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8 Attorneys for Plaintiff JULIE PEÑA
9 As an individual and on behalf of all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 JULIE PEÑA, as an individual on behalf of
13 herself and on behalf of all others similarly
14 situated,

15 Plaintiff,

16 v.
17

18 PALMDALE LODGING ASSOCIATES
19 LLC, a California Limited Liability
20 Company; BLUE SKY HOSPITALITY
21 SOLUTIONS LLC, a New York Limited
22 Liability Company; NAVIKA CAPITAL
23 GROUP LLC, a New York Limited
24 Liability Company; NAVIKA CAPITAL
25 GROUP PHASE II LLC, a Delaware
Limited Liability Company; NCG
CAPITAL PARTNERS LLC, a Delaware
Limited Liability Company; NAVIKA
GROUP OF COMPANIES LLC, a
Delaware Limited Liability Company; and
DOES 1-100, inclusive,

26 Defendants.
27
28

Case No.: 23STCV06479

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages
and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or
Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or
Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized
Wage Statements**
6. **Failure to Reimburse Business Expenses**
7. **Unfair Competition and**
8. **Violation of the Private Attorneys
General Act of 2004**

DEMAND FOR JURY TRIAL

1 Plaintiff, JULIE PEÑA (“PLAINTIFF”), an individual on behalf of PLAINTIFF and all
2 other similarly situated Class Members (as defined below), and Aggrieved Employees (as defined
3 below) hereby files this Complaint against Defendants PALMDALE LODGING ASSOCIATES
4 LLC, a California Limited Liability Company; BLUE SKY HOSPITALITY SOLUTIONS LLC, a
5 New York Limited Liability Company; NAVIKA CAPITAL GROUP LLC, a New York Limited
6 Liability Company; NAVIKA CAPITAL GROUP PHASE II LLC, a Delaware Limited Liability
7 Company; NCG CAPITAL PARTNERS LLC, a Delaware Limited Liability Company;
8 NAVIKA GROUP OF COMPANIES LLC, a Delaware Limited Liability Company; and
9 DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is
10 informed and believes and thereon alleges as follows:

11 **JURISDICTION AND VENUE**

12 1. This court possesses original subject matter jurisdiction over this matter. Venue is
13 proper in the County of Los Angeles pursuant to California Code of Civil Procedure section 395.5
14 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
15 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
16 PLAINTIFF herein occurred in this this judicial district. *See Crestwood Behavioral Health, Inc. v.*
17 *Superior Court*, 60 Cal. App. 5th 1069 (2021) (venue in a PAGA action is proper in any county
18 where the defendants committed Labor Code violations against some of its employees).

19 **THE PARTIES**

20 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
21 California and a citizen of the State of California. PLAINTIFF worked for DEFENDANTS in the
22 State of California as a non-exempt employee.

23 3. PLAINTIFF worked for DEFENDANTS as room attendant and/or similar title(s)
24 and/or position(s) from in or around March 2022 through on or around September 23, 2022.
25 DEFENDANTS assigned PLAINTIFF to work out of DEFENDANTS’ location, facility and/or
26 hotel located in Palmdale, California, which operated and/or operates under the name Embassy
27 Suites – Palmdale and/or Embassy Suites by Hilton Palmdale.
28

1 4. DEFENDANTS are either a California limited liability company and/or New York
2 limited liability company and/or a Delaware limited liability company that, at all relevant times,
3 were authorized to do business within the State of California and are doing business in the State of
4 California.

5 5. DEFENDANTS own, operate, or otherwise manage hospitality businesses, with
6 multiple locations, facilities and/or hotels, including but not limited to, DEFENDANTS' location,
7 facility and/or hotel located in Ontario, California, which operated and/or operates under the name
8 Embassy Suites – Ontario and/or Embassy Suites by Hilton Ontario and DEFENDANTS' location,
9 facility and/or hotel located in Palmdale, California, which operated and/or operates under the name
10 Embassy Suites – Palmdale and/or Embassy Suites by Hilton Palmdale¹

11 6. The true names and capacities of the DOE Defendants sued herein as DOES 1
12 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
13 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
14 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
15 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
16 become known.

17 7. PLAINTIFF is further informed and believes that, at all relevant times, each
18 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
19 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
20 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
21 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
22 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
23 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
24 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
25 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
26 controlled, aided and abetted the conduct of all other Defendants.

27
28 _____
¹ See <https://www.blueskyhospitalitysolutions.com/portfolio> (Last visited on March 22, 2023).

1 **JOINT LIABILITY**

2 8. Under California law, the definition of the terms “to employ” are broadly construed
3 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
4 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
5 to engage, thereby creating a common law employment relationship. *See Martinez v. Combs*, 49
6 Cal. 4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
7 was to reach situations in which multiple entities control different aspects of the employment
8 relationship. Supervision of the work, in the specific sense of exercising control over how services
9 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
10 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
11 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
12 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
13 California, applying a less stringent standard to what constitutes sufficient control by a business
14 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
15 employer. *See Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021) (“[i]f the putative
16 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
17 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
18 employment”) (emphasis added).

19 9. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the Class
20 Members (defined below) and Aggrieved Employees (defined below) were jointly employed by
21 DEFENDANTS for purposes of the Wage Orders, under the alternative definitions of “to employ”
22 adopted by the California Supreme Court in *Martinez*, 49 Cal. 4th 35. As discussed below, these
23 DEFENDANTS (1) exercised control over wages, hours and working conditions of PLAINTIFF
24 and the Class Members and Aggrieved Employees; (2) suffered or permitted PLAINTIFF and Class
25 Members and Aggrieved Employees to work for them; and (3) engaged PLAINTIFF and Class
26 Members and Aggrieved Employees to work for them.

27 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
28 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized

1 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
2 across all of their locations/facilities and subjected all of the Class Members and Aggrieved
3 Employees to these same policies and practices regardless of the location(s) where they worked.
4 Among other things, PLAINTIFF is informed and believes that: (1) there is common ownership in,
5 and financial control, in DEFENDANTS' companies, (2) DEFENDANTS utilize common
6 management, who have control over the day-to-day operations and employment matters, including
7 the power to hire and fire, set schedules, issue employee policies, and determine rates of
8 compensation across its locations in California; (3) DEFENDANTS utilize the same policies and
9 procedures for all California employees, including issuing the same employee handbooks and other
10 form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel
11 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

12 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
13 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
14 and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and causes of
15 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
16 Members and Aggrieved Employees' wages, hours and working conditions, and/or suffered or
17 permitted PLAINTIFF and the Class Members and Aggrieved Employees to work so as to be
18 considered the joint employers of PLAINTIFF and the Class Members and Aggrieved Employees.
19 For example, DEFENDANTS issued wage statements to PLAINTIFF that list "Palmdale Lodging
20 Associates LLC" as the legal name of the entity that is the employer. However, most documents in
21 PLAINTIFF's personnel file, including without limitation, confidentiality and/or non-disclosure
22 agreement(s), purported disclosures and/or authorization to conduct a background check, various
23 employee policy documents and/or acknowledgments of employment policies, including but not
24 limited to, employee emergency contact form(s), workers' compensation documents, sexual
25 harassment policies/other employment policy-related documents all identify the following as the
26 name(s) of PLAINTIFF's employer: "Blue Sky Hospitality Solutions LLC" and/or "Navika Capital
27 Group LLC" and/or "Navika Capital Group Phase II LLC" and/or "NCG Capital Partners LLC"
28 and/or "Navika Group of Companies." Moreover, based on information and belief, DEFENDANTS,

1 and each of them maintain the same principal place of business and/or business mailing address
2 and/or same agent for service of process as provided to the California Secretary of State and/or New
3 York Secretary of State and/or Delaware Secretary of State and/or maintain the same corporate
4 headquarters, and/or use at least some of the same Human Resources personnel and attorneys to
5 oversee employment matters. Upon information and belief, PLAINTIFF alleges that
6 DEFENDANTS created a uniform set of policies, practices and/or procedures concerning, inter alia,
7 hourly and overtime pay, time-keeping practices, meal and rest periods, reimbursement of business
8 expenses and other working conditions that were distributed to, and/or applied to PLAINTIFF and
9 the Class Members and Aggrieved Employees, and further that DEFENDANTS uniformly
10 compensated and controlled the wages of PLAINTIFF and the Class Members and Aggrieved
11 Employees in a uniform manner. DEFENDANTS collectively represented to PLAINTIFF and the
12 Class Members and Aggrieved Employees that each was an “at-will” employee of DEFENDANTS,
13 and that DEFENDANTS collectively retained the right to terminate PLAINTIFF’s and Class
14 Members and Aggrieved Employees’ employment with or without cause. Upon information and
15 belief, DEFENDANTS further collectively represented to PLAINTIFF and Class Members and
16 Aggrieved Employees in writing the details of their compensation, and the manner in which they
17 were to take meal and rest periods, the procedures required by DEFENDANTS collectively for
18 recordation of hours worked and the policies applicable to PLAINTIFF and Class Members and
19 Aggrieved Employees by which DEFENDANTS collectively would evaluate the wage rates of
20 PLAINTIFF and Class Members and Aggrieved Employees.

21 12. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
22 and working conditions of PLAINTIFF and Class Members and Aggrieved Employees. As such,
23 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF’s and
24 the Class Members and Aggrieved Employees’ employment, including the instrumentality that
25 resulted in the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

26 13. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
27 control over, applied the same policies and practices, and engaged in the same acts and omissions
28 with regard to the other Class Members and Aggrieved Employees.

1 **CLASS ALLEGATIONS**

2 14. PLAINTIFF brings this action on behalf of PLAINTIFF, and all others similarly
3 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
4 seeks to represent are defined as follows and referred to as the “Class” or “Class Members”:

5 All current and former non-exempt employees that worked either
6 directly or via a staffing agency for any one or more of the
7 DEFENDANTS at any location in California at any time within the
8 four years prior to the filing of the initial Complaint (“Class Period”).

9 a. Numerosity. While the exact number of Class Members is unknown to
10 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
11 all members is impractical under the circumstances of this case. PLAINTIFF is
12 informed and believes the Class consists of at least 100 individuals.

13 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
14 because common questions of law and fact predominate over individual issues.
15 Common questions include, but are not limited to, the following: (1) whether
16 DEFENDANTS understated hours worked and failed to pay all amounts due to
17 PLAINTIFF and the Class Members for wages earned, including minimum and
18 overtime wages, under California law; (2) whether DEFENDANTS provided
19 PLAINTIFF and the Class Members with all meal periods or premium payments
20 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
21 provided PLAINTIFF and the Class Members with all rest periods or premium
22 payments in lieu thereof, in compliance with California law; (4) whether
23 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
24 itemized wage statements in compliance with California law, displaying,
25 including but not limited to, the total hours worked during the pay period; (5)
26 whether DEFENDANTS failed to reimburse PLAINTIFF and the Class
27 Members for all business expenses; and (6) whether DEFENDANTS violated
28 California Business and Professions Code sections 17200, *et seq.*

- 1 c. Ascertainable Class. The proposed Class is ascertainable as members can be
2 identified and located using information in DEFENDANTS' business, payroll
3 and personnel records.
- 4 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
5 PLAINTIFF suffered a similar injury as members of the Class as a result of
6 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
7 and pay all owed minimum and overtime wages, failure to provide proper meal
8 periods and rest periods or premium compensation in lieu thereof, failure to
9 provide accurate wage statements, and failure to reimburse business expenses.
- 10 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
11 Class Members. PLAINTIFF has no interests adverse to the interests of the other
12 Class Members. Counsel who represent PLAINTIFF are competent and
13 experienced in litigating similar class action cases and are California lawyers in
14 good standing. Counsel for PLAINTIFF have the experience and resources to
15 vigorously prosecute this case.
- 16 f. Superiority. A class action is superior to other available means for the fair and
17 efficient adjudication of this controversy since individual joinder of all members
18 of the class is impractical. Class action treatment will permit a large number of
19 similarly situated persons to prosecute their common claims in a single forum
20 simultaneously, efficiently, and without the unnecessary duplication of effort
21 and expense that numerous individual actions would engender. Furthermore, as
22 the damages suffered by each individual member of the Class may be relatively
23 small, the expenses and burden of individual litigation would make it difficult
24 or impossible for individual members of the Class to redress the wrongs done to
25 them, while an important public interest will be served by addressing the matter
26 as a class action. The cost to the court system of adjudication of such
27 individualized litigation would be substantial. Individualized litigation would
28 also present the potential for inconsistent or contradictory judgments. Finally,

1 the alternative of filing a claim with the California Labor Commissioner is not
2 superior, given the lack of discovery in such proceedings, the fact that there are
3 fewer available remedies, and the losing party has the right to a trial de novo in
4 the Superior Court.

5 **FACTUAL AND LEGAL ALLEGATIONS**

6 15. During the relevant period, PLAINTIFF, and each of the Class Members and
7 Aggrieved Employees worked for DEFENDANTS in the State of California. At all times referenced
8 herein, DEFENDANTS exercised control over PLAINTIFF and Class Members and Aggrieved
9 Employees, and suffered and/or permitted them to work.

10 16. PLAINTIFF is employed by DEFENDANTS as a non-exempt employee.
11 PLAINTIFF worked for DEFENDANTS as a room attendant and/or similar title(s) and/or
12 position(s) from in or around March 2022 through on or around September 23, 2022.
13 DEFENDANTS assigned PLAINTIFF to work out of DEFENDANTS' location, facility and/or hotel
14 located in Palmdale, California, which operated and/or operates under the name Embassy Suites by
15 Hilton Palmdale.

16 17. PLAINTIFF regularly worked at least six (6) to nine (9) hours per day, at least four
17 (4) to five (5) days per week.

18 18. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
19 hourly basis for time counted by DEFENDANTS as hours worked.

20 19. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
21 PLAINTIFF and Class Members and Aggrieved Employees for all hours worked, resulting in the
22 underpayment of minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF
23 and Class Members and Aggrieved Employees for all hours worked by virtue of, DEFENDANTS'
24 automatic deduction and time rounding policies, and failure to relieve employees of all
25 duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or
26 improper meal periods, as explained below.

27 20. Based on information and belief, DEFENDANTS implemented a policy and/or
28 practice of rounding meal period start and end times and/or automatically deducting at least thirty

1 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
2 PLAINTIFF and other Class Members and Aggrieved Employees were subject to DEFENDANTS'
3 control during purported meal periods and/or were otherwise not afforded lawful meal periods,
4 depriving PLAINTIFF and Class Members and Aggrieved Employees of all wages owed.

5 21. Based on information and belief, Class Members and Aggrieved Employees were
6 not paid for all hours worked due to DEFENDANTS' policy and/or practice of rounding time entries
7 including but not limited to shift start and end times, or paying according to scheduled hours worked
8 instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For
9 example, based on information and belief, Class Members and Aggrieved Employees were
10 pressured to complete at least some of their work tasks off-the-clock in order to meet
11 DEFENDANTS' goals and expectations. For example, on information and belief, Class Members
12 and Aggrieved Employees were also required to complete off-the-clock work outside of scheduled
13 shifts and/or during unpaid meal periods due to work-related phone calls and/or messages they
14 received and were required to respond to, including but not limited to, communications from
15 supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages
16 owed to Class Members and Aggrieved Employees.

17 22. Based on information and belief, DEFENDANTS did not compensate Class
18 Members and Aggrieved Employees for time spent donning and doffing uniforms/work
19 clothing/personal protective/safety equipment (e.g., face masks and/or gloves) during off-the-clock
20 meal periods, before the start of a scheduled shift, and after completing a scheduled shift.

21 23. Based on information and belief, DEFENDANTS required Class Members and
22 Aggrieved Employees to undergo temperature screenings and/or other employer-mandated
23 screenings prior to clocking in for the start of their shifts, before clocking back in from meal periods
24 and/or after clocking out for their shifts, resulting in uncompensated work time, and the
25 underpayment of minimum and overtime wages owed to Class Members and Aggrieved Employees.

26 24. Based on information and belief, Class Members and Aggrieved Employees were
27 required to perform other pre-shift and/or post-shift off-the-clock work for which they were not
28 compensated. For example, based on information and belief, after completing a shift and clocking

1 out for a shift, Class Members and Aggrieved Employees were required to keep working. For
2 example, at times, based on information and belief, DEFENDANTS required Class Members and
3 Aggrieved Employees to assist guests and/or complete other work tasks after clocking out for a shift.
4 This work time was completed off-the-clock/outside of the scheduled shift and was uncompensated
5 resulting in unpaid minimum and overtime wages owed to Class Members and Aggrieved
6 Employees.

7 25. Based on information and belief, at times, DEFENDANTS' biometric/electronic
8 employee time-keeping system malfunctioned such that Class Members and Aggrieved Employees
9 were required to either reinitiate and/or otherwise troubleshoot the system prior to being able to
10 clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from
11 meal periods, resulting in off-the-clock work and the underpayment of wages owed to Class
12 Members and Aggrieved Employees. Based on information and belief, Class Members and
13 Aggrieved Employees experienced the same issues when clocking out for shifts and/or back in for
14 meal periods. This time spent under DEFENDANTS' control was not recorded and not
15 compensated and resulted in unpaid minimum wages owed to Class Members and Aggrieved
16 Employees.

17 26. Based on information and belief, DEFENDANTS failed to pay Class Members and
18 Aggrieved Employees for time they were required to spend completing orientation, policy
19 questionnaires, and/or time spent completing the onboarding process including but not limited to
20 reviewing various documents and policies provided by DEFENDANTS. Based on information and
21 belief, this work time was completed off-the-clock and was not compensated.

22 27. Based on further information and belief, DEFENDANTS implemented a time-
23 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
24 Aggrieved Employees of compensable time because the time-rounding system implemented by
25 DEFENDANTS would almost always, if not always, result in understating actual compensable work
26 time.

27 28. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
28 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal

1 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
2 minimum wages owed to PLAINTIFF and Class Members and Aggrieved Employees as well as
3 unpaid overtime wages for those Class Members and Aggrieved Employees who worked more than
4 eight (8) hours in a day and/or more than forty (40) hours in a week.

5 29. Based on information and belief, DEFENDANTS had actual and/or constructive
6 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
7 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
8 underpayment of minimum wages owed to PLAINTIFF and other Class Members and Aggrieved
9 Employees, in violation of California's minimum and overtime wage laws.

10 30. Based on information and belief, DEFENDANTS failed and continue to fail to pay
11 premium wage rate for all hours worked (including but not limited to, all recorded time and/or all
12 hours counted by DEFENDANTS as hours worked) beyond eight (8) hours in a day or beyond forty
13 (40) hours in a week. For example, at least approximately twice per week DEFENDANTS required
14 PLAINTIFF to work shifts exceeding eight (8) hours but did not compensate PLAINTIFF at any
15 premium wage rate for all time counted by DEFENDANTS as hours worked in excess of eight (8)
16 hours in a workday. Based on information and belief, DEFENDANTS had and have an unlawful
17 policy and practice of failing to pay Class Members and Aggrieved Employees any premium wage
18 rate on a daily basis and/or for all time worked in excess of eight (8) hours in a workday, including
19 but not limited to, time counted by DEFENDANTS as hours worked, resulting in the underpayment
20 of overtime wages to PLAINTIFF and other Class Members and Aggrieved Employees.

21 31. Based on information and belief, DEFENDANTS failed and continue to fail to pay
22 Class Members and Aggrieved Employees two times their regular rate of pay for time worked
23 beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh
24 consecutive day of work in a work week, in violation of California's overtime laws.

25 32. Based on information and belief, DEFENDANTS failed to incorporate all non-
26 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
27 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
28 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other

1 Class Members and Aggrieved Employees.

2 33. **Meal Period Violations.** PLAINTIFF and other Class Members and Aggrieved
3 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to
4 at least one meal period. However, PLAINTIFF and other Class Members and Aggrieved
5 Employees would not receive legally compliant thirty (30) minute first and second meal periods.
6 Based on information and belief, Class Members and Aggrieved Employees were consistently
7 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take
8 late meal periods, interrupted meal periods, and/or work through part or all their meal periods due
9 to understaffing, the nature and constraints of their job duties and/or commentary from supervisors
10 pressuring them to take non-compliant meal periods or skip meal periods completely.

11 34. Based on information and belief, other Class Members and Aggrieved Employees
12 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
13 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
14 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
15 duties, and/or the need to meet DEFENDANTS' goals and expectations. For example, at times,
16 PLAINTIFF was forced to work through her meal periods/cut her meal periods short due to the need
17 to clean rooms, respond to work-related communications from guests, her supervisor and/or other
18 Class Members and Aggrieved Employees and/or complete other work tasks. Other times,
19 PLAINTIFF was forced to take her meal period late (i.e. after the fifth hour of work) due to the need
20 to clean rooms, respond to work-related communications from guests, her supervisor and/or other
21 Class Members and Aggrieved Employees and/or complete other work tasks. Based on information
22 and belief, other Class Members and Aggrieved Employees also had to cut their meal periods short
23 (i.e. take a meal period that was less than thirty-minutes long) and were suffered, required and/or
24 permitted to take late meal periods due to the need to attend to guests, respond to work-related
25 communications and/or complete other work tasks. Based on information and belief, at times, Class
26 Members and Aggrieved Employees were instructed to clock out for meal periods but were required
27 to continue working during unpaid meal periods due to the need to attend to guests, respond to work-
28 related communications and/or complete other work tasks.

1 35. Based on information and belief, DEFENDANTS implemented policies and/or
2 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
3 DEFENDANTS' control during unpaid meal periods.

4 36. Based on information and belief, DEFENDANTS required Class Members and
5 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
6 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
7 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
8 unaccounted pre-shift off-the-clock work.

9 37. Based on information and belief, despite DEFENDANTS' failure to provide lawful
10 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
11 times of PLAINTIFF's and other Class Members and Aggrieved Employees' meal periods and/or
12 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
13 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Class
14 Members and Aggrieved Employees did not receive lawful meal periods.

15 38. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
16 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
17 compliant thirty (30) minute second meal period.

18 39. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
19 other Class Members and Aggrieved Employees as to the timing and duty-free nature of meal
20 periods. Based on further information and belief, DEFENDANTS did not have a compliant written
21 meal period policy, nor did DEFENDANTS have any sort of compliant policy in practice.

22 40. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
23 records of the true start and end times of PLAINTIFF's and Class Members and Aggrieved
24 Employees' meal periods. Based on information and belief, to the extent meal period were recorded,
25 DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in
26 PLAINTIFF and other Class Members and Aggrieved Employees not being paid for all time worked
27 as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC*, 11 Cal. 5th 58
28 (2021).

1 41. Based on information and belief, DEFENDANTS had actual and/or constructive
2 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
3 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members and Aggrieved
4 Employees, in violation of California's meal period laws.

5 42. DEFENDANTS failed to pay PLAINTIFF and other Class Members and Aggrieved
6 Employees, an additional hour of wages at their respective regular rates of compensation for each
7 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
8 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
9 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
10 but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into
11 the regular rate or compensation for purposes of calculating the owed meal period premium.

12 43. For example, DEFENDANTS' time records for PLAINTIFF for including but not
13 limited to, September 22, 2022, show a shift clock in time of 11:00AM and a clock out for a
14 purported mere one-minute meal period from 11:32 AM to 11:33 AM with a shift clock out time of
15 7:01 PM. However, DEFENDANTS' wage statement issued to PLAINTIFF for pay period
16 beginning on 9/17/22 and ending on 9/30/22 does not reflect the payment of any meal period
17 premiums to PLAINTIFF. Based on information and belief, DEFENDANTS failed to pay meal
18 period premiums for most if not all missed/shortened/interrupted and/or late meal periods. As such,
19 DEFENDANTS failed to pay Class Members and Aggrieved Employees a meal period premium at
20 all for each workday a lawful meal period was not provided.

21 44. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
22 PLAINTIFF and other Class Members and Aggrieved Employees with legally compliant rest
23 periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable,
24 are provided in the middle of the work period, as required by law.

25 45. PLAINTIFF and other Class Members and Aggrieved Employees were not
26 adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest
27 periods per California law. Based on information and belief, DEFENDANTS had no policy in place
28 nor instruction as to the taking of duty-free rest periods.

1 46. Based on information and belief, DEFENDANTS did not have a have a compliant
2 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
3 practice. For example, PLAINTIFF rarely, if ever, received a ten-minute, off-duty rest period during
4 the time she worked for DEFENDANTS due to the nature and constraints of her job duties, the need
5 to finish cleaning rooms on time,, attend to guests/staff members and/or complete other work tasks
6 as well as DEFENDANTS failure to communicate any lawful rest period policy to PLAINTIFF and
7 other Class Members and Aggrieved Employees. Based on information and belief, other Class
8 Members and Aggrieved Employees were also consistently required to work through their owed rest
9 periods due to the need to assist guests, respond to work-related communications and/or complete
10 other work tasks.

11 47. Based on information and belief, Class Members and Aggrieved Employees' rest
12 periods were interrupted, cut short, on duty, restricted to work premises and/or late due to
13 understaffing, the nature and constraints of their job duties, and/or due to commentary from
14 supervisors/managers pressuring them to skip rest periods completely or otherwise take non-
15 compliant rest periods.

16 48. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
17 lasting longer than ten hours.

18 49. Based on information and belief, DEFENDANTS implemented policies and/or
19 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
20 all duties and DEFENDANTS' control during rest periods.

21 50. Based on information and belief, Class Members and Aggrieved Employees were
22 pressured to complete their work duties according to a designated schedule such that rest periods
23 were only taken once tasks were completed, and/or as time permitted.

24 51. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
25 which PLAINTIFF and Class Members and Aggrieved Employees experienced a missed/unlawful
26 rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium
27 at all for each workday a proper rest period was not provided and/or failed to pay the proper rest
28 period premium for failure to incorporate all non-discretionary remuneration, including but not

1 limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
2 regular rate of compensation for purposes of calculating the owed rest period premium.

3 52. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
4 provide PLAINTIFF and other Class Members and Aggrieved Employees with accurate wage
5 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
6 PLAINTIFF and Class Members and Aggrieved Employees with meal and rest periods that
7 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and
8 Class Members and Aggrieved Employees failed and continue to fail to correctly set forth the gross
9 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
10 during the pay period and the corresponding number of hours worked at each hourly rate by the
11 employee.

12 53. DEFENDANTS issued wage statements to PLAINTIFF and Class Members and
13 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the
14 pay period, the correct applicable rates of pay for all hours worked, and the total hours worked by
15 PLAINTIFF and Class Members and Aggrieved Employees (by virtue of rounded time entries,
16 automatic deduction for meal periods/failure to relieve Class Members and Aggrieved Employees
17 of all duties and employer control during unpaid meal periods, payment according to scheduled
18 hours worked rather than actual hours worked, and/or other off-the-clock work policies and
19 practices) which results in a violation of Labor Code section 226(a).

20 54. As described herein, based on information and belief, DEFENDANTS also failed to
21 incorporate all forms of non-discretionary compensation earned during the pay period into the
22 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
23 of overtime worked by PLAINTIFF and other Class Members and Aggrieved Employees.

24 55. Moreover, based on information and belief, DEFENDANTS issued wage statements
25 to PLAINTIFF and Class Members and Aggrieved Employees that further violate Labor Code
26 section 226(a), by among other things, failing to list the correct name and/or address of the legal
27 entity that is the employer.
28

1 56. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
2 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
3 required information. As such, DEFENDANTS violated Labor Code section 226.

4 57. **Unreimbursed Business Expenses.** Based on information and belief,
5 DEFENDANTS required PLAINTIFF and Class Members and Aggrieved Employees to incur
6 business expenses as a direct consequence of the performance of their job duties without providing
7 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
8 PLAINTIFF and Class Members and Aggrieved Employees were improperly required to provide
9 and maintain work tools that are supposed to be the responsibility of the employer.

10 58. Based on information and belief, DEFENDANTS shifted the costs of doing business
11 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
12 including but not limited to, the use of Class Members and Aggrieved Employees' personal mobile
13 phone and data usage for work related purposes to receive and respond to work related messages
14 and/or phone calls and the purchase and/or maintenance of uniforms/work clothing/protective/safety
15 gear. For example, PLAINTIFF was required to purchase and maintain her own pants and shirts of
16 a specific brand and/or color as mandated by DEFENDANTS yet was not reimbursed by
17 DEFENDANTS for the purchase and/or maintenance of these uniforms/work clothing and/or other
18 uniforms/work clothing/protective/safety gear (e.g., face masks and/or gloves) PLAINTIFF and
19 other Class Members and Aggrieved Employees were required to wear for work. PLAINTIFF was
20 also required to keep in contact with her supervisors throughout her shifts via text message using
21 her personal cell phone/mobile device. DEFENDANTS did not reimburse PLAINTIFF in any way
22 for this business use of her personal cell phone /mobile device.

23 59. Additionally, based on information and belief, Class Members and Aggrieved
24 Employees were not reimbursed/not reimbursed in full for the business use of their personal
25 vehicles, including mileage, wear, and tear, and/or cost of fuel when they were required to drive
26 DEFENDANTS' locations/facilities and/or use their personal vehicles for other work-related
27 purposes. Based on information and belief, DEFENDANTS failed to reimburse Class Members and
28 Aggrieved Employees for the business use of their personal vehicles at the legally mandated Internal

1 Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

2 60. Based on information and belief, DEFENDANTS regularly failed to reimburse and
3 indemnify Class Members and Aggrieved Employees for business expenses. Pursuant to California
4 Labor Code section 2802, PLAINTIFF and Class Members and Aggrieved Employees were entitled
5 to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders
6 and/or carrying out the duties assigned by DEFENDANTS.

7 61. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with
8 full reimbursement for all reasonable expenses associated with carrying out their duties required
9 that Class Members and Aggrieved Employees subsidize and/or carry the burden of business
10 expenses in violation of Labor Code section 2802.

11 62. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
12 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
13 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

14 **FIRST CAUSE OF ACTION**

15 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
16 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

17 63. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

18 64. It is fundamental that an employer must pay its employees for all time worked.
19 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
20 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only
21 permits deductions from wages when the employer is required or empowered to do so by state or
22 federal law or when the deduction is expressly authorized in writing by the employee for specified
23 purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223
24 prohibits the pay of less than a statutory or contractual wage scale.

25 65. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
26 Commission ("IWC") Wage Orders, an employer must pay its employees for all hours worked, up
27 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
28 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
period is unlawful.

1 66. DEFENDANTS violated California's minimum wage laws by failing to compensate
2 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
3 DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
4 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
5 and/or payment according to scheduled hours worked rather than actual hours worked (described
6 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
7 wages.

8 67. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
9 Class Members for all hours worked.

10 68. Based on information and belief, DEFENDANTS had actual or constructive
11 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
12 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
13 periods, policy and practice of payment according to scheduled work time rather than actual work
14 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
15 owed to PLAINTIFF and other Class Members.

16 69. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
17 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
18 attorney's fees and costs, in an amount to be proved at trial.

19 **SECOND CAUSE OF ACTION**

20 **Recovery of Unpaid Overtime Wages**
21 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

22 70. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

23 71. Employees in California must be paid overtime, equal to one and one-half times the
24 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
25 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
26 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
27 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
28 consecutive day of work in a workweek, unless they are exempt.

1 72. PLAINTIFF and the Class Members worked overtime hours for which they were not
2 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding,
3 automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods,
4 other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to
5 scheduled hours worked rather than actual hours worked (described above), which resulted in the
6 failure to account for all hours worked and thus the denial of all owed overtime wages.

7 73. Based on information and belief, DEFENDANTS failed to pay twice Class
8 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
9 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
10 violation of California's overtime laws.

11 74. Based on information and belief, DEFENDANTS further violated California's
12 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
13 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
14 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
15 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
16 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
17 other Class Members.

18 75. DEFENDANTS' conduct described above is in violation of California Labor Code
19 sections 510 and 1194 and all applicable Wage Orders.

20 76. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
21 wages, plus attorney's fees and costs, in an amount to be proved.

22 **THIRD CAUSE OF ACTION**

23 **Failure to Provide Meal Periods or Compensation in Lieu Thereof** 24 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

25 77. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

26 78. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
27 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
28 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be

1 waived, but only under the following circumstances: (1) if an employee's total work period in a day
2 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
3 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
4 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
5 waived by mutual consent of the employer and employee, but only if the first meal period was not
6 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
7 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
8 done so.

9 79. Employers must pay employees an additional hour of wages at the employees'
10 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
11 meal period, first meal period provided after five (5) hours, second meal period provided after 10
12 hours). Lab. Code § 226.7.

13 80. As explained above, PLAINTIFF and other Class Members were consistently unable
14 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
15 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
16 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
17 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
18 completely.

19 81. Based on information and belief, DEFENDANTS had and continue to have a policy
20 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
21 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class
22 Members did not receive compliant meal periods.

23 82. Moreover, based on information and belief, Class Members did not receive a timely,
24 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

25 83. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
26 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
27 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
28 violation of California's meal period laws.

1 84. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
2 periods in violation of California law and/or failed to pay the proper meal period premium for failure
3 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
4 differential pay and/or other non-discretionary compensation into the regular rate or compensation
5 for purposes of calculating the owed meal period premium.

6 85. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
7 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
8 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
9 all in an amount to be proved at trial.

10 **FOURTH CAUSE OF ACTION**
11 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
12 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

13 86. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

14 87. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
15 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
16 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
17 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012),
18 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
19 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
20 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. *Id.* at
21 1029. The rest period requirement obligates employers to permit and authorize employees to take
22 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
23 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, 5 Cal. 5th 257
(2016).

24 88. If the employer fails to provide any required rest period, the employer must pay the
25 employee one hour of pay at the employee's regular rate of compensation for each workday the
26 employer did not provide at least one legally required rest period, pursuant to Labor Code section
27 226.7.
28

1 89. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
2 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
3 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
4 DEFENDANTS' control due to the nature and constraints of Class Members' job duties,
5 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
6 skip rest periods completely or otherwise take non-compliant rest periods.

7 90. Based on information and belief, DEFENDANTS implemented policies and/or
8 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
9 control during rest periods. Based on further information and belief, Class Members were pressured
10 to complete their work duties according to a designated schedule such that rest periods were only
11 taken once tasks were completed, and/or as time permitted.

12 91. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
13 second, or third rest periods as required by California law.

14 92. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
15 period premium to PLAINTIFF and other Class Members for each workday in which there was a
16 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
17 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
18 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
19 regular rate of compensation for purposes of determining the owed rest period premium.

20 93. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
21 hour of additional pay at the regular rate of compensation for each workday that a required rest
22 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
23 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
24 trial.

25 **FIFTH CAUSE OF ACTION**

26 **Failure to Furnish Accurate Itemized Wage Statements**
27 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

28 94. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

 95. Pursuant to California Labor Code section 226, subdivision (a), PLAINTIFF and the

1 Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an
2 itemized wage statement accurately stating the following:

3 (1) gross wages earned, (2) total hours worked by the employee,
4 except for any employee whose compensation is solely based on a
5 salary and who is exempt from payment of overtime under
6 subdivision (a) of Section 515 or any applicable order of the Industrial
7 Welfare Commission, (3) the number of piece-rate units earned and
8 any applicable piece rate if the employee is paid on a piece-rate basis,
9 (4) all deductions, provided that all deductions made on written orders
10 of the employee may be aggregated and shown as one item, (5) net
11 wages earned, (6) the inclusive dates of the period for which the
12 employee is paid, (7) the name of the employee and his or her social
13 security number, except that by January 1, 2008, only the last four
14 digits of his or her social security number or an employee
15 identification number other than a social security number may be
16 shown on the itemized statement, (8) the name and address of the
17 legal entity that is the employer, and (9) all applicable hourly rates in
18 effect during the pay period and the corresponding number of hours
19 worked at each hourly rate by the employee.

20 96. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with
21 meal and rest periods that complied with Labor Code section 226.7, the wage statements
22 DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to
23 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
24 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
25 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
26 during the pay period and the corresponding number of hours worked at each hourly rate by the
27 employee, in violation of Labor Code section 226(a)(9).

28 97. Moreover, due to violations detailed above, including but not limited to,
DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
DEFENDANTS have violated California Labor Code section 226 by willfully failing to furnish
PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
and net wages earned and the correct applicable rates of pay for all hours worked. Based on
information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
compensation earned during the pay period into the regular rate of pay for purposes of calculating

1 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
2 overtime worked by PLAINTIFF and other Class Members.

3 98. As explained above, wage statements issued by DEFENDANTS failed to list the
4 “total hours worked” by PLAINTIFF and Class Members (by virtue of rounded time entries,
5 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer
6 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
7 hours worked, and/or other off-the-clock work policies and practices, all described in greater detail
8 above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked
9 on a wage statement gives rise to an inference of injury under Labor Code Section 226. *See*
10 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1337 (2018).

11 99. Based on information and belief, wage statements issued by DEFENDANTS failed
12 to list all applicable hourly rates in effect during the pay period and the corresponding number of
13 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
14 For example, as described herein, based on information and belief, DEFENDANTS failed to
15 incorporate all forms of non-discretionary compensation earned during the pay period into the
16 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
17 of overtime worked by Class Members.

18 100. Separately, and independent from the above allegations, DEFENDANTS issued
19 wage statements to PLAINTIFF and Class Members that violate Labor Code section 226(a)(8), by
20 failing to list the correct name and/or address of the legal entity that is the employer.

21 101. Based on information and belief, wage statements issued by DEFENDANTS failed
22 to list the inclusive dates of the pay period for which the Class Member is being paid.

23 102. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
24 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
25 Members over whether they received all wages owed to them.

26 103. As a result, PLAINTIFF and other Class Members have suffered injury as they could
27 not easily determine whether they received all wages owed to them and whether they were paid for
28 all hours worked.

1 104. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
2 address of the legal entity that is the employer, PLAINTIFF and Class Members have suffered injury
3 as they could not contact their employer regarding any question(s) they had about wages paid.

4 105. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
5 Class Members with accurate, itemized wage statements.

6 106. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
7 have suffered injury. The absence of accurate information on their wage statements has prevented
8 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
9 mathematical computations to determine the amount of wages owed, and will cause difficulty and
10 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
11 submission of inaccurate information about wages and amounts deducted from wages to state and
12 federal government agencies. As a result, PLAINTIFF and Class Members are required to
13 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
14 and pay records than if DEFENDANT had complied with its legal obligations.

15 107. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
16 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
17 violation occurred and one hundred dollars per employee per violation for each subsequent pay
18 period, not to exceed an aggregate penalty of four thousand dollars per employee.

19 108. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
20 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
21 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
22 provide currently employed Class Members with inaccurate wage statements in violation of
23 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
24 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
25 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
26 with California Labor Code § 226(a).

27 109. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
28 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable

1 attorneys' fees, and costs of suit.

2 **SIXTH CAUSE OF ACTION**
3 **Failure to Reimburse Business Expenses**
4 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

5 110. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

6 111. California law requires employers to indemnify their employees for all necessary
7 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
8 their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802 and all applicable Wage
9 Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary expenditure
10 or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees incurred
11 by the employee enforcing the rights granted by this section."

12 112. Among other things, under California law, when employees must use their personal
13 cellphones for work-related purposes, the employer must reimburse them for a reasonable
14 percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.*, 228 Cal. App.
15 4th 1137, 1140 (2014). To show liability, an employee will only need to show that they were
16 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
17 *Id.* at 1144-1145. California law also requires employers to reimburse employees for automobile
18 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
19 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554 (2007).

20 113. As described above, PLAINTIFF and the Class Members were improperly required
21 to pay for business expenses that are legally the responsibility of the employer.

22 114. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full
23 reimbursement for all reasonable expenses associated with carrying out their duties required that
24 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
25 violation of Labor Code section 2802.

26 115. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
27 Members have suffered injury in that they were not completely reimbursed as mandated by
28 California law.

1 116. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
2 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
3 attorneys' fees, and costs of suit.

4 **SEVENTH CAUSE OF ACTION**

5 **Unfair Competition**

6 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

7 117. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

8 118. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
9 within the meaning of California Business and Professions Code section 17200, *et seq.* This unfair
10 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
11 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
12 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
13 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
14 wage statements; DEFENDANTS' failure to reimburse business expenses; and DEFENDANTS'
15 failure to provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due
16 to, including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary
17 compensation into the sick pay calculation and failure to base the accrued sick leave on the correct
18 number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and
19 practices, payment according to scheduled hours worked and/or other off-the-clock work policies
20 and practices).

21 119. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
22 California Labor Code, DEFENDANTS have gained a competitive advantage over other
23 comparable companies doing business in the State of California that comply with their obligations
24 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
25 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
26 itemized wage statements, to reimburse employees for all business expenses, and to pay all owed
27 minimum and overtime wages to their employees.

28 120. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
and Class Members have suffered injury in fact and lost money or property, as described in more

1 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
2 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
3 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
4 unlawful and unfair business practices.

5 121. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
6 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
7 engaging in each of the unlawful practices and policies set forth herein.

8 122. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
9 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
10 by law.

11 **EIGHTH CAUSE OF ACTION**

12 **Violation of the Private Attorneys General Act of 2004**

13 **(By PLAINTIFF and the Aggrieved Employees Against All DEFENDANTS)**

14 123. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

15 124. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
16 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of PLAINTIFF,
17 the State of California and Aggrieved Employees, regarding violations of the California Labor Code
as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

18 All current and former non-exempt employees who worked either
19 directly or via a staffing agency for any one or more of the
20 DEFENDANTS at any location in California at any time from one
21 year plus 65 days from the filing of the initial Complaint through the
22 present ("PAGA Period").

23 125. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
24 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
25 limitations period and suffered one or more of the Labor Code violations set forth herein.
26 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved
27 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
28 PLAINTIFF has standing to bring a PAGA cause of action on behalf of PLAINTIFF, the State of

1 California, and all Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS
2 and is thereby affected by one or more of the alleged violations. *See Huff v. Securitas Security*
3 *Services USA, Inc.*, 23 Cal. App. 5th 745, 757 (2018). A PAGA plaintiff has authority to seek
4 penalties for all known violations committed by the employer - regardless of whether Plaintiff
5 experienced all violations personally. *Id.* at 760-761.

6 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

7 126. On March 24, 2023, PLAINTIFF, through counsel, gave written notice by online
8 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
9 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
10 in this Complaint ("PAGA Notice").

11 127. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
12 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
13 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
14 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
15 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS
16 has duly accrued.

17 128. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
18 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal.
19 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

20 129. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
21 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
22 Labor Code sections 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1,
23 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage
24 Orders.

25 130. As set forth above, DEFENDANTS have committed numerous violations of the
26 California Labor Code due to including but not limited to their failure to pay all owed minimum
27 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation
28 in lieu thereof, failure to provide accurate wage statements, and failure to reimburse business

1 expenses as alleged above. PAGA penalties are in addition to any other relief available under the
2 Labor Code.

3 131. Additionally, DEFENDANTS have violated the following Labor Code sections and
4 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

5 **Failure to Keep Accurate Records**

6 132. California Labor Code § 1174 requires employers to keep “accurate and complete”
7 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
8 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
9 times during which all owed meal periods were provided each day.

10 133. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
11 and complete records as required by law, including but not limited to the following records: total
12 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
13 Aggrieved Employees began and ended each work period, time records of meal periods, and
14 accurate itemized wage statements.

15 134. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
16 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
17 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
18 Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
19 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
20 period during which the referenced statutes and Wage Order provisions were violated.²

21 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

22 135. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
23 Orders, section 7 require that employers keep the following information on file for each employee
24 for a minimum of three years: The employee’s dates of employment; the employee’s hourly rates

25 ² Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
26 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
27 employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid”) (emphasis added).

1 and the corresponding number of hours worked by the employee at each hourly rate, when the
2 employee begins and ends each work period (including meal periods) and split intervals; total hours
3 worked by the employee; all deductions; gross wages earned; and net wages earned.

4 136. Section (b) of Labor Code section 226 further requires employers to “afford current
5 and former employees the right to inspect or receive a copy of records pertaining to their
6 employment upon reasonable request to the employer.” Section (c) of Labor Code section 226
7 provides that, “an employer who receives a written or oral request to inspect or receive a copy of
8 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
9 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
10 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
11 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
12 the employer. Lab. Code section 226(f).

13 137. Personnel Records. In addition to their right to time and pay records, employees, and
14 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
15 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
16 section 432 further specifies that employers must furnish copies of all employment records bearing
17 the employee’s signature. Labor Code section 1198.5 also requires that the file be made available
18 for inspection or receipt within a “reasonable” amount of time, but “not later than 30 calendar days
19 from the date the employer receives a written request.” An employer’s failure to comply within this
20 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
21 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

22 138. Based on information and belief, DEFENDANTS fail to timely produce or make
23 available Aggrieved Employees’ personnel records and/or payroll records when requested pursuant
24 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example,
25 PLAINTIFF, through counsel, sent written request(s) for payroll and personnel records to
26 DEFENDANTS. Yet, DEFENDANTS failed to timely produce complete records within the time
27 periods delineated by California labor law. For example, DEFENDANTS failed to timely produce
28 complete records, including but not limited to, wage statements. These violations subject

1 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

2 **Untimely Payment of Final Wages**

3 139. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
4 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
5 payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an
6 employee not having a written contract for a definite period quits his or her employment, his or her
7 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
8 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
9 to his or her wages at the time of quitting.”

10 140. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
11 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
12 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
13 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
14 section 256. *See Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014); *see also*,
15 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

16 141. Based in information and belief, DEFENDANTS failed and continue to fail to timely
17 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
18 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF
19 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not
20 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
21 sick leave and/or paid time off wages at the properly accrued rates.

22 142. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
23 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
24 256.

25 **Statutory Wage Violations**

26 143. California Labor Code section 223 makes it unlawful for an employer to secretly pay
27 wages lower than required by statute while purporting to pay legal wages. As described above,
28 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all

1 earned minimum and overtime compensation for all hours worked which resulted in the payment of
2 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
3 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
4 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
5 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
6 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
7 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
8 Labor Code section 2699(f)-(g).

9 **Refusal to Make Payment**

10 144. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
11 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
12 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
13 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
14 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
15 *Inc.*, 31 Cal. App. 4th 1137, 1154-1155 (1995). These violations subject DEFENDANTS to civil
16 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
17 each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

18 **Standard Conditions of Labor Violations**

19 145. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
20 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
21 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
22 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
23 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
24 minimum/overtime wages and other violations described herein result in separate violations of
25 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections

26 _____
27 ³ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 1197.1 and 2699.

2 **Failure to Provide Suitable Resting Facilities**

3 146. Per section 13 of all applicable IWC Wage Orders, including but not limited to Wage
4 Order 4, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage
5 Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet
6 rooms and shall be available to employees during work hours."

7 147. DEFENDANTS' locations/facilities are generally similar in layout and design, and
8 there was, and continues to be, space that allows for a resting facility that employees may use to
9 cease work and recover during meal or rest periods. DEFENDANTS could have provided
10 PLAINTIFF and Aggrieved Employees with a resting facility within DEFENDANTS'
11 facilities/locations with reasonable or no modification, but instead denied and continues to deny,
12 employees with suitable areas to rest (e.g. a breakroom). As a result, PLAINTIFF and other
13 Aggrieved Employees were forced to adjust to areas not conducive to resting, including but not
14 limited to leaning up against the wall, or search for facilities outside of DEFENDANTS' premises
15 which are not designated or reserved for their rest, such as their personal vehicles.

16 148. DEFENDANTS did not provide PLAINTIFF and Aggrieved Employees with
17 suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

18 149. DEFENDANTS' failure to provide suitable resting facilities to PLAINTIFF and
19 Aggrieved Employees violated and continue to violate the applicable Wage Order, section 13(B)
20 and the California Labor Code, including but not limited to section 1198.

21 **Seating Violations**

22 150. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be
23 provided with suitable seats when the nature of the work reasonably permits the use of seats and
24 when they are not actively engaged in the work duties that would not permit them to be seated.

25 151. All applicable IWC Wage Orders, Section 14(A-B) provides:

26 (A) All working employees shall be provided with suitable seats when the nature of the
27 work reasonably permits the use of seats.
28

1 (B) When employees are not engaged in the active duties of their employment and the
2 nature of the work requires standing, an adequate number of suitable seats shall be placed in
3 reasonable proximity to the work area and employees shall be permitted to use such seats when it
4 does not interfere with the performance of their duties.

5 152. Suitable seating is one of the worker protections covered by California's Wage
6 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
7 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
8 *Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1027 (2012).

9 153. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF and
10 other Aggrieved Employees with suitable seating, and when such employees were not engaged in
11 duties which required them to stand, no seating was placed in reasonable proximity to their
12 workstations.

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

18 155. The Aggrieved Employees worked in various positions including but not limited to,
19 as cooks, restaurant workers, maintenance workers, maintenance technicians and/or other job title(s)
20 and/or position(s). The nature of Aggrieved Employees' work reasonably permitted the use of seats.
21 However, DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved
22 Employees' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor
23 Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code
24 sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision,
25 for each Aggrieved Employee, results in a separate civil penalty.

26 **Violation of Labor Code section 351 and 353**

27 156. Labor Code Section 351 prohibits employers and their agents from sharing in or
28 keeping any portion of a gratuity left for or given to one or more employees by a patron.

1 Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using
2 gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353
3 mandates employers to keep accurate records of all gratuities received.

4 157. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
5 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
6 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
7 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
8 accurate records of all tips received, in violation of Labor Code Section 353.

9 158. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period
10 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353
11 they experienced within the statutory period, and \$200 per pay period for each additional violation.

12 **Sick Leave Violations**

13 159. DEFENDANTS violated California's paid sick leave laws including, Labor Code
14 sections 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
15 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
16 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
17 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
18 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
19 compensation into the sick leave pay rate calculation.

20 160. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
21 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
22 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
23 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
24 Aggrieved Employees' intelligent exercise of their paid sick leave.

25 161. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
26 their paid sick leave at least prior to their respective separations, for as on several occasions
27 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
28 compensation.

1 162. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
2 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
3 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
4 were entitled to the maximum number of hours accruable.

5 163. Upon information and belief, DEFENDANTS failed and continue to fail to comply
6 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
7 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
8 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
9 wages.

10 164. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

11 165. On information and belief, PLAINTIFF alleges that all of these practices were
12 experienced and continue to be experienced by other Aggrieved Employees.

13 166. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
14 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
15 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

16 **Failure To Provide Supplemental Paid Sick Leave**

17 167. Labor Code section 248.2 provides that all employers with 26 or more employees are
18 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
19 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
20 DEFENDANTS violated Labor Code section 248.2 by not providing PLAINTIFF and other
21 Aggrieved Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on
22 information and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in
23 violation of Labor Code section 248.6.

24 **Failure to Pay Vested Vacation/Paid Time Off**

25 168. California Labor Code section 227.3 provides that when an employer policy provides
26 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
27 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
28 employee's final rate in accordance with such contract of employment or employer policy respecting

1 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
2 off upon termination.

3 169. Based on information and belief, DEFENDANTS had and continue to have a
4 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
5 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
6 to Aggrieved Employees upon separation of employment, in violation of California law, including
7 but not limited to, Labor Code section 227.3.

8 **Unlawful Deductions**

9 170. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from
10 an employee any part of wages theretofore paid by said employer to said employee.” Based on
11 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
12 paychecks during the relevant period including but not limited to deducting costs of uniforms and/or
13 other business costs and/or deducting wages for purported overpayments from previous pay periods
14 and/or unlawfully deducting wages for negligently damaged property and/or deducting costs
15 advanced by DEFENDANTS from Aggrieved Employees’ final paychecks. Such a practice is in
16 violation of including but not limited to, Labor Code Sections 221-222 which subjects
17 DEFENDANTS to civil penalties under Labor Code Section 2699.

18 171. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
19 each pay period during which the statute provisions were violated. See Lab. Code §225.5
20 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
21 provided in this article, every person who unlawfully withholds wages due any employee in
22 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
23 to pay each employee”).

24 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

25 172. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
26 require any employee or applicant for employment to agree, in writing, to any term or condition
27 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
28 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful

1 conditions of employment including but not limited to unlawful criminal and/or financial checks as
2 a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

3 173. The California Labor Code places certain procedural and substantive limits on an
4 employers' ability to conduct employee background checks and on how employers can use the
5 information they obtain through those background checks. Labor Code section 1024.5 states that
6 employers, except for financial institutions, may order a credit check only if the individual works
7 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
8 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
9 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
10 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
11 background check, including but not limited to identifying an appropriate reason for the background
12 check, a separate consent form with required disclosures and certain formatting requirements,
13 additional forms such as a summary of rights, a way by which to request a copy of the report, as
14 well as proper notice of adverse actions taken, among other statutory requirements.

15 174. Based on information and belief, DEFENDANTS ordered unlawful financial credit
16 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
17 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
18 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

19 175. Based on information and belief, DEFENDANTS required Aggrieved Employees to
20 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
21 obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

22 176. Based on further information and belief, DEFENDANTS required Aggrieved
23 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
24 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
25 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
26 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

27 177. Based on further information and belief, DEFENDANTS knew that requiring
28 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a

1 condition of obtaining and/or holding employment was unlawful.

2 178. By requiring that Aggrieved Employees sign off on the illegal background and/or
3 financial checks, DEFENDANTS violated Labor Code section 432.5.

4 Unlawful Inquires into Criminal History

5 179. Labor Code section 432.7 prohibits an employer from asking applicants about past
6 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
7 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
8 convictions on its employment application, in violation of California law.

9 180. Upon information and belief, DEFENDANTS, in violation of California law,
10 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
11 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
12 employment and/or otherwise impermissibly inquired into criminal history on its employment
13 application in violation of California law.

14 181. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
15 Code section 432.7. By asking about convictions at the application phase or prior to extending an
16 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
17 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
18 disclose arrests and/or convictions as a condition of employment.

19 182. Under the provisions of PAGA and the above mentioned Labor Code sections,
20 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
21 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
22 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
23 interpretations of these laws by California Courts and administrative bodies, as well as any other
24 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 25 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
26 relevant California Labor Code provisions listed herein only if permitted by the
27 PAGA statute, pursuant to Labor Code section 2699(a); and
28 b. Default PAGA penalties for any violation of the enumerated list of Labor Code

violations without a civil penalty recoverable under the PAGA, all in the default amounts provided by Labor Code section 2699(f).

c. The proper measure of penalties under PAGA is the number of violations, whether those violations were committed as against PLAINTIFF or any Aggrieved Employee, whether a party to this action or not.

183. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and Class Members and Aggrieved Employees as follows:

1. For an order that the action be certified as a class action;
2. For an order that PLAINTIFF be appointed as class representative;
3. For an order that counsel for PLAINTIFF be appointed as class counsel;
4. For compensatory damages according to proof;
5. For liquidated damages according to proof;
6. For penalties according to proof;
7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully withheld from PLAINTIFF and the Class Members;
8. For an order finding DEFENDANTS have engaged in unfair competition in violation of section 17200, *et seq.*, of the California Business and Professions Code;
9. For an order enjoining DEFENDANTS from further acts of unfair competition;
10. For pre-judgment interest as permitted by law;
11. For attorney's fees and costs reasonably incurred;
12. For an order finding DEFENDANTS have engaged in unfair competition in violation of section 17200, *et seq.*, of the California Business and Professions Code;

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1 13. For such other and further relief that the Court deems just and proper.

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3 Dated: July 19, 2023

CROSNER LEGAL, PC

4
5 By: 
6 Zachary M. Crosner, Esq.
7 Jamie Serb, Esq.
8 Chad Saunders, Esq.
9 Attorneys for Plaintiff
10 JULIE PEÑA

11 **DEMAND FOR JURY TRIAL**

12 PLAINTIFF demands a trial by jury on all claims so triable.

13 Dated: July 19, 2023

CROSNER LEGAL, PC

14
15 By: 
16 Zachary M. Crosner, Esq.
17 Jamie Serb, Esq.
18 Chad Saunders, Esq.
19 Attorneys for Plaintiff
20 JULIE PEÑA
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PROOF OF SERVICE
JULIE PENA V. PALMDALE LODGING ASSOCIATES LLC et al.
Los Angeles County Superior Court Case No. 23STCV06479

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 9440 Santa Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

On July 19, 2023, I served true copies of the following document(s) described as follows:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ ONLY BY ELECTRONIC TRANSMISSION. Pursuant to the Court's Order re Electronic Service, I caused the documents described above to be E-Served through Case Anywhere by electronically mailing a true and correct copy through Case Anywhere to the addressee(s) listed

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 19, 2023, at Los Angeles, California.



Jessica Ball

SERVICE LIST

JULIE PENA V. PALMDALE LODGING ASSOCIATES LLC et al.
Los Angeles County Superior Court Case No. 23STCV06479

Lonnie D. Giamela, Esq.
Areen Babajanian, Esq.

Attorney for **DEFENDANTS'**

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