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6 JEREMIAH ROJAS and
7 DANIEL MAAKESTAD,
And Aggrieved Employees

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/30/2023 at 12:35:00 PM

Clerk of the Superior Court
By Katie Winburn, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

11 JEREMIAH ROJAS, an Individual;
12 DANIEL MAAKESTAD, and Individual,
13 on behalf of themselves and all other
14 aggrieved employees of Defendants in the
State of California

15 Plaintiffs,

16 vs.

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18 CALIFORNIA DREAMS HOSTEL, LLC;
19 PEDRO HADDAD MOREIRA, an
Individual; ALEJANDRO JAIME
20 MARINO, an Individual; PLINIO
DASILVA FRANCA, an Individual; and
21 DOES 1-10, Inclusive,

22 Defendants.
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Case No. 37-2023-00010705-CU-OE-CTL

UNLIMITED CIVIL CASE

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay Earned Wages (Cal. Lab. Code § 204);
2. Failure to Pay Minimum Wages (Cal. Labor Code §§ 1182.12, 1194, 1197, 1198; IWC Wage Order No. 5-2001);
3. Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001);
4. Failure to Pay Meal Period Compensation (Cal. Lab. Code §§ 226.7, 512, 1198; IWC Wage Order No. 5-2001);
5. Failure to Pay Rest Period Compensation (Cal. Lab. Code §§ 226.7, 1198; IWC Wage Order No. 5-2001);
6. Failure to Furnish Accurate Wage and Hour Statements (Cal. Lab. Code § 226);
7. Illegal Offset Against Wages (Cal. Lab. Code §§ 221, 224; IWC Wage Order No. 5-2001);

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8. **Failure to Indemnify for All Necessary Expenditures (Cal. Lab. Code § 2802; IWC Wage Order No. 5-2001);**
 9. **Waiting Time Penalties (Cal. Lab. Code §§ 201, 203);**
 10. **Wrongful Termination in Violation of Public Policy;**
 11. **Unlawful Retaliation and Discrimination; and**
 12. **Civil Penalties for Violations of the Labor Code (Cal. Lab. Code, § 2698, et seq.).**

Demand for Jury Trial

Plaintiffs JEREMIAH ROJAS (“ROJAS”) and DANIEL MAAKESTAD (“MAAKESTAD”) (collectively, “Plaintiffs”), allege as against defendants CALIFORNIA DREAMS HOSTEL, LLC (“CDH” or the “Company”), PEDRO HADDAD MOREIRA (“MOREIRA”), ALEJANDRO JAIME MARINO (“MARINO”), PLINIO DASILVA FRANCA (“FRANCA”), and DOES 1-10, the following:

Nature of the Action

1. This is an individual action by ROJAS and MAAKESTAD for for wrongful and retaliatory discharge in violation of public policy and individual wage and hour violations, to recover unpaid wages and related penalties and compensation owed to them by Defendants. This is also a representative action under California’s Private Attorneys General Act of 2004 (the “PAGA”).

2. The class of aggrieved workers under the PAGA is composed of all individuals who work for or have worked for Defendants on a non-salary basis, as well as those whom Defendants have otherwise subjected to Labor Code violations, including unpaid regular and minimum wages; unpaid overtime; noncompliant meal and rest periods; wage statements that were inaccurate, untimely, and/or not provided at all; illegal offsets against wages; unreimbursed necessary, work-related expenses; final pay violations; and the like (the “PAGA

1 Aggrieved Employees”) in the State of California from March 16, 2022 to the final judgment
2 (the “PAGA Period”).

3 **Jurisdiction and Venue**

4 3. Pursuant to Article VI, § 10 of the California Constitution, subject matter
5 jurisdiction is proper in the Superior Court of California, County of San Diego, State of
6 California.

7 4. Venue is proper in this Court because Defendants are headquartered in, and did
8 substantial business in San Diego County, California, and employed Plaintiff in San Diego
9 County, California at all relevant times.

10 **The Parties**

11 5. Plaintiff ROJAS is, and at all relevant times was, a competent adult residing in
12 San Diego County, California.

13 6. Plaintiff MAAKESTAD is, and at all relevant times was, a competent adult
14 residing in San Diego County, California.

15 7. Defendant CALIFORNIA DREAMS HOSTEL, LLC is, and at all relevant
16 times was, a California limited liability company with its principal place of business in San
17 Diego County, California.

18 8. On information and belief, Defendant MOREIRA is, and at all relevant times
19 was, a competent adult residing in San Diego County, California.

20 9. On information and belief, Defendant MARINO is, and at all relevant times
21 was, a competent adult residing in San Diego County, California.

22 10. On information and belief, Defendant FRANCA is, and at all relevant times
23 was, a competent adult residing in San Diego County, California.

24 11. On information and belief, each of MOREIRA, MARINO, and FRANCA, at
25 all relevant times, was a director, officer, and/or managing agent of Defendant CALIFORNIA
26 DREAMS HOSTEL, LLC within the meaning of California Labor Code section 558.1 and
27 California Civil Code section 3294. On information and belief, MOREIRA, MARINO, and
28 FRANCA, at all relevant times, exercised substantial discretion in their decision-making such

1 that their decisions ultimately determined policy of the Company. On information and belief,
2 MOREIRA, MARINO, and FRANCO conceived of and implemented the unlawful
3 compensation scheme to which ROJAS and, on information and belief, other employees were
4 subjected during the relevant liability period, as described in this Complaint. In addition,
5 MOREIRA, MARINO, and FRANCO are sued individually pursuant to Labor Code
6 sections 558, 1197.1, and 2698 *et seq.* (the PAGA) as an employer or person acting on behalf
7 of an employer, who violated or causes to be violated, a section of Part 2, Chapter 1 of the
8 California Labor Code or any provision regulating hours and days of work in any order of
9 the Industrial Welfare Commission, and as an employer or other person acting either
10 individually or as an officer, agent, or employee of another person, who pays or causes to be
11 paid to any employee a wage less than the minimum fixed by an applicable state or local
12 law, or by an order of the Industrial Welfare Commission.

13 12. At all relevant times, every defendant was the agent, representative, employee,
14 servant, or affiliated entity of every other defendant and, in doing the acts herein alleged, each
15 defendant is liable and responsible to Plaintiffs for the acts of every other defendant.

16 13. Plaintiffs are ignorant of the true names and capacities of defendants sued herein
17 as DOES 1 through 10, inclusive, and therefore sue said defendants by such fictitious names.
18 Plaintiffs will amend this Complaint to allege the true names and capacities of such fictitiously
19 named defendants when they are ascertained.

20 21 **General Allegations**

22 14. Defendants: (1) failed to pay Plaintiffs and the PAGA Aggrieved Employees the
23 required minimum wage; (2) failed to pay Plaintiffs and the PAGA Aggrieved Employees the
24 required overtime compensation; (3) employed Plaintiffs and the PAGA Aggrieved Employees
25 for more than five hours without timely, uninterrupted meal periods of not less than 30 minutes
26 and failed to compensate Plaintiffs and the PAGA Aggrieved Employees for the missed meal
27 periods; (4) employed Plaintiffs and the PAGA Aggrieved Employees for work periods of four
28 hours or major fraction thereof without rest periods of ten minutes net rest time and failed to

1 compensate Plaintiffs and the PAGA Aggrieved Employees rest period compensation for the
2 missed rest periods; (5) failed to provide Plaintiffs and the PAGA Aggrieved Employees with
3 timely and accurate wage and hour statements; (6) took illegal deductions from the wages of
4 Plaintiffs and the PAGA Aggrieved Employees; (7) failed to indemnify Plaintiffs and the
5 PAGA Aggrieved Employees for all necessary expenditures he incurred in connection with his
6 employment therewith; (8) failed to pay Plaintiff ROJAS and the PAGA Aggrieved Employees
7 their earned wages in a timely manner upon separation; and (9) discharged ROJAS wrongfully
8 and in retaliation for ROJAS's hiring of an attorney to negotiate the terms and conditions of
9 his employment and/or for protesting in good faith suspected unlawful compensation
10 practices. The foregoing acts and other acts by the Defendant violated provisions of the Labor
11 Code, including §§ 201, 202, 203, 204, 221, 224, 226, 226.7, 226.8, 510, 512, 1182.12, 1174,
12 1194, 1194.2, 1197, 1198, and 2802; violated the applicable Wage Orders issued by the IWC
13 of the State of California (the "Wage Order(s)"), and violated the rights of Plaintiffs and the
14 PAGA Aggrieved Employees.

15 **Specific Allegations**

16 15. On information and belief, the Company operates two standalone coastal hostels
17 in the Pacific Beach and Ocean Beach neighborhoods of San Diego, California. The Ocean
18 Beach hostel is located at 3790 Udall Street and Pacific Beach hostel is located at 743 Emerald
19 Street. The hostels featured multiple dorm-like living quarters with up to 10 beds per unit, and
20 a few private units. One dorm unit was dedicated to staff who traded their labor for lodging.
21 The remaining hostel units, dorm and private, were rented to patrons. In addition, the
22 Company operated and rented out an adjacent duplex designed for single and family use
23 occupancy.

24 16. To staff its hostels, the Company solicited Plaintiffs and other aggrieved
25 employees by offering them a place to stay in exchange for their working and operating the
26 premises on behalf of the Company. The Company deemed Plaintiffs and other similarly
27 aggrieved who agreed to this arrangement as "volunteers." No hourly compensation was
28 promised or paid to Plaintiffs and, on information and belief, the aggrieved employees, while

1 they fulfilled the purported volunteer role. On information and belief, the Company employed
2 15-plus volunteers throughout the relevant liability periods, roughly 7 or 8 per location.

3 17. ROJAS began employment with the Company in or around October 2021. He
4 hired on as a volunteer and worked continuously in that role, on a full-time basis, until in or
5 around March 2022. At that point, the Company elevated him to a “manager/supervisor” role.
6 ROJAS worked continuously in that role, on a full-time basis, for the remainder of his
7 employment with the Company. Having enlisted in the National Guard, ROJAS deployed for
8 related training for a period of five consecutive months, from in or around August 2022 through
9 on or about January 19, 2023. ROJAS returned to the Company to resume his supervisor role
10 immediately after his training deployment concluded. He had grown weary of the Company’s
11 failure to pay compensation for work performed and protested the same after looking into the
12 matter. Shortly after he voiced his concerns to Company leadership about what he perceived
13 to be unlawful compensation practices and the COMPANY learned that he has retained
14 counsel regarding his employment rights, ROJAS was promptly evicted from his unit and
15 terminated from employment.

16 18. MAAKESTAD began employment with the Company as a purported volunteer
17 on or about March 29, 2022. He has worked continuously in that role to the present.

18 19. During his employment, ROJAS reported to all three individual defendants, but
19 primarily to MOREIRA. MAAKESTAD reported to ROJAS and Renee Contreras.

20 20. Throughout his employment, Plaintiffs typically performed routine innkeeper
21 duties, including bookings, check in and check out of guests, guest relations, housekeeping,
22 general upkeep and maintenance, and operation of the retail shop which featured rentals of
23 bikes, surfboards, wetsuits, aquatic equipment, and the like.

24 21. The Company did not pay Plaintiffs any compensation while they worked as
25 purported volunteers; it was strictly an exchange of services for lodging. After ROJAS gained
26 promotion to supervisor in or around March 2022, the Company began to pay him \$400 every
27 two weeks; payment was in the form of cash (either actual or via cash app) or check. The
28 Company maintained just two supervisory employees, one of whom was ROJAS.

1 22. In terms of schedule, each purported volunteer was scheduled for at least 27
2 hours per week but often worked upwards of 40 or more. Operating hours at each location were
3 8 a.m. to 1 a.m. Typically, the purported volunteers worked in shifts. The opening shift was
4 between 8 a.m. and 1:30 p.m. The mid shift was between 1:30 to 7:30 p.m., and the night shift
5 was between 7:30 p.m. and 1 a.m. The Company's busier days of the week were Thursdays
6 through Saturdays. Despite the scheduled shifts, the Company expected each purported
7 volunteer to monitor the premises throughout the day and timely attend to guest and
8 operational issues as they arose. For example, even if a purported volunteer was off premises
9 on a personal errand, the purported volunteer sometimes received a call or text message to
10 return to the hostel to address an issue. As a further example, hostel patrons would often knock
11 on the door of the staff dorm unit requesting accommodations of some kind. Plaintiffs generally
12 worked anywhere between 30 to 40-plus hours per week during any given workweek. Plaintiffs,
13 and particularly ROJAS, estimate that they were free to engage in personal endeavors during
14 a very small fraction of the workday.

15 23. In terms of rest breaks, because the Company did not generally compensate
16 Plaintiffs and its purported volunteers, it failed to provide them with *paid* rest breaks of 10
17 uninterrupted minutes for every 4 hours or major fraction thereof worked. In terms of meal
18 breaks, the Company never promulgated any employment policies authorizing or permitting
19 the same; on information and belief, this is because the Company did not deem its purported
20 volunteers as employees. Furthermore, Plaintiffs and the purported volunteers did not have
21 reasonable opportunities to take duty-free meal periods of 30 consecutive minutes for every
22 five-plus hours worked. Rather, Plaintiffs and the purported volunteers were required to remain
23 vigilant and attentive to guest and operational issues in a contemporaneous manner throughout
24 the workday, between hours of operation (i.e., 8 a.m. to 1 a.m). The Company never paid
25 Plaintiffs and the aggrieved employees break premium wages for these missed breaks.

26 24. Throughout the relevant liability periods, Plaintiffs and their aggrieved peers
27 were required to use personal devices, such as mobile phones, to communicate with Company
28 leadership and amongst themselves regarding guest and operational issues throughout the

workday. In addition, Plaintiff ROJAS, having oversight at both the Ocean Beach and Pacific Beach locations, was required to use his personal vehicle to travel back and forth between locations. ROJAS estimates that he incurred about 50 miles per week on behalf of the Company. Notwithstanding, the Company never reimbursed Plaintiffs and their aggrieved peers for use of their personal devices and vehicles for necessary, work-related tasks.

25. Throughout the relevant liability periods, the Company never issued to Plaintiffs, and on information and belief their aggrieved peers, any wage statements reflecting compensation paid.

26. In terms of lodging credits taken by the Company against wage compensation that should have been paid to Plaintiffs and their aggrieved peers, meals or lodging may *not* be credited against the minimum wage without a voluntary written agreement between the employer and employee under California law. Plaintiffs did not have any such written agreement with Defendants regarding lodging offsets; on information and belief, nor did Plaintiffs' aggrieved peers.

EFFECTIVE:	JANUARY 1, 2020		JANUARY 1, 2021		JANUARY 1, 2022		JANUARY 1, 2023
For an employer who employs:	26 or More Employees	25 or Fewer Employees	26 or More Employees	25 or Fewer Employees	26 or More Employees	25 or Fewer Employees	All Employers regardless of number of Employees
LODGING							
Room occupied alone	\$61.13 /week	\$56.43 /week	\$65.83 /week	\$61.13 /week	\$70.53 /week	\$65.83 /week	\$72.88 /week
Room shared	\$50.46 /week	\$46.58 /week	\$54.34 /week	\$50.46 /week	\$58.22 /week	\$54.34 /week	\$60.16 /week
Apartment — two thirds (2/3) of the ordinary rental value, and in no event more than:	\$734.21 /month	\$677.75 /month	\$790.67 /month	\$734.21 /month	\$847.12 /month	\$790.67 /month	\$875.33 /month
Where a couple are both employed by the employer, two thirds (2/3) of the ordinary rental value, and in no event more than:	\$1086.07 /month	\$1002.56 /month	\$1169.59 /month	\$1086.07 /month	\$1253.10 /month	\$1169.59 /month	\$1294.83 /month
MEALS							
Breakfast	\$4.70	\$4.34	\$5.06	\$4.70	\$5.42	\$5.06	\$5.60
Lunch	\$6.47	\$5.97	\$6.97	\$6.47	\$7.47	\$6.97	\$7.72
Dinner	\$8.68	\$8.01	\$9.35	\$8.68	\$10.02	\$9.35	\$10.35

27. Based on the governing IWC Wage Order chart depicted above, the Company was permitted to offset no more than between \$50.46 and \$60.16 *per week* for its purported volunteers who lived in a 10-bed dorm, depending on the calendar year. Throughout the statutory period, the hours worked by Plaintiffs and their aggrieved peers during a typical workweek entitled them to compensation well beyond the lodging offset listed in the IWC

1 Wage Order. As such, Plaintiffs and their aggrieved peers were not even paid the minimum
2 wage for virtually all their hours worked throughout the relevant liability periods.

3 28. Plaintiff ROJAS is still owed wages that should have been paid to him on
4 separation, in violation of California's final pay laws. On information and belief, the Company
5 failed to pay other aggrieved employees all their wages due upon separation, in violation of
6 California's final pay laws.

7 Exhaustion of Administrative Remedies

8 29. On or about March 16, 2023, Plaintiffs notified the California Labor & Workforce
9 Development Agency (the "LWDA") of the Labor Code violations to which he and his aggrieved
10 peers were subjected, and on information and belief, continue to be subjected. Thereafter, they
11 timely served this PAGA notice on Defendants by certified mail, in compliance with the PAGA
12 statute.

13 **First Cause of Action**

14 **For Failure to Pay Earned Wages**

15 **(California Labor Code § 204)**

16 **By Plaintiffs Against All Defendants**

17 30. Plaintiffs hereby incorporate the preceding paragraphs.

18 31. Defendants failed to pay Plaintiffs the wages that they earned, as required by the
19 Code and the applicable Wage Order.

20 32. Plaintiffs have been deprived of their rightfully earned wages as a direct and
21 proximate result of Defendants' failure to pay said compensation. Plaintiffs are entitled to
22 recover such amounts, plus interest thereon, attorney's fees and costs.

23 **Second Cause of Action**

24 **For Failure to Pay Minimum Wages**

25 **(California Labor Code §§ 1182.12, 1194 *et seq.*, 1197, 1198; IWC Wage Order No. 5-2001)**

26 **By Plaintiffs Against All Defendants**

27 33. Plaintiffs hereby incorporate the preceding paragraphs.

28 ///

34. Plaintiffs are entitled to minimum wage as provided under the Code and the Wage Orders.

35. The Labor Code and Wage Order 5-2001, which governs the public housekeeping industry, provide that a smaller employer must pay a minimum wage to an employee, which is \$12.00 per hour for 2020, \$13.00 per hour for 2021, \$14.00 per hour for 2022, and \$15.50 per hour for 2023. Section 4(A)(1).

36. Defendants required Plaintiffs to work without compensation for all hours worked every week, in violation of California's minimum wage laws, among other provisions of the Labor Code.

37. As a result, Defendants failed to pay Plaintiffs minimum wage for their work, as required by the Code and the Wage Orders.

38. Defendants thus required Plaintiffs to work under conditions prohibited by order of the IWC, in violation of those orders.

39. Defendants deprived Plaintiffs of their rightfully earned minimum wage compensation, as a direct and proximate result of Defendant's failure to pay said compensation. Under Labor Code § 1194, Plaintiffs are entitled to recover such amounts, plus interest thereon, reasonable attorney's fees, and costs.

40. In addition, under Labor Code § 1194.2, Plaintiffs are entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and interest thereon.

Third Cause of Action

For Failure to Pay Overtime Compensation

(California Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001)

By Plaintiffs Against All Defendants

41. Plaintiffs hereby incorporate the preceding paragraphs.

42. The Code and the Wage Order provide that a workday consists of eight hours, a workweek consists of 40 hours, and an employer must compensate an employee who works overtime hours with either one-and-one-half times or double the employee's regular rate of

1 compensation. Defendant employed Plaintiffs for more than eight hours per day and more than
2 40 hours per workweek, but Defendant failed to pay Plaintiffs the overtime compensation
3 required by the California Labor Code and the Wage Order.

4 43. Defendants thus required Plaintiffs to work for longer hours than those fixed, or
5 under conditions prohibited, by order of the IWC, in violation of those orders.

6 44. Defendants deprived Plaintiffs of their rightfully earned overtime compensation
7 as a direct and proximate result of Defendants' failure to pay said compensation. Under Labor
8 Code § 1194, Plaintiffs are entitled to recover such amounts, plus interest thereon, attorney's
9 fees, and costs.

10 **Fourth Cause of Action**

11 **For Failure to Pay Meal Period Compensation**

12 **(California Labor Code §§ 226.7, 512, 1198; IWC Wage Order No. 5-2001)**

13 **By Plaintiffs Against All Defendants**

14 45. Plaintiffs hereby incorporate the preceding paragraphs.

15 46. The Code and the Wage Order provide that an employee is entitled to an
16 uninterrupted, off-the-clock meal period of not less than 30 minutes for every five hours
17 worked. The Code and the Wage Order also require the employer to pay the employee one
18 hour at the employee's regular rate of compensation for each day that the employer does not
19 provide at least one required meal period.

20 47. Defendants employed Plaintiffs for work periods of more than five (5) hours
21 without a timely meal period of not less than 30 minutes and failed to compensate Plaintiffs for
22 such meal periods, as required by Labor Code § 226.7 and the Wage Order.

23 48. Defendants deprived Plaintiffs of their rightfully earned compensation for meal
24 periods as a direct and proximate result of Defendant's failure to pay said compensation.

25 49. The remedy provided for in Code § 226.7 constitutes a wage, and Plaintiffs are
26 entitled to interest thereon. *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal. 5th 93, 101;
27 *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1099-1100.

1 50. Defendants thus required Plaintiffs to work for longer hours than those fixed, or
2 under conditions prohibited, by order of the IWC, in violation of those orders.

3 **Fifth Cause of Action**

4 **For Failure to Pay Rest Period Compensation**

5 **(California Labor Code §§ 226.7, 1198; IWC Wage Order No. 5-2001)**

6 **By Plaintiffs Against All Defendants**

7 51. Plaintiffs hereby incorporate the preceding paragraphs.

8 52. The Code and the Wage Order provide that an employee is entitled to an
9 uninterrupted rest period of not less than 10 net minutes for every four hours worked or major
10 fraction thereof. The Code and the Wage Order require the employer to pay the employee one
11 hour at the employee's regular rate of compensation for each day that the employer does not
12 provide at least one required rest period.

13 53. Defendant employed Plaintiffs for work periods of four hours or major fraction
14 thereof without rest periods of ten minutes' net rest time and failed to compensate Plaintiffs for
15 such rest periods, as required by Code § 226.7 and the Wage Order.

16 54. Defendant deprived Plaintiffs of their rightfully earned compensation for rest
17 periods as a direct and proximate result of Defendants' failure to pay said compensation.

18 55. The remedy provided for in Code § 226.7 constitutes a wage, and Plaintiffs are
19 entitled to interest thereon. *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal. 5th 93, 101;
20 *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1099-1100.

21 56. Defendant thus required Plaintiffs to work for longer hours than those fixed, or
22 under conditions prohibited, by order of the IWC, in violation of those orders.

23 **Sixth Cause of Action**

24 **For Failure to Furnish Accurate Wage and Hour Statements**

25 **(California Labor Code § 226)**

26 **By Plaintiffs Against All Defendants**

27 57. Plaintiffs hereby incorporate the preceding paragraphs.

28 ///

58. Labor Code § 226(a) required Defendants, “semimonthly or at the time of each payment of wages,” to furnish Plaintiff “an accurate itemized statement in writing” showing gross and net wages earned, total hours worked by the employee/employees, rates of pay, and other information. Defendants knowingly and intentionally failed to provide Plaintiffs with such accurate wage and hour statements, as they had failed to pay all earned compensation in a timely manner.

59. Plaintiffs suffered injury as a result of Defendants' knowing and intentional failure to provide them with the wage and hour statements required by law.

60. Under Labor Code § 226, subsections (e) and (f), and based on Defendants' conduct as alleged herein, Plaintiffs are entitled to: (a) fifty dollars (\$50) for the initial pay period in which a wage and hour statement violation occurred, and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000); (b) injunctive relief to ensure Defendants' compliance with Labor Code § 226; and (c) an award of costs and reasonable attorney's fees.

Seventh Cause of Action

For Illegal Offset Against Wages

(California Labor Code §§ 221, 224; IWC Wage Order No. 5-2001)

By Plaintiffs Against All Defendants

61. Plaintiffs hereby incorporate the preceding paragraphs.

62. Code § 221 provides: “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

63. As alleged herein, Defendants unlawfully withheld compensation due Plaintiff in amounts grossly exceeding what the Wage Order authorized (see paragraphs 25 and 26 above), in violation of Code §§ 221, 224.

64. Further, no amounts should have been withheld for lodging, as there was no valid written agreement for any withholding.

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1 65. Plaintiffs have been deprived of their rightfully earned wages as a direct and
2 proximate result of Defendants' failure to pay said compensation. Plaintiffs are entitled to
3 recover such amounts, plus interest thereon, attorney's fees and costs.

4 **Eighth Cause of Action**

5 **For Failure to Indemnify for All Necessary Expenditures or Losses**

6 **(California Labor Code § 2802; IWC Wage Order No. 5-2001)**

7 **By Plaintiffs Against All Defendants**

8 66. Plaintiffs hereby incorporate the preceding paragraphs.

9 67. Code § 2802(a) provides:

10 An employer shall indemnify his or her employee for all necessary
11 expenditures or losses incurred by the employee in direct consequence
12 of the discharge of his or her duties, or of his or her obedience to the
13 directions of the employer, even though unlawful, unless the
employee, at the time of obeying the directions, believed them to be
unlawful.

14 68. Plaintiffs were required to use their personal mobile phones to perform their
15 work duties. Plaintiff ROJAS was also required to use his personal vehicle for performing his
16 work duties. None of these necessary and reasonable expenses were reimbursed, as there was
17 no mechanism or policy or procedure. To date, Defendants have failed to indemnify Plaintiffs
18 for these out-of-pocket expenses.

19 69. Under Code § 2802(c), Plaintiffs are entitled to recover all reasonable costs,
20 including attorney's fees, incurred in enforcing his rights granted by § 2802.

21 **Ninth Cause of Action**

22 **For Waiting Time Penalties**

23 **(California Labor Code §§ 201, 202 and 203)**

24 **By Plaintiff ROJAS Against All Defendants**

25 70. Plaintiff ROJAS hereby incorporates the preceding paragraphs.

26 71. Defendants willfully failed to pay Plaintiff accrued wages due to him promptly
27 upon separation, as required by California Labor Code §§ 201 and 202.

72. Based on Defendants' conduct as alleged herein, Defendants are liable for statutory penalties pursuant to Labor Code § 203.

Tenth Cause of Action

Wrongful Termination in Violation of Public Policy

By Plaintiff ROJAS Against CDH and All DOE Defendants

73. Plaintiff ROJAS hereby incorporates the preceding paragraphs.

74. California codifies a number of fundamental public policies intended to protect both employees and the public at large from unscrupulous and overreaching employers. An employer's material violation of any such fundamental public policies when terminating the employment of an employee supports a cause of action for wrongful termination of employment in violation of public policy.

75. Section 923 of the California Labor Code embodies one such fundamental public policy. It renders it against the public policy of the State for an employer to terminate an employee because that employee hired an attorney to negotiate the employee's terms and conditions of employment. See *Gelini v. Tishgart*, 77 Cal.App.4th 219 (1999); *Montalvo v. Zamora*, 7 Cal.App.3d 69 (1970)

76. ROJAS was wrongfully retaliated against for hiring an attorney to negotiate the terms and conditions of his employment, and he was subjected to a wrongful termination of employment. He was fired, with no good cause or reason, shortly after Company leadership learned that he had retained counsel regarding his employment. This adverse action was retaliatory and carried out within 120 days of his protected activities, rendering his discharge presumptively retaliatory and discriminatory under the Labor Code.

77. ROJAS's protected activity, hiring a lawyer to negotiate the terms and conditions of his employment, and the adverse action that followed, independently support a cause of action for retaliation and wrongful termination of employment, in violation of Labor Code Section 1102.5. That statute prohibits retaliation against an employee who engages in protected activities, including the hiring of a lawyer to negotiate the terms and conditions of

1 employment and reporting the nonpayment of earned wages and the reporting of the
2 employer's suspected noncompliance or violation of state or federal laws.

3 78. As a direct and proximate result of Defendants' acts and omissions, Plaintiff
4 has suffered compensatory, consequential, and incidental damages all in amounts to be
5 proven at the time of trial herein.

6 79. As a further direct and proximate result of Defendants' acts and omissions,
7 Plaintiff has suffered general damages, including emotional distress, anxiety, and worry, all in
8 amounts to be proven at the time of trial herein. Defendants' conduct harmed Plaintiff
9 emotionally and mentally.

10 80. Defendants' conduct, intentionally perpetrated against Plaintiff, was malicious,
11 wanton, and despicable within the meaning of Civil Code §3294, as to entitle Plaintiff to an
12 award of punitive damages against Defendants, and each of them, in amounts deemed
13 appropriate at the time of trial. Defendants' conduct was intentional and outside all norms of
14 society, bearing no relationship to the normal employer-employee relationship.

15 81. Defendants' unfair and illegal conduct further entitles Plaintiff to the recovery
16 of his attorneys' fees and costs under the Labor Code, including Section 1102.5, as well as the
17 private attorney general provisions of California Code of Civil Procedure §1021.5. Plaintiff
18 seeks to vindicate important and substantial public interests and rights, namely for employees
19 to be free from unlawful retaliation and discrimination in the workplace. Defendants' conduct
20 herein thus warrants a finding that Plaintiff's fees and costs be paid by Defendants rather than
21 from a recovery in this matter.

22 **Eleventh Cause of Action**

23 **Unlawful Retaliation and Discrimination**

24 **By Plaintiff ROJAS Against CDH and All DOE Defendants**

25 82. Plaintiff ROJAS incorporates the preceding paragraphs.

26 83. As alleged herein above, Defendants engaged in a concerted course of action
27 intended to compromise and inhibit Plaintiff's and the public's rights and interests, which
28 conduct was substantially motivated by ROJAS's engagement of an attorney to negotiate the

1 terms and conditions of his employment, to oppose the Company's unfair and illegal business
2 practices, and ROJAS's objection to the Company's improper denial of compensation earned.

3 84. Defendants engaged in acts of retaliation and discrimination against ROJAS
4 when taking the adverse actions against him as alleged herein, in violation of the California
5 Labor Code, including Sections 923, 1102.5 and such other statutes and promulgations,
6 including those mandating the timely payment to employees of all compensation earned.
7 Defendants' acts and omissions on account of ROJAS's exercise of his rights and engagement
8 in protected activities constituted unlawful employment practices in violation of his rights and
9 interests.

10 85. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has
11 suffered compensatory, consequential, and incidental damages all in amounts to be proven at
12 the time of trial herein.

13 86. As a further direct and proximate result of Defendants' acts and omissions,
14 Plaintiff has suffered general damages, including emotional distress, anxiety, and worry, all in
15 amounts to be proven at the time of trial herein. Defendants' conduct harmed Plaintiff
16 emotionally and mentally.

17 87. Defendants' conduct, intentionally perpetrated against Plaintiff, was malicious,
18 wanton, and despicable within the meaning of Civil Code §3294, as to entitle Plaintiff to an
19 award of punitive damages against Defendants, and each of them, in amounts deemed
20 appropriate at the time of trial. Defendants' conduct was intentional and outside all norms of
21 society, bearing no relationship to the normal employer-employee relationship.

22 88. Defendants' unfair and illegal conduct further entitles Plaintiff to the recovery of
23 his attorneys' fees and costs under the Labor Code, including Section 1102.5, as well as the
24 private attorney general provisions of California Code of Civil Procedure §1021.5. Plaintiff
25 seeks to vindicate important and substantial public interests and rights, namely for employees
26 to be free from unlawful retaliation and discrimination in the workplace. Defendants' conduct
27 herein thus warrants a finding that Plaintiff's fees and costs be paid by Defendants rather than
28 from a recovery in this matter.

1 **Twelfth Cause of Action**

2 **For Civil Penalties for Violations of the Labor Code**

3 **(California Labor Code Section 2698, *et seq.*)**

4 **By Plaintiffs Individually, On Behalf of All Aggrieved Employees, and**

5 **On Behalf of the Public Against All Defendants**

6 89. Plaintiffs incorporates the preceding paragraphs.

7 90. Throughout the PAGA Period, Defendants have violated and, on information
8 and belief, continue to violate provisions of the Labor Code, including §§ 201, 202, 203, 204,
9 221, 224, 226, 226.7, 226.8, 510, 512, 1182.12, 1174, 1194, 1194.2, 1197, 1198, and 2802.

10 91. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf
11 of himself or herself and other current or former employees, to bring a civil action to recover
12 civil penalties pursuant to the procedures specified in Labor Code § 2699.3.

13 92. Plaintiffs have complied with the procedures for bringing suit specified in Labor
14 Code § 2699.3. By letter dated March 16, 2023, Plaintiffs gave written notice by online filing
15 with the LWDA and by certified mail to Defendants of Plaintiffs' allegations of Defendants'
16 violations of the Labor Code. The LWDA failed to notify these representative Plaintiffs by
17 certified mail that it does not intend to investigate the alleged violations within 60 calendar
18 days of the postmark date of the notice filing and failed to send any notice within 65 days of
19 Plaintiffs' filing of the notice of its intention to investigate Plaintiffs' claimed violations.

20 93. Pursuant to Labor Code § 2699.3, subdivision (a)(2), Plaintiffs may seek civil
21 penalties under the PAGA, codified at Labor Code §§ 2698, *et seq.*

22 94. Pursuant to Labor Code § 2699, subdivisions (a) and (f), Plaintiffs are entitled to
23 recover civil penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 221, 224,
24 226, 226.7, 226.8, 510, 512, 1182.12, 1174, 1194, 1194.2, 1197, 1198, and 2802, in the following
25 amounts:

- 26 a. For violation of Labor Code § 201, one hundred dollars (\$100) for each
27 underpaid employee for each pay period the employee was underpaid,
28 and two hundred dollars (\$200) for each subsequent violation for each

1 underpaid employee for each pay period (penalty amounts established by
2 Labor Code Section 2699(f)(2));

3 b. For violation of Labor Code § 204, one hundred dollars (\$100) for each
4 underpaid employee for each pay period the employee was underpaid,
5 and two hundred dollars (\$200) for each subsequent violation or any
6 willful or intentional violation, for each underpaid employee for each pay
7 period, plus 25 percent of the amount unlawfully withheld (penalty
8 amounts established by Labor Code Section 210);

9 c. For violation of Labor Code § 221, one hundred dollars (\$100) for each
10 aggrieved employee per pay period for the initial violation and two
11 hundred dollars (\$200) for each aggrieved employee per pay period for
12 each subsequent violation, plus 25 percent of the amount unlawfully
13 withheld (penalty amounts established by Labor Code Section 225.5);

14 d. For violation of Labor Code § 224, one hundred dollars (\$100) for each
15 aggrieved employee per pay period for the initial violation and two
16 hundred dollars (\$200) for each aggrieved employee per pay period for
17 each subsequent violation (penalty amounts established by Labor Code
18 Section 2699(f)(2));

19 e. For violation of Labor Code § 226(a), two hundred fifty dollars (\$250) for
20 each employee per pay period for the initial violation and one thousand
21 dollars (\$1,000) per employee in a subsequent violation (penalty amounts
22 established by Labor Code Section 226.3) *or* one hundred dollars (\$100)
23 for each aggrieved employee per pay period for the initial violation and
24 two hundred dollars (\$200) for each aggrieved employee per pay period
25 for each subsequent violation;

26 f. For violation of Labor Code § 226(b), one hundred dollars (\$100) for each
27 aggrieved employee per pay period for the initial violation and two
28 hundred dollars (\$200) for each aggrieved employee per pay period for

1 each subsequent violation (penalty amounts established by Labor Code
2 Section 2699(f)(2));

3 g. For violation of Labor Code § 226.7, one hundred dollars (\$100) for each
4 aggrieved employee per pay period for the initial violation and two
5 hundred dollars (\$200) for each aggrieved employee per pay period for
6 each subsequent violation (penalty amounts established by Labor Code
7 Section 2699(f)(2));

8 h. For “pattern and practice” violations of Labor Code § 226.8, not less than
9 ten thousand dollars (\$10,000) and not more than twenty-five thousand
10 dollars (\$25,000) for each violation for each aggrieved employee (penalty
11 amounts established by Labor Code Section 226.8(c));

12 i. For violation of Labor Code § 510, fifty dollars (\$50) for each underpaid
13 employee for each pay period the employee was underpaid in addition to
14 an amount sufficient to recover underpaid wages, and one hundred
15 dollars (\$100) for each subsequent violation for each underpaid employee
16 for each pay period in addition to an amount sufficient to recover
17 underpaid wages (penalty amounts established by Labor Code Section
18 558);

19 j. For violation of Labor Code § 512, fifty dollars (\$50) for each underpaid
20 employee for each pay period the employee was underpaid in addition to
21 an amount sufficient to recover underpaid wages, and one hundred
22 dollars (\$100) for each subsequent violation for each underpaid employee
23 for each pay period in addition to an amount sufficient to recover
24 underpaid wages (penalty amounts established by Labor Code Section
25 558);

26 k. For violation of Labor Code § 1174, five hundred dollars (\$500) for any
27 person employing labor who willfully fails to maintain the records
28 required by subdivision (c) of Section 1174 or accurate and complete

1 records required by subdivision (d) of Section 1174 (penalty amounts
2 established by Labor Code Section 1174.5);

3 1. For violation of Labor Code § 1194(a), one hundred dollars (\$100) for
4 each aggrieved employee per pay period for the initial violation and two
5 hundred dollars (\$200) for each aggrieved employee per pay period for
6 each subsequent violation (penalty amounts established by Labor Code
7 Section 2699(f)(2));

8 m. For violation of Labor Code § 1197, one hundred dollars (\$100) for each
9 underpaid employee for each pay period the employee was underpaid,
10 and two hundred dollars (\$250) for each subsequent violation for each
11 underpaid employee for each pay period (penalty amounts established by
12 Labor Code Section 1197.1);

13 n. For violation of Labor Code § 1198, one hundred dollars (\$100) for each
14 underpaid employee for each pay period the employee was underpaid,
15 and two hundred dollars (\$200) for each subsequent violation for each
16 underpaid employee for each pay period (penalty amounts established by
17 Labor Code Section 2699(f)(2)); and

18 o. For violation of Labor Code § 2802, one hundred dollars (\$100) for each
19 aggrieved employee per pay period for the initial violation and two
20 hundred dollars (\$200) for each aggrieved employee per pay period for
21 each subsequent violation (penalty amounts established by Labor Code
22 Section 2699(f)(2)).

23 95. Plaintiffs further demand reasonable attorney's fees, costs of suit, and interest
24 pursuant to California Labor Code §§ 2699(g)(1).

25 **Prayer for Relief**

26 WHEREFORE, Plaintiffs hereby pray that the Court enter judgment in their favor and
27 against Defendant and Does 1 through 10, Inclusive, and each of them, as follows:

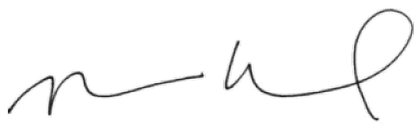
28 1. For unpaid wages in an amount according to proof;

2. For minimum wages and corresponding liquidated damages in an amount according to proof;
3. For overtime compensation in an amount according to proof;
4. For meal period compensation in an amount according to proof;
5. For rest period compensation in an amount according to proof;
6. For Labor Code § 226(e) statutory penalties in an amount according to proof;
7. For Labor Code § 203 penalties in an amount according to proof;
8. For recovery of all wages illegally offset in an amount according to proof;
9. For indemnification of all necessary expenditures incurred according to proof;
10. For general damages according to proof;
11. For special damages according to proof;
12. For punitive damages according to proof;
13. For civil penalties in accordance with Labor Code § 2698, *et seq.*;
14. For prejudgment interest on the foregoing at the legal rate;
15. For reasonable attorney fees as allowed by law;
16. For costs of suit incurred herein;
17. For such further relief as the Court may deem appropriate.

Plaintiffs hereby demands jury trial of this matter.

Dated: June 30, 2023

KASED LAW GROUP APC

By: 

Nathan N. Kased
Attorneys for Plaintiffs
JEREMIAH ROJAS and
DANIEL MAAKESTAD, and all other
aggrieved employees of Defendants in the
State of California