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 individually and on behalf of other aggrieved current and former employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - STANLEY MOSK COURTHOUSE

ADRIAN GOMEZ, individually and on
 behalf of other aggrieved current and former
 employees,

Plaintiff(s),

v.

CS HOTEL, LLC,
 HOTEL CARA,
 DEAN McKILLEN,
 EDUARDO CASTILLO,
 DOES 1 to 50,

Defendants.

Case No.: 23STCV06023
 Hon. Jon R. Tagasuki, Dept.17

**FIRST AMENDED COMPLAINT FOR
 DAMAGES, PENALTIES & OTHER RELIEF:**

FEHA Claims

1. Violation(s) of the FEHA (Gov. Code § 12940 (a), (j) & (k))

Individual Employment Law Claims

2. Failure to Pay Overtime
3. Failure to Pay Minimum Wages
4. Meal Period Violations
5. Rest Break Violations
6. Failure to Pay Owed Tips/Service Fees
7. Sick Leave/Pay Violations
8. Failure to Pay Wages for All Time Worked
9. Failure to Timely Pay Wages Owed at Time of Termination/Separation
10. Failure to Provide Accurate Wage Statements
11. Failure Produce Employment Records
12. Violation of Labor Laws Giving Rise to an Action Under the PAGA

PAGA Claims

Jury Trial Demanded

INTRODUCTORY ALLEGATIONS

1. Plaintiff herein is Adrian Gomez (also referred to as “Plaintiff” or “Mr. Gomez”). At all times herein, Mr. Gomez was a resident of the County of Los Angeles, State of California.

2. For several months in 2021 and continuing for several months in 2022, Plaintiff Adrian Gomez was employed as a non-exempt employee to work at the CARA HOTEL, located at 1730 N. Western Ave., West Hollywood, CA 90027.

3. The gravamen of this action is multiple illegal employment practices giving rise to the following:

- a. A cause of action for violation of Mr. Gomez’s rights under the Fair Employment and Housing Act (the FEHA) based on Mr. Gomez’ ancestry (Mexican), his origin (Mexico), his race (Hispanic/Mexican) and his sex/gender (male).
- b. Causes of action for multiple violations of various wage/hour and related laws which deprived Mr. Gomez of employment benefits and rights mandated under California law.
- c. A claim under the Private Attorneys General Act (Labor Code § 2699 aka PAGA) based on various California employment wage/hour laws.

General Allegations re Defendants

4. Adrian Gomez brings this action against the following Defendants and said Defendants’ successors in interest, alter egos, and other persons/entities engaged with Defendants in a joint enterprise of providing hotel accommodations as well as associated services (including restaurant food and beverage services) in the State of California.

- a. Defendants CS HOTEL, LLC, HOTEL CARA, DEAN McKILLEN, and DOES 1 through 10 (hereinafter collectively referred to as the CARA HOTEL DEFENDANTS) were the employers/joint employers of Adrian Gomez and the other aggrieved employees referenced herein. CS HOTEL, LLC is an active California corporation registered with the Secretary of State with an entity address located at 8445 Santa Monica Blvd., Suite 1, West Hollywood, CA 90069 which is also its principal address as identified on its Secretary of State filings. HOTEL

- 1 CARA is located at 1730 N. Western Ave., West Hollywood, CA 90027 and is an
2 entity whose corporate form (or other form) is unknown. Alternatively, HOTEL
3 CARA may be a dba for Defendant CS HOTEL, LLC.
- 4 b. At all relevant times, Defendants DEAN McKILLEN and DOES 11 – 20 have
5 been officers, directors and/or managing agents of Defendants CS HOTEL, LLC,
6 HOTEL CARA, and DOES 1 through 10. Said Defendants have also been
7 supervisors at HOTEL CARA who either: 1) directly participated in and/or
8 contributed to causing the illegal conduct described herein and/or 2) ratified the
9 illegal conduct of others, including employees/co-employees under their
10 supervision. Each said Defendant had authority to set policies, procedures, and
11 practices at the CARA HOTEL as well as the authority to hire, transfer, promote,
12 assign, reward, discipline the employees working for the CARA HOTEL
13 DEFENDANTS or to effectively recommend said actions. Additionally, said
14 Defendants also had responsibility to act on employee grievances and/or to
15 effectively recommend action on employee grievances. The exercise of said
16 authority and responsibility by said individual Defendants required the use of their
17 independent judgment.
- 18 c. Defendants EDUARDO CASTILLO and DOES 21 – 30 directed the daily work
19 activities of Adrian Gomez and either: 1) directly participated in and/or
20 encouraged the illegal conduct described herein, and/or 2) ratified said illegal
21 conduct complained of herein. The exercise of said Defendants' authority and
22 responsibility required the use of their independent judgment.
- 23 d. Defendants DOES 31 through 50 are unidentified persons or entities who are
24 legally responsible in some actionable manner for the illegal acts and omissions
25 complained of herein. To the extent said Defendants are a business entity, the
26 form of said Defendants is unknown at the present time.
- 27 5. At all times herein and for many prior years, the CARA HOTEL DEFENDANTS and
28 DOES 1 through 50 either employed individuals in California and/or were involved in

managing businesses and/or employees in California. During those years, said Defendants were provided with notifications from various governmental agencies as well as from various publications advising employers of the employment laws referenced herein. Accordingly, said Defendants knew the obligations that were owed to employees under California law. As such, Defendants' failures to comply with the FEHA and applicable Labor Code sections, Industrial Wage Orders, regulations, and local laws as described herein were done willfully, intentionally and with knowledge of their illegality. Despite said knowledge, said Defendants deliberately approved, established and/or implemented business-wide policies, procedures and/or practices they knew violated California law as set forth herein and did so for the purpose of maximizing the profits of the CARA HOTEL DEFENDANTS as well as their own personal gain (monetary or otherwise) to the illegal detriment of employees working at the CARA HOTEL, including Adrian Gomez.

6. Additionally, based on requirements set forth in the Labor Code and wage orders applicable to Defendants' business, at all times herein, the CARA HOTEL DEFENDANTS knew it was necessary to possess, and Defendants did possess, a certain level of knowledge and skill in order to comply with the labor and employment laws applicable to their area of business. Said knowledge was vastly superior to that of Defendants' employees. Moreover, as set forth herein, Defendants' employees depended on Defendants to provide the discrimination and/or harassment training mandated by law and to know, record, and/or track certain information to ensure California labor laws and/or employment laws were followed. Such things include the dates and times worked by employees, when wages were owed to employees, the minimum and overtime wages owed to employees, the number of rest breaks and meal breaks that employees were entitled to take, when rest breaks and meal breaks were required to be provided, the information required to be accurately reported on wage statements, when employees should be paid their final wages, what expenditures employees were required to be reimbursed, etc.

7. The CARA HOTEL DEFENDANTS and each DOE Defendant that was a business entity or organization at the relevant times herein, was a privately-owned business authorized to do business in the State of California. Additionally, said Defendants employed more than five

(5) employees and were engaged in interstate commerce within the meaning of California Gov. Code § 12926. As such, Defendants are subject to the FEHA (Govt. Code, § 12900 et. seq.).

Alter-Ego / Joint Enterprise Allegations

8. All business entity Defendants herein are and at all times herein mentioned were the alter-egos of each and every individually named Defendant and there exists, and at all times herein mentioned has existed, a unity of interest and ownership between said Defendants such that any separateness between them has ceased to exist in that the defendants have completely controlled, dominated, managed, and operated the business entity defendants and have intermingled the assets of each to suit their convenience. Further, the business entity defendants are, and at all times mentioned herein were, mere shells, instrumentalities and conduits through which Defendants carried out their business by its name while exercising complete control and dominance of the business such that individuality or separateness of the business entities did not exist. Additional facts supporting the existence of an alter ego and/or joint enterprise relationship between Defendants include the following: Defendants commingled funds and other assets, Defendants held themselves out as a single entity, Defendants share equitable ownership, they use the same offices, Defendants have disregarded corporate formalities, Defendants share the same directors and officers, etc.

9. All Defendants herein were also members of a joint enterprise of providing hotel accommodations as well as associated services (including restaurant food and beverage services). Each said Defendant contributed skill, effort, knowledge, and/or money to achieve a common purpose, namely, maximizing their respective and collective business profits as well as their individual profits.

General Allegations re Fictitious DOE Defendants

10. The facts linking the fictitiously designated Defendants with the causes of action alleged herein and/or the true names and capacities, whether individual, corporate, partnership, or otherwise of Defendants, DOES 1 through 50, are unknown to Plaintiff(s) at this time, who therefore sue said Defendants by such fictitious names and will seek to amend this First Amended Complaint to show their true names and/or capacities when ascertained. Said

Defendants are sued as employers, principals and/or agents, servants, and/or employees of said employers or principals who were performing acts within the course and scope of their authority and/or employment. Each Defendant designated herein as a "DOE" is responsible in some actionable manner for the events and happenings referred to herein which proximately caused the injuries, damages, losses and/or penalties as alleged herein.

DEFA "Right to Sue" Notification Obtained

11. Adrian Gomez timely filed a complaint against Defendants with the California Department of Fair Employment and Housing ("DFEH"), alleging violations of Gov. Code § 12940. Thereafter, Mr. Gomez received notification from the DFEH of his/her "Right to Sue" in the courts of the State of California. Subsequently, Plaintiff served each known Defendant with the Right to Sue Notice via United States Certified Mail, return receipt requested as required by Gov. Code § 12962. As required by law, a complaint has been filed within one year of that notification as required by law.

Defendants' Failure to Comply with Labor Code § 226 Requests

12. Plaintiff does not have copies of all of his employment records with Defendants and Defendants have failed to provide Plaintiff with complete copies of his employment records (including work schedules, time sheets, rest break/meal break records, sick time records, and wage statements) even though such records pertain to Plaintiff's employment with Defendants and were requested from Defendants by Plaintiff pursuant to Labor Code § 226. Said records were also not produced by Defendants after a complaint was filed with the LWDA (and concurrently served on Defendants) in which it was alleged that said records had not been provided in accordance with Labor Code § 226. Plaintiff also does not have access to the employment records of other aggrieved employees. After Defendants have produced said employment records in this action, additional facts in support of each cause of action pled in this complaint can be determined.

No Exemptions or Legal Excuse

13. There is no legally recognized exemption or exception which excused Defendants from complying with the California employment laws at issue in this action; therefore, Defendants

1 were without legal justification or excuse for failing to comply with said laws.

2 **Joint Liability of Individual Defendants**

3 14. While acting on behalf of the CARA HOTEL DEFENDANTS, Defendants DEAN
4 McKILLEN, and DOES 11-20 (who were owners, directors, officers, and/or managing agents
5 of said entities) caused the California employment laws at issue in this action to be violated by
6 establishing and/or implementing employment, wage, and/or payroll procedures, and/or policies
7 that violated said laws. Therefore, to the extent permitted under Labor Code § 558.1, said
8 individual Defendants are as liable as the business entities for such violation(s).

9 **FIRST CAUSE OF ACTION FOR VIOLATIONS OF THE FEHA (GOV. CODE § 12940**
10 **(a), (j) & (k)) BY PLAINTIFF, ADRIAN GOMEZ, AGAINST DEFENDANTS CS HOTEL,**
11 **LLC, HOTEL CARA, DEAN McKILLEN, EDUARDO CASTILLO, AND DOES 1**
12 **THROUGH 50**

13 15. Plaintiff hereby incorporates and fully realleges by this reference the allegations
14 contained in paragraphs 1 through 13 of this First Amended Complaint as though fully set forth
15 in this cause of action.

16 **The FEHA's Prohibitions Against Illegal Discrimination and/or Harassment**
17 **in the Workplace (Gov. Code § 12940 (a) and (j))**

18 16. Pursuant to Gov. Code § 12940 (a), Defendants were prohibited from discriminating
19 against Mr. Gomez in the terms, conditions, or privileges of his employment based on any of
20 the following protected classes under the FEHA: Mr. Gomez' ancestry (Mexican), his origin
21 (Mexico), his race (Hispanic/Mexican) and his sex/gender (male).

22 17. Pursuant to Gov. Code § 12940 (j), it was unlawful for Defendants to harass Adrian
23 Gomez in the workplace based on the above protected classes. When such harassing conduct is
24 severe or pervasive, it creates a hostile work environment that results in further violation of the
25 FEHA. Defendants were not only prohibited from harassing Mr. Gomez based on his protected
26 classes, but Defendants were prohibited from allowing him to be exposed to a hostile work
27 environment because of his ancestry (Mexican), his origin (Mexico), his race
28 (Hispanic/Mexican) and his sex/gender (male).

Statutory Duty to Prevent Discrimination and Harassment in the Workplace

(Gov. Code § 12940 (k))

18. Pursuant to Gov. Code § 12940 (k), the HOTEL CARA DEFENDANTS owed a duty to take all reasonable steps necessary to prevent discrimination and harassment in violation of the FEHA from occurring in the workplace.

Statutory Duty to Take Immediate Corrective Action

(Gov. Code § 12940 (j))

19. Gov. Code § 12940 (j) requires that an employer (which includes any person acting as an agent of the employer) take immediate corrective action as soon as it is known (or should be known) that an employee is being harassed in violation of the FEHA.

Defendants' Violations of the FEHA

20. In one or more of the following ways, Defendants, and each of them, either 1) illegally discriminated and/or harassed Mr. Gomez, 2) failed to take all reasonable steps necessary to prevent such illegal discrimination and/or harassment from occurring, and/or 3) failed to take immediate corrective action regarding the illegal harassment being perpetrated against Mr. Gomez once they knew (or should have known) that Mr. Gomez was being harassed:

- a. Defendant EDUARDO CASTILLO (one of Mr. Gomez' supervisors) repeatedly approached Mr. Gomez from behind while he was working, stuck his hand between Mr. Gomez' legs, and physically grabbed and/or touched Mr. Gomez' private area.
- b. On multiple occasions while Mr. Gomez was performing his work duties in the hotel, a co-employee by the first name of Pedro (last name unknown) repeatedly called Mr. Gomez a "fucken wetback."
- c. The HOTEL CARA DEFENDANTS failed to establish and/or implement anti-discrimination policies, procedures, and practices in the workplace to reasonably ensure that Mr. Gomez was not discriminated against and/or harassed based on his protected classes (i.e., ancestry (Mexican), his origin (Mexico), his race (Hispanic/Mexican) and his sex/gender (male)).

- 1 d. The HOTEL CARA DEFENDANTS failed to reasonably ensure that persons
2 being placed in management positions (including Defendant CASTILLO) were
3 properly advised, trained, and supervised regarding issues of discrimination and
4 harassment in violation of the FEHA. The HOTEL CARA DEFENDANTS
5 (individually and/or through individually and/or through Defendants' officers,
6 directors, managing agents and/or supervisors) did not provide the FEHA
7 training mandated by California law to supervisors working in the hotel
8 (including CASTILLO).
- 9 e. The HOTEL CARA DEFENDANTS (individually and/or through individually
10 and/or through Defendants' officers, directors, managing agents and/or
11 supervisors) failed to make it known to employees that discrimination and/or
12 harassment based on classes protected by the FEHA would not be tolerated in the
13 workplace. Instead, they affirmatively or tacitly encouraged such discrimination
14 and harassment in the workplace by turning a blind eye and/or deaf ear to the
15 discriminatory and/or harassing conduct occurring in the workplace and not by
16 not providing the training mandated by the FEHA.
- 17 f. The HOTEL CARA DEFENDANTS failed to reasonably publicize and remind
18 employees working at the CARA HOTEL that any employee who engaged in
19 discrimination and/or or harassment in violation of the FEHA would be subject
20 to appropriate discipline, including possible termination.
- 21 g. The HOTEL CARA DEFENDANTS failed to take other reasonable action to
22 prevent Mr. Gomez from being subjected to discrimination and/or harassment in
23 violation of the FEHA.
- 24 h. As a result of Defendants' failure to take the steps reasonably necessary to
25 prevent illegal harassment and/or discrimination from occurring in the workplace
26 as mandated under the FEHA, such conduct not only occurred but unnecessarily
27 continued.
- 28 i. Even after the HOTEL CARA DEFENDANTS (individually and/or through

Defendants' officers, directors, managing agents and/or supervisors) knew or should have known that employees working in the hotel had been harassed in violation of the FEHA, said Defendants (individually and/or through and their officers, directors, managing agents and/or supervisors) failed to take immediate and appropriate corrective action as follows:

- i. They continually disregarded the illegal harassing conduct and took no substantive action to reasonably ensure that the harassing conduct would not continue and did so knowing that their failure to take immediate corrective action would allow the illegal harassing conduct to continue.
- ii. They failed to reasonably and sufficiently train/retrain employees who were involved (or suspected of being involved) in harassing conduct in violation of the FEHA, even though they knew (or should have known) that without such training/retraining said employees (and others aware of such conduct) would engage/continue to engage in harassing conduct in violation of the FEHA without such training/retraining.
- iii. They failed to appropriately reprimand and/or dismiss employees who were involved in illegally harassing conduct, even though they knew, or should have known, that such harassment was occurring and would continue to occur if the employees involved in such illegal conduct were not appropriately reprimanded and/or dismissed.
- iv. They failed to notify or renotify employees that if they believed they were being illegally discriminated against and/or harassed that they could report such conduct to a designated person or office so that appropriate personnel could intervene as necessary.
- j. Instead of terminating employees who engaged in conduct in violation of the FEHA, the HOTEL CARA DEFENDANTS (individually and/or through Defendants' officers, directors, managing agents and/or supervisors) terminated employees subjected to the discrimination and/or harassment.

21. With respect to the above-described harassing conduct suffered by Mr. Gomez, it was so severe and so pervasive in nature that not only would a reasonable employee in Adrian Gomez' circumstances consider the work environment at the CARA HOTEL to be hostile based one or more of his protected classes, but Mr. Gomez considered the work environment at the CARA HOTEL to be hostile and abusive toward based on his protected classes (i.e., ancestry (Mexican), his origin (Mexico), his race (Hispanic/Mexican) and his sex/gender (male)).

22. The above-described acts and/or omissions of Defendants were done maliciously and/or oppressively in that Defendants disregarded Mr. Gomez' rights guaranteed under the FEHA and either directly subjected him to ongoing illegal discrimination and/or harassment in the workplace or consciously disregarded the duties imposed on them under the FEHA to prevent and/or take corrective action with respect to such conduct occurring in the workplace and did so knowing there was a high probability that the rights of Mr. Gomez and/or other similarly situated employees would be violated.

Causation, Damages and Other Remedies

23. One or more of Mr. Gomez' protected classes (i.e., ancestry (Mexican), his origin (Mexico), his race (Hispanic/Mexican) and his sex/gender (male)) was/were substantial motivating factors for Defendants' unlawful acts and/or omissions in violation of the FEHA as described herein.

24. As a direct and proximate result of the above-described unlawful acts and/or omissions in violation of the FEHA, Mr. Gomez suffered economic and non-economic damages (physical and/or mental pain and suffering, loss of enjoyment of life, inconvenience, anxiety, fright, humiliation and/or emotional distress) and is seeking to recover the damages, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the Section entitled "FEHA Cause of Action ."

SECOND CAUSE OF ACTION -- FAILURE TO PAY OVERTIME WAGES BY PLAINTIFF ADRIAN GOMEZ AGAINST DEFENDANTS CS HOTEL, LLC, HOTEL CARA, DEAN McKILLEN, DOES 1 THROUGH 20, AND DOES 31 THROUGH 50

25. Plaintiff hereby incorporates paragraphs 1 through 14 of this First Amended Complaint.

Mandated Overtime Pay

26. At all times herein, pursuant to Labor Code § 510 and the Industrial Wage Order applicable to the CARA HOTEL DEFENDANTS, employers of non-exempt employees (including Adrian Gomez and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) were required to pay their non-exempt employees overtime pay as follows:

- a. If an employee works in excess of 8 hours in one workday, the employer must pay the employee no less than one and one-half times the employee's regular rate of pay for all hours worked over 8 hours up to and including 12 hours.
- b. If an employee works more than 12 hours in one workday, the employer must pay the employee no less than twice the employee's regular rate of pay.
- c. If an employee works more than 40 hours in any one workweek, the employer must pay the employee no less than one and one-half times the employee's regular rate of pay for all hours worked over 40 hours.
- d. If an employee works seven days in any workweek, the employer must pay the employee no less than one and one-half times the employee's regular rate of pay the first 8 hours worked on the seventh day.

Defendants' Failure to Pay Plaintiff Legally Mandated Overtime Pay

27. At all times during the statute of limitations period applicable to this cause of action, the CARA HOTEL DEFENDANTS and each of them willfully, knowingly, and intentionally failed to calculate and/or compensate Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) the overtime wages mandated by Labor Code § 510 and/or applicable Industrial Wage Order in at least the following ways: 1) In calculating the wages (including overtime wages) owed to Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter), said Defendants wrongfully failed to include time worked that was not reported on timesheets (including but not limited to times that were unfairly rounded, on-duty travel time, on-duty meal periods, donning/doffing time); 2) the CARA HOTEL DEFENDANTS failed to accurately calculate the overtime wages that were owed. Thereby, said employees were denied overtime wages as required under Labor Code §

510 as set forth above.

Remedies

28. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the wages, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Individual Causes of Action for Labor Law Violations.”

THIRD CAUSE OF ACTION -- FAILURE TO PAY MINIMUM WAGES BY PLAINTIFF ADRIAN GOMEZ AGAINST DEFENDANTS CS HOTEL, LLC, HOTEL CARA, DEAN McKILLEN, DOES 1 THROUGH 20, AND DOES 31 THROUGH 50

29. Plaintiff hereby incorporates paragraphs 1 through 14 of this First Amended Complaint.

Legally Mandated Minimum Wages

30. At all times herein, pursuant to Labor Code § 1182.12, employers were required to pay their employees at least the minimum hourly wage set forth in the Labor Code, the applicable Industrial Wage Order or other applicable local law, ordinance and/or regulation for all time worked by their employees. Notably, in this case, City of West Hollywood Ordinance 5.130.010, 5.130.020 required that beginning on January 1, 2022 (when Adrian Gomez was still employed by the CARA HOTEL DEFENDANTS), that hotel workers were to get a minimum wage of \$17.64 per hour.

Defendants’ Failure to Pay Plaintiff Legally Mandated Minimum Wages

31. At all times during the applicable statutes of limitations period, the CARA HOTEL DEFENDANTS willfully, knowingly, and intentionally failed to calculate and/or compensate Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff’s PAGA Notice Letter) the minimum wages owed under Labor Code § 1182.12, the applicable wage order and/or local regulation for all the hours worked for the CARA HOTEL DEFENDANTS as follows: 1) Said Defendants (who employed hotel workers, including Adrian Gomez) paid employees less than the minimum wage mandated by law beginning on January 1, 2022; 2) Said Defendants failed to pay said employees for all the time that they worked for Defendants including but not limited to times that were unfairly rounded, on-duty travel time, on-duty meal

periods, donning/doffing times. Thereby, said employees were not paid at least the minimum wage mandated by law for all time worked.

Remedies

32. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the wages, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Individual Causes of Action for Labor Law Violations.”

FOURTH CAUSE OF ACTION -- FAILURE TO PROVIDE MEAL PERIODS OR PREMIUM PAY BY PLAINTIFF ADRIAN GOMEZ AGAINST DEFENDANTS CS HOTEL, LLC, HOTEL CARA, DEAN McKILLEN, DOES 1 THROUGH 20, AND DOES 31 THROUGH 50

33. Plaintiff hereby incorporates paragraphs 1 through 14 of this First Amended Complaint.

Legally Mandated Meal Periods

34. At all times herein, pursuant to Labor Code § 512 and the applicable wage order, an employer may not employ a non-exempt employee to work more than a five hours per day without providing the employee with a thirty-minute meal break within the first five hours of their workday.

35. Labor Code § 512 and the applicable wage order further provide that an employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than 30 minutes.

36. California law further requires that for a meal period to qualify as a valid meal period under the law, the meal period must be timely, off-duty, unrestricted, and uninterrupted.

Defendants’ Failure to Provide Legally Mandated Meal Periods

37. At all times during the statute of limitations period applicable to this cause of action, Defendants either deprived Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff’s PAGA Notice Letter) of taking the meal period(s) required each workday under California law, required them to take their meal periods after their fifth hour of work, restricted their meal periods, required employees to remain on-duty during their meal periods, shortened

1 their 30-minute meal period, and/or interrupted their meal periods. As a result, the CARA
2 HOTEL DEFENDANTS were required by Labor Code § 226.7 and/or the applicable IWC
3 Wage Order to pay said employees “premium pay”, i.e., one (1) hour of pay at their regular rate
4 of compensation for each workday that a legally compliant meal period was not provided in
5 violation of California law.

6 38. Nevertheless, during the time that Adrian Gomez (and the other aggrieved employees
7 encompassed by Plaintiff’s PAGA Notice Letter) were employed by the CARA HOTEL
8 DEFENDANTS, said Defendants failed to provide meal periods in compliance with Labor
9 Code § 512 and also failed to pay their employees (including Plaintiff) the premium pay
10 required for the failure to provide legally compliant meal periods. This includes the fact that
11 said Defendants did not accurately calculate the regular hourly rate wage owed to their
12 employees by using the correct minimum wage rate and/or including nondiscretionary
13 bonuses/service fees in said calculations.

14 Remedies

15 39. As applicable under California law to the allegations made in this cause of action,
16 Plaintiff is entitled to recover the wages, damages, penalties, awards, and other remedies set
17 forth below in the Prayer for Damages, Awards and Other Relief under the section entitled
18 “Individual Causes of Action for Labor Law Violations.”

19 **FIFTH CAUSE OF ACTION -- FAILURE TO PROVIDE REST PERIODS OR** 20 **PREMIUM PAY BY PLAINTIFF ADRIAN GOMEZ AGAINST DEFENDANTS CS** 21 **HOTEL, LLC, HOTEL CARA, DEAN McKILLEN, DOES 1 THROUGH 20, AND DOES** 22 **31 THROUGH 50**

23 40. Plaintiff hereby incorporates paragraphs 1 through 14 of this First Amended Complaint.

24 Legally Mandated Rest Periods

25 41. At all times herein, pursuant to the California Labor Code, the applicable Industrial
26 Wage Order, and/or applicable regulation, employers must authorize and permit non-exempt
27 employees to take paid rest periods at the rate of 10 minutes net rest time per four hours or
28 major fraction thereof (unless the total work time is less than 3 ½ hours). California law further

provides that so far as practical, the mandatory rest breaks must be provided in the middle of each work period of the workday.

42. California law further requires that for a rest break to qualify as a valid rest break under the law, the rest break must be paid and timely in addition to being 10-minutes in length without restrictions, off-duty, and uninterrupted.

Defendants' Failure to Provide Legally Mandated Rest Breaks

43. In violation of California law, the CARA HOTEL DEFENDANTS either failed to provide Plaintiff Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) with the require rest/lactation breaks in at least the following ways: 1) rest breaks were not provided, 2) any rest breaks that were provided were on-duty, restricted, interrupted, too short, too early and/or too late (even though it was practical for them to take their rest breaks in the middle of each work period), 3) lactation breaks were not provided and no private space was made available for employees to express their breast milk.

44. In violation of Labor Code § 226.7, the CARA HOTEL DEFENDANTS also failed to pay Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) premium pay, i.e., one (1) hour of pay at their regular rate of compensation for each workday that a legally compliant rest break was not provided. This includes the fact that said Defendants did not accurately calculate the regular hourly rate wage owed to their employees by using the correct minimum wage rate and/or including nondiscretionary bonuses/service fees in said calculations.

Remedies

45. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the other wages, damages, penalties, awards and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

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**SIXTH CAUSE OF ACTION -- FAILURE TO PAY TIPS/SERVICE FEES BY
PLAINTIFF ADRIAN GOMEZ AGAINST DEFENDANTS CS HOTEL, LLC, HOTEL
CARA, DEAN McKILLEN, DOES 1 THROUGH 20, AND DOES 31 THROUGH 50**

46. Plaintiff hereby incorporates paragraphs 1 through 14 of this First Amended Complaint.

Duty to Distribute Tips/Service Fees to Employees

47. Pursuant to Labor Code § 351, tips left by customers and collected by employers are the sole property of the employees, not the employer or its agents (defined in Labor Code § 350 as those having authority to hire, fire, direct or control the acts of Defendants' employees).

48. Additionally, pursuant to West Hollywood Local Ordinance 5.130.010 and 5.130.050, beginning on January 1, 2022, services fees collected by the CARA HOTEL DEFENDANTS were/are to be distributed in their entirety to the employee(s) who performed services for the customers from whom the service charges were/are collected and/or to the employee associated accounts/plans identified in the ordinance.

Failure to Lawfully Distribute Tips/Service Fees

49. At all times during the statute of limitations period applicable to this cause of action, the CARA HOTEL DEFENDANTS regularly and unlawfully failed to pay Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) their share of the tips that had been collected from customers of the CARA HOTEL DEFENDANTS.

50. Additionally, since January 1, 2022, the CARA HOTEL DEFENDANTS have failed to distribute the service fees they collected to the employee(s) (including Adrian Gomez) who performed services for the customers from whom the service charges were/are collected and/or to the employee associated accounts/plans identified in the ordinance.

Remedies

51. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the wages, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

**SEVENTH CAUSE OF ACTION – FAILURE TO PROVIDE/PERMIT USE OF/PAY OUT
ACCRUED SICK TIME BY PLAINTIFF ADRIAN GOMEZ AGAINST DEFENDANTS
CS HOTEL, LLC, HOTEL CARA, DEAN McKILLEN, DOES 1 THROUGH 20, AND
DOES 31 THROUGH 50**

52. Plaintiff hereby incorporates paragraphs 1 through 14 of this First Amended Complaint.

Legally Mandated Sick Leave

53. Pursuant to Labor Code §246, employers in California are required to provide employees (including Mr. Gomez and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) with sick leave time that accrues at the rate mandated in § 246 or other applicable law. City of West Hollywood Ordinance 5.130.010, 5.130.030, et. al. mandates the provision of additional sick leave time to employees like Mr. Gomez (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) who have worked in the City of West Hollywood on or after January 1, 2022.

54. Labor Code § 246(i) and/or other applicable law also requires employers to notify employees of the amount of their accrued sick leave either in their wage statements or in a separate writing provided on the designated pay date with the employee's payment of wages.

55. Pursuant to Labor Code § 233, employers are also required to permit employees to use accumulated sick time for any of the reasons specified in Labor Code § 246.5 including the following: diagnosis, care or treatment of an existing health condition of (or preventive care for) an employee or an employee's family member. Labor Code § 246.5 specifically prohibits an employer from denying employees the right to use accrued sick days or attempting to exercise their right to use accrued sick days.

56. Once accrued sick leave is used by an employee, Labor Code § 246(h) requires employers to pay out used sick leave no later than the payday for the next regular payroll period after sick leave was taken.

Defendants' Failure to Comply with Sick Leave Laws

57. At all times herein, in violation of Labor Code § 233, Labor Code § 246.5, and City of West Hollywood Ordinance 5.130.010, 5.130.030, et. seq., the CARA HOTEL DEFENDANTS

1 failed to provide their employees (including Adrian Gomez and the other aggrieved employees
2 encompassed by Plaintiff's PAGA Notice Letter) with the sick leave time mandated by law
3 and/or failed to pay said employees within the timeframe mandated under the law when they
4 missed work for one of the reasons identified under California's sick leave laws.

5 58. The CARA HOTEL DEFENDANTS, and each of them, have also violated and continue
6 to violate Labor Code § 246(i) and/or §248.2(d)(2)(C)) by failing to notify their employees
7 (including Adrian Gomez and the other aggrieved employees encompassed by Plaintiff's PAGA
8 Notice Letter) as to the amount of their available sick leave hours (including COVID-related
9 hours and the hours required by the City of West Hollywood ordinance) either in their wage
10 statements or in a separate writing provided to employees on the designated pay date along with
11 the employees' payment of wages.

12 Remedies

13 59. As applicable under California law to the allegations made in this cause of action,
14 Plaintiff Adrian Gomez as an individual is entitled to recover the wages, damages, penalties,
15 awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief
16 under the section entitled "Individual Causes of Action for Labor Law Violations."

17 **EIGHTH CAUSE OF ACTION -- FAILURE TO PAY WAGES/TIMELY PAY WAGES** 18 **FOR ALL TIME WORKED BY PLAINTIFF AGAINST DEFENDANTS CS HOTEL,** 19 **LLC, HOTEL CARA, DEAN McKILLEN, DOES 1 THROUGH 20, AND DOES 31** 20 **THROUGH 50**

21 60. Plaintiff hereby incorporates the following paragraphs from this First Amended
22 Complaint: 1 – 14, 26 – 27, 30 – 31, 34 – 38, 41 – 44, 47 – 50, and 53 – 58.

23 Legal Duty to Pay Wages

24 61. At all times herein, pursuant to Labor Code § 200, wages in California include all
25 amounts for labor performed by employees of every description, whether the amount is fixed or
26 ascertained by the standard of time, task, piece, commission basis, or other method of
27 calculation. Wages under Labor Code § 200 also includes vested benefits such as accrued
28 vacation pay/personal time off (PTO), sick leave benefits owed due to use of accrued sick leave,

and premium pay for missed, untimely, restricted and/or interrupted meal periods and/or rest breaks/lactation breaks.

62. All non-exempt employees must be paid all wages earned within the timeframes set forth in Labor Code § 204, et. seq.

Defendants' Failure to Pay All Earned Wages

63. At all times during the statute of limitations period applicable to this cause of action, the CARA HOTEL DEFENDANTS and each of them willfully, knowingly, and intentionally failed to pay Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) for all the time they actually worked and earned wages (including minimum wages, regular wages, and/or overtime wages and/or) by failing to pay them: 1) for time worked off-the-clock (e.g., unfairly rounded hours, donning/doffing time, on-duty travel time, on-duty meal periods, etc.), 2) for not paying employees premium wages owed for missed, untimely, on-duty, short, interrupted and/or or restricted meal periods and/or rest breaks; 3) for not accurately calculating the times worked by said employees and/or the wages owed to said employees, etc.

64. Since such wages were not paid, said wages were also not paid in accordance with the time frames set forth in Labor Code § 204.

Remedies

65. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the wages, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

NINTH CAUSE OF ACTION -- FAILURE TO PAY WAGES OWED AT TIME OF SEPARATION BY PLAINTIFF ADRIAN GOMEZ AGAINST DEFENDANTS CS HOTEL, LLC, HOTEL CARA, DEAN McKILLEN, DOES 1 THROUGH 20, AND DOES 31 THROUGH 50

66. Plaintiff hereby incorporates the following paragraphs from this First Amended Complaint: 1 – 14, 26 – 27, 30 – 31, 34 – 38, 41 – 44, 47 – 50, 53 – 58, and 61 - 64.

Mandated Payment of Wages Owed at Time of Separation

67. Pursuant to Labor Code § 201, employers are required to immediately pay employees all wages due at the time employees are discharged. Additionally, pursuant to Labor Code § 202, if an employee gives at least 72-hours previous notice of their intent to quit/retire, the employer is required to pay the employee all wages due the time the employee quits/retires. Pursuant to Labor Code § 202, if an employee does not give 72-hours previous notice of their intention to quit/retire, the employer is required to pay the employee all wages due the employee within 72-hours of the time the employee leaves employment.

Defendants' Failure to Timely Pay

Wages Owed at the Time of Separation

68. At all times during the applicable statute of limitations period, in violation of Labor Code §§ 200-203, 227.3, Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) were not timely paid all wages due them at the time of their separation from employment even though Defendants knew such payment was owed and it was within Defendants' control to make such payment in accordance with Labor Code §§ 200-203, 227.3. With respect to Plaintiff Adrian Gomez, he was terminated but did not receive his final wages for several days. Defendants thereby willfully violated Labor Code §§ 201-202 and the applicable IWC Wage Order(s).

69. Because Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) were not paid all the wages owed to them in accordance with the timeframes set forth in Labor Code §§ 201-202, pursuant to Labor Code § 203, the CARA HOTEL DEFENDANTS were required to pay Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) their regular wages from the due date thereof at the same rate until paid, up to a maximum of thirty (30) days of pay. However, not only did Defendants fail to pay the wages owed said employees (including Plaintiff) at the time of their separation from employment, the CARA HOTEL DEFENDANTS, Defendants also failed to provide said employees (including Plaintiff) with the continuous wages mandated under Labor Code § 203.

Remedies

70. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the wages, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Individual Causes of Action for Labor Law Violations.”

TENTH CAUSE OF ACTION -- FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS BY PLAINTIFF ADRIAN GOMEZ AGAINST DEFENDANTS CS HOTEL, LLC, HOTEL CARA, DEAN McKILLEN, DOES 1 THROUGH 20, AND DOES 31 THROUGH 50

71. Plaintiff hereby incorporates the following paragraphs from this First Amended Complaint: 1 – 14, 26 – 27, 30 – 31, 34 – 38, 41 – 44, 47 – 50, 53 – 58, 61 – 64, and 67 - 69.

Statutory Requirement to Provide Accurate Itemized Wage Statements

72. At all times herein, pursuant to Labor Code § 226(a), each time an employer pays wages to an employee, the employer is required to furnish the employee with an “accurate itemized statement in writing” that itemizes the following: 1) gross wages earned; 2) total hours worked; 3) the number of piece-rate units earned and the applicable piece rates; 4) all deductions; 5) net wages earned; 6) the inclusive dates for which the employee is being paid; 7) name of the employee and only the last 4 digits of his/her social security number or employee I.D. number; 8) the name and address of the legal entity of the employer; 9) all hourly rates in effect to the pay period and corresponding number of hours worked at each hourly rate.

Failure to Provide Accurate Itemized Wage Statements

73. At all times during the statute of limitations period applicable to this cause of action, Defendants violated Labor Code §226(a) in a multitude of ways with respect to Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff’s PAGA Notice Letter), including the following:

- a. The CARA HOTEL DEFENDANTS did not/do not always provide wage statements in writing to said employees (including Plaintiff).
- b. When wage statements are provided, the wage statements do not accurately record

the total hours worked and the gross/net wages earned by Employees for:

- i. Premium pay wages for missed, untimely, restricted, interrupted, on-duty and/or short rest breaks/lactation breaks as referenced above.
- ii. Premium pay wages for missed, untimely, restricted, interrupted and/or short meal periods as referenced above,
- iii. Regular and/or overtime wages for time worked but not reported on the time records,
- iv. Regular and/or overtime wages for on-duty travel time,
- v. Regular and/or overtime wages for on-duty meal periods,
- vi. Regular and/or overtime wages for donning/doffing time,
- vii. Regular and/or overtime wages for rounding to the benefit of the CARA HOTEL EMPLOYERS,
- viii. Earned overtime wages,
- ix. Owed wages due to CARA HOTEL EMPLOYERS' failure to comply with minimum wages laws,
- x. Wages owed for vested vacation time,
- xi. Wages in the form of tips and/or service fees.

c. The CARA HOTEL EMPLOYERS' wage statements do not accurately set forth the name and address of the legal entity of the entity that employed Employees;

d. The CARA HOTEL EMPLOYERS' wage statements do not accurately record all the deductions deducted from Employee's wages,

e. The CARA HOTEL EMPLOYERS' wage statements do not set forth/accurately set forth all the hourly rates in effect (including the correct minimum wage and corresponding overtime wage) to the pay period and corresponding number of hours worked at each hourly rate by Employees.

74. As a result of the above statutory deficiencies in the wage statements provided to Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter), said employees (including Plaintiff) were not reasonably able to promptly and easily determine

from the wage statements alone one or more of the following items of information:

- a. The amount/accurate amount of gross wages earned and paid for the pay period,
- b. The amount/accurate amount of net wages earned and paid for the pay period,
- c. The amount/accurate total number of hours worked,
- d. The deductions that were made and/or the deductions made from the gross wages to determine the net wages paid during the pay period,
- e. The hourly rates/accurate hourly rates in effect during the pay period and/or the corresponding number of hours worked at each hourly rate,
- f. The accurate name and address of the legal entity of the employer.

75. A reasonable person would also have been unable to readily discern the above information without reference to other documents or information.

Remedies

76. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the wages, damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

ELEVENTH CAUSE OF ACTION -- FAILURE TO PROVIDE EMPLOYMENT RECORDS BY PLAINTIFF ADRIAN GOMEZ AGAINST DEFENDANTS CS HOTEL, LLC, HOTEL CARA, DEAN McKILLEN, DOES 1 THROUGH 20, AND DOES 31 THROUGH 50

77. Plaintiff hereby incorporates paragraphs 1 through 14 of this First Amended Complaint.

Statutory Requirement to Provide Employment Records

78. At all times herein, pursuant to Labor Code § 226(b), employers are required to afford their current and former employees the right to inspect or copy all records pertaining to their employment upon reasonable notice.

79. Pursuant to Labor Code § 226(c), an employer who receives a written or oral request to inspect or copy records must comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.

80. Pursuant to Labor Code § 226(b), if the employer provides copies of the records, the actual cost of reproduction may be charged to the employee.

Defendants' Failure to Provide Employment Records to Plaintiff

81. Pursuant to Labor Code §226(b), Adrian Gomez (via written correspondence transmitted via certified letter with return receipt) requested all records pertaining to Plaintiff's employment with the CARA HOTEL DEFENDANTS.

82. the CARA HOTEL DEFENDANTS received the request but failed to provide all the requested the documents for copying or to timely provide copies of all the requested records to Plaintiff or Plaintiff's attorneys. As a result, the CARA HOTEL DEFENDANTS prevented Mr. Gomez from discovering all facts and/or theories of liability which may support the allegation in this action.

Remedies

83. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

TWELFTH CAUSE OF ACTION -- VIOLATION OF LABOR LAWS GIVING RISE TO AN ACTION PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT (PAGA) - BY ADRIAN GOMEZ ON BEHALF OF HIMSELF AND OTHER CURRENT AND FORMER AGGRIEVED EMPLOYEES AGAINST DEFENDANTS CS HOTEL, LLC, HOTEL CARA, DEAN McKILLEN, DOES 1 THROUGH 20, AND DOES 31 THROUGH 50

84. Plaintiff hereby incorporates the following paragraphs of this First Amended Complaint: 1 – 14, 26 – 27, 30 – 31, 34 – 38, 41 – 44, 47 – 50, 53 – 58, 61 – 64, 67 – 69, 71 - 75, and 78 - 82.

85. Plaintiff brings this cause of action pursuant to the Private Attorneys General Act (Labor Code §2699) on behalf of himself and all aggrieved employees as described as follows: All current and former employees of Defendants who were either 1) classified as non-exempt

employees or 2) should have been classified as non-exempt employees who worked for Defendants at any time during the following time period: One year before the date that the PAGA Notice Letter was filed with the LWDA) to the present and continuing until the unlawful employment practices are stopped or a judgment is obtained.

PAGA Claim Filed with the LWDA

86. Plaintiff has exhausted all statutory prerequisites to filing a Private Attorneys General Action in this matter by providing written notice to the Labor and Workforce Development Agency on or about March 9, 2023 that Defendants had violated and were continuing to violate provisions of the California Labor Code. Pursuant to the PAGA, said filing resulted in a tolling of the applicable statute of limitation(s).

87. At least sixty-five days has passed since Plaintiff provided written notice (by online submission to the Labor and Workforce Development Agency and by certified mail to Defendants) that Defendants had violated and continued to violate provisions of the California Labor Code. Plaintiff has not received notice from the LWDA that it intends to prosecute an action against Defendants. Therefore, as statutorily permitted by Labor Code § 2699.3, Plaintiff has the right to commence a Private Attorneys General Action (PAGA) pursuant to Labor Code § 2699.

COUNT ONE – FAILURE TO PAY OVERTIME WAGES

88. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and/or other aggrieved employees) is entitled to recover the penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT TWO -- FAILURE TO PAY MINIMIUM WAGES

89. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and/or other aggrieved employees) is entitled to recover the penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards, and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT THREE – FAILURE TO PROVIDE MEAL PERIODS/PREMIUM PAY

90. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and/or other aggrieved employees) is entitled to recover the penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT FOUR – FAILURE TO PROVIDE REST BREAKS/PREMIUM PAY

91. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and/or other aggrieved employees) is entitled to recover the damages, penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards, and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT FIVE -- FAILURE TO PAY TIPS/SERVICE FEES

92. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and/or other aggrieved employees) is entitled to recover the penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards, and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT SIX – FAILURE TO COMPLY WITH SICK LEAVE LAWS

93. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and/or other aggrieved employees) is entitled to recover the penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards, and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT SEVEN -- FAILING TO PAY/TIMELY PAY

WAGES FOR ALL TIME WORKED

94. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and/or other aggrieved employees) is entitled to recover the penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT EIGHT – FAILURE TO PAY WAGES OWED AT SEPARATION

95. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and/or other aggrieved employees) seeks to recover the penalties, awards, and other remedies set forth

below in the Prayer for Damages, Awards, and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT NINE – FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

96. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and/or other aggrieved employees) seeks to recover the penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards, and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT TEN – FAILURE TO INDEMNIFY NECESSARY EXPENDITURES

Statutory Requirement that Employees Be Indemnified for Expenditures

97. At all times herein, pursuant to Labor Code § 2802(a), an employer is required to indemnify employees for all necessary expenditures incurred by the employee in the discharge of the employee’s duties or in obedience to the directions of the employer.

Defendants’ Failure to Indemnify Expenditures

98. At all times during the statute of limitations period applicable to this cause of action, in violation of Labor Code § 2802(a), the CARA HOTEL DEFENDANTS failed to indemnify Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff’s PAGA Notice Letter) for necessary expenditures incurred by them in the discharge of their duties or in obedience to the directions of Defendants including the following expenditures: Use of Employees’ personal vehicles resulting in necessary expenditures for gas, vehicle maintenance, and insurance; availability and/or use of Employees’ personal cell phone devices; availability and/or use of Employees’ personal computer equipment and programs; etc.

Remedies

99. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and/or other aggrieved employees) seeks to recover the penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT ELEVEN - FAILURE TO PROVIDE SEATING

Mandated Seating

100. At all times herein, pursuant to the applicable Industrial Wage Order (IWO), the CARA HOTEL DEFENDANTS was required to provide Adrian Gomez (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) with seating as follows:

- 1) Suitable seating when the nature of the Employees' work reasonably permits use of seats and
- 2) Suitable seating in reasonable proximity to Employee's work areas for use by Employees when a) they are not engaged in active duty, b) their work requires standing and c) such seats would not interfere with the performance of their duties.

Defendants' Failure to Provide Mandated Seating

101. Adrian Gomez (who assisted in preparing food) was not given a stool/seat during times that he could prepare food while sitting. Other Employees were similarly denied stools/seats while performing their respective job duties.

Remedies

102. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and/or other aggrieved employees) seeks to recover the penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

COUNT TWELVE - TAKING ILLEGAL DEDUCTIONS

Statutory Prohibition of Making Deductions from an Employee's Wages

103. Pursuant to Labor Code § 221, it is unlawful for any employer to collect or deduct monies from an employee's wages. The only exceptions to Labor Code § 221 are found in Labor Code § 224 which states that deductions may be made when the employer is required or empowered to do so by state or federal law or when a deduction is expressly authorized in writing by the employee for purposes specified in Labor Code § 224.

Illegal Deductions from Employee Wages

104. During the statute of limitations period applicable to this cause of action, in violation of Labor Code § 221, the CARA HOTEL DEFENDANTS took deductions from the wages earned by aggrieved employees encompassed by Plaintiff's PAGA Notice Letter which were not authorized under Labor Code § 224 or any other state or federal law. Moreover, said aggrieved

employees never agreed in writing to such deductions and such deductions are not one of the items that an employee may authorize be deducted from their earned wages.

Remedies

105. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and/or other aggrieved employees) seeks to recover the penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT THIRTEEN -- MISCLASSIFICATION OF EMPLOYEES AS EXEMPT EMPLOYEES

Aggrieved Employees were Non-Exempt Employees, Not Exempt Employees

106. At all times that the aggrieved employees encompassed by Plaintiff’s PAGA Notice Letter provided work for the CARA HOTEL DEFENDANTS, they were non-exempt employees of the CARA HOTEL DEFENDANTS for the following reasons:

- a. They were either not paid a salary or they salary they were paid was not at least twice the minimum wage for full-time employment.
- b. Their primary duties did not consist of administrative, executive, or professional tasks.
- c. Their job duties did not involve the use of discretion or independent judgment.
- d. Other reasons set forth in the applicable Industrial Wage Order.

107. Based on the above and pursuant to California law, at all times herein, aggrieved employees encompassed by Plaintiff’s PAGA Notice Letter were non-exempt employee rather than exempt employees of the CARA HOTEL DEFENDANTS.

108. Misclassifying aggrieved employees encompassed by Plaintiff’s PAGA Notice Letter as exempt employees was done willfully by Defendants for the purpose of maximizing the business profits and/or personal assets of the CARA HOTEL DEFENDANTS to the illegal detriment of the aggrieved employees. This was accomplished by depriving said employees of employment benefits that employers owe to non-exempt employees (but not exempt employees) under California law including the following: overtime wages, legally compliant rest breaks

and meal periods, etc.

Remedies

109. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and/or other aggrieved employees) is entitled to recover the penalties, awards, and other remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

PRAYER FOR DAMAGES, AWARDS AND OTHER RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, in an amount within the jurisdiction of the above-entitled court and within the applicable statutes of limitation as follows:

FEHA Cause of Action

1. Economic, non-economic and consequential damages to the fullest extent permitted under California law in the amount of \$750,000.
2. Punitive damages to the fullest extent permitted under Civil Code § 3294 in the amount of \$1,500,000.
3. Attorney’s fees to the fullest extent permitted under Gov. Code § 12965(c) in an amount to be determined by the court.
4. Costs (including expert witness fees) to the fullest extent permitted under Gov’t Code § 12965(c), CCP § 998 and/or CCP § 1032, in an amount to be determined by the court.
5. Prejudgment interest to the fullest extent permitted under California law, including but not limited to Civil Code § 3287(b), Civil Code § 3288, Civil Code § 3289, CCP § 998, CCP § 1032, and/or CCP § 3291, in an amount to be determined by the court.
6. Post-judgment interest if applicable, to the fullest extent permitted by law, in an amount to be determined by the court.
7. For such further relief as the court deems just and proper as permitted under California law.

Individual Causes of Action for Labor Law Violations

1. Unpaid/underpaid wages or other pay (including but not limited to regular wages,

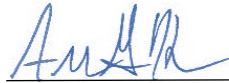
- 1 overtime wages and/or minimum wages, tips and/or service fees) owed to Plaintiff under
- 2 the Labor Code and/or applicable Industrial Wage Order in the amount of \$50,000
- 3 2. All premium pay/wages owed to Plaintiff under the Labor Code, applicable Industrial
- 4 Wage Order(s) and/or local law/ordinance for untimely, missed, or interrupted meal
- 5 periods and/or rest breaks in the amount of \$30,000.
- 6 3. Continuing wages to the fullest extent permitted by Labor Code § 203 in the amount of
- 7 \$4,000.
- 8 4. Statutory penalties which the Labor Code permits an individual employee to recover from
- 9 an employer for violation(s) of the Labor Code, applicable Industrial Wage Order(s)
- 10 and/or applicable local laws/ordinances which were violated with respect to Plaintiff's
- 11 employment as alleged herein, in the amount of \$10,000.
- 12 5. The Civil Remedies set forth in the City of West Hollywood Ordinance 5.130.150,
- 13 including, but not limited to, back wages, payment of unlawfully withheld sick leave,
- 14 payment of penalties up to the amount of one hundred dollars (\$100.00) for each day that
- 15 the violation occurred or continued, trebled monies and penalties for willful violations and
- 16 reasonable attorneys' fees and costs.
- 17 6. All liquidated damages which the Labor Code permits an individual employee to recover
- 18 from an employer for violation(s) of the Labor Code, applicable Industrial Wage Order(s)
- 19 and/or applicable local laws/ordinances which were violated with respect to Plaintiff's
- 20 employment (including the failure to comply with minimum wage laws) as alleged herein,
- 21 in the amount of \$50,000.
- 22 7. All equitable relief permitted under California law, according to proof.
- 23 8. Attorney's fees to the fullest extent permitted under California law, according to proof.
- 24 9. Costs to the fullest extent permitted under California law.
- 25 10. Prejudgment interest to the fullest extent permitted under California law.
- 26 11. Post-judgment interest, as applicable, and to the extent permitted under California law.
- 27 12. For such further relief as the court deems just as permitted under California law.
- 28

PAGA Cause of Action

1. All civil penalties and/or other penalties and remedies recoverable under the PAGA for violations of the Labor Code, applicable Industrial Wage Order(s) and/or applicable regulation, local law/ordinance, in the amount of \$5,000,000. To the extent required by the PAGA, the civil penalties recovered on behalf of all aggrieved employees shall be distributed seventy-five percent (75%) to the LWDA and the remaining twenty-five percent (25%) distributed to Plaintiff and all aggrieved employees.
2. Attorneys' fees and/or costs to the full extent permitted under the PAGA, the Labor Code, the applicable Industrial Wage Order and/or other applicable California law.
3. Prejudgment interest to the fullest extent permitted under California law.
4. Post-judgment interest if applicable, to the fullest extent permitted by California law.
5. For such further relief as the court deems just and as permitted under California law.

Dated: May 31, 2023

MOORADIAN LAW, APC



By: Zorik Mooradian
Andrina G. Hanson
Nanor A. Kamberian
Attorneys for Plaintiff Adrian Gomez

DEMAND FOR A JURY TRIAL

Plaintiff, Adrian Gomez, hereby demands a jury trial in the within matter.

Dated: May 31, 2023

MOORADIAN LAW, APC



By: Zorik Mooradian
Andrina G. Hanson
Nanor A. Kamberian
Attorneys for Plaintiff Adrian Gomez