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Electronically filed
by Superior Court of CA,
County of Santa Clara,
on 8/9/2023 3:35 PM
Reviewed By: R. Walker
Case #23CV420534
Env #12708194

Attorneys for Plaintiff JHONY ALEXANDER LOPEZ FLORES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

JHONY ALEXANDER LOPEZ FLORES,

Plaintiff,

vs.

HL PENINSULA PEARL, INC.; MINGIE
ZHI MIN LI; and DOES 1 to 25, inclusive,

Defendants.

CASE NO.:

23CV420534

COMPLAINT FOR DAMAGES FOR:

- 1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) FAILURE TO PAY MINIMUM WAGES;**
- 3) FAILURE TO PAY OVERTIME;**
- 4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 6) FAILURE TO GIVE REST BREAKS;**
- 7) FAILURE TO GIVE MEAL BREAKS;**
- 8) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 9) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**
- 10) FAILURE TO REIMBURSE BUSINESS EXPENSES**
- 11) VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, JHONY ALEXANDER LOPEZ FLORES (hereinafter "Plaintiff"),
and alleges:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Santa Clara in this judicial district because Defendants HL PENINSULA PEARL, INC.; MINGIE ZHI MIN LI and DOES 1 to 25, inclusive, (collectively "Defendant(s)" or "HL PENINSULA") do business in the County of Santa Clara, and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant HL PENINSULA PEARL, INC. was and is a domestic California corporation, operating in the County of Santa Clara, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that all times herein mentioned, Defendant MINGIE ZHI MIN LI is and was a resident of the County of Santa Clara, State of California and was the owner, director, and/or managing agent of HL PENINSULA PEARL, INC., who was personally involved in the day-to-day activities of the business and hence controlled the wages, hours, and working conditions of Plaintiff and other aggrieved employees.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants. Unless otherwise alleged in this

1 complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at
2 all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter
3 alleged, were acting within the course, scope, and under the authority of their agency,
4 employment, or representative capacity, with the consent of his/her codefendants.

5 **GENERAL ALLEGATIONS**

6 6. Plaintiff started working at HL PENINSULA on or around mid 2022 as a washer.
7 Plaintiff was classified as an hourly, non-exempt employee and his latest rate of pay was
8 \$18.00 per hour. Plaintiff's employment ended on or around April 2023.

9 7. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
10 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
11 Security Services USA, Inc., an onsite security provider. After about a year of employment,
12 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
13 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
14 termination of employment and weekly payment of wages to temporary employees. The trial
15 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
16 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
17 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
18 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
19 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
20 PAGA representative to sue for violations that the representative has personally suffered. The
21 PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves
22 and others. The statute also states that an "aggrieved employee" is "any person who was
23 employed by the alleged violator and against whom one or more of the alleged violations was
24 committed." Because at least one of the violations that Huff had alleged had affected him
25 personally, the Court of Appeal denied Securitas' motion.

26 8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
27 other employees, it allows for suits broader than the specific violations the named employee
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1 experienced. Therefore, even if the employee did not personally experience the Labor Code
2 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's
3 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
4 other employees, including ALL hourly, non-exempt employees, irrespective of job title or job
5 duties.

6 9. It is Plaintiff's position that HL PENINSULA has violated the following Labor Code
7 Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-
8 exempt, hourly employees who worked for HL PENINSULA at their various locations in the
9 State of California during the relevant PAGA period.

10 10. HL PENINSULA violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed
11 to pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including
12 the statutory minimum wage for all hours worked and for "off the clock" work. This is so because
13 HL PENINSULA had a company policy wherein they would disproportionately round down the
14 number of hours worked, resulting in "time shaving" and further resulting in aggrieved
15 employees not being paid for all hours worked. Furthermore, and to the extent that Plaintiff and
16 others worked through their meal periods while "off the clock", they were not compensated for
17 all hours worked, which would be akin to a minimum wage violation. In fact, Plaintiff was
18 specifically not paid his full and complete wages for all hours worked, including his final pay.
19 Plaintiff complained about the fact that he was shorted on his hours and was not paid for all hours
20 worked, but Plaintiff was ignored.

21 11. Due to the above "off the clock" violations, HL PENINSULA also violated Labor Code
22 §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation,
23 even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
24 throughout their employment. Plaintiff's and other aggrieved employees' actual work hours
25 entitled them to overtime compensation, however, HL PENINSULA did not compensate its
26 hourly, non-exempt employees with the correct amount of overtime due to the "off the clock"
27 work and time shaving as described above. Furthermore, HL PENINSULA failed to include
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1 bonuses/incentive payments in calculating employees' regular rate of pay for use in deciphering
2 the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not
3 factored into employees' regular rate for purposes of receiving meal and rest break premiums
4 per the Ferra v. Loews case.

5 12. HL PENINSULA also violated Labor Code § 226.7 and the appropriate Industrial
6 Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly
7 situated aggrieved employees with 10-minute rest periods for every four hours of work, or
8 majority portion thereof, throughout their employment. HL PENINSULA did not completely
9 relieve Plaintiff and others of all duty during said rest periods. HL PENINSULA did not pay to
10 Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each
11 workday that one or more statutory rest periods was not provided. It was not part of the company
12 policy for employees such as Plaintiff to take at least two rest breaks per shift. The concept of
13 rest breaks was not consistently implemented as it was not company policy. Moreover, it would
14 not have been possible for employees such as Plaintiff to take such rest breaks due to being
15 understaffed and due to a heavy workload, especially in the fast-paced restaurant industry. As
16 such, the culture as well as the policies and procedures of HL PENINSULA did not lend itself
17 to the employees receiving consistent statutory rest breaks wherein they were relieved of all work
18 duties. The environment at HL PENINSULA was not conducive to receiving multiple statutory
19 rest breaks under California law and timely, statutory rest breaks were not authorized or
20 enforced.

21 13. HL PENINSULA violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
22 Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt
23 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
24 for every five (5) hours of work throughout their employment. HL PENINSULA did not
25 completely relieve Plaintiff and other employees of all duty during said meal periods. HL
26 PENINSULA did not pay to Plaintiff and its hourly, non-exempt employees one additional hour
27 of pay at their regular rate of compensation for each workday that one or more statutory meal
28 periods was not provided. The hourly, non-exempt employees would often not be able to receive

1 timely meal periods before the 5th hour worked that were actually uninterrupted. The latter was
2 due to the workload and due to being in a fast-paced restaurant environment. Like the rest breaks,
3 receiving a thirty-minute uninterrupted and timely meal break was not part of the company
4 culture and was not enforced by HL PENINSULA. Consequently, it was the normal practice and
5 custom of HL PENINSULA not to authorize, permit, and enforce timely statutory meal periods.
6 If HL PENINSULA had Plaintiff sign a meal period waiver, it would not be valid and enforceable
7 since Plaintiff and others generally worked more than a 6-hour shift. If HL PENINSULA had
8 Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the
9 meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job does
10 not and did not prevent him from taking a meal period and the company could have hired
11 "breakers" to relieve Plaintiff of his job duties so that he can actually take a timely, uninterrupted
12 meal period. Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to
13 revoke such an agreement even if it was signed. As such, Plaintiff and others did not always
14 receive statutory, timely meal periods during their employment. To the extent that HL
15 PENINSULA argues that employees receive meal break premium pay for missed meal periods,
16 that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for
17 the violations themselves, irrespective of whether an employee received the premium payment
18 for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the
19 Court stated, "section 226.7 does not give employers a lawful choice between
20 providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire*
21 *Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of
22 pay does not excuse the violation; the employer has still committed a violation even if the remedy
23 for the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL
24 1110302 at *4). As such, the work environment and culture at HL PENINSULA was not
25 conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover,
26 any meal or rest break premiums paid were not compensated at the weighted average regular
27 rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

28 14. Furthermore, during the relevant time period, and due to the above labor code violations,
HL PENINSULA failed to pay Plaintiff and other similarly situated aggrieved employees all

1 wages due to them within any time period specified by California Labor Code section 204. Since
2 Plaintiff was personally not compensated for all hours worked, HL PENINSULA would have
3 certainly violated section 204 as to Plaintiff. HL PENINSULA was also in violation of California
4 Labor Code section 226(a) by failing to include pertinent information on the wage statements,
5 including but not limited to, the correct hourly rate, all hours worked, overtime hours worked,
6 correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and
7 rest breaks, all deductions, the correct start and end of the pay period, all employee identifying
8 information, the correct and complete name and address of the legal employer, and
9 reimbursement for business expenses, among others. As such, HL PENINSULA did not provide
10 Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized
11 wage statements.

12 15. During the relevant time period, HL PENINSULA also failed to keep accurate and
13 complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff
14 and others pursuant to California Labor Code sections 1174(d).

15 16. HL PENINSULA also violated Labor Code § 203 because it willfully failed to pay
16 Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation
17 of employment, either immediately upon involuntary termination, or within 72 hours of
18 resignation. These earned but unpaid wages include compensation for all hours worked,
19 including minimum wages, overtime compensation, and premium pay for missed meal and rest
20 breaks. Since Plaintiff was shorted on his hours and was not paid his full wages, HL
21 PENINSULA would have unequivocally violated Labor Code section 203 as to Plaintiff.

22 17. During the relevant time period, Plaintiff and other aggrieved employees incurred
23 necessary, business-related expenses and costs that were not reimbursed by HL PENINSULA.
24 These costs include, but are not limited to, uniforms. Accordingly, HL PENINSULA was in
25 violation of California Labor Code sections 2800 and 2802.

26 18. Additionally, HL PENINSULA violated Labor Code Section 351 and 353 by taking some
27 of the tips meant for employees and also deducting the tips from others' earned wages. HL
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PENINSULA also deducted the credit card fee from others' tips and did not timely provide the credit card and even cash tips to other aggrieved employees. As such, other similarly situated employees were not given accurate tips to which they were entitled.

FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(California Industrial Welfare Commission Order 5-2001, California Code of Regulations Title 8 Section 11050, and California Labor Code Section 1198)

(Plaintiff against all named defendants and all DOE defendants)

19. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

20. At all times relevant herein, Defendants were required to compensate its employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 5-2001, California Code of Regulations, Title 8, Section 11050.

21. For the three (3) years preceding filing of this action, Defendants failed to compensate Plaintiff for all hours worked.

22. Under the aforementioned wage order and regulations, Plaintiff is to recover compensation for all hours worked but not paid by Defendants for the three (3) years preceding the filing of this Complaint.

23. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable attorney's fees and costs of suit.

25. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
2 amount known to Plaintiff once he has obtained all of his payroll records from
3 Defendants.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

6 **(California Labor Code Sections 1194, 1194.2, 1197)**

7 **(Plaintiff against all named defendants and all DOE defendants)**

8 26. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 25, inclusive, of this Complaint as though fully set forth herein.

10 27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
11 to suffer or permit a California employee to work without paying wages at the minimum wage
12 rate for all hours worked as required by the applicable Industrial Welfare Commission
13 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title
14 8, Section 11050, subdivision 4.

15 28. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K), at all relevant times, "hours
16 worked" included "the time during which an employee is subject to the control of an employer,
17 and includes all the time the employee is suffered or permitted to work, whether or not required
18 to do so..."

19 29. During his employment, Plaintiff was regularly required as a matter of uniform
20 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
21 was paid less than the minimum wage rate by Defendants for hours worked in violation of
22 California Labor Code Section 1197 and the applicable California Industrial Wage
23 Commission wage order(s).

24 30. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
25 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
26 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
27 to believe that their acts or omissions were not contrary to California law.
28

1 31. For all hours worked by Plaintiff for which he was paid less than the minimum wage
2 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
3 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
4 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
5 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

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

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10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME**

12 **(California Industrial Welfare Commission Order 5-2001, California Code of**
13 **Regulations Title 8 Section 11050)**

14 **(Plaintiff against all named defendants and all DOE defendants)**

15 33. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein.

17 34. Pursuant to Industrial Welfare Commission Order No. 5-2001, California Code of
18 Regulations, Title 8, Section 11050, for the period of Plaintiff's employment, Defendants were
19 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
20 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
21 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
22 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
23 week.

24 35. Plaintiff was a non-exempt employee entitled to the protections of the California
25 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
26 Section 11050.

27 36. Plaintiff worked more than eight (8) hours in a single workday, more than twelve (12)
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hours in a single day, or forty (40) hours in a single workweek on numerous occasions.

37. Plaintiff was entitled to the above overtime premiums.

38. Defendants did not pay Plaintiff premium wages of at least one and one-half times Plaintiff's regular rate of pay for hours worked past eight (8) in a day or two times Plaintiff's regular rate of pay for hours worked past twelve (12) in a day.

39. Defendants did not pay Plaintiff premium wages of at least one and one-half times Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

40. Plaintiff worked at least one pay period in which he was not properly paid overtime within the three (3) years prior to the initiation of this lawsuit.

41. Defendants know or should know the actual dates of overtime worked, the amount of overtime worked, and the amount of unpaid overtime due.

42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable attorney's fees and costs of suit.

44. 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.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(Plaintiff against all named and all DOE defendants)

45. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

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

3 47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
4 accurately reflected all information required by Labor Code Section 226, including but not
5 limited to, gross wages earned, including overtime, net wages earned, total hours worked by
6 the employee, all deductions, and premium pay for missed meal breaks and rest breaks.

7 Therefore, Defendants failed to maintain and provide accurate itemized wage statements to
8 Plaintiff in accordance with California Labor Code Section 226(a).

9 48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
10 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
11 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
12 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
13 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
14 the 1-year period immediately preceding the date this lawsuit was filed.

15 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
16 sustained damages, including loss of earnings, in an amount to be established at trial. As a
17 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
18 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
19 and attorney's fees pursuant to statute.

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

23 **FIFTH CAUSE OF ACTION**

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

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

26 **(Plaintiff against all named defendants and all DOE defendants)**

27 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
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1 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

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

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

6 54. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
7 informed, believes, and thereon alleges, that all times relevant during the liability period,
8 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
9 including overtime hours and the minimum wage along with premiums for missed meal breaks
10 and rest breaks.

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

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

18 **SIXTH CAUSE OF ACTION**

19 **FAILURE TO GIVE REST BREAKS**

20 **(Plaintiff against all named defendants and all DOE defendants)**

21 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.
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24 58. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 25 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which
26 provides that every employer shall authorize and permit all employees to take rest
27 periods, which insofar as practicable shall be in the middle of each work period.
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1 The authorized rest period time shall be based on the total hours worked daily at the
2 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

3 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which
4 provides that if an employer fails to provide an employee a rest period in
5 accordance with the applicable provisions of this order, the employer shall pay the
6 employee one (1) hour of pay at employee's regular rate of compensation for each
7 workday that the rest period is not provided;

8 c. Title 8 of the California Code of Regulations sections 11050(20)(A), which
9 penalizes the employer \$50.00 for each initial violation, per employee, of any
10 provision of the Wage Order, and \$100.00 for each additional violation thereafter
11 per employee; and
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13 d. California Labor Code section 226.7, which states that (a) no employer shall require
14 any employee to work during any rest period mandated by an applicable order of
15 the Industrial Welfare Commission, and (b) if an employer fails to provide an
16 employee a rest period in accordance with an applicable order of the Industrial
17 Welfare Commission, the employer shall pay the employee one (1) additional hour
18 of pay at employee's regular rate of compensation for each work day that the rest
19 period is not provided.
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21 59. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute
22 rest break after every four (4) hours of work or major fraction thereof, as required by California
23 law.
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25 60. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
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1 regulations, and wage orders alleged in this cause of action along with any allowable interest,
2 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
3 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

4 61. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
5 fees as well as interest under Labor Code section 218.6.

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

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10 **SEVENTH CAUSE OF ACTION**

11 **FAILURE TO GIVE MEAL BREAKS**

12 **(Plaintiff against all named defendants and all DOE defendants)**

13 63. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 62, inclusive, of this Complaint as though fully set forth herein.

15 64. Plaintiff brings this cause of action under the following laws, for the following
16 reasons:
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- 18 a. California Labor Code section 512(a), which requires that employees be given a 30-
19 minute uninterrupted meal break after five (5) hours of work, and a second
20 uninterrupted meal break after ten (10) hours of work;
21 b. California Labor Code section 226.7, which states that (a) no employer shall require
22 any employee to work during any meal period mandated by an applicable order of
23 the Industrial Welfare Commission, and (b) if any employer fails to provide an
24 employee a meal period in accordance with an applicable order of the Industrial
25 Welfare Commission, the employer shall pay the employee one (1) additional hour
26 of pay at the employee's regular rate of compensation for each workday that the
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meal period is not provided;

- c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11050, which states that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11050, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as codified under California Code of Regulations Section 11050, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5) as enforceable law.

65. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work

1 duty. California Labor Code section 226.7 provides that employers may not require their
2 employees to work through their meal periods. California Labor Code section 226.7 and
3 California Code of Regulations section 11050 requires that if the employer fails to provide the
4 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
5 of pay for each work day that the meal period is not given.

6 66. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
7 regulations, and wage orders alleged in this cause of action along with any allowable interest,
8 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
9 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

10 67. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
11 fees as well as interest under Labor Code section 218.6.

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

15 **EIGHTH CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT**

17 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
18 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5,**
19 **1194, 1197, 1198, 2802)**

20 **(Plaintiff Against all Named Defendants and all DOE Defendants)**

21 69. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 68, inclusive, of this Complaint as though fully set forth herein.

23 70. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
24 Defendants of the specific violations of the California Labor Code that Defendants
25 and DOE defendants have violated and continue to violate.

26 71. Pursuant to California Labor code section 2699.3, no response was received from the
27 LWDA within 65 days of the postmark date of the above-alleged letter.

1 72. Plaintiff therefore has exhausted all administrative remedies required of him under
2 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
3 cause of action and pursue penalties in a representative action for Defendants' violations of the
4 Labor Code.

5 73. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
6 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
7 departments, divisions, commissions, boards, agencies, or employees for violation of the code
8 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
9 on behalf of himself or herself and other current or former employees pursuant to the
10 procedures specified in California Labor Code section 2699.3.

11 74. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
12 violator and had one or more of the alleged violations committed against him, and therefore is
13 properly suited to represent the interests of other current and former hourly, non-exempt
14 employees who worked for HL PENINSULA at all locations in the state of California during
15 the relevant PAGA Period.

16 75. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties under
17 California Labor Code sections 2698 and 2699 because of Defendants' violations of numerous
18 provisions of the California Labor Code as alleged in this Complaint.

19 76. Plaintiff therefore has exhausted all administrative remedies required of him under
20 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
21 cause of action and pursue penalties in a representative action for Defendants' violations of the
22 Labor Code.

23 77. California Labor Code section 2699 et seq. imposes penalties upon culpable
24 Defendants for violating the Labor Code.

25 78. California Labor Code section 558 establishes a civil penalty as follows: Any
26 employer or other person action on behalf of an employer who violates, or causes to be
27 violated, a section of this chapter or any provision regulating hours and days of work in any
28

1 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
2 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
3 dollars (\$50) for each underpaid employee for each pay period for which the employee was
4 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
5 employee for each pay period for which the employee was underpaid...

6 79. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
7 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
8 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
9 employees in this specific cause of action under the Private Attorneys General Act.

10 80. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
11 the following:

12 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
13 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, via 2698 and
14 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order
15 Provisions (no. 5) violated based on the facts alleged in this Complaint.

16 81. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney’s fees,
17 costs, and civil penalties on behalf of other current and former aggrieved employees as alleged
18 herein in an amount to be shown according to proof at trial and within the jurisdictional limits
19 of this Court.

20 **NINTH CAUSE OF ACTION**

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

22 **(California Labor Code Sections 201, 202, 203)**

23 **(Plaintiff against all named defendants and all DOE defendants)**

24 82. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 81, inclusive, of this Complaint as though fully set forth herein.

26 83. Pursuant to California Labor Code Section 201(a), an employer who discharges an
27 employee must immediately pay for all compensation due and owing.
28

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

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

9 86. After Plaintiff's employment with Defendants ended, Defendants willfully
10 refused and continue to refuse to pay him unpaid wages as required by Labor Code Section
11 203.

12 87. Under this cause of action, Plaintiff prays for penalties due under the statutes
13 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
14 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 1 year
15 immediately preceding the filing of this lawsuit.

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

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

22 **TENTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

24 **(Plaintiff against all Defendants and DOE Defendants, and each of them)**

25 90. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 89, inclusive, of this Complaint as thought fully set forth herein.
27
28

1 91. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties.”

4 92. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
5 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
6 of completing his job duties, which were not reimbursed by Defendant. These expenses
7 include, but are not limited to, the cost of uniforms.

8 93. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
9 and attorney’s fees and costs, under Labor Code section 2802.

10 **ELEVENTH CAUSE OF ACTION**

11 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

12 **(California Business and Professions Code Section 17200)**

13 **(Plaintiff against HL PENINSULA PEARL, INC. and all DOE defendants)**

14 94. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 93, inclusive, of this Complaint as though fully set forth herein.

16 95. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
17 constitutes unfair and unlawful business practices under California Business and Professions
18 Code Section 17200, et seq.

19 96. Defendant’s violations of California labor laws and the Labor Code constitutes a
20 business practice because it was done repeatedly over a significant period of time in a
21 systematic manner that was detrimental to Plaintiff and others.

22 97. For the four years preceding the filing of this action, Plaintiff has suffered damages
23 and requests restitution of all monies and profits to be disgorged from corporate defendant
24 HL PENINSULA PEARL, INC. in an amount according to proof at time of trial, but in excess
25 of the jurisdiction of this Court.

26 ///

27 ///

1 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
2 follows:

- 3 1. For compensatory damages including lost past and future wages, regular wages,
4 overtime, and all other sums of money, together with interest on said amounts, and any
5 other economic injury to Plaintiff, according to proof;
- 6 2. For special and consequential damages to the extent allowed by law;
- 7 3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
8 at trial;
- 9 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
10 subject to proof at trial;
- 11 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
12 proof at trial;
- 13 6. For restitution and disgorgement for all unfair business practices by corporate
14 Defendants against Plaintiff in an amount subject to proof at trial;
- 15 7. For an order enjoining corporate Defendants from further unfair and unlawful business
16 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 17 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
18 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 19 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
20 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 21 10. For maximum civil penalties available under the Labor Code and applicable Wage
22 Order against Defendants as described more particularly in the Complaint and
23 representative PAGA claim;
- 24 11. For all remedies available to Plaintiff under the applicable Wage Order and the
25 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
26 liquidated damages, damages, penalties, and waiting time penalties according to proof
27
- 28

1 to the extent permitted by law;

2 12. For the imposition of civil penalties and/or statutory penalties;

3 13. For all interest as allowed by law;

4 14. For all costs and disbursements incurred in this suit;

5 15. Reasonable attorney's fees where available by law, including but not limited to,
6 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
7 the Labor Code generally; and/or other applicable laws; and

8 16. For such other and further relief as this Court may deem proper.
9

10 **DATED:** August 9, 2023

MESSRELIAN LAW INC.

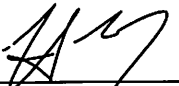
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12 By 
13 Harout Messrelian, Esq.
14 Attorneys for Plaintiff

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
17

18
19 **DATED:** August 9, 2023

MESSRELIAN LAW INC.

20 By 
21 Harout Messrelian, Esq.
22 Attorneys for Plaintiff
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