants  
15 did not incorporate the nondiscretionary bonuses into Plaintiff's and class members' regular  
16 rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours  
17 worked. Specifically, Defendants paid Plaintiff and class members 1.5 times their hourly rate  
18 of pay instead of 1.5 times their regular rate of pay. Defendants' failure to properly calculate  
19 the overtime rates of pay based on all remuneration paid has resulted in an underpayment of  
20 overtime wages to Plaintiff and class members on a company-wide basis.

21 73. Defendants' failure to pay Plaintiff and class members the balance of overtime  
22 compensation as required by California law, violates the provisions of California Labor Code  
23 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class  
24 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,  
25 and attorneys' fees.

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**SECOND CAUSE OF ACTION**  
**Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid**  
**Minimum Wages**  
**(Against all Defendants)**

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

75. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

76. As set forth above, during the relevant time period, Defendants had a company-wide policy and/or practice requiring Plaintiff and class members to perform various work-related tasks while off-the-clock, including discussing work matters in-person or while on the phone, and submitting to off-the-clock health screenings. Defendants failed to track this time Plaintiff and class members spent working off-the-clock, and Plaintiff and class members received no compensation for this time.

77. As also stated, due to Defendants’ policies and/or practices of understaffing their locations while assigning heavy workloads and failing to schedule meal periods, Plaintiff and class members were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, Defendants’ managers adjusted Plaintiff’s and class members’ time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted. Furthermore, as stated, Defendants systematically failed to

1 pay Plaintiff and class members for actual hours worked during unpaid meal periods, because  
2 Defendants' timekeeping system locked out Plaintiff and class members for 30 minutes when  
3 they clocked out for a meal period. Thus, Defendants systematically failed to pay Plaintiff  
4 and class members for actual hours worked during unpaid meal periods because these hours  
5 were not always correctly recorded.

6 78. Defendants did not pay minimum wages for all hours worked by Plaintiff and  
7 class members. To the extent that these off-the-clock hours did not qualify for overtime  
8 premium payment, Defendants did not pay at least minimum wages for those hours worked  
9 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and  
10 1198.

11 79. Defendants' failure to pay Plaintiff and class members minimum wages violates  
12 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to  
13 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover  
14 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

### 15 **THIRD CAUSE OF ACTION**

#### 16 **Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period**

#### 17 **Violations**

#### 18 **(Against all Defendants)**

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

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

28 82. At all relevant times herein set forth, California Labor Code sections 226.7,

1 512(a), 516, and 1198 provide that no employer shall require an employee to work during any  
2 meal period mandated by an applicable order of the IWC.

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

10 84. First, during the relevant time period, as stated, Defendants had, and continue  
11 to have, a company-wide policy and/or practice of understaffing while assigning heavy  
12 workloads, and failing to schedule meal periods, which resulted in a lack of meal period  
13 coverage and prevented Plaintiff and class members from taking all timely, uninterrupted meal  
14 periods to which they were entitled. As a result, Plaintiff and class members had to work  
15 through all or part of their meal periods, took their meal periods late, and/or had their meal  
16 periods interrupted. For example, because of Defendants' policy and/or practice of  
17 understaffing while assigning heavy workloads, Plaintiff missed her meal periods, took her  
18 meal periods late, and had her meal periods interrupted due to her managers requiring she  
19 return to the kitchen and complete additional tasks, or by other coworkers asking her work-  
20 related questions.

21 85. Second, as stated, on information and belief, because Defendants frowned upon  
22 employees accruing meal period penalties, Defendants' management adjusted Plaintiff's and  
23 class members' time records to reflect compliant meal periods, even when they did not receive  
24 a compliant meal period, in order to strictly limit meal penalties that Defendants would  
25 otherwise owe. Also, as stated, Defendants' company-wide timekeeping system prevented  
26 Plaintiff and class members from recording all hours worked when their meal periods were  
27 shortened or interrupted, because the system locked out Plaintiff and class members once they  
28 clocked out for a meal period, and would not permit them to clock back in from a meal period

1 before 30 minutes had elapsed.

2 86. Third, Defendants did not provide Plaintiff and class members with second 30-  
3 minute meal periods on days that they worked in excess of ten (10) hours in one day. During  
4 her employment, Plaintiff regularly worked shifts in excess of ten (10) or more hours per day  
5 but was not provided a second 30-minute meal period. Plaintiff and class members did not  
6 sign valid meal period waivers on days that they were entitled to meal periods and were not  
7 relieved of all duties.

8 87. Moreover, Defendants had a company-wide policy of requiring all employees  
9 to sign blanket meal period waivers. Defendants took the position that non-exempt, hourly  
10 paid employees had waived their rights to first and/or second meal periods for the entirety of  
11 their employment and, on that basis, did not provide them with all meal periods to which they  
12 were entitled. Specifically, Defendants' meal period waiver form requires employees to  
13 provide Defendants with written notice should they wish to revoke the waiver. Defendants'  
14 presumption that meal periods would not be provided for shifts in excess of five (5) hours but  
15 less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12)  
16 hours, due to blanket meal period waivers signed at or near the time of hire discouraged and  
17 impeded Plaintiff and class members from taking all meal periods to which they were entitled.

18 88. Furthermore, an employer's obligation to provide a meal period is only  
19 "triggered" when the employer "employs an employee for a work period of more than five  
20 hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits  
21 anyone to work for a full five hours, its meal break obligation is triggered.").

22 [A]fter the meal break obligation is triggered . . . an employer is put to a  
23 choice: it must (1) afford an off-duty meal period; (2) consent to a mutually  
24 agreed-upon waiver if one hour or less will end the shift; or (3) obtain  
25 written agreement to an on-duty meal period if circumstances permit.  
Failure to do one of these will render the employer liable for premium pay.

26 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants  
27 required Plaintiff and class members to sign meal period waivers in advance (as opposed to on a  
28 specific work day) renders them invalid and unenforceable, because Defendants' obligation to

1 provide Plaintiff and class members with meal periods did not arise until it had employed them  
2 for a full five (5) hours.

3 89. At all times herein mentioned, Defendants knew or should have known that, as  
4 a result of these policies, Plaintiff and class members were prevented from being relieved of  
5 all duties and required to perform some of their assigned duties during meal periods.  
6 Defendants further knew or should have known that Defendants did not pay Plaintiff and class  
7 members meal period premiums when meal periods were late, interrupted, shortened, and/or  
8 missed.

9 90. Furthermore, Defendants engaged in a company-wide practice and/or policy of  
10 not paying all meal period premiums owed when compliant meal periods are not provided.  
11 Because of this practice and/or policy, Plaintiff and class members have not received premium  
12 pay for missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants  
13 did pay Plaintiff and class members premium pay for missed, late, and interrupted meal  
14 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for  
15 premiums because Defendants systematically failed to include all forms of compensation,  
16 such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the  
17 regular rate of pay. As a result, Defendants failed to provide Plaintiff and class members  
18 compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516  
19 and failed to pay the full meal period premiums due.

20 91. Defendants' conduct violates the applicable IWC Wage Order, and California  
21 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore  
22 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular  
23 rate of compensation for each work day that the meal period was not provided.

#### 24 **FOURTH CAUSE OF ACTION**

#### 25 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 26 **(Against all Defendants)**

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

1           93.     At all relevant times herein set forth, the applicable IWC Wage Order and  
2 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class  
3 members' employment by Defendants.

4           94.     At all relevant times, the applicable IWC Wage Order provides that "[e]very  
5 employer shall authorize and permit all employees to take rest periods, which insofar as  
6 practicable shall be in the middle of each work period" and that the "rest period time shall be  
7 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)  
8 hours or major fraction thereof" unless the total daily work time is less than three and one-half  
9 (3 ½) hours.

10          95.     At all relevant times, California Labor Code section 226.7 provides that no  
11 employer shall require an employee to work during any rest period mandated by an applicable  
12 order of the California IWC. To comply with its obligation to authorize and permit rest  
13 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an  
14 employer must "relinquish any control over how employees spend their break time, and  
15 relieve their employees of all duties—including the obligation that an employee remain on  
16 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*  
17 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California  
18 Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from  
19 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a  
20 required rest period was not authorized and permitted.

21          96.     During the relevant time period, Defendants regularly failed to authorize and  
22 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour  
23 period worked or major fraction thereof. As with meal periods, Defendants' company-wide  
24 practices, including understaffing and assignment of heavy workloads, prevented Plaintiff and  
25 class members from being relieved of all duty to take rest periods. Additionally, Defendants  
26 failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate  
27 rest period coverage, further led to Plaintiff and class members not being authorized and  
28 permitted to take rest periods.

1           97.     Furthermore, upon information and belief, Defendants maintained and  
2 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff  
3 and class members remain on the premises during their rest periods. Because Plaintiff and  
4 class members were restricted from leaving Defendants' premises during rest periods, they  
5 were denied the ability to use their rest periods freely for their own purposes, such as  
6 completing personal errands. Thus, Defendants effectively maintained control over Plaintiff  
7 and class members during rest periods.

8           98.     As a result of Defendants' practices and policies, Plaintiff and class members  
9 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without  
10 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,  
11 Plaintiff had to forego nearly all of her rest periods because of the lack of coverage and  
12 Defendants' failure to schedule rest periods for employees.

13           99.     Defendants have also engaged in a company-wide practice and/or policy of not  
14 paying rest period premiums owed when compliant rest periods are not authorized and  
15 permitted. Because of this practice and/or policy, Plaintiff and class members have not  
16 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants  
17 did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest  
18 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for  
19 premiums because Defendants failed to include all forms of compensation, such as incentive  
20 pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.  
21 As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them  
22 rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the  
23 applicable IWC Wage Order.

24           100.    Defendants' conduct violates the applicable IWC Wage Order and California  
25 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled  
26 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of  
27 compensation for each work day that a compliant rest period was not authorized and  
28 permitted.

1 **FIFTH CAUSE OF ACTION**

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

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

7 102. At all relevant times herein set forth, California Labor Code section 226(a)  
8 provides that every employer shall furnish each of his or her employees an accurate and  
9 complete itemized wage statement in writing, including, but not limited to, the name and  
10 address of the legal entity that is the employer, the inclusive dates of the pay period, total  
11 hours worked, and all applicable rates of pay.

12 103. At all relevant times, Defendants have knowingly and intentionally provided  
13 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.  
14 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members  
15 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the  
16 address of the legal entity that is the employer; and all applicable hourly rates in effect during  
17 the pay period, including rates of pay for overtime wages and/or meal and rest period  
18 premiums, and the corresponding number of hours worked at each hourly rate. Specifically,  
19 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

20 104. First, because Defendants did not record the time Plaintiff and Subclass  
21 members spent working off the clock and deducted time from their records for meal periods  
22 that were interrupted and/or missed (and therefore time for which they should have been paid),  
23 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff  
24 and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same  
25 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and  
26 Subclass members, in violation of section 226(a)(2), and failed to list the applicable hourly  
27 rates of pay in effect during the pay period and the corresponding accurate number of hours  
28 worked at each hourly rate, in violation of section 226(a)(9).

105. Second, because Defendants did not calculate Plaintiff's and Subclass members' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, Defendants did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages in violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest premiums, in violation of section 226(a)(9).

106. Third, and separate from these violations, Defendants issued uniform wage statements to Plaintiff and other class members that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. This includes providing employees with the correct physical address of the employer. During the relevant time period, Defendants systematically, and on a company-wide basis, issued wage statements to Plaintiff and class members that incorrectly list the employer's address as "92290 W SUNSET BLVD. STE 200 WEST HOLLYWOOD, CA 90069, USA," but, according to the California Secretary of State's website, Defendant RHR CALIFORNIA SERVICES, L.L.C.'s address should be "2909 COLE AVE. SUITE 303 DALLAS, TX 75204." Moreover, Defendants systematically, and on a company-wide basis, issued wage statements to Plaintiff and class that incorrectly listed an alternative employer's (SHR HOTEL LLC) address as "2825 SAND HILL ROAD, MENLO PARK, CA 94025," but, according to the California Secretary of State's website, the address should be "415 BROADWAY, 3RD FLOOR, MC: 8873, REDWOOD CITY, CA 94063."

107. The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period

1 for which employees were paid; failing to list the name of the employee and only the last four  
2 digits of his or her social security number or an employee identification number other than a  
3 social security number; failing to list the name of the legal entity that is the employer; and/or  
4 failing to state all hours worked as a result of not recording or stating the hours they worked  
5 off-the-clock.

6 108. California Labor Code section 1174(d) provides that “[e]very person employing  
7 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees  
8 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the  
9 plants or establishments at which employees are employed, payroll records showing the hours  
10 worked daily by and the wages paid to, and the number of piece-rate units earned by and any  
11 applicable piece rate paid to, employees employed at the respective plants or  
12 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),  
13 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass  
14 members showing the daily hours they worked and the wages paid thereto as a result of failing  
15 to record the off-the-clock hours that they worked.

16 109. California Labor Code section 1198 provides that the maximum hours of work  
17 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as  
18 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he  
19 employment of any employees for longer hours than those fixed by the order or under  
20 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC  
21 Wage Order, employers are required to keep accurate time records showing when the  
22 employee begins and ends each work period and meal period. During the relevant time  
23 period, Defendants engaged in company-wide practices and/or policies of failing to record  
24 actual hours worked (including falsifying time records by recording that compliant meal  
25 periods were taken regardless of if or when meal periods were actually taken), and thereby  
26 failed to keep accurate records of work period and meal period start and end times for Plaintiff  
27 and Subclass members in violation of section 1198. Also, in light of Defendants’ failure to  
28 provide Plaintiff and Subclass members with second 30-minute meal periods to which they

1 were entitled, Defendants kept no records of meal start and end times for second meal periods.

2 110. Plaintiff and Subclass members are entitled to recover from Defendants the  
3 greater of their actual damages caused by Defendants' failure to comply with California Labor  
4 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per  
5 employee.

## 6 **SIXTH CAUSE OF ACTION**

### 7 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 8 **Termination** 9 **(Against all Defendants)**

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

12 112. At all times relevant herein set forth, Labor Code sections 201 and 202 provide  
13 that if an employer discharges an employee, the wages earned and unpaid at the time of  
14 discharge are due and payable immediately, and that if an employee voluntarily leaves his or  
15 her employment, his or her wages shall become due and payable not later than seventy-two  
16 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of  
17 his or her intention to quit, in which case the employee is entitled to his or her wages at the  
18 time of quitting.

19 113. On information and belief, Defendants had a company-wide practice or policy  
20 of paying departing employees their final wages on the next regular pay cycle, instead of  
21 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,  
22 Plaintiff was terminated on or about October 28, 2022; however, Defendants did not provide  
23 Plaintiff with her final paycheck until November 9, 2022. Thus, Defendants failed to pay  
24 Plaintiff her final wages immediately, in violation of Labor Code section 201.

25 114. Additionally, Defendants willfully failed to pay Plaintiff and class members  
26 who are no longer employed by Defendants the earned and unpaid wages set forth above,  
27 including but not limited to, overtime wages, minimum wages, and/or meal and rest period  
28 premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving

1 Defendants' employ.

2 115. Defendants' failure to pay Plaintiff and class members who are no longer  
3 employed by Defendants their wages earned and unpaid at the time of discharge, or within  
4 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201  
5 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the  
6 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a  
7 thirty (30) day maximum pursuant to California Labor Code section 203.

8 **SEVENTH CAUSE OF ACTION**

9 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**  
10 **Employment**

11 **(Against all Defendants)**

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

14 117. This cause of action is dependent upon, and wholly derivative of, the overtime  
15 wages, minimum wages, and/or meal and rest period premiums, that were not timely paid to  
16 Plaintiff and class members during their employment.

17 118. At all times relevant herein set forth, Labor Code section 204 provides that all  
18 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)  
19 days, inclusive, of any calendar month, other than those wages due upon termination of an  
20 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of  
21 the month during which the labor was performed.

22 119. At all times relevant herein, Labor Code section 204 provides that all wages  
23 earned by any person in any employment between the sixteenth (16th) and the last day,  
24 inclusive, of any calendar month, other than those wages due upon termination of an  
25 employee, are due and payable between the first (1st) and the tenth (10th) day of the following  
26 month.

27 120. At all times relevant herein, Labor Code section 204 provides that all wages  
28 earned for labor in excess of the normal work period shall be paid no later than the payday for

1 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section  
2 204 provides that the requirements of this section are deemed satisfied by the payment of  
3 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than  
4 seven (7) calendar days following the close of the payroll period.

5 121. During the relevant time period, Defendants willfully failed to pay Plaintiff and  
6 class members all wages due including, but not limited to, overtime wages, minimum wages,  
7 and/or meal and rest period premiums, within the time periods specified by California Labor  
8 Code section 204.

9 122. Defendants' failure to pay Plaintiff and class members all wages due violates  
10 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from  
11 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

## 12 **EIGHTH CAUSE OF ACTION**

### 13 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 14 **(Against all Defendants)**

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

17 124. At all times herein set forth, California Labor Code section 2802 provides that  
18 an employer must reimburse employees for all necessary expenditures and losses incurred by  
19 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is  
20 to prevent employers from passing off their cost of doing business and operating expenses on  
21 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144  
22 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen  
23 tools or equipment are required by the employer or are necessary to the performance of a job,  
24 such tools and equipment shall be provided and maintained by the employer, except that an  
25 employee whose wages are at least two (2) times the minimum wage provided herein may be  
26 required to provide and maintain hand tools and equipment customarily required by the trade  
27 or craft."

28 125. During the relevant time period, Defendants, on a company-wide basis,

1 required that Plaintiff and class members use their own personal mobile devices, including,  
2 but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed  
3 to reimburse them for the costs of their work-related mobile device expenses. For example,  
4 Plaintiff and class members were required to use their personal mobile devices for work-  
5 related tasks, including responding to calls or text messages from Defendants' managers.  
6 Specifically, Plaintiff used her personal cellular phone to respond to calls or text messages  
7 from her managers regarding kitchen inventory needs or the preparation of certain food items.  
8 Although Defendants required Plaintiff and class members to utilize their personal mobile  
9 devices and/or mobile data to carry out their work-related responsibilities, Defendants failed  
10 to reimburse them for these costs.

11 126. Defendants could have provided Plaintiff and class members with the actual  
12 equipment for use on the job, such as company mobile devices; or Defendants could have  
13 reimbursed employees for their mobile device usage. Instead, Defendants passed these  
14 operating costs off onto Plaintiff and class members.

15 127. Defendants' company-wide policy and/or practice of passing on their operating  
16 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants  
17 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary  
18 business-related expenses and costs.

19 128. Plaintiff and class members are entitled to recover from Defendants their  
20 business-related expenses incurred during the course and scope of their employment, plus  
21 interest.

## 22 **NINTH CAUSE OF ACTION**

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

#### 24 **(Against all Defendants)**

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

27 130. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover  
28 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code

1 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,  
2 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)  
3 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of  
4 those Labor Code sections not found in section 2699.5, including sections 246, 516, and  
5 1182.12.

6 131. Defendants' conduct, as alleged herein, violates numerous sections of the  
7 California Labor Code, including, but not limited to, the following:

- 8 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC  
9 Wage Order for Defendants' failure to compensate Plaintiff and other  
10 aggrieved employees with all required overtime pay, as alleged herein  
11 and set forth below;
- 12 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the  
13 applicable IWC Wage Order for Defendants' failure to include all forms  
14 of remuneration in the "regular rate" of pay as required by law for  
15 purposes of paying overtime wages and/or meal and rest period  
16 premiums, to Plaintiff and other aggrieved employees, as alleged herein  
17 and set forth below;
- 18 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and  
19 1198, and the applicable IWC Wage Order for Defendants' failure to  
20 compensate Plaintiff and other aggrieved employees with at least  
21 minimum wages for all hours worked, as alleged herein and set forth  
22 below;
- 23 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the  
24 applicable IWC Wage Order for Defendants' failure to provide Plaintiff  
25 and other aggrieved employees with meal periods, as set forth below;
- 26 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the  
27 applicable IWC Wage Order for Defendants' failure to authorize and  
28 permit Plaintiff and other aggrieved employees to take rest periods, as

1                   alleged herein;

- 2                   (f)     Violation of Labor Code sections 226(a) and 1198, and the applicable  
3                   IWC Wage Order for failure to provide accurate and complete wage  
4                   statements to Plaintiff and other aggrieved employees, as alleged herein;
- 5                   (g)     Violation of Labor Code sections 1174(d) and 1198, and the applicable  
6                   IWC Wage Order for failure to maintain payroll records, as alleged  
7                   herein;
- 8                   (h)     Violation of Labor Code sections 201 and 202 for failure to pay all  
9                   earned wages upon termination, as alleged herein;
- 10                  (i)     Violation of Labor Code section 204 for failure to pay all earned wages  
11                  during employment, as alleged herein;
- 12                  (j)     Violation of Labor Code section 246 for failure to properly calculate the  
13                  sick leave rate paid to other aggrieved employees, as set forth below;
- 14                  (k)     Violation of Labor Code section 1198 and the applicable IWC Wage  
15                  Order for failure to provide suitable seating, as set forth below; and
- 16                  (l)     Violation of Labor Code section 2802 for failure to reimburse Plaintiff  
17                  and other aggrieved employees for all business expenses necessarily  
18                  incurred, as alleged herein.

19               132.    At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,  
20               247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more  
21               days from the commencement of employment with paid sick days, to be accrued at least one  
22               hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),  
23               employers must provide no less than 24 hours or three (3) days of paid sick leave (or  
24               equivalent paid leave or paid time off) in each year of the employee's employment. Further,  
25               Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using  
26               one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in  
27               the same manner as the regular rate of pay for the workweek in which the employee uses paid  
28               sick time, whether or not the employee actually works overtime in that workweek[;]" or 2)

1 “[p]aid sick time for nonexempt employees shall be calculated by dividing the employee’s  
2 total wages, not including overtime premium pay, by the employee’s total hours worked in the  
3 full pay periods of the prior 90 days of employment.”

4 133. During the relevant time period, Defendants did not pay other aggrieved  
5 employees the correct sick leave rates of pay. In addition to an hourly wage, Defendants paid  
6 other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of  
7 remuneration. However, in violation of the California Labor Code, Defendants failed to  
8 incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into  
9 the calculation of the regular rate of pay for purposes of calculating the sick leave rate.  
10 Therefore, during times when other aggrieved employees took sick leave and received these  
11 other forms of pay, Defendants failed to pay all sick leave benefits by paying a lower sick  
12 leave rate than required. Specifically, Defendants paid other aggrieved employees sick leave  
13 based on their hourly rate of pay instead of their regular rate of pay.

14 134. Defendants’ failure to properly calculate the sick leave rates of pay based on all  
15 remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved  
16 employees on a company-wide basis in violation of Labor Code 246(l). Other aggrieved  
17 employees are entitled to recover civil penalties pursuant to Labor Code sections 248.5 and/or  
18 2699(a), (f), and (g).

19 135. At all relevant times herein, California Labor Code section 1198 makes it  
20 illegal to employ an employee under conditions of labor that are prohibited by the applicable  
21 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of  
22 labor fixed by the commission shall be the . . . standard conditions of labor for employees.  
23 The employment of any employee . . . under conditions of labor prohibited by the order is  
24 unlawful.”

25 136. California Code of Regulations, Title 8, section 11050(14)(A) provides that  
26 “[a]ll working employees shall be provided with suitable seats when the nature of the work  
27 reasonably permits the use of seats.”

28 137. Defendants’ California restaurants within their hotels are generally similar in

1 their layout and design and there was, and continues to be, space behind host stands to allow  
2 for the presence and use of a seat or stool by other aggrieved employees (with reasonable or  
3 no modification to these work areas) during the performance of their work duties. Defendants  
4 could have provided other aggrieved employees with a seat or stool at their host stands, but  
5 instead denied them seating and forced other aggrieved employees to stand throughout the  
6 day.

7 138. Other aggrieved employees spent a portion substantial portion of their day  
8 behind or at these host stands. The nature of the work of an employee performing host duties  
9 can reasonably be accomplished from a seated position. However, Defendants systematically,  
10 and on a company-wide basis, do not provide seats or stools at or near the host stands, forcing  
11 other aggrieved employees to stand throughout their work shifts.

12 139. Defendants violated California Labor Code section 1198 and California Code  
13 of Regulations, Title 8, section 11050(14)(A), because other aggrieved employees were not  
14 allowed to sit, even when it would not have interfered with the performance of their duties,  
15 nor were they provided with suitable seats. Defendants' management did not inform other  
16 aggrieved employees that they were allowed to sit down, provide any means for them to sit  
17 down, or mention any policy regarding sitting.

18 140. As a result of Defendants' company-wide policy and/or practice of prohibiting  
19 employees from sitting during their shifts and company-wide failure to provide suitable  
20 seating, other aggrieved employees were forced to stand during shifts and denied seats.  
21 Defendants' failure to provide suitable seating to other aggrieved employees violated and  
22 continues to violate California Labor Code section 1198 and IWC Wage Order No. 5-2001,  
23 subdivision 14(A). Other aggrieved employees are therefore entitled to recover civil penalties  
24 pursuant to Labor Code sections 2699(a), (f), and (g).

25 141. California Code of Regulations, Title 8, section 11050 subdivision 14(B)  
26 provides that "[w]hen employees are not engaged in the active duties of their employment and  
27 the nature of the work requires standing, an adequate number of suitable seats shall be placed  
28 in reasonable proximity to the work area and employees shall be permitted to use such seats

1 when it does not interfere with the performance of their duties.”

2 142. During the relevant time period, Defendants violated California Labor Code  
3 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because other  
4 aggrieved employees were not allowed to sit, even during lulls in their work duties, nor were  
5 they provided with suitable seats in reasonable proximity to their work areas.

6 143. Defendants’ California locations are generally similar in their layout and design  
7 and there was, and continues to be, space near their work areas (with reasonable or no  
8 modification to these work areas) to allow for the presence and use of a seat or stool by other  
9 aggrieved employees during lulls in operation. Defendants could have provided other  
10 aggrieved employees with a seat or stool in their work areas, but instead denied other  
11 aggrieved employees suitable seating altogether and effectively forced other aggrieved  
12 employees to stand throughout the day.

13 144. Defendants did not provide other aggrieved employees with seats or stools in  
14 reasonable proximity to their work areas to allow them to use seats when it would not interfere  
15 with the performance of their duties for times when they were not engaged in active duties  
16 that require standing. In other words, to the extent other aggrieved employees engaged in  
17 duties in which the nature of the work required standing, Defendants denied them the use of  
18 seats nearby during lulls in their work duties. Moreover, Defendants did not inform other  
19 aggrieved employees of their rights to a seat or stool under California law.

20 145. As a result of Defendants’ company-wide policy and/or practice of prohibiting  
21 employees from sitting at any time, even when they were not engaged in active duties  
22 requiring standing, and company-wide failure to provide seats in reasonable proximity to their  
23 work areas, other aggrieved employees were forced to stand during shifts and denied seats.  
24 Defendants’ failure to provide suitable seating to other aggrieved employees violated and  
25 continues to violate California Labor Code section 1198 and IWC Wage Order No. 5-2001,  
26 subdivision 14(B). Other aggrieved employees are therefore entitled to recover civil penalties  
27 pursuant to Labor Code sections 2699(a), (f), and (g).

28 //

1 **TENTH CAUSE OF ACTION**

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

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

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

7 147. Defendants are “persons” as defined by California Business & Professions  
8 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,  
9 and/or associations.

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

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

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

- 21 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and  
22 class members, to work overtime without paying them proper  
23 compensation in violation of California Labor Code sections 510 and  
24 1198, and the applicable IWC Wage Order, as alleged herein;
- 25 (b) Failing to include all forms of remuneration in the “regular rate” of pay  
26 as required by law for purposes of paying overtime wages and/or meal  
27 and rest period premiums to Plaintiff and class members, in violation of  
28 California Labor Code sections 226.7, 510, and 1198, and the applicable

IWC Wage Order, as alleged herein;

- (c) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (f) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;
- (g) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein; and
- (h) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein.

151. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

152. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a

1 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and  
2 class members; and an award of attorneys' fees pursuant to California Code of Civil  
3 Procedure section 1021.5 and other applicable laws; and an award of costs.

#### 4 **ELEVENTH CAUSE OF ACTION**

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

##### 6 **Unfair Business Practices**

##### 7 **(Against all Defendants)**

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

10 154. Defendants are "persons" as defined by California Business & Professions  
11 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,  
12 and/or associations.

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

18 156. Defendants' activities, namely Defendants' company-wide practice and/or  
19 policy of not paying Plaintiff and class members all meal and rest period premiums due to  
20 them under Labor Code section 226.7, deprived Plaintiff and class members of the  
21 compensation guarantee and enhanced enforcement implemented by section 226.7. The  
22 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to  
23 compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v.*  
24 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7  
25 were guaranteed to Plaintiff and class members as part of their employment with Defendants,  
26 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an  
27 unfair business practice in violation of California Business & Professions Code sections  
28 17200, *et seq.* (*Id.*)

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

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

#### **REQUEST FOR JURY TRIAL**

Plaintiff requests a trial by jury.

#### **PRAYER FOR RELIEF**

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

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

#### **Class Certification**

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

#### **As to the First Cause of Action**

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to pay all overtime wages due to Plaintiff and class members;

6. For general unpaid wages at overtime wage rates and such general and special

1 damages as may be appropriate;

2 7. For pre-judgment interest on any unpaid overtime compensation commencing  
3 from the date such amounts were due, or as otherwise provided by law;

4 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to  
5 California Labor Code section 1194(a); and

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

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

9 10. That the Court declare, adjudge and decree that Defendants violated California  
10 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage  
11 Order by willfully failing to pay minimum wages to Plaintiff and class members;

12 11. For general unpaid wages and such general and special damages as may be  
13 appropriate;

14 12. For pre-judgment interest on any unpaid compensation from the date such  
15 amounts were due, or as otherwise provided by law;

16 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to  
17 California Labor Code section 1194(a);

18 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

19 15. For such other and further relief as the Court may deem equitable and  
20 appropriate.

21 **As to the Third Cause of Action**

22 16. That the Court declare, adjudge, and decree that Defendants violated California  
23 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by  
24 willfully failing to provide all meal periods to Plaintiff and class members;

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

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

1 proof;

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

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

5 21. For attorneys' fees pursuant to California Code of Civil Procedure section  
6 1021.5, or as otherwise provided by law; and

7 22. For such other and further relief as the Court may deem equitable and  
8 appropriate.

9 **As to the Fourth Cause of Action**

10 23. That the Court declare, adjudge and decree that Defendants violated California  
11 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully  
12 failing to authorize and permit Plaintiff and class members to take all rest periods;

13 24. That the Court make an award to the Plaintiff and class members of one (1) hour  
14 of pay at each employee's regular rate of pay for each workday that a rest period was not  
15 authorized and permitted;

16 25. For all actual, consequential, and incidental losses and damages, according to  
17 proof;

18 26. For premiums pursuant to California Labor Code section 226.7(c);

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

21 28. For attorneys' fees pursuant to California Code of Civil Procedure section  
22 1021.5, or as otherwise provided by law; and

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

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

26 30. That the Court declare, adjudge and decree that Defendants violated the  
27 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC  
28 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate

1 itemized wage statements thereto;

2 31. For all actual, consequential, and incidental losses and damages, according to  
3 proof;

4 32. For injunctive relief pursuant to California Labor Code section 226(h);

5 33. For statutory penalties pursuant to California Labor Code section 226(e);

6 34. For attorneys' fees and costs pursuant to California Labor Code section  
7 226(e)(1); and

8 35. For such other and further relief as the Court may deem equitable and  
9 appropriate.

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

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

15 37. For all actual, consequential and incidental losses and damages, according to  
16 proof;

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

19 39. For pre-judgment interest on any unpaid wages from the date such amounts  
20 were due, or as otherwise provided by law;

21 40. For attorneys' fees pursuant to California Code of Civil Procedure section  
22 1021.5, or as otherwise provided by law; and

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

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

26 42. That the Court declare, adjudge and decree that Defendants violated California  
27 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members  
28 overtime wages, minimum wages, and/or meal and rest period premiums during their

1 employment;

2 43. For all actual, consequential and incidental losses and damages, according to  
3 proof;

4 44. For statutory penalties according to proof pursuant to California Labor Code  
5 section 210;

6 45. For pre-judgment interest on any unpaid wages from the date such amounts  
7 were due, or as otherwise provided by law;

8 46. For attorneys' fees pursuant to California Code of Civil Procedure section  
9 1021.5, or as otherwise provided by law; and

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

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

13 48. That the Court declare, adjudge and decree that Defendants violated California  
14 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-  
15 related expenses and costs incurred by Plaintiff and class members;

16 49. For unpaid business-related expenses and such general and special damages as  
17 may be appropriate;

18 50. For pre-judgment interest on any unpaid business-related expenses from the  
19 date such amounts were due, or as otherwise provided by law;

20 51. For all actual, consequential, and incidental losses and damages, according to  
21 proof;

22 52. For attorneys' fees and costs pursuant to California Labor Code section  
23 2802(c), or as otherwise provided by law; and

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

26 **As to the Ninth Cause of Action**

27 54. That the Court declare, adjudge and decree that Defendants violated the  
28 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:

1 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing  
2 to include all forms of remuneration in the “regular rate” of pay for purposes of paying  
3 overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and  
4 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and  
5 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and  
6 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage  
7 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all  
8 earned wages upon termination); 204 (by failing to timely pay all earned wages during  
9 employment); 246 (by failing to properly calculate sick leave pay); 1198 and the applicable  
10 IWC Wage Order (by failing to provide suitable seating); and 2802 (by failing to reimburse  
11 business expenses);

12 55. For civil penalties pursuant to the California Labor Code, including sections  
13 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f), and (g), for violations of  
14 California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d),  
15 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

16 56. For attorneys’ fees and costs pursuant to California Labor Code section  
17 2699(g)(1), and any and all other relevant statutes, for Defendants’ violations of California  
18 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12,  
19 1194, 1197, 1197.1, 1198, and 2802;

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

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

23 **As to the Tenth Cause of Action**

24 59. That the Court declare, adjudge and decree that Defendants’ conduct of failing  
25 to provide Plaintiff and class members all overtime wages due to them, failing to include all  
26 forms of remuneration in the “regular rate” of pay for purposes of paying overtime and/or  
27 meal period premiums to Plaintiff and class members, failing to provide Plaintiff and class  
28 members all minimum wages due to them, failing to provide Plaintiff and class members all

1 meal periods, failing to authorize and permit Plaintiff and class members to take all rest  
2 periods, failing to provide Plaintiff and class members accurate and complete wage  
3 statements, failing to maintain accurate payroll records for Plaintiff and class members, failing  
4 to timely pay Plaintiff and class members all earned wages during employment, and failing to  
5 reimburse Plaintiff and class members for business-related expenses, constitutes an unlawful  
6 business practice in violation of California Business and Professions Code sections 17200, *et*  
7 *seq.*;

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

10 61. For the appointment of a receiver to receive, manage, and distribute any and all  
11 funds disgorged from Defendants and determined to have been wrongfully acquired by  
12 Defendants as a result of violations of California Business & Professions Code sections  
13 17200, *et seq.*;

14 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
15 California Code of Civil Procedure section 1021.5; and

16 63. For such other and further relief as the Court may deem equitable and  
17 appropriate.

18 **As to the Eleventh Cause of Action**

19 64. That the Court declare, adjudge and decree that Defendants' conduct of denying  
20 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes  
21 an unfair business practice in violation of California Business and Professions Code sections  
22 17200, *et seq.*;

23 65. For restitution of the statutory benefits under section 226.7 unfairly withheld  
24 from Plaintiff and class members and prejudgment interest from the day such amounts were  
25 due and payable;

26 66. For the appointment of a receiver to receive, manage, and distribute any and all  
27 funds disgorged from Defendants and determined to have been wrongfully acquired by  
28 Defendants as a result of violations of California Business & Professions Code sections

1 17200, *et seq.*;

2 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
3 California Code of Civil Procedure section 1021.5;

4 68. For pre-judgment and post-judgment interest as provided by law; and  
5 For such other and further relief as the Court may deem equitable and appropriate.

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7 Dated: April 25, 2023

Respectfully submitted,

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Capstone Law APC

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By: \_\_\_\_\_



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Robert Drexler

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Molly DeSario

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Jonathan Lee

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Attorneys for Plaintiff Tannia Ayala

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# **EXHIBIT “1”**



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February 17, 2023

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency  
ATTN: PAGA Administrator  
(<https://dir.tfaforms.net/308>)

Subject: *Tannia Ayala v. RHR California Services, L.L.C., et al.*

Dear PAGA Administrator:

This office represents Tannia Ayala in connection with her claims under the California Labor Code. Ms. Ayala was an employee of RHR CALIFORNIA SERVICES, L.L.C.; ROSEWOOD HOTELS AND RESORTS, LLC; and/or SHR HOTEL LLC. For the purpose of this letter, Ms. Ayala collectively refers to these entities as "RHR."

The employers may be contacted directly at the addresses below:

RHR CALIFORNIA SERVICES, L.L.C.  
2909 COLE AVE., SUITE 303  
DALLAS, TX 75204

RHR CALIFORNIA SERVICES, L.L.C.  
9220 W. SUNSET BLVD. SUITE 301  
WEST HOLLYWOOD, CA 90069

ROSEWOOD HOTELS AND RESORTS, LLC  
9220 W. SUNSET BLVD., SUITE 200 WEST  
HOLLYWOOD, CA 90069

SHR HOTEL LLC  
415 BROADWAY, 3RD FLOOR, MC: 8873  
REDWOOD CITY, CA 94063

Ms. Ayala intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Ayala seeks relief on behalf of herself, the State of California, and other persons who are or were employed by RHR in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

RHR employed Ms. Ayala as a non-exempt Line Cook from approximately April 2009 to October 2022. Ms. Ayala worked at RHR's Rosewood Sand Hill hotel location in Menlo Park, California. During her employment, Ms. Ayala typically worked eight (8) or more hours per day and five (5) or more days per week. Ms. Ayala's job duties included, without limitation, preparing and presenting cold food buffet displays such as meat and cheese boards, sandwich platters, and salad arrangements for hotel events; maintaining and overseeing kitchen ingredient inventory; and making food item preparation lists and schedules to correspond with guests' events.

RHR has committed one or more of the following Labor Code violations against Ms. Ayala, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):<sup>1</sup>

### **RHR’s Company-Wide and Uniform Payroll and HR Practices**

RHR CALIFORNIA SERVICES, L.L.C. and SHR HOTEL LLC are California limited liability companies, while ROSEWOOD HOTELS AND RESORTS, LLC is a Delaware limited liability company. Together, RHR manages and operates a global collection of luxury hotels, resorts, and residences, with two (2) locations in California. Upon information and belief, RHR maintains a single, centralized Human Resources (HR) department at its corporate headquarters in West Hollywood, California, for all non-exempt, hourly paid employees working for RHR in California, including Ms. Ayala and other aggrieved employees. At all relevant times, RHR issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Ayala and other aggrieved employees, regardless of their location or position.

Upon information and belief, RHR maintains a centralized Payroll department at its corporate headquarters in West Hollywood, California, which processes payroll for all non-exempt, hourly paid employees working for RHR in California, including Ms. Ayala and other aggrieved employees. Further, RHR issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Ayala and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, RHR utilized the same methods and formulas when calculating wages due to Ms. Ayala and other aggrieved employees in California.

### **Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime**

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

RHR willfully failed to pay all overtime wages owed to Ms. Ayala and other aggrieved employees. During the relevant time period, Ms. Ayala and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

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<sup>1</sup> These facts, theories, and claims are based on Ms. Ayala’s experience and counsel’s review of those records currently available relating to Ms. Ayala’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Ayala reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

First, RHR had, and continues to have, a company-wide policy and/or practice requiring Ms. Ayala and other aggrieved employees to perform various work-related tasks while off-the-clock after their shifts. For example, several times per week, Ms. Ayala would clock out at the end of her shift, but RHR's managers required her to stay to discuss work-related matters, such as kitchen inventory needs or plans for upcoming guest events, before she could leave for the day, which could take up to 15 minutes per instance. As a further example, after clocking out or on her days off, Ms. Ayala was required to answer work-related phone calls and text messages from management approximately twice per week. Thus, RHR failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Ms. Ayala and other aggrieved employees received no compensation for this time.

Second, during the relevant period, RHR implemented, on a company-wide basis, an employer-imposed requirement that Ms. Ayala and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. For example, Ms. Ayala was required to spend approximately four (4) minutes per instance undergoing a temperature check, answering questions related to symptoms, and signing a health screening attestation form, before being permitted to clock in for her shift. Even though RHR required these temperature checks and/or health screenings, RHR did not provide Ms. Ayala and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

Third, during the relevant period, RHR had, and continue to have, a company-wide policy and/or practice of understaffing its locations while assigning heavy workloads, resulting in a failure to provide Ms. Ayala and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Ms. Ayala and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Ms. Ayala's meal periods would be interrupted by her managers or coworkers asking her work-related questions or requiring that she return to the kitchen to assist with food preparation. Additionally, RHR, on a company-wide basis, had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Ms. Ayala and other aggrieved employees to not be relieved of their duties for compliant meal periods. Thus, Ms. Ayala and other aggrieved employees worked through their meal periods or had them interrupted in order to complete their assigned workloads. RHR did not pay Ms. Ayala and other aggrieved employees for the time they continued to perform tasks during meal periods.

Further, on information and belief, because RHR frowned upon employees accruing meal period penalties, RHR's managers adjusted Ms. Ayala's and other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period. Furthermore, RHR's company-wide timekeeping system prevented Ms. Ayala and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Ayala and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, RHR did not record all hours worked during meal periods and Ms. Ayala and other aggrieved employees performed work during meal periods for which they were not paid.

RHR knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Ayala and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Ayala and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Furthermore, RHR did not pay Ms. Ayala and other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, RHR paid Ms. Ayala and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, RHR failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when Ms. Ayala and other aggrieved employees worked overtime and received these other forms of pay, RHR failed to pay all overtime wages by paying a lower overtime rate than required.

For example, RHR paid Ms. Ayala and other aggrieved employees nondiscretionary bonuses which were listed on Ms. Ayala's and other aggrieved employees' wage statements as "Bonus." During pay periods that Ms. Ayala and other aggrieved employees were paid overtime wages, RHR did not incorporate the nondiscretionary bonuses into Ms. Ayala's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, RHR paid Ms. Ayala and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. RHR's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Ayala and other aggrieved employees on a company-wide basis.

RHR's failure to pay Ms. Ayala and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages**

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As set forth above, during the relevant time period, RHR had a company-wide policy and/or practice requiring Ms. Ayala and other aggrieved employees to perform various work-related tasks while off-the-clock, including discussing work matters in-person or while on the phone, and submitting to off-the-clock health screenings. RHR failed to track this time Ms. Ayala and other aggrieved employees spent working off-the-clock, and Ms. Ayala and other aggrieved employees received no compensation for this time.

As also stated, due to RHR's policies and/or practices of understaffing its locations while assigning heavy workloads and failing to schedule meal periods, Ms. Ayala and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, RHR's managers adjusted Ms. Ayala's and other aggrieved employees' time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted. Furthermore, as stated, RHR systematically failed to pay Ms. Ayala and other aggrieved employees for actual hours worked during unpaid meal periods, because RHR's timekeeping system locked out Ms. Ayala and other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, RHR systematically failed to pay Ms. Ayala and other aggrieved

employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, RHR did not pay minimum wages for all hours worked by Ms. Ayala and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, RHR did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, RHR regularly failed to pay at least minimum wages to Ms. Ayala and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods**

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, as stated, RHR had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, and failing to schedule meal periods, which resulted in a lack of meal period coverage and prevented Ms. Ayala and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. Ayala and other aggrieved employees had to work through all or part of their meal periods, took their meal periods late, and/or had their meal periods interrupted. For example, because of RHR's policy and/or practice of understaffing while assigning heavy workloads, Ms. Ayala missed her meal periods, took her meal periods late, and had her meal periods interrupted due to her managers requiring she return to the kitchen and complete additional tasks, or by other coworkers asking her work-related questions.

Second, as stated, on information and belief, because RHR frowned upon employees accruing meal period penalties, RHR's management adjusted Ms. Ayala's and other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that RHR would otherwise owe. Also, as stated, RHR's company-wide timekeeping system prevented Ms. Ayala and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Ayala and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Third, RHR did not provide Ms. Ayala and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, Ms. Ayala regularly worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Ms. Ayala and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, RHR had a company-wide policy of requiring all employees to sign blanket meal period waivers. RHR took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Specifically, RHR's meal period waiver form requires employees to provide RHR with written notice should they wish to revoke the waiver. RHR's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire discouraged and impeded Ms. Ayala and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

*Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That RHR required Ms. Ayala and other aggrieved employees to sign meal period waivers in advance (as opposed to on a specific work day) renders them invalid and unenforceable, because RHR's obligation to provide Ms. Ayala and aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

At all times mentioned herein, RHR knew or should have known that as a result of its policies, Ms. Ayala and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. RHR further knew or should have known that it did not pay Ms. Ayala and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, RHR engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Ayala and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that RHR did pay Ms. Ayala and other aggrieved employees for missed, late, and interrupted meal periods, RHR did not pay Ms. Ayala and other aggrieved employees at the correct rate of pay for premiums because RHR systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, RHR failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Ayala and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

### **Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods**

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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 major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, RHR regularly failed to authorize and permit Ms. Ayala and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, RHR's company-wide practices, including understaffing and assignment of heavy workloads, prevented Ms. Ayala and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, RHR failed to schedule rest periods, which, coupled with RHR's failure to provide adequate rest period coverage, further led to Ms. Ayala and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, RHR maintained a company-wide on-premises rest period policy, which mandated that Ms. Ayala and other aggrieved employees remain on RHR's premises during their rest periods. Because Ms. Ayala and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, RHR effectively maintained control over Ms. Ayala and other aggrieved employees during rest periods.

As a result of RHR's practices and policies, Ms. Ayala and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Ayala had to forego nearly all of her rest periods because of the lack of coverage and RHR's failure to schedule rest periods for employees.

RHR also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Ayala and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that RHR did pay Ms. Ayala and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, RHR did not pay Ms. Ayala and other aggrieved employees at the correct rate of pay for premiums because RHR failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, RHR failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Ayala and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

**Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records**

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. RHR has not provided Ms. Ayala and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, RHR has knowingly and intentionally provided Ms. Ayala and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, RHR issued uniform wage statements to Ms. Ayala and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, RHR violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because RHR did not record the time Ms. Ayala and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), RHR did not list the correct amount of gross wages and net wages earned by Ms. Ayala and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, RHR failed to accurately list the total number of the hours worked by Ms. Ayala and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because RHR did not calculate Ms. Ayala's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, RHR did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). RHR also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

Third, and separate from these violations, RHR issued uniform wage statements to Ms. Ayala and other aggrieved employees that failed to list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. This includes providing employees with the correct physical address of the employer. During the relevant time period, RHR systematically, and on a company-wide basis, issued wage statements to Ms. Ayala and other aggrieved employees that incorrectly list the employer's address as "92290 W SUNSET BLVD. STE 200, WEST HOLLYWOOD, CA 90069, USA," but, according to the California Secretary of State's website, the employing entity RHR CALIFORNIA SERVICES, L.L.C.'s address should be "2909 COLE AVE. SUITE 303 DALLAS, TX 75204." Moreover, RHR systematically, and on a company-wide basis, issued

wage statements to Ms. Ayala and other aggrieved employees that incorrectly listed an alternative employer's (SHR HOTEL LLC) address as "2825 SAND HILL ROAD, MENLO PARK, CA 94025," but, according to the California Secretary of State's website, the address should be "415 BROADWAY, 3RD FLOOR, MC: 8873, REDWOOD CITY, CA 94063."

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), RHR willfully failed to maintain accurate payroll records for Ms. Ayala and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, RHR engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Ayala and other aggrieved employees in violation of section 1198. Furthermore, in light of RHR's failure to provide Ms. Ayala and other aggrieved employees with second 30-minute meal periods to which they were entitled, RHR kept no records of meal start and end times for second meal periods.

Because RHR failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Ayala and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Ayala and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

### **Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment**

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, RHR failed to pay Ms. Ayala and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or paid sick leave, within any time period specified by California Labor Code section 204.

Ms. Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

### **Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination**

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, RHR had a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Ms. Ayala was terminated on or about October 28, 2022; however, RHR did not provide Ms. Ayala with her final paycheck until November 9, 2022. Thus, RHR failed to pay Ms. Ayala her final wages immediately, in violation of Labor Code section 201.

Additionally, RHR willfully failed to pay Ms. Ayala and other aggrieved employees who are no longer employed by RHR all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or paid sick leave, either at the time of discharge, or within seventy-two (72) hours of their leaving RHR's employ.

Ms. Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

### **Violation of California Labor Code § 246 – Unpaid Sick Leave**

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment.

Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) “[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]” or 2) “[p]aid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

During the relevant time period, RHR did not pay other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, RHR paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, RHR failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, RHR failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, RHR paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

RHR’s failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code 246(l). Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

**Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating**

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

RHR’s California restaurants within its hotels are generally similar in their layout and design and there was, and continues to be, space behind host stands to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. RHR could provide other aggrieved employees with a seat or stool at its host stands, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these host stands. The nature of the work of an employee performing host duties at host stands can reasonably be accomplished from a seated position. However, as set forth herein, RHR systematically, and on a company-wide basis, does not provide seats or stools at or near the host stands, forcing other aggrieved employees to stand throughout their work shifts.

RHR violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when the nature of their work would reasonably permit the use of seats, nor were they provided with suitable seats. RHR's management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of RHR's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. RHR's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring RHR into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

**Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating**

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

RHR's California locations are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. RHR could have provided other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

RHR did not provide other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent other

aggrieved employees engaged in duties in which the nature of the work required standing, RHR denied them the use of seats nearby during lulls in their work duties. Moreover, RHR did not inform other aggrieved employees of their rights to a seat or stool under California law.

As a result of RHR's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, other aggrieved employees were forced to stand during shifts and denied seats. RHR's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring RHR into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

### **Violation of California Labor Code § 2802 – Unreimbursed Business Expenses**

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, RHR had a company-wide policy of requiring Ms. Ayala and other aggrieved employees to utilize their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but RHR failed to reimburse them for the costs of their work-related mobile device expenses. Ms. Ayala and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls or text messages from RHR's managers. Specifically, Ms. Ayala used her personal cellular phone to respond to calls or text messages from her managers regarding kitchen inventory needs or the preparation of certain food items. Although RHR required Ms. Ayala and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related duties, RHR failed to reimburse them for these costs.

RHR could have provided Ms. Ayala and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, or, RHR could have reimbursed employees for their mobile device usage. Instead, RHR passed these operating costs off onto Ms. Ayala and other aggrieved employees. At all relevant times, Ms. Ayala did not earn at least two (2) times the minimum wage.

Thus, RHR had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

### **California Labor Code § 558(a)**

California Labor Code section 558(a) provides "[a]ny 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. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” RHR, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Ayala’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Ayala seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Ayala, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against RHR for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Ayala seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura  
Capstone Law APC  
1875 Century Park East, Suite 1000  
Los Angeles, CA 90067  
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: RHR CALIFORNIA SERVICES, L.L.C. (via U.S. Certified Mail); ROSEWOOD HOTELS AND RESORTS, LLC (via U.S. Certified Mail); SHR HOTEL LLC (via U.S. Certified Mail)

Capstone Law, APC  
1875 Century Park, East, 1000  
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ROSEWOOD HOTELS AND RESORTS, LLC  
9220 W. SUNSET BLVD., SUITE 200 WEST  
HOLLYWOOD, CA 90069

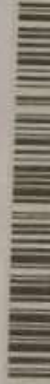
7022 2410 0000 2406 4741

ROSEWOOD HOTELS AND RESORTS, LLC  
9220 W. SUNSET BLVD., SUITE 200 WEST  
HOLLYWOOD, CA 90069

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ROSEWOOD HOTELS AND RESORTS, LLC  
9220 W. SUNSET BLVD., SUITE 200 WEST  
HOLLYWOOD, CA 90069



9590 9402 7690 2122 7170 20

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4741

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒

Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Registered Mail

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Capstone Law, APC  
1875 Century Park, East, 1000  
Los Angeles, CA. 90067



7022 2410 0000 2406 4758

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Extra Services & Fees (Enter date, and fee or appropriate)  
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2 12 14  
Postmark  
Date

SHR HOTEL LLC

415 BROADWAY, 3RD FLOOR, MC: 8872  
REDWOOD CITY, CA 94063

SHR HOTEL LLC  
415 BROADWAY, 3RD FLOOR, MC: 8873  
REDWOOD CITY, CA 94063

SENDER: COMPLETE THIS SECTION

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SHR HOTEL LLC  
415 BROADWAY, 3RD FLOOR, MC: 8873  
REDWOOD CITY, CA 94063



9590 9402 7690 2122 7170 13

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4758

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent  
☒ Addressee
- B. Received by (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

- Service Type
- ☐ Adult Signature
  - ☐ Adult Signature Restricted Delivery
  - ☒ Certified Mail
  - ☐ Certified Mail Restricted Delivery
  - ☐ Collect on Delivery
  - ☐ Collect on Delivery Restricted Delivery
  - ☐ Insured Mail
  - ☐ Restricted Delivery
- Priority Mail Express®
- ☐ Registered Mail™
  - ☐ Registered Mail Restricted Delivery
  - ☐ Signature Confirmation™
  - ☐ Signature Confirmation Restricted Delivery

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**RHR CALIFORNIA SERVICES, L.L.C.**  
**2909 COLE AVE., SUITE 303**  
**DALLAS, TX 75204**



9590 9402 7690 2122 7170 44

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4734

PS Form 3811, July 2020 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*[Handwritten Signature: Gabriela Gonzales]*

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

*[Handwritten Name: Gabriela Gonzales]*

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
- If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail Restricted Delivery

Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

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SHR HOTEL LLC  
415 BROADWAY, 3RD FLOOR, MC: 8873  
REDWOOD CITY, CA 94063



9590 9402 7690 2122 7170 13

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4758

PS Form 3811, July 2020 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY****A. Signature**

**X**

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

**3. Service Type**

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

☐ Restricted Delivery

Domestic Return Receipt

**PROOF OF SERVICE**

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

On **April 25, 2023**, I served the document described as **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Jiyun Cameron Lee  
jlee@folgerlevin.com  
Rosha Jones  
rjones@folgerlevin.com  
Sherri M. Hansen  
shansen@folgerlevin.com  
Charles King  
cking@folgerlevin.com  
FOLGER LEVIN LLP  
199 Fremont Street, 20th Floor  
San Francisco, CA 94105

*Attorneys Defendants*  
RHR CALIFORNIA SERVICES, L.L.C. et  
al.

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

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

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **April 25, 2023**, at Los Angeles, California.

Sophia Flores  
\_\_\_\_\_  
Type/Print Name

  
\_\_\_\_\_  
Signature