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ANGEL RODRIGUEZ

Assigned for All Purposes
Judge Peter Wilson
Dept. CX101

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
(UNLIMITED JURISDICTION)

ANGEL RODRIGUEZ,

Plaintiff,

vs.

WORK CITY USA LLC; GO AMERICA
STAFFING SERVICES, INC.; SUMMIT
HOTEL TRS 129, LLC; and DOES 1 to 25,
inclusive,

Defendant(s).

Case No.: 30-2023-01346912-CU-OE-CXC

COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 8) Failure to Provide Personnel Records;
- 9) Failure to Provide Pay Records;
- 10) Civil Penalties (Lab. Code §§ 2698, *et seq.*);
- 11) Retaliation In Violation of Labor Code Section 1102.5;
- 12) Retaliation In Violation of Labor Code Section 6310;

- 13) Negligent Hiring, Retention,
Supervision, & Training;
14) Wrongful Constructive Discharge In
Violation of Public Policy; and
15) Unfair Competition (Bus. & Prof.
Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

COMES NOW Plaintiff, ANGEL RODRIGUEZ (hereafter “Plaintiff”), and complains
and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), the Business and Professions Code, and public policy against WORK CITY USA LLC; GO AMERICA STAFFING SERVICES, INC.; SUMMIT HOTEL TRS 129, LLC; and DOES 1 to 25, inclusive (collectively “Defendants”).

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the County of Orange because Defendants WORK CITY USA LLC, GO AMERICA STAFFING SERVICES, INC., SUMMIT HOTEL TRS 129, LLC, and DOES 1 to 25, inclusive do business in the County of Orange and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Orange is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

THE PARTIES

3. Plaintiff Angel Rodriguez is a resident of the city of Lake Forest in Orange County, California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11050 and an “Aggrieved Employee” within the meaning of Labor Code Section 2699(c).

1 4. Defendant WORK CITY USA LLC is and was a Colorado limited liability
2 company, doing business in Orange County, California and which employed Plaintiff. As
3 such, it is a citizen of California based on Plaintiff's information and belief.

4 5. Defendant GO AMERICA STAFFING SERVICES, INC. is and was a
5 California corporation, doing business in Orange County, and which employed Plaintiff. As
6 such, it is a citizen of California based on Plaintiff's information and belief.

7 6. Defendant SUMMIT HOTEL TRS 129, LLC is and was a Delaware limited
8 liability company, doing business in Orange County, California. On information and belief,
9 SUMMIT HOTEL TRS 129, LLC owns and operates the Homewood Suites by Hilton Aliso
10 Viejo - Laguna Beach located at 110 Vantis Dr., Aliso Viejo, California, where Plaintiff
11 worked. As such, it is a citizen of California based on Plaintiff's information and belief.

12 7. At all relevant times, Defendants WORK CITY USA LLC, GO AMERICA
13 STAFFING SERVICES, INC., and SUMMIT HOTEL TRS 129, LLC were the "employer" of
14 Plaintiff within the meaning of all applicable state laws and statutes, in that in that they each
15 controlled the wages, hours, and/or working conditions of Plaintiff and the Aggrieved
16 Employees (defined below).

17 8. The "Aggrieved Employees" are all current and former non-exempt or hourly
18 paid employees who worked for Defendants in California during the relevant time period
19 pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys
20 General Act of 2004 ("PAGA").

21 9. At all times herein relevant, Defendants WORK CITY USA LLC, GO
22 AMERICA STAFFING SERVICES, INC., SUMMIT HOTEL TRS 129, LLC, and DOES 1 to
23 25, and each of them, were the agents, partners, joint venturers, joint employers,
24 representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each
25 of the other, and at all times relevant hereto were acting within the course and scope of their
26 authority as such agents, partners, joint venturers, representatives, servants, employees,
27 successors, coconspirators and/or assigns, and all acts or omissions alleged herein were duly
28 committed with the ratification, knowledge, permission, encouragement, authorization and/or

1 consent of each defendant designated as a DOE herein.

2 10. The true names and capacities, whether corporate, associate, individual or
3 otherwise, of defendants DOES 1 through 25, inclusive, are unknown to Plaintiff who sues
4 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
5 information and belief alleges, that each of the defendants designated as a DOE is legally
6 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
7 the injuries and damages to Plaintiff as alleged in this Complaint. Plaintiff will seek leave of
8 court to amend this Complaint to show the true names and capacities when the same have been
9 ascertained.

10 11. Plaintiff further alleges that Defendants including the unknown defendants
11 identified as DOES, directly or indirectly controlled or affected the working conditions,
12 wages, working hours, and conditions of employment of Plaintiff and the other Aggrieved
13 Employees so as to make each of said Defendants employers and employers liable under the
14 statutory provisions set forth herein.

15 **GENERAL ALLEGATIONS**

16 12. Plaintiff started working as a server at the Homewood Suites by Hilton Aliso
17 Viejo - Laguna Beach located at 110 Vantis Dr., Aliso Viejo, California, in or around 2021.
18 Plaintiff's employment ended on or around April 1, 2023.

19 13. At all relevant times, Defendants issued wages to Plaintiff and all of the other
20 Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times,
21 Defendants classified Plaintiff and all of the other Aggrieved Employees as non-exempt
22 employees entitled to the protections of the Labor Code and the Wage Order. Plaintiff's latest
23 rate of pay was approximately \$18.00 per hour.

24 14. Defendants failed to pay Plaintiff and the other Aggrieved Employees for all
25 time worked or subject to its control. Plaintiff and the other Aggrieved Employees worked "off
26 the clock" in that the company had a policy and practice of rounding down work hours which
27 led to Plaintiff and others not being paid for all hours worked, which would include the
28 minimum wage. Moreover, to the extent employees such as Plaintiff and others worked

1 through their meal periods and those meal periods were interrupted, they were not
2 compensated for that time, which would be akin to a minimum wage violation. Furthermore,
3 Defendants management would often speak to or call/text Plaintiff and the other Aggrieved
4 Employees about work-related matters before the start of their shifts or after their shifts had
5 ended.

6 15. Due to the above “off the clock” violations, Defendants failed to pay Plaintiff
7 and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved
8 Employees’ actual work hours, which included the “off the clock” work as described above,
9 entitled them to overtime, however, it was not company policy to keep accurate track of all
10 hours worked and to pay employees the accurate amount of overtime, especially since the “off
11 the clock” work was not factored into the equation. Furthermore, any incentive payments
12 and/or bonus payments were not factored into employees’ regular rate of pay for purposes of
13 deciphering the correct overtime rate of pay, premium wages for missed meal and rest breaks,
14 and sick leave wages.

15 16. Defendants failed to provide all compliant meal periods and authorize and
16 permit all compliant rest periods to which Plaintiff and the other Aggrieved Employees were
17 entitled. Plaintiff and the other Aggrieved Employees were entitled to take off-duty,
18 uninterrupted 30-minute meal periods before the fifth and tenth hours of work and to take
19 uninterrupted 10-minute rest periods for every four hours or major fraction thereof worked.
20 Due to the workload, Plaintiff and the Aggrieved Employees would not be able to take timely,
21 uninterrupted meal periods before the 5th hour worked. Even when the Aggrieved Employees
22 would take their meal periods, their meal breaks were often interrupted by management and/or
23 hotel guests asking for assistance. Similarly, Plaintiff and the other Aggrieved Employees
24 were not able to take their 10-minute rest breaks due to the workload. During his employment
25 tenure, Plaintiff never took rest breaks. On information and belief, Defendants did not always
26 provide premium wages for these meal and rest break violations; if Defendants did provide
27 premium wages, they were not paid at the correct rate, as explained above.

28 17. Defendants failed to reimburse Plaintiff and the other Aggrieved Employees for

1 business expenses they incurred in direct consequence of the discharge of their duties. These
2 costs include, but are not limited to, use of personal cell phones to communicate with office
3 staff concerning work matters and scheduling. In fact, Defendants required Plaintiff and the
4 other employees to download an app called “Work Records” onto their personal cell phones
5 and to clock in and out of their work shifts through the “Work Records” app. However,
6 Defendants did not provide Plaintiff and the others with mobile phones and did not reimburse
7 Plaintiff and the other Aggrieved Employees for these mobile phone expenses. Accordingly,
8 Defendants was in violation of California Labor Code sections 2800 and 2802.

9 18. Defendants failed to pay its employees all wages due to them within any time
10 period specified by California Labor Code section 204, including the minimum wages and
11 overtime as described above as well as meal/rest break premiums.

12 19. Defendants did not provide Plaintiff and the other Aggrieved Employees
13 accurate, itemized wage statements. Wage statements must include all hours worked, overtime
14 hours worked, all applicable hourly rates, the correct legal name and correct address of
15 employer entity, gross wages earned, all deductions, net wages earned, reimbursement for
16 business expenses, the correct start and end of the applicable pay period, the employee ID
17 numbers or social security numbers, among other items. Labor Code § 226(a)(2). Defendants
18 issued wage statements that simply did not include the required information, did not reflect
19 total hours worked and the number of hours worked at each hourly rate, and incorrectly
20 reflected gross and net wages earned because of Defendants’ failure to properly pay wages as
21 explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). Defendants’ failure to maintain
22 accurate records as to the hours worked daily by employees also constitutes a violation of
23 Labor Code section 1174(d).

24 20. Moreover, Defendants failed to provide paid sick leave and/or correctly
25 calculated sick leave wages to Plaintiff and the other Aggrieved Employees and failed to
26 provide Plaintiff and all of the other Aggrieved Employees with statements of sick leave
27 available, or paid time off in lieu of sick leave, in violation of Labor Code sections 233 and
28 246.

21. Finally, because Defendants did not properly pay all wages earned as explained herein, Defendants also failed to pay final wages owed to Plaintiff and the other Aggrieved Employees in violation of Labor Code section 203. These earned but unpaid wages include minimum wages and compensation for all hours worked, overtime compensation, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

22. Defendants has also violated Labor Code section 558 and engaged in business practices which violate Business and Professions Code Section 17200.

23. Plaintiff would also have individual claims against Defendants for retaliation in violation of Labor Code sections 1102.5 and 6310, negligent retention and supervision, and constructive wrongful discharge in violation of public policy. Throughout Plaintiff's employment, the front desk supervisor, "Celine", would often arrive to work intoxicated and would behave inappropriately during work. Not only did Celine's behavior make Plaintiff feel very uncomfortable, but it also posed a safety concern for him. Plaintiff confronted Celine about her behavior and reported Celine's behavior/intoxication during work hours to both the General Manager, Martha Marquez, and the Maintenance Supervisor, Jose Albear. Following Plaintiff's complaints, Celine became more hostile and began to consistently yell at Plaintiff during his work shifts. On or around April 1, 2023, Celine once again started yelling at Plaintiff and accused Plaintiff of spending more money than necessary on supplies. The situation had become intolerable for Plaintiff. Due to the retaliation and hostile work environment Plaintiff was experiencing, and the rampant labor code violations that were occurring, Plaintiff was forced to quit his job.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

(Lab. Code §§ 510, 1194, 1197, and 1198)

(By Plaintiff against all Defendants)

24. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

25. At all relevant times, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and

1 1198, and the Wage Order.

2 26. Section 2(K) of the Wage Order defines “hours worked” as “the time during
3 which an employee is subject to the control of an employer, and includes all the time the
4 employee is suffered or permitted to work, whether or not required to do so.”

5 27. Section 3 of the Wage Order states:

6 (A) Daily Overtime - General Provisions

7 (1) The following overtime provisions are applicable to
8 employees 18 years of age or over and to employees 16 or
9 17 years of age who are not required by law to attend
10 school and are not otherwise prohibited by law from
11 engaging in the subject work. Such employees shall not
12 be employed more than eight (8) hours in any workday or
13 more than 40 hours in any workweek unless the employee
14 receives one and one-half (1 ½) times such employee’s
15 regular rate of pay for all hours worked over 40 hours in
16 the workweek. Eight (8) hours of labor constitutes a day’s
17 work. Employment beyond eight (8) hours in any
18 workday or more than six (6) days in any workweek is
19 permissible provided the employee is compensated for
20 such overtime at not less than:

21 (a) One and one-half (1 ½) times the employee’s
22 regular rate of pay for all hours worked in excess
23 of eight (8) hours up to and including 12 hours in
24 any workday, and for the first eight (8) hours
25 worked on the seventh (7th) consecutive day of
26 work in a workweek.

27 (b) Double the employee’s regular rate of pay for
28 all hours worked in excess of 12 hours in any
workday and for all hours worked in excess of
eight (8) hours on the seventh (7th) consecutive
day of work in a workweek.

(c) The overtime rate of compensation required to
be paid to a nonexempt full-time salaried
employee shall be computed by using the
employee’s regular hourly salary as one-fortieth
(1/40) of the employee’s weekly salary.

28 28. Section 4 of the Wage Order requires an employer to pay non-exempt
employees at least the minimum wage set forth therein for all hours worked, which consist of

1 all hours that an employer has actual or constructive knowledge that employees are working.

2 29. Labor Code section 510 states:

3 Eight hours of labor constitutes a day's work. Any work in excess
4 of eight hours in one workday and any work in excess of 40
5 hours in any one workweek and the first eight hours worked on
6 the seventh day of work in any one workweek shall be
7 compensated at the rate of no less than one and one-half times the
8 regular rate of pay for an employee. Any work in excess of 12
9 hours in one day shall be compensated at the rate of no less than
10 twice the regular rate of pay for an employee. In addition, any
11 work in excess of eight hours on any seventh day of a workweek
shall be compensated at the rate of no less than twice the regular
rate of pay of an employee. Nothing in this section requires an
employer to combine more than one rate of overtime
compensation in order to calculate the amount to be paid to an
employee for any hour of overtime work.

12 30. California Labor Code § 1194 invalidates any agreement between an employer
13 and an employee to work for less than the minimum wage required under the applicable Wage
14 Order.

15 31. California Labor Code § 1197 makes it unlawful for an employer to pay an
16 employee less than the minimum wage required under the applicable Wage Order for all hours
17 worked during a payroll period.

18 32. California Labor Code § 1198 makes it unlawful for an employer to employ an
19 employee under conditions that violate the Wage Order.

20 33. In conjunction, these provisions of the California Labor Code require
21 employers to pay non-exempt employees no less than their agreed-upon or statutorily
22 mandated wage rates for all hours worked, including unrecorded hours when the employer
23 knew or reasonably should have known that employees were working during those hours. (See
24 *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

25 34. Defendants required Plaintiff to work in excess of eight (8) hours in one
26 workday and forty (40) hours in one workweek without compensating him for such time
27 worked at the premium rates required by California law.

28 35. As described more fully above, Defendants failed to pay all minimum, regular,

1 overtime, and double time wages to Plaintiff because Defendants paid wages based on
2 rounded times, did not pay for off-the-clock work, and failed to pay overtime and double time
3 wages based on correct regular rates of pay.

4 36. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
5 an amount, subject to proof, to the extent that he was not paid the full amount of wages earned
6 during each pay period during the applicable limitations period, including minimum, overtime,
7 and double-time wages.

8 37. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution
9 for unpaid wages which Defendants failed to pay him at the rates set forth herein, interest
10 thereon, and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§
11 1194.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REST BREAKS**

14 **(Lab. Code §§ 226.7 and 1198)**

15 **(By Plaintiff against all Defendants)**

16 38. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

17 39. At all relevant times during the applicable limitations period, Plaintiff was a
18 non-exempt employee of Defendants and entitled to the benefits and protections of California
19 Labor Code §§ 226.7, 1198, and the Wage Order.

20 40. Labor Code § 1198 states,

21 "The maximum hours of work and the standard conditions of labor
22 fixed by the commission shall be the maximum hours of work and the
23 standard conditions of labor for employees. The employment of any
employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful."

24 41. In relevant part, Section 12 of the Wage Order states:

25 Rest Periods:

26 (A) Every employer shall authorize and permit all employees
27 to take rest periods, which insofar as practicable shall be in the
28 middle of each work period. The authorized rest period time
shall be based on the total hours worked daily at the rate often
(10) minutes net rest time per four (4) hours or major fraction

1 thereof. However, a rest period need not be authorized for
2 employees whose total daily work time is less than three and
3 one-half (3 1/2) hours. Authorized rest period time shall be
4 counted as hours worked for which there shall be no deduction
5 from wages.

6 (B) If an employer fails to provide an employee a rest period
7 in accordance with the applicable provisions of this Order, the
8 employer shall pay the employee one (1) hour of pay at the
9 employee's regular rate of compensation for each work day that
10 the rest period is not provided.

11 42. In addition, Labor Code Section 226.7 states

12 (b) An employer shall not require an employee to work during a
13 meal or rest or recovery period mandated pursuant to an applicable
14 statute, or applicable regulation, standard, or order of the Industrial
15 Welfare Commission, the Occupational Safety and Health Standards
16 Board, or the Division of Occupational Safety and Health.

17 (c) If an employer fails to provide an employee a meal or rest or
18 recovery period in accordance with a state law, including, but not
19 limited to, an applicable statute or applicable regulation, standard, or
20 order of the Industrial Welfare Commission, the Occupational Safety
21 and Health Standards Board, or the Division of Occupational Safety and
22 Health, the employer shall pay the employee one additional hour of pay
23 at the employee's regular rate of compensation for each workday that
24 the meal or rest or recovery period is not provided.

25 43. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest
26 breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

27 44. Defendants failed to authorize and permit Plaintiff to take compliant rest
28 periods and failed to pay one hour of correctly-calculated premium pay for each day such a
29 rest period was not provided.

30 45. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
31 an amount subject to proof to the extent he was not paid additional wages owed for all rest
32 breaks not provided to him.

33 46. By reason of the above, Plaintiff is entitled to premium wages for workdays in
34 which one or more rest breaks were not provided to him pursuant to California Labor Code §
35 226.7, plus interest and costs.

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employee's regular rate of compensation for each workday that the meal period is not provided.

52. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day he worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also entitled to a second 30-minute meal period when he worked more than ten (10) hours in a workday.

53. During the relevant time period, Defendants failed to provide Plaintiff with compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

54. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount subject to proof to the extent he was not paid additional wages owed for all meal periods not provided to him.

55. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more meal periods were not provided to him pursuant to California Labor Code § 226.7, plus interest and costs.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiff against all Defendants)

56. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

57. At all relevant times, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the Wage Order.

58. In pertinent part, California Labor Code § 2802(a) states:

An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.

59. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

1 60. At all relevant times during the applicable limitations period, Plaintiff used his
2 personal cell phone to clock in and out of their work shifts through the “Work Records” app
3 and to communicate with office staff concerning work matters and scheduling. However,
4 Defendants did not provide Plaintiff with a mobile phone and did not reimburse Plaintiff for
5 his mobile phone expenses.

6 61. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
7 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
8 Defendants’ failure to indemnify Plaintiff for the reasonable expenses he incurred in the course
9 of performing his duties.

10 62. By reason of the above, Plaintiff is entitled to reimbursement for all necessary
11 expenditures and losses and interest due and owing to within three years (3) of the date of the
12 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §
13 2802(b). Further, Plaintiff seeks reasonable attorney’s fees pursuant to Labor Code § 2802(c).

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

16 **(California Labor Code Section 226)**

17 **(By Plaintiff against all Defendants)**

18 63. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 64. Pursuant to California Labor Code Section 226, every employer must furnish
20 each employee an itemized statement of wages and deductions at the time of payment of wages.

21 65. Defendants knowingly and intentionally did not furnish Plaintiff with pay stubs
22 that accurately reflected all information required by Labor Code Section 226, including but not
23 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
24 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
25 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed
26 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with
27 California Labor Code Section 226(a).

28 66. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to

1 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
2 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
3 subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000),
4 plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of
5 action pursuant to the 1-year period immediately preceding the date this lawsuit was filed.

6 67. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
7 sustained damages, including loss of earnings, in an amount to be established at trial. As a
8 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
9 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
10 and attorney's fees pursuant to statute.

11 68. Under this cause of action, Plaintiff prays for penalties due under the statutes
12 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
13 proof at trial.

14 **SIXTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

16 **(California Labor Code Sections 201-203)**

17 **(By Plaintiff against all Defendants)**

18 69. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 70. Pursuant to California Labor Code Section 201(a), an employer who discharges
20 an employee must immediately pay for all compensation due and owing.

21 71. Pursuant to California Labor Code Section 202, when an employee resigns, the
22 employer must pay all compensation due and owing within 72 hours of resignation, or on the
23 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

24 72. Pursuant to California Labor Code Section 203, if an employer willfully fails to
25 pay, without abatement or reduction, any wages of an employee whose employment ends, the
26 wages of the employee shall continue as a penalty from the due date at the same rate until paid
27 or until an action is commenced; however, the wages shall not continue for more than 30 days
28 for failure to pay an employee owed wages.

1 73. After Plaintiff's employment with Defendants ended, Defendants willfully
2 refused and continue to refuse to pay him unpaid wages as required by Labor Code Section
3 203.

4 74. Under this cause of action, Plaintiff prays for penalties due under the statutes
5 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
6 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years
7 immediately preceding the filing of this lawsuit.

8 75. Under this cause of action, Plaintiff also prays for attorney's fees and costs
9 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
10 as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

11 76. Under this cause of action, Plaintiff prays for penalties due under the statutes
12 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
13 proof at trial.

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

16 **(California Labor Code Section 204)**

17 **(By Plaintiff against all Defendants)**

18 77. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

19 78. California Labor Code Section 204 establishes the fundamental right of all
20 employees in the State of California to be paid wages in a timely fashion for their work.

21 79. At all times relevant during the liability period, Defendants failed to pay
22 Plaintiff the full amount of all owed wages when due as required by California Labor Code
23 Section 204.

24 80. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
25 informed, believes, and thereon alleges, that all times relevant during the applicable limitations
26 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours
27 worked, including the minimum wage, overtime hours, double time hours, and premium pay
28 for missed meal and rest breaks.

81. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount, subject to proof, to the extent he was not paid all wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from Defendants' records or indirectly based on information from Defendants' records.

82. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE PERSONNEL RECORDS

(By Plaintiff against all Defendants)

83. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

84. Labor Code section 1198.5 dictates “every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.”

85. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times...” On information and belief, Defendants intentionally failed to provide Plaintiff with personnel records when requested by Plaintiff via letter on May 10, 2023, as required by law. Plaintiff requested his personnel records in accordance with California Labor Code section 1198.5(k) on May 10, 2023 via certified U.S. mail.

86. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants' failure to provide personnel records.

87. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to penalties, and costs to the extent permitted by law and according to proof at trial.

1 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
2 amount of \$750.00, along with costs and attorney's fees.

3 **NINTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE PAY RECORDS**

5 **(By Plaintiff against all Defendants)**

6 88. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

7 89. Labor Code section 226 sub-section (b) dictates "an employer...shall afford
8 current and former employees the right to inspect or copy records pertaining to their
9 employment, upon reasonable request to the employer..."

10 90. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
11 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
12 pertaining to a current or former employee shall comply with the request as soon as practicable,
13 but no later than 21 calendar days from the date of the request." On information and belief,
14 Defendants intentionally failed to provide Plaintiff with pay records when requested by
15 Plaintiff via letter, on May 10, 2023, and as required by law. Plaintiff requested his pay records
16 in accordance with California Labor Code section 226 on May 10, 2023, via U.S. certified mail.
17 Defendants failed to provide Plaintiff with an opportunity to inspect or copy his pay records
18 within 21 days.

19 91. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
20 and continues to suffer substantial losses related to Defendants' failure to provide pay records.
21 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
22 amount of \$750.00, along with costs and attorney's fees.

23 92. Plaintiff seeks all available remedies for Defendants' violations including, but
24 not limited to, penalties and costs to the extent permitted by law and according to proof at trial.

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1 **TENTH CAUSE OF ACTION**

2 **CIVIL PENALTIES**

3 **(Lab. Code §§ 2698, *et seq.*)**

4 **(By Plaintiff against all Defendants)**

5 93. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 94. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of
7 2004 (“PAGA”) because he was employed by Defendants during the applicable statutory
8 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.
9 Plaintiff seeks to recover on his own behalf, on behalf of the State of California, and on behalf
10 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by
11 PAGA, plus reasonable attorney’s fees and costs.

12 95. During the applicable time period, Defendants violated California Labor Code
13 §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 246.5, 510, 512, 558, 1102.5, 1174, 1194, 1197,
14 1198, 2802, and 6310.

15 96. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
16 behalf of themselves and other current or former employees, to bring a civil action to recover
17 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

18 97. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
19 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants’
20 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 246.5, 510,
21 512, 558, 1102.5, 1174, 1194, 1197, 1198, 2802, and 6310 during the applicable limitations
22 period in the following amounts:

23 A. For violations of California Labor Code § 204, one hundred dollars
24 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
25 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
26 established by California Labor Code § 210).

27 B. For violations of California Labor Code § 226(a), two hundred fifty
28 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars

1 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
2 established by California Labor Code § 226.3).

3 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
4 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
5 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
6 California Labor Code § 558).

7 D. For violations of California Labor Code § 1174, five hundred dollars
8 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
9 California Labor Code § 1174.5).

10 E. For violations of California Labor Code § 1197, one hundred dollars
11 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
12 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
13 per pay period (regardless of whether the initial violations were intentionally committed)
14 (penalty amounts established by California Labor Code § 1197.1).

15 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 233,
16 246, 246.5, 1194, 1198, 2802, and 6310, one hundred dollars (\$100.00) for each Aggrieved
17 Employee per pay period for each initial violation and two hundred dollars (\$200.00) for each
18 Aggrieved Employee per pay period for each subsequent violation (penalty amounts
19 established by California Labor Code § 2699(f)(2)).

20 G. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff individually
21 is entitled to recover civil penalties for each of the Defendants' violations of California Labor
22 Code § 1102.5 during the applicable limitations period in the following: an amount not to
23 exceed \$10,000 for each violation by Defendants of California Labor Code § 1102.5(c), as well
24 as attorney's fees and costs under Labor Code § 2699(g) (penalty amounts established by
25 California Labor Code § 1102.5(f)).

26 98. Plaintiff has complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letter dated May 10, 2023, Plaintiff filed written notices
28 online with the Labor and Workforce Development Agency ("LWDA") and gave written notice

1 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
2 to have been violated, including the facts and theories to support the alleged violations. Plaintiff
3 accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to
4 take action in response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff
5 anticipates that the LWDA will provide written notice to Plaintiff informing him that it does
6 not intend to investigate these allegations.

7 99. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
8 Employees are entitled to an award of civil penalties and reasonable attorney's fees and costs in
9 connection with their claims for civil penalties.

10 **ELEVENTH CAUSE OF ACTION**

11 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

12 **(Plaintiff against all Defendants)**

13 100. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 101. At all times material to this Complaint, California Labor Code § 1102.5 was
15 in effect and binding on Defendants. California Labor Code section 1102.5(b) requires
16 Defendants to refrain from retaliating against an employee for disclosing information to a
17 person with authority over the employee if the employee has reasonable cause to believe that
18 the information discloses a violation of state or federal statute, or a violation of or
19 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing
20 the information is part of the employee's job duties.

21 102. As discussed fully above, Plaintiff complained to Defendants about his safety
22 concerns at the workplace.

23 103. Defendants retaliated against Plaintiff for his complaints about the unsafe
24 working environment, by retaliating against Plaintiff and turning his work environment into a
25 hostile one, as alleged above, all in violation of Labor Code § 1102.5.

26 104. As a direct and proximate result of the aforementioned acts and omissions of
27 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
28 loss of income (past and future), loss of employment benefits (past and future), general and

1 compensatory damages (past and future), mental pain and anguish and emotional distress (past
2 and future), and will continue to suffer in the future, in an amount to be proved at trial.

3 105. Plaintiff requests all available relief under Labor Code § 1102.5 including
4 damages, attorney's fees, and the imposition of civil penalties of \$10,000 for each violation.

5 **TWELFTH CAUSE OF ACTION**

6 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 6310**

7 **(Plaintiff against all Defendants)**

8 106. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

9 107. At all times material to this Complaint, California Labor Code § 6310 was in
10 effect and binding on Defendants. California Labor Code section 6310 prohibits employers
11 from firing or discriminating against any employee because the employee has informed their
12 employer about unsafe working conditions.

13 108. As discussed fully above, Plaintiff complained to Defendants about unsafe
14 working conditions at the workplace.

15 109. Defendants willfully and/or with reckless indifference violated California
16 Labor Code section 6310 by retaliating against Plaintiff and turning his work environment into
17 a hostile one, for complaining of unsafe working conditions.

18 110. As a direct and proximate result of the aforementioned acts and omissions of
19 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
20 loss of income (past and future), loss of employment benefits (past and future), general and
21 compensatory damages (past and future), mental pain and anguish and emotional distress (past
22 and future), and will continue to suffer in the future, in an amount to be proved at trial.

23 111. Pursuant to Labor Code Section 6310, Defendants are liable for statutory
24 damages, including reimbursement for lost wages and work benefits.

25 112. Defendants' conduct described herein was undertaken, authorized and/or
26 ratified by Defendants' officers, directors and/or managing agents. The aforementioned
27 conduct of said officers, directors and/or managing agents and individuals was therefore
28 undertaken on behalf of Defendants.

113. Defendants committed the acts herein alleged maliciously, fraudulently, and oppressively in conscious disregard for Plaintiff's rights, and Plaintiff is entitled to recover punitive damages from Defendants in an amount according to proof.

114. As a result of the conduct of Defendants and each of them, Plaintiff was forced to retain an attorney in order to protect his rights.

115. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff is entitled to recover civil penalties for Defendants' violations of Labor Code section 6310.

116. Plaintiff further demands reasonable attorney's fees and costs pursuant to Labor Code section 2699, subdivision (g)(1).

THIRTEENTH CAUSE OF ACTION

NEGLIGENT HIRING, RETENTION, SUPERVISION, AND TRAINING

(By Plaintiff against all Defendants)

117. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

118. Defendants owed a duty of care to Plaintiff to appoint, hire, retain, supervise, and train persons who would furnish a place of employment that is safe and healthful for the employees therein. Defendants owed a duty of care to Plaintiff not to retain managers or employees who would retaliate against employees for engaging in protected activities. Defendants owed a duty of care to Plaintiff to supervise their managers and employees closely to ensure that they would provide a safe working environment and refrain from retaliating against Plaintiff. Defendants owed a duty of care to Plaintiff to train their managers and employees not to engage in retaliation.

119. As described above, Defendants breached these duties. Defendants allowed the front desk supervisor, “Celine”, to arrive to work intoxicated and behave inappropriately during work, even after Defendants were put on notice of Celine’s behavior/intoxication. Moreover, Defendants allowed Celine to retaliate against Plaintiff and turn his environment into a hostile one after Plaintiff reported Celine’s behavior/intoxication to management. As a result, Defendants caused damages to Plaintiff.

120. As a proximate cause of Defendants' negligent hiring, retention, supervision, and training of their managers and employees, Plaintiff has suffered and continues to suffer damages, including losses of earnings and benefits, according to proof.

FOURTEENTH CAUSE OF ACTION

WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY

(By Plaintiff against all Defendants)

121. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

122. At all times during his employment with Defendants, Plaintiff performed his duties with the utmost diligence and competence.

123. Defendants intentionally created an illegal work environment and atmosphere by retaliating against Plaintiff and subjecting him to a hostile work environment, thereby not giving Plaintiff an opportunity to work in an environment free of retaliation and labor code violations. This situation became intolerable for Plaintiff and Plaintiff had no alternative but to quit his job.

124. The employment of Plaintiff was constructively wrongfully terminated on or around April 1, 2023 in violation of the fundamental public policy of the State of California with respect to retaliating against an employee and subjecting him to a hostile work environment for reporting unsafe working conditions. Moreover, Plaintiff was forced to hire an attorney to assist him to end these illegal activities. Said conduct violated statutory and constitutional expressions of public policy, the California Labor Code and the California Constitution, Article 1 section 8.

125. As set forth above, said actions by Defendants were wrongful and in violation of the fundamental principles of the public policy of the State of California as reflected in its laws, objectives and policies. Said statutes and constitutional expressions of public policy include, but are not limited to, the California Labor Code. These laws inure to the benefit of the public at large, and not just the private interests of the employers and employees whom they govern or protect.

126. As a direct and proximate result of the aforementioned acts and omissions of

1 Defendants, Plaintiff suffered general and compensatory damages, including but not limited
2 to, loss of income (past and future), loss of employment benefits (past and future), general and
3 compensatory damages (past and future), mental pain and anguish and emotional distress (past
4 and future), and will continue to suffer in the future, in an amount to be proved at trial.

5 127. The foregoing conduct engaged in by Defendants and each of their directors,
6 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
7 ratified, and carried on with a conscious and willful disregard of their workers' right to work
8 in an environment free of retaliation, so as to justify the imposition of punitive damages to
9 punish and set an example of said Defendants.

10 **FIFTEENTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

13 **(By Plaintiff against all Defendants)**

14 128. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 129. At all relevant times during the applicable limitations period, Plaintiff has been
16 an employee of Defendants and entitled to the benefits and protections of the Business and
17 Professions Code §§ 17200, *et seq.*

18 130. The unlawful conduct of Defendants alleged herein amounts to and constitutes
19 unfair competition within the meaning of California Business & Professions Code §§ 17200,
20 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
21 unfairly gained a competitive advantage over other comparable companies doing business in
22 California that comply with their legal obligations to, among other things, refrain from
23 retaliatory practices and prevent retaliation, pay their employees premium wages for workdays
24 in which they did not provide employees with one or more meal and rest periods, indemnify
25 them for all business expenses incurred during the course of performing their duties, and pay
26 them all wages earned.

27 131. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
28 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all

1 hours worked, failed to provide him with premium wages for missed meal and rest periods,
2 and failed to reimburse Plaintiff for all expenses he incurred in the course of performing his
3 duties.

4 132. Pursuant to California Business & Professions Code § 17203, Plaintiff is
5 entitled to restitution of all monies rightfully belonging to him that Defendants did not pay him
6 or otherwise retained by means of their unlawful and unfair business practices.

7 133. Plaintiff is entitled to reasonable attorneys' fees in connection with his unfair
8 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
9 benefit doctrine and/or the common fund doctrine.

10 134. Accordingly, with respect to this cause of action, Plaintiff prays for the herein
11 stated relief, and an award of all reasonable costs and attorneys' fees, including interest
12 thereon, as permitted by law, all in amounts subject to proof.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 15 1. For compensatory damages including lost past and future wages, commissions, and all
16 other sums of money, including employment benefits, together with interest on said
17 amounts, and any other economic injury to Plaintiff, according to proof;
- 18 2. For general damages according to proof;
- 19 3. For special and consequential damages to the extent allowed by law;
- 20 4. For punitive and exemplary damages against Defendants in an amount subject to proof;
- 21 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
22 subject to proof at trial;
- 23 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
24 7. proof at trial;
- 25 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
26 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 27 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
28 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;

- 1 10. For maximum civil penalties available under the Labor Code and applicable Wage
2 Order against Defendants as described more particularly in the Complaint;
3 11. For restitution and disgorgement for all unfair business practices by Defendants against
4 Plaintiff in an amount according to proof;
5 12. For an order enjoining Defendants from further unfair and unlawful business practices
6 in violation of Business and Professions Code Sections 17200, et seq.;
7 13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
8 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
9 damages, damages, penalties, and waiting time penalties according to proof to the
10 extent permitted by law;
11 14. For the imposition of civil penalties and/or statutory penalties;
12 15. For all interest as allowed by law;
13 16. For all costs and disbursements incurred in this suit;
14 17. Reasonable attorney's fees where available by law, including but not limited to,
15 pursuant to, Code of Civil Procedure section 1021.5, Labor Code section 1102.5(j),
16 and/or other applicable laws; and
17 18. For such other and further relief as this Court may deem proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
20

21 Dated: September 5, 2023

MM LAW, APC

22
23 By Maralle Messrelian
24 Maralle Messrelian, Esq.
25 Attorney for Plaintiff,
26 ANGEL RODRIGUEZ
27
28