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HIGHGATE HOTELS, L.P.

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SANTA CLARA**
19

20 GLENN WALTRIP, on behalf of himself and
all others similarly situated,

21 Plaintiff,

22 vs.
23

24 HIGHGATE HOTELS, L.P., a Delaware
limited partnership; and DOES 1 through 50,
25 inclusive,

26 Defendant.
27
28

Case No. 23CV417680

**JOINT STIPULATION OF SETTLEMENT
AND RELEASE OF CLASS AND PAGA
CLAIMS**

[Assigned for all purposes to The Honorable
Socrates P. Manoukian, Dept. 20]

Action Filed: June 15, 2023
Trial Date: None Set

1 This Stipulation of Settlement and Release of Class and PAGA Claims is entered into
2 between plaintiff Glenn Waltrip ("Plaintiff") on behalf the Settlement Class and Defendant Highgate
3 Hotels, L.P. ("Defendant" or "Highgate").

4 **I. DEFINITIONS**

5 A. "Agreement" or "Settlement Agreement" means this Joint Stipulation of Settlement
6 and Release of Class and PAGA Claims.

7 B. "Aggrieved Employees" means all current and former hourly-paid or non-exempt
8 employees of Highgate in California during the PAGA Covered Period.

9 C. "Action" means *Glenn Waltrip v. Highgate Hotels, L.P.*, filed on June 15, 2023, in
10 the Superior Court for the State of California, County of Santa Clara, and assigned Case Number
11 23CV417680.

12 D. "Class" means all current and former employees of Defendant in hourly or non-
13 exempt positions in California at any time from January 12, 2022 through the date of preliminary
14 approval, subject to section III.L.1 of this Agreement.

15 E. "Class Payment" means the portion of the Net Settlement Amount that is allocated
16 for payment to members of the Class for alleged violations of the California Labor Code, based on
17 the Compensable Workweeks worked by each Class Member.

18 F. "Class Member(s)" means an individual who falls within the definition of the Class.

19 G. "Class Counsel" means Setareh Law Group.

20 H. "Class Counsel Award" means the amount awarded to Class Counsel for attorneys'
21 fees and costs through the Settlement.

22 I. "Class Data" means information regarding Class Members that Defendant will in
23 good faith compile from its records and provide to the Settlement Administrator. It shall be formatted
24 as a Microsoft Excel spreadsheet and shall include: each Class Member's employee number; full
25 name; last known address; last known home telephone number; Social Security Number; and start
26 dates and end dates of employment with Defendant.

27 J. "Class Representative Service Award" means the amount that the Court authorizes to
28 be paid to Plaintiff, in addition to his Individual Settlement Payment, in recognition of his efforts

1 and risks in assisting with the prosecution of the Action.

2 K. "Class Representative" means Plaintiff Glenn Waltrip.

3 L. "Compensable Workweeks" means the number of workweeks during which Class
4 Members were employed by Defendant during the Settlement Class Period. Using the Class Data,
5 the Settlement Administrator will calculate the number of Compensable Workweeks by calculating
6 the number of days each Class Member was employed during the Settlement Class Period, dividing
7 by seven (7), and rounding up to the nearest whole number.

8 M. "Court" means the Superior Court for the State of California, County of Santa Clara.

9 N. "Defendant" means Highgate Hotels, L.P.

10 O. "Defendant's Counsel" means Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

11 P. "Effective Date" means: (a) if there is no objection or if there is an objection which is
12 withdrawn before being ruled upon, then the date when the Final Approval Order and Judgment is
13 signed; or (b) if there is an objection and the objection is not withdrawn, then the date that is sixty-
14 one (61) calendar days after entry of the Final Approval Order and Judgment; or (c) if there is an
15 objection, the objection is not withdrawn, and if an appeal or request for review has been commenced
16 with respect to the Final Approval Order and Judgment, then the day on which order(s) affirming
17 said Final Approval Order and Judgment or denying review, after exhaustion of all appellate
18 remedies, have been entered.

19 Q. "Final Approval" means that the Final Approval Order and Judgment have been
20 entered by the Court.

21 R. "Final Approval Hearing" means the hearing on the Motion for Final Approval of the
22 Settlement.

23 S. "Final Approval Order" means the Order Granting Final Approval of the Class
24 Settlement, the proposed form of which shall be submitted with the Motion for Final Approval.

25 T. "Individual Settlement Payment" means the entire payment to a Class Member in a
26 single check, consisting of one or both of the following, as may apply: (1) the Settlement Class
27 Member's *pro rata* share of the NSA ("Individual Class Payment"); and/or (2) an Aggrieved
28 Employee's *pro rata* share of 25% of the PAGA Penalty Payment ("Individual PAGA Payment").

1 U. "Gross Settlement Amount" or "GSA" means the Net Settlement Amount, the PAGA
2 Penalty Payment, the Class Representative Service Awards, the Class Counsel Award, and the
3 Settlement Administration Costs, up to a maximum of \$1,200,000, subject to section III.L.1 of this
4 Agreement. The GSA shall not include the employer's share of payroll taxes with respect to the wage
5 portion of Individual Settlement Payments, which shall be paid separately and apart from the GSA.

6 V. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less the
7 following: Class Counsel Award, Class Representative Service Award, Settlement Administration
8 Costs, and the PAGA Penalty Payment.

9 W. "Notice Packet" means the Notice of Class Action Settlement in a form substantially
10 similar to the form attached hereto as **Exhibit 1**; the Employment Information Sheet, in a form
11 substantially similar to the form attached as **Exhibit 2**; Change of Address Form, in a form
12 substantially similar to the form attached as **Exhibit 3**; and a pre-printed and post-paid return
13 envelope.

14 X. "Operative Complaint" means the Second Amended Complaint in this action
15 (attached as **Exhibit 4**). The Parties will stipulate to leave for Plaintiff to file the Second Amended
16 Complaint prior to time Plaintiff moves for preliminary approval of this Settlement.

17 Y. "PAGA Penalty Payment" means the portion of the Gross Settlement Amount that is
18 allocated for alleged violations of the Labor Code Private Attorneys General Act ("PAGA"), Labor
19 Code Section 2698 *et seq.*

20 Z. "PAGA Covered Period" means the time period of May 8, 2022 through the date of
21 preliminary approval.

22 AA. "Parties" means Plaintiff and Defendant, collectively and "Party" shall mean either
23 Plaintiff or Defendant.

24 BB. "Plaintiff" means Glenn Waltrip.

25 CC. "Preliminary Approval Date" means the date the Court enters an order granting
26 preliminary approval of the Settlement.

27 DD. "Released Claims" means all causes of action that were alleged or reasonably could
28 have been alleged against the Released Parties based on the facts, legal theories, or causes of action

1 contained in the Operative Complaint, including all of the following: (a) failure to provide meal
2 periods (Labor Code §§ 204, 223, 226.7, 512 and 1198); (b) failure to provide rest breaks (Labor
3 Code §§ 204, 223, 226.7, 512 and 1198); (c) failure to pay hourly wages (Labor Code §§ 223, 510,
4 1194, 1194.2, 1197, 1197.1 and 1198); (d) failure to pay sick time (Labor Code §§ 246 *et seq.*); (e)
5 failure to indemnify (Labor Code § 2802); (f) failure to issue accurate itemized wage statements
6 (Labor Code § 226); (g) failure to timely pay all final wages (Labor Code §§ 201-203); (h) wages
7 not timely paid during employment (Labor Code § 204); (i) failure to keep requisite payroll records
8 (Labor Code § 1174(d)); (j) failure to pay interest on deposits (Labor Code § 404); (k) failure to pay
9 vacation wages (Labor Code § 227.3); (l) unfair/unlawful business practices (Cal. Bus. & Prof. Code
10 § 17200, *et seq.*); (m) any other potential claims reasonably arising out of the same set of operative
11 facts alleged in the Operative Complaint; and (n) all damages, relief, penalties, interest and other
12 amounts recoverable under said causes of action under California and federal law, to the extent
13 permissible, including but not limited to the California Labor Code, the applicable Wage Orders, the
14 Fair Credit Reporting Act, the California Business and Professions Code section 17200, *et seq.*, and
15 the federal Fair Labor Standards Act as to the facts and alleged in the Operative Complaint Settlement
16 Class Period. The Released Claims include all potential claims, whether known or unknown, and
17 regardless of the remedy sought, that are reasonably arising out of the same set of operative facts
18 and/or theories pled in the Operative Complaint.

19 EE. “Released PAGA Claims” means all causes of action for civil penalties under PAGA
20 arising during the PAGA Covered Period that were alleged or reasonably could have been alleged
21 against Defendant or any of the Released Parties based on the facts, legal theories, or causes of action
22 contained in the Operative Complaint and in Plaintiff’s most recent Notice to the California Labor
23 Workforce Development Agency as of the date of this Agreement, including all of the following: (a)
24 failure to provide meal periods (Labor Code §§ 204, 223, 226.7, 512 and 1198); (b) failure to provide
25 rest breaks (Labor Code §§ 204, 223, 226.7, 512 and 1198); (c) failure to pay hourly wages (Labor
26 Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198); (d) failure to pay sick time (Labor Code
27 §§ 246 *et seq.*); (e) failure to indemnify (Labor Code § 2802); (f) failure to issue accurate itemized
28 wage statements (Labor Code § 226); (g) failure to timely pay all final wages (Labor Code §§ 201-

203); (h) wages not timely paid during employment (Labor Code § 204); (i) failure to keep requisite payroll records (Labor Code § 1174(d); (j) failure to pay interest on deposits (Labor Code § 404); (k) failure to pay vacation wages (Labor Code § 227.3); (l) unfair/unlawful business practices (Cal. Bus. & Prof. Code § 17200, *et seq.*); (m) any other potential claims reasonably arising out of the same set of operative facts alleged in the Operative Complaint; and (n) all damages, relief, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, as to the facts and alleged in the Operative Complaint. The Released PAGA Claims include all potential claims, whether known or unknown, that are reasonably arising out of the same set of operative facts and/or theories pled in the Operative Complaint.

FF. "Released Parties" means Defendant and its past, present and/or future, direct and/or indirect, current and/or former owners, hotel ownership groups, officers, directors, members, managers, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, employees, trustees, accountants, bankers, fiduciaries, beneficiaries, subrogees, executors, partners, investors, privies, servants, reinsurers, representatives, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, joint ventures, dba's, co-employers, brother and sister corporations, related companies, employee benefit plans, and assigns of said entities.

GG. "Response Deadline" means the date that is forty-five (45) calendar days after the Settlement Administrator mails Notice Packets to Class Members and the last date on which Class Members may submit requests for exclusion or objections to the Settlement.

HH. "Settlement" means the disposition of the Action pursuant to this Agreement.

II. "Settlement Administrator" means Phoenix Settlement Administrators, Inc.

JJ. "Settlement Administration Costs" means the amounts paid to the Settlement Administrator for the costs of administering the Settlement.

KK. "Settlement Class" means the settlement class to be certified for settlement purposes in accordance with Section II(A) of this Agreement.

LL. "Settlement Class Member(s)" means Class Members who do not submit a timely and

valid request for exclusion as provided in this Agreement.

MM. “Settlement Class Period” or “Class Period” means the period from January 12, 2022 through the date of preliminary approval, subject to section III.L.1 of this Agreement.

II. RECITALS

A. Class Certification. The Parties stipulate to provisional class certification for purposes of settlement only. If the Court does not grant final approval of this Settlement, this provisional class certification shall immediately be set aside and the Class immediately decertified (subject to further proceedings on motion of any party to certify or deny certification thereafter) and this Agreement shall not constitute or be used as evidence that class certification is appropriate. If the Court does not grant either preliminary or final approval of this Settlement, the Parties agree to work cooperatively and in good faith in an effort to address and resolve any concerns raised by the Court to secure the Court’s approval of the Agreement. The Parties will meet and confer for a period of no less than 30 days attempt to address any concerns raised by the Court and resubmit a revised Agreement within 60 days of the Court Order, if possible. In the event the parties do not resolve the issues raised by the Court Order, the parties shall submit any items that remain extant to the Court for its review and recommended resolution. Should the revised Agreement not be approved after the parties joint efforts to resolve any issues that remain extant, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of the Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed, except that any costs actually incurred by the Settlement Administrator shall be paid by equal apportionment among the Parties. Nothing herein shall be interpreted to be a waiver or repudiation of the Memorandum of Understanding executed by the Parties on December 4, 2023 which shall remain in full force and effect.

B. Procedural History. On June 15, 2023, Plaintiff filed a putative class action Complaint in the Santa Clara Superior Court, alleging claims for Defendant’s failure to provide meal periods and rest breaks, failure to pay hourly wages, failure to pay sick time, failure to indemnify business expenses, failure to issue accurate itemized wage statements, failure to pay all wages due upon separation of employment, unfair/unlawful business practices, PAGA penalties, and claims for interest, attorneys’ fees, and costs. After they exchanged informal mediation data, on or about

December 4, 2023, the Parties participated in a private mediation with Michael Loeb, Esq., a respected and experienced mediator, which resulted in a resolution of the Action in its entirety.

C. The Class Representative believes he has alleged meritorious claims in the Action, and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action.

D. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by the Class Representative, and further contends that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant contends, among other things, that at all times it complied with the California Labor Code, the Industrial Wage Commission Orders, and the California Business & Professions Code.

E. The Plaintiff and Class Representative is represented by Class Counsel. Class Counsel conducted an investigation into the facts relevant to the Action, including interviewing witnesses, propounding discovery, and reviewing documents and information provided by Defendant pursuant to formal discovery requests and informal requests for information, in order to prepare for mediation. Among other things, Defendant produced for the purpose of settlement negotiations certain employment data concerning the Class, which Class Counsel reviewed and analyzed. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant is fair, reasonable and adequate, and in the best interest of the Class in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding class certification, and numerous potential appellate issues. Although Defendant denies any liability, Defendant is agreeing to this Settlement solely to avoid the cost of further litigation. The Parties and their counsel have agreed to settle the claims on the terms set forth herein.

F. The Parties believe that the Settlement is fair, reasonable and adequate. The Settlement was arrived at through arm's-length negotiations, taking into account all relevant factors. The Parties recognize the uncertainty, risk, expense and delay attendant to continuing the Action through trial and any appeal. Accordingly, the Parties desire to fully, finally, and forever settle,

1 compromise and discharge all Released Claims, as defined herein, in conformity with the terms set
2 forth herein.

3 **III. TERMS OF AGREEMENT**

4 A. Settlement Consideration. Defendant shall pay all sums as specified in this
5 Agreement. The Parties agree that this is a non-reversionary Settlement and that no portion of the
6 Gross Settlement Amount shall revert to Defendant. Cancelled checks and funds associated with any
7 settlement payments shall be transmitted to a *cy pres* recipient or the California Controller's Office,
8 Unclaimed Property Fund. In no event shall Defendant be required to pay more than the Gross
9 Settlement Amount and applicable employer payroll taxes.

10 B. Release by All Settlement Class Members. As of the Effective Date, in exchange for
11 the consideration set forth in this Agreement, Plaintiff and the Settlement Class Members fully,
12 finally, and forever settle and release the Released Parties from the Released Claims.

13 C. Release of PAGA Claims. As of the Effective Date, in exchange for the consideration
14 set forth in this Agreement, the State of California, Plaintiff and the Aggrieved Employees fully,
15 finally, and forever settle and release the Released Parties from the Released PAGA Claims.

16 D. General Release by Plaintiff Glenn Waltrip. As of the Effective Date, in consideration
17 for the consideration set forth in this Agreement, Plaintiff, for himself and his heirs, successors and
18 assigns, does hereby waive, release, acquit and forever discharge the Released Parties, from any and
19 all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether
20 known or unknown, which exist or may exist on Plaintiff's behalf as of the date of this Agreement,
21 including but not limited to any and all tort claims, contract claims, wage claims, wrongful
22 termination claims, disability claims, benefit claims, public policy claims, retaliation claims,
23 statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims,
24 defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any
25 federal, state or other governmental statute, law, regulation or ordinance, including, but not limited
26 to claims for violation of the Fair Credit Reporting Act, Fair Labor Standards Act, the California
27 Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and
28 hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act

(ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 *et seq.*, claims arising from Plaintiff's allegation that he was misclassified as an exempt employee, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance. Plaintiff hereby expressly waives and relinquishes any and all claims, rights or benefits that she may have under California Civil Code § 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor." Plaintiff may hereafter discover claims or facts in addition to, or different from, those which he now knows or believes to exist, but he expressly agrees to fully, finally and settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant. The Parties further acknowledge, understand and agree that this representation and commitment is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation and commitment.

1. Notwithstanding the foregoing, this release excludes the claims pled by Plaintiff in his individual wrongful termination action, *Waltrip v. Highgate Hotels, L.P.*, Santa Clara Superior Court Case no. 23CV417497.

E. Conditions Precedent: This Settlement will become final and effective upon the occurrence of the Effective Date, and satisfaction of the following conditions:

1. The Court enters an order granting preliminary approval of the Settlement;
and

2. The Court enters an order granting final approval of the Settlement and a Final Judgment to that effect; and

3. The time for appeal of the Final Judgment and Order Granting Final Approval of Class Action Settlement expires, or, if an appeal is timely filed, there is a final

1 resolution of any appeal from the Judgment and Order Granting Final Approval of Class
2 Action Settlement; and

3 4. Defendant does not invoke its right to terminate the Settlement in conformity
4 with Section III(N) herein.

5 F. Nullification of Settlement Agreement. In the event that this Settlement Agreement
6 is not preliminarily or finally approved by the Court, fails to become effective, or is reversed,
7 withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining
8 a complete resolution of the claims as described herein, the Parties agree to work cooperatively and
9 in good faith in an effort to address and resolve any concerns raised by the Court to secure the
10 Court's approval of the Agreement. The Parties will meet and confer for a period of no less than 30
11 days attempt to address any concerns raised by the Court and resubmit a revised Agreement within
12 60 days of the Court Order, if possible. In the event the Parties do not resolve the issues raised by
13 the Court Order, the Parties shall submit any items that remain extant to the Court for its review and
14 recommended resolution. Should the revised Agreement not be approved after the Parties' joint
15 efforts to resolve any issues that remain extant:

16 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
17 and shall not be admissible in any judicial, administrative or arbitral proceeding for any
18 purpose or with respect to any issue, substantive or procedural;

19 2. The conditional class certification (obtained for any purpose) shall be void
20 *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative
21 or arbitral proceeding for any purpose or with respect to any issue, substantive or
22 procedural; and

23 3. None of the Parties to this Settlement will be deemed to have waived any
24 claims, objections, defenses or arguments in the Action, including with respect to the issue
25 of class certification.

26 Nothing herein shall be interpreted to be a waiver or repudiation of the Memorandum
27 of Understanding executed by the Parties on December 4, 2023, which shall remain
28 in full force and effect.

1 G. Certification of the Class for Settlement Purposes Only. The Parties stipulate to
2 conditional class certification of the Class for the Class Period for purposes of settlement only. In the
3 event that this Settlement is not approved by the Court, fails to become effective, or is reversed,
4 withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining
5 a complete resolution of the claims as described herein, the conditional class certification (obtained
6 for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any
7 judicial, administrative or arbitral proceeding for any purpose or with respect to any issue,
8 substantive or procedural.

9 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
10 effect of the payments called for hereunder, and Settlement Class Members are not relying on any
11 statement or representation by the Parties in this regard. Settlement Class Members understand and
12 agree that they will be responsible for the payment of any taxes and penalties assessed on the
13 Individual Settlement Payments described herein and will hold the Parties (including the Released
14 Parties) free and harmless from and against any claims, liabilities, costs and expenses, including
15 attorney's fees, resulting in any way from personal tax treatment of the payments made pursuant to
16 this Agreement, including the treatment of such payments as not subject to withholding or deduction
17 for payroll and employment taxes. Furthermore, neither Class Counsel nor Defendant's Counsel
18 intend anything contained in this Agreement to constitute legal advice regarding the taxability of any
19 amount paid as a result of the Settlement, nor shall it be relied upon as such.

20 I. Preliminary Approval Motion. No later than 4 court days after this Agreement is fully
21 executed, Plaintiff shall file with the Court a Motion for Order Granting Preliminary Approval and
22 supporting papers, which shall include this Agreement. In connection with their Motion for
23 Preliminary Approval. Class Counsel shall provide a copy of the draft Motion for Order Granting
24 Preliminary Approval, together with the supporting documents, to Defendant's Counsel for review
25 and comment 2 court days before filing it with the Court. Defendant shall timely file a Statement of
26 Non-Opposition to the Motion for Order Granting Preliminary Approval, unless Class Counsel fails
27 to address Defendant's comments.

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1 J. Settlement Administrator. The Settlement Administrator shall be responsible for:
2 processing and transmitting payments to the Class Representative, Class Counsel, and Settlement
3 Class Members; printing and mailing the Notice Packets to the Class Members as directed by the
4 Court; receiving and reporting the objections and requests for exclusion; distributing tax forms;
5 processing and mailing tax payments to the appropriate state and federal taxing authorities; providing
6 declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and
7 other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform.
8 The Settlement Administrator shall keep the Parties timely apprised of the performance of all
9 Settlement Administrator responsibilities. The Settlement Administrator shall also mail to the
10 LWDA its share of the PAGA Penalty Payment, as described in Section III(L)(3), within five (5)
11 calendar days after the Effective Date.

12 K. Notice Procedure.

13 1. Class Data. No later than fourteen (14) calendar days after the Preliminary
14 Approval Date, Defendant shall provide the Settlement Administrator with the Class Data
15 for purposes of preparing and mailing Notice Packets to Class Members. The Class Data
16 shall be confidential. The Settlement Administrator shall not provide the Class Data to
17 Class Counsel or Plaintiff or any third party or use the Class Data or any information
18 contained therein for any purpose other than to administer this Settlement, unless the Parties
19 jointly agree otherwise in writing. However, the Settlement Administrator can provide the
20 final total number of Compensable Workweeks of all Class Members (i.e., the total number
21 of workweeks during which Class Members were employed by Defendant during the
22 Settlement Class Period).

23 2. Notice Packets.

24 (a) The Notice Packet shall contain the Notice of Class Action
25 Settlement in a form substantially similar to the form attached hereto as **Exhibit 1**.
26 The Notice of Class Action Settlement shall inform Class Members that in order to
27 receive an Individual Settlement Payment, they do not need to do anything except
28 that they must not request to be excluded from the Settlement and must keep the

1 Settlement Administrator apprised of their current mailing addresses. The Notice of
2 Class Action Settlement shall set forth the release to be given by all members of the
3 Class who do not request to be excluded from the Settlement.

4 (b) The Notice Packet shall contain the Employment Information Sheet,
5 in a form substantially similar to the form attached as **Exhibit 2**, and shall include
6 the Class Member's starting and ending dates of employment during the Class
7 Period and the number of Compensable Workweeks credited to the Class Member
8 based on the Class Data provided by Defendant, and the estimated amount of their
9 Individual Settlement Payment if they do not request to be excluded from the
10 Settlement. The Settlement Administrator shall use the Class Data to determine the
11 dates of employment and calculate the number of Compensable Workweeks for
12 each Class Member.

13 (c) The Notice Packet shall contain the Change of Address Form, in a
14 form substantially similar to the form attached as **Exhibit 3**.

15 3. Notice By First Class U.S. Mail. Upon receipt of the Class Data, the
16 Settlement Administrator will perform a search based on the National Change of Address
17 Database to update and correct any known or identifiable address changes. No later than
18 fourteen (14) calendar days after receiving the Class Data from Defendant as provided
19 herein, the Settlement Administrator shall mail copies of the Notice Packet to all Class
20 Members via regular First Class U.S. Mail. The Settlement Administrator shall exercise its
21 best judgment to determine the current mailing address for each Class Member. The
22 address identified by the Settlement Administrator as the current mailing address shall be
23 presumed to be the best mailing address for each Class Member.

24 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
25 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to
26 the forwarding address affixed thereto. If no forwarding address is provided, the Settlement
27 Administrator shall promptly attempt to determine a correct address by lawful use of skip-
28 tracing, or other search using the name, address and/or Social Security number of the Class

1 Member involved, and shall then perform a single re-mailing, if another mailing address is
2 identified by the Settlement Administrator. Class Members who received a re-mailed
3 Notice Packet shall have their Response Deadline extended fourteen (14) calendar days
4 from the original Response Deadline.

5 5. Disputes Regarding Compensable Workweeks. Class Members will have
6 the opportunity, should they disagree with the dates of employment or the number of
7 Compensable Workweeks stated on their Employment Information Sheet, to provide
8 documentation and/or an explanation to show contrary employment dates. Disputes are due
9 by the Response Deadline (or fourteen (14) calendar days after the Response Deadline in
10 the case of a re- mailed Notice Packet). If there is a dispute, the Settlement Administrator
11 will consult with the Parties to determine whether an adjustment is warranted. The
12 Settlement Administrator shall determine the eligibility for, and the amounts of, any
13 Individual Settlement Payments under the terms of this Agreement. The Settlement
14 Administrator's determination of the eligibility for and amount of any Individual Settlement
15 Payment shall be binding upon the Class Member and the Parties, subject to the review of
16 the court at Final Approval.

17 6. Disputes Regarding Administration of Settlement. Any disputes not
18 resolved by the Settlement Administrator concerning the administration of the Settlement
19 will be resolved by the Court under the laws of the State of California. Prior to any such
20 involvement of the Court, counsel for the Parties will confer in good faith to resolve the
21 disputes without the necessity of involving the Court.

22 7. No Claim Form Required. Class Members are not required to submit a
23 claim form to receive an Individual Settlement Payment. The Notice of Class Action
24 Settlement contained in the Notice Packet shall state that Class Members who wish to
25 receive Individual Settlement Payments need not do anything, except they must not request
26 to be excluded from the Settlement and they must keep the Settlement Administrator
27 apprised of a current mailing address in order to receive an Individual Settlement Payment
28 check following the Effective Date of the Settlement.

1 8. Exclusions. The Notice of Class Action Settlement contained in the Notice
2 Packet shall state that Class Members who wish to exclude themselves from the Settlement
3 must submit a written request for exclusion by the Response Deadline. The written request
4 for exclusion (1) must contain the name, address, telephone number and the last four digits
5 of the Social Security number of the person requesting exclusion; (2) must be signed by the
6 Class Member; (3) must be postmarked by the Response Deadline and returned to the
7 Settlement Administrator at the specified address; and (4) must contain a typewritten or
8 handwritten notice stating in substance: "I have read the Notice of Class Action Settlement,
9 and I wish to opt out of the Settlement of the case: *Glenn Waltrip v. Highgate Hotels, L.P.*,
10 Santa Clara County Superior Court Case Number 23CV417680, and understand that I will
11 not receive a Settlement Payment pursuant to the terms of the Settlement described in the
12 Notice of Class Action Settlement." The request for exclusion will not be valid if it is not
13 timely submitted, if it is not signed by the Class Member, or if it does not contain the name
14 and address of the Class Member. The date of the postmark on the return mailing envelope
15 on the request for exclusion shall be the exclusive means used to determine whether the
16 request for exclusion was timely submitted. Any Class Member who requests to be
17 excluded from the Settlement will not be entitled to any recovery under the Settlement and
18 will not be bound by the terms of the Settlement or have any right to object, appeal or
19 comment thereon. Class Members who fail to submit a valid and timely written request for
20 exclusion on or before the Response Deadline shall be bound by all terms of the Settlement
21 and any final judgment entered in this Action if the Settlement is approved by the Court.
22 No later than twenty-one (21) calendar days after the Response Deadline, the Settlement
23 Administrator shall provide counsel for the Parties with a final list of the Class Members
24 who have timely submitted written requests for exclusion. At no time shall any of the
25 Parties or their counsel seek to solicit or otherwise encourage members of the Class to
26 submit requests for exclusion from the Settlement. Regardless of whether they submit
27 timely, valid Requests for Exclusion, Aggrieved Employees shall be bound to the terms of
28 the Settlement with respect to the PAGA Penalty Payment and Released PAGA Claims.

1 9. Objections. The Notice of Class Action Settlement contained in the Notice
2 Packet shall state that Class Members who do not request to be excluded from the
3 Settlement may object to the Settlement, and shall also state that objection must be made in
4 a writing ("Notice of Objection") that is submitted to the Settlement Administrator by the
5 Response Deadline. The Settlement Administrator shall promptly provide counsel for the
6 Parties with copies of any and all written objections that it receives, and shall also submit
7 timely and compliant objections to the Court by way of declaration filed before the Final
8 Approval Hearing. The postmark date on the Notice of Objection, or the envelope
9 containing said Notice of Objection, shall be deemed the exclusive means for determining
10 that a Notice of Objection was timely submitted. The Notice of Objection must be signed
11 by the Settlement Class Member and state: (1) the full name of the Settlement Class
12 Member; (2) the dates of employment of the Settlement Class Member; (3) the last four
13 digits of the Settlement Class Member's Social Security number and/or the Employee ID
14 number; (4) that an objection is being made and the basis for the objection; and (5) whether
15 the Settlement Class Member intends to appear at the Final Approval Hearing and whether
16 he or she is represented by an attorney (if so, the attorney shall be identified). Settlement
17 Class Members who fail to make objections in the manner specified above shall be deemed
18 to have waived any objections and shall be foreclosed from making any objections (whether
19 by appeal or otherwise) to the Settlement. However, any Settlement Class Member will
20 have a right to appear at the Final Approval Hearing. At no time shall any of the Parties or
21 their counsel seek to solicit or otherwise encourage Settlement Class Members to file or
22 serve written objections to the Settlement or appeal from the Order and Final Judgment.
23 Class Members who submit a written request for exclusion are not entitled to object to the
24 Settlement.

25 L. Funding and Allocation of the Gross Settlement Amount. Defendant is required to
26 pay the sum of the Net Settlement Amount, the Class Representative Service Award, the Class
27 Counsel Award, the Settlement Administration Costs, and the PAGA Penalty Payment, as specified
28 in this Agreement, up to the Gross Settlement Amount.

1 1. Escalator Clause. Defendant estimates that there are no more than 160,000
2 Workweeks during the Class Period as of October 1, 2023. In the event the number of
3 Workweeks during the Class Period increases by more than 10%, or an additional 16,000
4 Workweeks, then Defendant shall have the choice of (i) increasing the Gross Settlement
5 Amount on a proportional basis above 10% (i.e., if there is an 11% increase in the number
6 of workweeks during the Class Period, Defendant agrees to increase the Gross Settlement
7 Amount by 1%); or (2) electing to end the Class Period on the date that the number of
8 workweeks reaches 176,000 Workweeks (160,000 Workweeks + 16,000 Workweeks). In
9 the event the number of Workweeks during the Class Period decreases by more than 10%,
10 or 16,000 Workweeks, then the Gross Settlement Amount will be reduced on a proportional
11 basis for every 1% decrease below 10% (i.e. if there is a 10% decrease in the number of
12 workweeks during the Class Period, the Gross Settlement Amount will decrease by 1%).

13 2. Funding Due Date. No later than fourteen (14) calendar days after the
14 Effective Date, Defendant shall provide the Gross Settlement Amount and employer payroll
15 taxes to fund the Settlement, as set forth in this Agreement.

16 3. PAGA Penalty Payment. In order to settle the claims alleged by Plaintiff
17 under the Private Attorneys General Act, California Labor Code § 2698 *et seq.*, the Parties
18 have agreed to allocate One Hundred Thousand Dollars (\$100,000.00) of the Gross
19 Settlement Amount toward penalties recoverable under PAGA. Seventy-five percent (75%)
20 percent of this amount will be paid to the LWDA, and the remaining twenty-five percent
21 (25%) will be paid to the Aggrieved Employees.

22 4. Individual Settlement Payments. Individual Settlement Payments shall be
23 paid from the Net Settlement Amount and the 25% of the PAGA Penalty Payment allocated
24 to Aggrieved Employees and shall be paid pursuant to the formula set forth herein.

25 (a) Calculation of Individual Settlement Payments. The Individual
26 Settlement Payments include both (i) an individual share of the Class Payment to
27 the Settlement Class Members (an “Individual Class Payment”), and/or (ii) an
28 individual share of 25% of the PAGA Penalty Payment allocated to Aggrieved

1 Employees (an “Individual PAGA Payment”).

2 (i) The Settlement Administrator will allocate the Net Settlement
3 Amount as Individual Class Payments to all Settlement Class Members. The
4 Settlement Administrator will distribute the Individual Class Payments
5 amongst the Settlement Class Members *pro rata* according to each
6 Settlement Class Member’s total number of Compensable Workweeks
7 during the Settlement Class Period divided by the total number of
8 Compensable Workweeks of Settlement Class Members. The Individual
9 Class Payment will be included in each Settlement Class Member’s
10 Individual Settlement Payment.

11 (ii) Allocation. For tax purposes, Individual Class Payments
12 shall be allocated and treated as follows: (i) twenty (20) percent as wages;
13 (ii) eighty (80) percent as penalties and interest. Individual Class Payments
14 shall be subject to reduction for the employee’s and employer’s share of
15 payroll taxes and withholdings with respect to the wage-portion of an
16 Individual Class Payment, which shall be distributed by the Settlement
17 Administrator to the appropriate taxing authorities. Settlement Class
18 Members who are issued Individual Class Payments shall be issued IRS
19 Form W-2 with respect to the portion of their Individual Class Payment that
20 is allocated toward wages, and shall be issued IRS Form 1099, as applicable,
21 with respect to the portion of their Individual Class Payment that is allocated
22 toward penalties and interest.

23 (iii) The Settlement Administrator will allocate 25% of the PAGA
24 Penalty Payment as Individual PAGA Payments to all Aggrieved
25 Employees. The Settlement Administrator will distribute the Individual
26 PAGA Payments amongst the Aggrieved Employees *pro rata* according to
27 each Aggrieved Employees’ total number of Compensable Workweeks
28 during the PAGA Covered Period. The Individual PAGA Payment will be

1 included in each Aggrieved Employee's Individual Settlement Payment,
2 regardless of whether they opt out of the Settlement.

3 (iv) Allocation. For tax purposes, Individual PAGA Payments
4 shall be allocated and treated as follows: (i) One hundred (100) percent as
5 penalties and interest. Individual PAGA Payments shall not be subject to
6 reduction for the employee's and employer's share of payroll taxes and
7 withholdings with respect to the wage-portion of an Individual Settlement
8 Payment. Aggrieved Employees who are issued Individual PAGA Payments
9 shall be issued IRS Form 1099, as applicable, with respect to the portion of
10 their Individual PAGA Payment that is allocated toward penalties and
11 interest.

12 (v) In order to cash their Individual Settlement Payment checks,
13 Settlement Class Members shall be required to affirmatively opt in for purposes
14 of the Fair Labor Standards Act ("FLSA") and waive all Released Claims
15 falling under the FLSA by endorsing their Individual Settlement Payment
16 checks, which shall contain thereon the following or substantially similar
17 language: "By endorsing and cashing this check, I agree to the waiver of the
18 wage and hour claims set forth in the class notice in *Glenn Waltrip v. Highgate*
19 *Hotels, L.P., et al.*, including all claims under the FLSA and hereby
20 affirmatively opt in to the FLSA claim and FLSA waiver for purposes of 29
21 U.S.C. section 216(b)." This FLSA release shall not apply to Aggrieved
22 Employees who timely submit a valid Request for Exclusion from the
23 Settlement Class, and this language shall not appear on the checks provided to
24 such an employee for his or her Individual PAGA Payment only.

25 (b) Mailing. Individual Settlement Payments shall be mailed by regular
26 First-Class U.S. Mail to Settlement Class Members' last known mailing address no
27 later than fourteen (14) calendar days after the Effective Date. Neither Defendants,
28 counsel for Defendants, or Class Counsel shall have any liability for lost or stolen

1 settlement checks, for forged signatures on settlement checks, or for unauthorized
2 negotiation of settlement checks.

3 (c) Expiration. Any checks issued to Settlement Class Members shall
4 remain valid and negotiable for one hundred and eighty (180) calendar days from
5 the date of their issuance. All Individual Settlement Payment checks that have not
6 been cashed or deposited into an account within one hundred and eighty (180)
7 calendar days, shall be voided and funds associated with such voided checks plus
8 any accrued interest that has not otherwise been distributed, shall be transmitted to
9 the California Controller's Office, Unclaimed Property Fund. The Settlement
10 Administrator shall prepare a report regarding the distribution plan pursuant to
11 California Code Civil Procedure Section 384, including and not limited to the
12 unused funds as set forth in this section, in accordance with the Court's orders.

13 5. Class Representative Service Award. Defendant agrees not to oppose or
14 object to any application or motion by Plaintiff for a Class Representative Service Award of
15 up to Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff, for his time and effort
16 in bringing and prosecuting this matter. The Settlement Administrator shall pay the Class
17 Representative Service Award to Plaintiff from the Gross Settlement Amount no later than
18 fourteen (14) calendar days after the Effective Date. Any portion of the requested Class
19 Representative Service Award that is not awarded to the Class Representative shall be part
20 of the Net Settlement Amount and shall be distributed to Settlement Class Members as
21 provided in this Agreement. The Settlement Administrator shall issue an IRS Form 1099-
22 MISC to Plaintiff for her Class Representative Service Award. Plaintiff shall be solely and
23 legally responsible to pay any and all applicable taxes on his Class Representative Service
24 Award and shall hold harmless Defendant from any claim or liability for taxes, penalties, or
25 interest arising as a result of the Class Representative Service Award. The Class
26 Representative Service Awards shall be in addition to the Plaintiff's respective Individual
27 Settlement Payment as a Settlement Class Member. In the event that the Court reduces or
28 does not approve the requested Class Representative Service Award, Plaintiff shall not have

1 the right to revoke the Settlement, and it will remain binding.

2 6. Class Counsel Award. Defendant agrees not to oppose or object to any
3 application or motion by Class Counsel for attorneys' fees not to exceed one-third (1/3) of
4 the Gross Settlement Amount (\$400,000 out of \$1,200,000), plus costs and expenses
5 supported by declaration, not to exceed \$15,000, from the Gross Settlement Amount. Any
6 portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be
7 part of the Net Settlement Amount and shall be distributed to Settlement Class Members as
8 provided in this Agreement. The Settlement Administrator shall pay the Class Counsel
9 Award to Class Counsel from the Gross Settlement Amount no later than fourteen (14)
10 calendar days after the Effective Date. Class Counsel shall be solely and legally
11 responsible to pay all applicable taxes on the payment made pursuant to this section. The
12 Settlement Administrator shall issue an IRS Form 1099-MISC to Class Counsel for the
13 payments made pursuant to this section. In the event that the Court reduces or does not
14 approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the
15 right to revoke the Settlement, or to seek an appeal of that ruling, and the Settlement will
16 remain binding.

17 7. Settlement Administration Costs. The Settlement Administrator shall be paid
18 for the costs of administration of the Settlement from the Gross Settlement Amount. The
19 Settlement Administration Costs are estimated not to exceed \$32,500. The Settlement
20 Administrator shall be paid the Settlement Administration Costs no later than fourteen (14)
21 calendar days after Defendant provides funds to the Settlement Administrator for
22 disbursement under this Agreement.

23 M. Final Approval Motion. No later than 30 days following the expiration of the
24 Response Deadline, Plaintiff shall file with the Court a Motion for Final Approval of Class Action
25 Settlement, which motion shall request final approval of the Settlement and the amounts payable for
26 the Class Representative Service Award, the Class Counsel Award, the Settlement Administration
27 Costs, and entry of Judgment.

28 ///

1 1. Declaration by Settlement Administrator. No later than twenty-one (21)
2 calendar days after the Response Deadline, the Settlement Administrator shall submit a
3 declaration in support of Plaintiff's Motion for Final Approval of this Settlement detailing
4 the number of Notice Packets mailed and re-mailed to Class Members, the number of
5 undeliverable Notice Packets, the number of timely requests for exclusion, the number of
6 objections received, the amount of the average Individual Settlement Payment, the
7 Settlement Administration Costs, and any other information as the Parties mutually agree or
8 the Court orders the Settlement Administrator to provide.

9 2. Final Approval Order and Judgment. Plaintiff shall present a proposed Final
10 Approval Order and Judgment to the Court, that Defendant has had an opportunity to
11 review and comment on.

12 N. Defendant's Option to Terminate Settlement. Defendant has the unilateral right to
13 terminate the Settlement if, after the Response Deadline and before the Final Approval/Settlement
14 Fairness Hearing, the number of Settlement Class Members who submitted timely and valid written
15 requests for exclusion from the Settlement is at least five percent (5%) of all Settlement Class
16 Members, Defendant shall have, in its sole discretion, the option to terminate this Settlement. If
17 Defendant exercises the option to terminate this Settlement, Defendant shall: (a) provide written
18 notice to Class Counsel within seven (7) calendar days after the Settlement Administrator provides
19 final confirmation of the number of Class Members who submitted timely and valid written requests
20 for exclusion, and (b) pay all Settlement Administration Costs incurred up to the date or as a result
21 of the termination. The Parties shall proceed in all respects as if this Agreement had not been
22 executed. Nothing herein shall be interpreted to be a waiver or repudiation of the Memorandum of
23 Understanding executed by the Parties on December 4, 2023 which shall remain in full force and
24 effect.

25 O. Motions for Preliminary and Final Approval. Class Counsel will provide Counsel for
26 Defendant a draft of the Motions for Preliminary and Final Approval at least two court days prior to
27 filing with the Court to enable counsel for Defendant to review and comment. The Parties and their
28 counsel will cooperate with each other and use their best efforts to effectuate the Court's approval of

1 the Motions for Preliminary and Final Approval of the Settlement.

2 P. Cooperation. The Parties and their counsel will cooperate with each other and use
3 their best efforts to implement the Settlement. The Parties, including Class Counsel, agree not to
4 take any action to encourage Class Members to opt out of or to object to the Settlement. . The Parties
5 agree to fully cooperate with each other to accomplish the terms of the Agreement, including, but
6 not limited to, execution of such documents and to take such other action as may reasonably be
7 necessary to implement the terms of the Agreement. In the event the Parties cannot agree upon such
8 terms, their dispute shall be decided finally by the Court.

9 Q. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
10 except such proceedings necessary to implement and complete the Settlement, pending the Final
11 Approval Hearing to be conducted by the Court.

12 R. Amendment or Modification. This Agreement may be amended or modified only by
13 a written instrument signed by counsel for all Parties or their successors-in-interest, subject to
14 approval by the Court.

15 S. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
16 Agreement among these Parties, and no oral or written representations, warranties or inducements
17 have been made to any Party concerning this Agreement or its Exhibits other than the representations,
18 warranties and covenants contained and memorialized in the Agreement, and Exhibits to the
19 Agreement. Notwithstanding the foregoing, nothing herein shall be interpreted to be a waiver or
20 repudiation of the Memorandum of Understanding executed by the Parties on December 4, 2023,
21 which shall remain in full force and effect.

22 T. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant
23 and represent they are expressly authorized by the Parties whom they represent to negotiate this
24 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
25 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
26 effectuate the terms of this Agreement. The person signing this Agreement on behalf of Defendant
27 represents and warrants that he or she is authorized to sign this Agreement on behalf of Defendant.
28 Plaintiff represents and warrant that she is authorized to sign this Agreement and that she has not

assigned any claim, or part of a claim, covered by this Settlement to a third-party.

U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

V. California Law Governs. All terms of this Agreement and the Exhibits hereto and any disputes arising hereunder shall be governed by and interpreted according to the laws of the State of California.

W. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts.

X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential.

Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

AA. Publicity. Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except to the LWDA (in conformity with PAGA), potential Class Members, and as shall be contractually required to effectuate the terms of the Settlement as set forth herein. For the avoidance of doubt, this section

1 means Plaintiff and Class Counsel agree not to issue press releases, communicate with, or respond
2 to any media or publication entities, publish information in any manner or form (including on Class
3 Counsel's website), whether printed or electronic, on any medium or otherwise communicate,
4 whether by print, video, recording or any other medium, with any person or entity concerning the
5 Settlement, including the fact of the Settlement, its terms or contents and the negotiations underlying
6 the Settlement, except as otherwise set forth herein. However, for the limited purpose of allowing
7 Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the
8 name of the Parties in this action and the venue/case number of this action (but not any other
9 settlement details) for such purposes.

10 BB. Certification for Settlement Only. The Parties stipulate to class certification for
11 purposes of this settlement only.

12 CC. No Admissions. Plaintiff has claimed and continues to claim that the Released Claims
13 have merit and give rise to liability on the part of Defendant. Defendant claims that the Released
14 Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed
15 claims. Nothing contained in this Agreement and no documents referred to herein and no action taken
16 to carry out this Agreement may be construed or used as an admission by or against either of the
17 Defendant or Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted.

18 DD. Plaintiff's Right to Revoke. Plaintiff acknowledges that he is knowingly and
19 voluntarily waiving and releasing any rights he may have under the Age Discrimination in
20 Employment Act of 1967 ("ADEA"). He or she also acknowledges that the Class Representative
21 Service Award to him is in addition to anything of value to which he or she was already entitled.
22 Plaintiff further acknowledges that he has been advised by this writing, as required by the Older
23 Workers' Benefit Protection Act, that: (a) his waiver and release of Plaintiff's Released Claims does
24 not apply to any rights or claims that may arise after the Effective Date of this Agreement; (b) he
25 should consult with an attorney prior to executing this Agreement; (c) he has at least twenty-one (21)
26 days to consider this Agreement (although he may by his own choice execute this Agreement earlier);
27 (d) he has seven (7) days following the execution of this Agreement to revoke the Agreement; and
28 (e) this Agreement shall not be effective earlier than the next business day following the expiration

of this 7-day revocation period. Plaintiff may revoke this Agreement only by giving Defendant formal, written notice of his or her revocation of this Agreement, addressed to: Christopher W. Decker, Esq., Ogletree Deakins P.C., 400 South Hope Street, 12th Floor, Los Angeles, CA 90071; fax: 213-239-9045, to be received by the Defendant by the close of business on the seventh day following the Plaintiff's execution of this Agreement.

EE. Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

Class Counsel	Counsel for Defendant
SHAUN SETAREH (CA Bar No. 204514) shaun@setarehlaw.com JOSE MARIA D. PATINO, JR. (CA Bar No. 270194) jose@setarehlaw.com SETAREH LAW GROUP 9665 Wilshire Boulevard, Suite 430 Beverly Hills, CA 90212 Telephone: (310) 888-7771 Facsimile: (310) 888-0109	CHRISTOPHER W. DECKER, CA Bar No. 229426 christopher.decker@ogletree.com OGLETREE, DEAKINS, NASH, SMOAK & STEWART, PC 400 South Hope Street, Suite 1200 Los Angeles, CA 90071 Telephone: 213-239-9800 Facsimile: 213-239-9045 CAROLYN B. HALL, CA Bar No. 212311 carolyn.hall@ogletree.com OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C. One Embarcadero Center, Suite 900 San Francisco, CA 94111 Telephone: 415-442-4810 Facsimile: 415-442-4870
Attorneys for Plaintiff GLENN WALTRIP	Attorneys for Defendant HIGHGATE HOTELS, L.P.

FF. ENFORCEMENT ACTIONS

In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to this Settlement to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the prevailing party or parties shall be entitled to recover from the non-prevailing party or parties reasonable attorney's fees and costs, including expert witness fees, incurred in connection with any such action or proceeding. Prior to filing any papers initiating such legal action or other proceeding with the Court, the moving party shall: (1)

1 provide written notice to the nonmoving party explaining the provision(s) to be enforced, the reasons
2 the moving party believes the nonmoving party has failed to comply with the provision(s), and the
3 prejudice suffered by the moving party due to the alleged failure to comply; (2) meet and confer with
4 the nonmoving party by teleconference or in person to try to resolve the issues noticed; and (3) provide
5 a reasonable opportunity for the nonmoving party to cure.

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8 **IT IS SO STIPULATED.**

9
10 DATED: 5/17/2024

By: 
ID qNHxcbpsUAuzEKbrSjsgWJ8
Plaintiff, GLENN WALTRIP

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13 DATED: _____

HIGHGATE HOTELS, L.P.

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15 By: _____
16 Larry R. Martinez

17 Vice President of Human Resources and
18 Employment Counsel

19
20 APPROVED AS TO FORM:

21
22 DATED: 5/20/2024

SETAREH LAW GROUP

23
24 By: 
ID 7KQ83EcFBZPYywkBujBMr5Ex
25 Shaun Setareh

26 Attorneys for Plaintiff
27 GLENN WALTRIP
28

1 provide written notice to the nonmoving party explaining the provision(s) to be enforced, the reasons
2 the moving party believes the nonmoving party has failed to comply with the provision(s), and the
3 prejudice suffered by the moving party due to the alleged failure to comply; (2) meet and confer with
4 the nonmoving party by teleconference or in person to try to resolve the issues noticed; and (3) provide
5 a reasonable opportunity for the nonmoving party to cure.

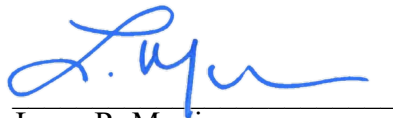
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8 **IT IS SO STIPULATED.**
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10 DATED: _____

By: _____
Plaintiff, GLENN WALTRIP

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12
13 DATED: May 16, 2024

HIGHGATE HOTELS, L.P.

14
15 By: 
16 Larry R. Martinez

17 Vice President of Human Resources and
18 Employment Counsel

19
20 APPROVED AS TO FORM:

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22 DATED: _____

SETAREH LAW GROUP

23
24 By: _____
25 Shaun Setareh

26 Attorneys for Plaintiff
27 GLENN WALTRIP
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DATED: May 16, 2024

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: 
Christopher W. Decker

Attorneys for Defendant
HIGHGATE COMPANY

EXHIBIT 1

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this Notice. This is not a solicitation.
This is not a lawsuit against you, and you are not being sued.
However, your legal rights are affected, whether you act or don't act.*

To: All current and former employees of Highgate Hotels, L.P. in hourly or non-exempt positions in California at any time from January 12, 2022 through [REDACTED] (the "Class"); and

All current and former hourly-paid or non-exempt employees of Highgate Hotels, L.P. in California at any time from May 8, 2022 through [REDACTED] (the "Aggrieved Employees").

This Notice is related to a pending lawsuit entitled *Glenn Waltrip v. Highgate Hotels, L.P.*, in the Superior Court of California for the County of Santa Clara ("Court"), Case No. 23CV417680 ("the Lawsuit"). The Lawsuit alleges that Highgate Hotels, L.P. ("Highgate Hotels") failed to provide meal periods and rest breaks, pay hourly wages, pay sick time, indemnify business expenses, issue accurate itemized wage statements, pay all wages due upon separation of employment, engaged in unfair/unlawful business practices, and also asserts claims for PAGA penalties, interest, attorneys' fees, and costs. Highgate Hotels denies that it committed any violations but prefers to settle the Lawsuit rather than continuing the legal process.

Pursuant to the Order of the Court entered on [REDACTED], the proposed settlement (the "Settlement") has been preliminarily approved by the Court. You have received this Notice because the company's records indicate that you are a member of the Class. This Notice is designed to inform you of how you can obtain your share of the settlement payment, object to the Settlement, or exclude yourself from the Settlement and receive no payment.

Your rights and each option—and the deadlines to exercise each of them—are explained in this Notice.

1. Why did I get this Notice Packet?

You received this Notice Packet because a Settlement has been reached in the Lawsuit on behalf of the Class. Highgate Hotels' records indicate that you may be a member of the Class. The Class includes all persons employed by Highgate Hotels in hourly or non-exempt positions in California from January 12, 2022 through [REDACTED] ("Settlement Class Period"). You may also be an Aggrieved Employee under the Settlement if you also worked for Highgate Hotels in California as an hourly-paid or non-exempt employee at any time from May 8, 2022 through [REDACTED] ("PAGA Covered Period").

2. What is a class action?

In a putative class action, one or more people sue on behalf of themselves and other people who may have similar claims and seek to represent the group of people with similar claims. If the Court certifies the action for determination on a class-wide basis, the group of people with similar claims is called a "class." Each person covered by the class definition is a "class member." When a class is certified by a court, the court resolves the issues for all class members, except for those who request to be excluded from the class. In this case, Plaintiff Glenn Waltrip ("Plaintiff") is a former employee of Highgate Hotels pursuing the Lawsuit on behalf of themselves and the Class. On [REDACTED], the Court preliminarily approved the Class for settlement purposes, Plaintiff Glenn Waltrip ("Plaintiff") was appointed as the Class Representative for the Class, and Setareh Law Group was appointed as counsel for the Class ("Class Counsel").

3. Why is there a Settlement?

The Court has not decided in favor of Plaintiff or Highgate Hotels. There has been no trial. Instead, both sides agreed to a no-fault settlement of the Lawsuit. Plaintiff (also known as "Class Representative") and Class Counsel support this Settlement. Their reasons include the inherent risk of denial of class certification, the risk of a trial on the merits, and the inherent delays and uncertainties involved in litigation. Based on their experience litigating similar cases, Class Counsel believes that further proceedings in this case, including a trial and probable appeals, would be expensive, would take a long time, and would be uncertain as to the outcome. Therefore, upon careful consideration of all of the facts and circumstances of this case, the Class Representative and Class Counsel believe that the Settlement is in the best interest of all Class Members.

4. What is the background of this Lawsuit?

On June 15, 2023, Plaintiff Glenn Waltrip filed a Class Action Complaint against Defendant Highgate Hotels L.P. ("Defendants" or "Highgate Hotels") alleging certain violations of the law, as set forth above.

5. Who are the attorneys for the Parties?

Class Counsel:

Shaun Setareh, Esq.
Jose Maria D. Patino, Jr., Esq.
Setareh Law Group
9665 Wilshire Boulevard, Suite 430
Beverly Hills, CA 90212

Counsel for Defendant:

Christopher W. Decker, Esq.
Carolyn Hall, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
400 South Hope Street, Suite 1200
Los Angeles, CA 90071

If you have questions regarding this Settlement, you should contact Class Counsel or the Settlement Administrator.

6. What is the Gross Settlement Amount and how will Individual Settlement Payments be calculated?

The proposed Settlement provides for a payment of \$1,200,000 to fully and finally resolve the Lawsuit (the "Gross Settlement Amount"). Plaintiff will apply to the Court for: an award of attorneys' fees of up to \$400,000 and reimbursement of litigation costs and expenses up to \$15,000 ("Class Counsel Award"), a payment to the Plaintiff of up to \$5,000 ("Class Representative Service Award"), the costs of administering the Settlement which are estimated not to exceed \$32,500 ("Settlement Administration Costs"), and approval of an allocation of \$100,000 to penalties under PAGA ("PAGA Penalty Payment") (of which 75% of the PAGA Penalty Payment will be paid to the Labor and Workforce Development Agency and 25% will be paid to Aggrieved Employees). These sums, if approved by the Court, shall be paid from the Gross Settlement Amount. The amount remaining after subtracting the Court-approved amounts for the Class Counsel Award, Class Representative Service Awards, Settlement Administration Costs, and the PAGA Penalty Payment is called the "Net Settlement Amount."

Individual Settlement Payments shall be paid from the Net Settlement Amount and the 25% of the PAGA Penalty Payment allocated to Aggrieved Employees

The Net Settlement Amount will be apportioned and paid out entirely, automatically, to all Class Members who do not submit a timely and valid request for exclusion ("Settlement Class Members") as "Individual Class Payments."

Any portion of the Net Settlement Amount that would have been paid to individuals who timely opt out of the Settlement will be paid to the Settlement Class Members. In other words, the entire amount of the Net Settlement Amount will be distributed as payments to Settlement Class Members, and no portion of the Net Settlement Amount will be returned to Highgate Hotels under any circumstances. The Settlement Administrator will distribute the Individual Class Payments amongst the Settlement Class Members *pro rata* according to each Settlement Class Member's total number of Compensable Workweeks during the Settlement Class Period divided by the total number of Compensable Workweeks of Settlement Class Members. The Individual Class Payment will be included in each Settlement Class Member's Individual Settlement Payment.

The Settlement Administrator will distribute 25% of the PAGA Penalty Payment as "Individual PAGA Payments" amongst the Aggrieved Employees *pro rata* according to each Aggrieved Employees' total number of Compensable Workweeks during the PAGA Covered Period. The Individual PAGA Payment will be included in each Aggrieved Employee's Individual Settlement Payment, regardless of whether they opt out of the Settlement.

7. How much will my Individual Settlement Payment be?

The estimated gross amount of your Individual Settlement Payment is shown on the enclosed Employment Information Sheet.

The Individual Settlement Payment is based on the number of Compensable Workweeks credited to you based on Highgate Hotels' records. This is only a gross estimate. The actual amount you receive may be slightly more or less than the estimated amount shown, depending on whether other Class Members submit requests for exclusion, and it will be subject to reduction for the employee's share of payroll taxes as explained in Paragraph 9 below.

8. What do I do if my dates of employment are wrong?

As described above, for Settlement Class Members, the amount of your Individual Settlement Payment will be based on your Compensable Workweeks. The dates of your employment as a Class Member during the Settlement Class Period and your Compensable Workweeks are shown on the Employment Information Sheet and determined based upon Highgate Hotels' records. If you believe the dates of employment and/or Compensable Workweeks stated therein are incorrect, you may send a letter to the Settlement Administrator indicating that you dispute them and stating what you believe to be the correct dates and/or Compensable Workweeks. Your dispute letter must be postmarked on or before [REDACTED], and must include your name, current address, telephone number, signature, any documents or other information which supports your belief regarding the dates of employment as a Class Member. The Settlement Administrator will resolve any dispute regarding the dates of employment and/or number of Compensable Workweeks based on Highgate Hotels' records as well as any information you provide. Highgate Hotels' records will be presumed correct unless you supply credible documentation showing that they are not.

9. How Do I get my Individual Settlement Payment?

If you do nothing and the Court approves the Settlement at the Final Approval Hearing, you will automatically be issued your Individual Settlement Payment. To ensure receipt of your Individual Settlement Payment, you must notify the Settlement Administrator of any change in your name, mailing address and/or telephone number or if the information shown on the Employment Information Sheet is not correct. **It is your responsibility to keep the Settlement Administrator informed and updated as to your current information, and your Individual Settlement Payment will be mailed to the last known address that the Settlement Administrator has on file for you.** A Change of Address Form is enclosed for your convenience, for return by mail, to the Settlement Administrator. You may also fax the Change of Address Form to the Settlement Administrator, at the following fax

number: (800) [REDACTED]. It is **strongly recommended** that you retain a copy of the completed Change of Address Form until you receive your Individual Settlement Payment.

Settlement Class Members receiving an Individual Settlement Payment will be responsible for correctly characterizing this compensation for tax purposes and paying taxes due, if any. Under the Settlement, Individual Settlement Payments shall be allocated and treated as follows: (i) twenty percent (20%) as wages; (ii) eighty percent (80%) as penalties and interest. The penalties and interest portion will be paid out without reduction for taxes, and if applicable, will be reported on IRS Form 1099. The wage portion will be paid out subject to applicable employee's share of taxes and withholding and will be reported on IRS Form W-2.

10. What am I giving up in order to get an Individual Settlement Payment?

Unless you request to be excluded from (*i.e.*, opt out of) the Settlement, upon the Effective Date you will fully, finally, and forever settle and release the Released Parties from the Released Claims.

"Released Parties" means Highgate Hotels, L.P. and its past, present and/or future, direct and/or indirect, current and/or former owners, hotel ownership groups, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, employees, trustees, accountants, bankers, fiduciaries, beneficiaries, subrogees, executors, partners, investors, privies, servants, reinsurers, representatives, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint ventures, dba's, co-employers, brother and sister corporations, related companies, employee benefit plans, and assigns of said entities.

"Released Claims" means all causes of action that were alleged or reasonably could have been alleged against the Released Parties based on the facts, legal theories, or causes of action contained in the Operative Complaint, including all of the following: (a) failure to provide meal periods (Labor Code §§ 204, 223, 226.7, 512 and 1198); (b) failure to provide rest breaks (Labor Code §§ 204, 223, 226.7, 512 and 1198); (c) failure to pay hourly wages (Labor Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198); (d) failure to pay sick time (Labor Code §§ 246 et seq.); (e) failure to indemnify (Labor Code § 2802); (f) failure to issue accurate itemized wage statements (Labor Code § 226); (g) failure to timely pay all final wages (Labor Code §§ 201-203); (h) wages not timely paid during employment (Labor Code § 204); (i) failure to keep requisite payroll records (Labor Code § 1174(d)); (j) failure to pay interest on deposits (Labor Code § 404); (k) failure to pay vacation wages (Labor Code § 227.3); (l) unfair/unlawful business practices (Cal. Bus. & Prof. Code § 17200, *et seq.*); (m) any other potential claims reasonably arising out of the same set of operative facts alleged in the Operative Complaint; and (n) all damages, relief, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, the Fair Credit Reporting Act, the California Business and Professions Code section 17200, *et seq.*, and the federal Fair Labor Standards Act as to the facts and alleged in the Operative Complaint for the time period from January 12, 2022 through [REDACTED]. The Released Claims include all potential claims, whether known or unknown and regardless of the remedy sought, that are reasonably arising out of the same set of operative facts and/or theories pled in the Operative Complaint.

11. How do I get out of the Settlement?

If you do not wish to participate in the Settlement for whatever reason (which will allow you to pursue your own separate lawsuit against Highgate Hotels and/or the Released Parties with respect to the Released Claims), you should exclude yourself from the Settlement (also referred as "opting out" of the Settlement). To opt out and exclude yourself from the Settlement, you must provide a written, signed, and dated letter to the Settlement Administrator requesting to be excluded. The letter must state in substance:

“I have read the Notice of Class Action Settlement and I wish to opt out of the Settlement of the case: *Glenn Waltrip v. Highgate Hotels, L.P.*, Case No. 23CV417680, and understand that I will not receive an Individual Settlement Payment pursuant to the terms of the Settlement described in the Notice of Class Action Settlement.”

The request for exclusion letter must also include your full name, current address, telephone number, and last four digits of your social security number, and must be submitted to the Settlement Administrator, postmarked on or before [REDACTED]. Requests postmarked after this date may be disregarded. The request for exclusion letter must be submitted at the following address:

HIGHGATE HOTELS CLASS ACTION

Settlement Administrator

[insert]

12. If I don't exclude myself, can I sue Highgate Hotels for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the Released Parties for the Released Claims, for the period from January 12, 2022, through [REDACTED]. You must exclude yourself from this Settlement in order to pursue your own lawsuit. Remember, the deadline to submit a request for exclusion is [REDACTED].

If you are an Aggrieved Employee, you will automatically give up any right to sue the Released Parties for the Released PAGA Claims for the period from May 8, 2022 through [REDACTED], regardless of whether you submit a request for exclusion.

13. If I exclude myself, can I get money from this Settlement?

If you exclude yourself from the Settlement, you will not be a Settlement Class Member and will not receive an Individual Class Payment. The Individual Class Payment that you would have been entitled to receive will remain in the Net Settlement Amount and be subject to distribution to the remaining Settlement Class Members.

If you are an Aggrieved Employee, you will automatically receive your Individual PAGA Payment regardless of whether you submit a request for exclusion.

14. How do I tell the Court that I don't like the Settlement?

If you do not think the Settlement is fair, you can object to the Settlement and tell the Court that you do not agree with the Settlement or some part of it. The Court will consider your views. To object, you must submit a written objection, which you sign, saying that you object to the settlement of *Glenn Waltrip v. Highgate Hotels, L.P.*, Case No. 23CV417680 (“Notice of Objection”). Your Notice of Objection must include your name, dates of employment with Highgate Hotels, the last four digits of your Social Security number and/or your Highgate Hotels employee ID number, the specific reasons you object to the terms of the Settlement, and whether you intend to appear at the Final Approval Hearing and whether you are represented by an attorney (if so, you must identify your attorney). See Paragraph 18, below. The objection must be submitted by mail to the Settlement Administrator at the address listed below, postmarked on or before [REDACTED].

Mail To:

HIGHGATE HOTELS CLASS ACTION

Settlement Administrator

[insert address]

15. What's the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the Settlement. You may object only if you remain a Settlement Class Member (*i.e.*, if you do not submit a request for exclusion). If you object, and the Settlement is granted final approval by the Court, you will still receive your Individual Settlement Payment. Excluding yourself is telling the Court that you do not want to be a Settlement Class Member. If you exclude yourself, you have no basis to object because the case no longer affects you, and you will not receive a settlement payment. You may do nothing, in which case you will receive your Individual Settlement Payment and be bound by the terms of the Settlement.

You may submit a request for exclusion, in which case you will not receive any money from the Settlement, you will not be bound by the terms of Settlement (subject to the exception regarding Aggrieved Employees as may apply) and may, at your own expense, pursue a separate claim. Please note that if you are also an Aggrieved Employee, you will automatically receive your Individual PAGA Payment and give up any right to sue the Released Parties for the Released PAGA Claims for the period from May 8, 2022 through [REDACTED], even if you submit a request for exclusion.

You may file an objection to the Settlement. You may object to the Settlement and still receive your Individual Settlement Payment if the Court grants final approval.

16. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing in Department 20 of the Superior Court of California, County of Santa Clara located at 191 North First Street, San Jose, California, 95113 on [REDACTED], at [REDACTED] a.m. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the Class Counsel Award, the Class Representative Service Award, the Settlement Administration Costs, and the PAGA Penalty Payment.

The Court may reschedule the Final Approval Hearing without further notice to Class Members. Class Members who have objected to the Settlement and indicated in their Notice of Objection their intention to appear at the Final Approval Hearing should monitor the Court's docket to determine if the date and time of the Final Approval Hearing has changed. This information is available on the Court's website.

17. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. But, you are welcome to attend if you would like. Even if you submit an objection, you do not have to come to Court to talk about it. As long as you have mailed your written objection on time to the Settlement Administrator, the Court will consider it. You may also hire and pay your own lawyer to appear for you if you so desire.

18. Who may I contact if I have questions about the Settlement?

You may contact Class Counsel at the contact information listed above in Paragraph 6 if you have any questions about the Settlement. You may also contact the Court-appointed Settlement Administrator by calling toll free 1-[REDACTED], or you can write to the Settlement Administrator at the address or fax number shown in Paragraph 15. You may also review the Settlement Agreement, pleadings, records, and other papers filed and/or lodged with the Court in this Lawsuit. These and other court records may be accessed online by using the Court's website, <https://traffic.sccscourt.org/search>, or the kiosks located on the first floor of the Superior Court of the State of California, in and for the County of Santa Clara, located at 191 North First Street, San Jose, California, 95113, during regular business hours of each court day.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, HIGHGATE HOTELS MANAGERS, SUPERVISORS, OR THEIR ATTORNEYS FOR INFORMATION.



Highgate Hotels supports the Settlement and will not retaliate in any manner whatsoever against any Class Member for participating in the Settlement and receiving his/her Individual Settlement Payment, for requesting to be excluded from the Settlement, or for objecting to the Settlement.

It is your responsibility to ensure that the Settlement Administrator has your current mailing address and telephone number on file, as this will be the address to which your Individual Settlement Payment will be sent if the Court grants final approval of the Settlement.

Individual Settlement Payment checks must be cashed or deposited within 180 days of issuance. Checks that are not cashed or deposited within 180 days after the date of issuance will be voided. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2

EMPLOYMENT INFORMATION SHEET

Your address on file with the Settlement Administrator is as follows:

[Last Name, First Name]

[Address Line 1]

[Address Line 2]

Highgate Hotels' records indicate that **you were hired by Highgate Hotels on [redacted] and employed as a Class Member from [redacted] to [redacted]** such that you have **Compensable Workweeks**. Because your Compensable Workweeks are determined based on the period from January 12, 2022 through [redacted], any work for Highgate Hotels prior to January 12, 2022 does not impact your number of Compensable Workweeks.

Based on the above information, if you stay in the Settlement Class and participate in the Settlement, and if all Class Members participate, **your Individual Settlement Payment is estimated to be \$ [redacted]**.

You do not have to take any action if you want to participate in the Settlement. Your Individual Settlement Payment will be mailed to you at the address shown above, if the Court grants final approval of the Settlement. As discussed in further detail in the accompanying Notice of Class Action Settlement, the actual amount you receive under the Settlement may be slightly more or less than the estimated amount shown depending on whether other Class Members submit requests for exclusion and will be subject to reduction for employee's share of payroll taxes. Under the Settlement, Individual Settlement Payments shall be allocated and treated as follows: (i) twenty (20) percent as wages; (ii) eighty (80) percent as penalties and interest. The penalties and interest portion will be paid out without reduction for taxes, and if applicable, will be reported on IRS Form 1099. The wage portion will be paid out subject to applicable employee share of payroll taxes and withholding and will be reported on IRS Form W-2.

If your address has changed, you should submit the separately enclosed Change of Address Form to notify the Settlement Administrator of your correct mailing address immediately.

If you believe the dates of employment and/or Compensable Workweeks credited to you above are not correct, you may send a letter to the Settlement Administrator (at the address listed below) on or before [redacted]. The dispute letter must indicate that you dispute the dates of employment and/or Compensable Workweeks shown above and state what you believe to be the corrected dates of employment and/or Compensable Workweeks that should be credited to you. Your letter must also include your name, current address, telephone number, signature, and any documents or other information which supports your belief regarding the dates of employment as a Class Member and/or Compensable Workweeks. The dispute letter must be postmarked on or before [redacted], and mailed to the following address:

HIGHGATE HOTELS CLASS ACTION

Settlement Administrator

[insert]

The Settlement Administrator will resolve any dispute regarding the dates of employment or number of Compensable Workweeks based on Highgate Hotel's records and any information you provide. Highgate Hotels' records will be presumed correct unless you supply credible documentation showing that they are not correct.

EXHIBIT 3

Glenn Waltrip v. Highgate Hotels, L.P.
Superior Court of California, County of Santa Clara, Case No. 23CV417680

CHANGE OF ADDRESS FORM

Your Name and Address on File with the Settlement Administrator is as follows:

[Last Name, First Name]

[Address Line 1]

[Address Line 2]

If the address listed above is incorrect or if your address has changed, please complete, sign, and submit this form to (by mail or fax) the Settlement Administrator, to notify the Settlement Administrator of your corrected information immediately:

Former Name (if applicable):

Corrected/Updated Name:

Street and Apt. Number (if any):

City, State and ZIP Code:

Telephone Number(s):

I wish to change my name and/or mailing address and/or other contact information as reflected above. I understand all future correspondence in this Action, including but not necessarily limited to important notices or Individual Settlement Payments, will be sent to the address listed above and not to the address previously used. I hereby request and consent to the use of the address listed above for these purposes.

Submitted by:

DATED: _____

Print Name: _____

Signature: _____

PLEASE RETURN THIS FORM VIA UNITED STATES MAIL OR FAX TO:

HIGHGATE HOTELS CLASS ACTION

Settlement Administrator

[insert]

CHANGE OF ADDRESS FORM

61565433.v1-OGLETREE

EXHIBIT 4

1 Shaun Setareh (SBN 204514)
shaun@setarehlaw.com
2 Jose Maria D. Patino, Jr. (SBN 339154)
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4 SETAREH LAW GROUP
9665 Wilshire Boulevard, Suite 430
5 Beverly Hills, California 90212
Telephone (310) 888-7771
6 Facsimile (310) 888-0109

7 Attorneys for Plaintiff GLENN WALTRIP

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA CLARA

10 UNLIMITED JURISDICTION

11 GLENN WALTRIP, on behalf of himself and
all others similarly situated,

12 *Plaintiff,*

13 v.

14 HIGHGATE HOTELS, L.P., a Delaware
15 limited partnership; and DOES 1 through 50,
16 inclusive,

17 *Defendants.*

Case No. 23CV417680

SECOND AMENDED COMPLAINT

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Pay Sick Time (Lab. Code §§ 246 *et seq.*)
5. Failure to Indemnify (Lab. Code § 2802);
6. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
7. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
8. Wages Not Timely Paid During Employment (Labor Code § 204);
9. Failure To Keep Requisite Payroll Records (Labor Code § 1174(d));
10. Failure to Pay Interest on Deposits (Labor Code § 404);
11. Failure to Pay Vacation Wages (Labor Code § 227.3
12. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
13. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff GLENN WALTRIP (“Plaintiff”), on behalf of himself and all others similarly
2 situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against defendants HIGHGATE HOTELS, L.P., a
5 Delaware limited partnership; and DOES 1 through 50, inclusive, (collectively referred to as
6 “Defendants”) for alleged violations of the Labor Code. As set forth below, Plaintiff alleges that
7 Defendants have

- 8 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
9 periods;
- 10 (2) failed to provide them with rest periods;
- 11 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 12 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
13 rate of pay;
- 14 (5) failed to pay them at least minimum wage for all hours worked;
- 15 (6) failed to pay them overtime wages at the correct rate;
- 16 (7) failed to pay them double time wages at the correct rate;
- 17 (8) failed to pay them for sick time off;
- 18 (9) failed to reimburse them for all necessary business expenses;
- 19 (10) failed to provide them with accurate written wage statements; and
- 20 (11) failed to pay them all of their final wages following separation of employment.

21 Based on these alleged violations, Plaintiff now brings this class action to recover unpaid wages,
22 restitution, and related relief on behalf of himself and all others similarly situated.

23 **JURISDICTION AND VENUE**

24 2. This Court has subject matter jurisdiction to hear this case because the unpaid wages,
25 actual damages, liquidated damages, restitution, and penalties sought by Plaintiff from Defendants
26 exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

27 3. Venue is proper in SANTA CLARA pursuant to Code of Civil Procedure §§ 393(a),
28 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are the

1 subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices,
2 transacts business, and/or has an agent therein.

3 **PARTIES**

4 4. Plaintiff is and was, and at all relevant times mentioned herein, an individual
5 residing in the State of California.

6 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant
7 HIGHGATE HOTELS, L.P. is, and at all relevant times mentioned herein, a Delaware limited
8 partnership doing business in the State of California.

9 6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
10 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
11 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
12 when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the
13 fictitiously named defendants are responsible in some manner for the occurrences, acts and
14 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
15 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
16 capacities of the DOE defendants when ascertained.

17 7. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
18 mentioned herein, some or all of the defendants were the representatives, agents, employees,
19 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some
20 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
21 and scope of such relationship and with the full knowledge, consent, and ratification by such other
22 defendants.

23 **CLASS ALLEGATIONS**

24 8. This action has been brought and may be maintained as a class action pursuant to
25 Code of Civil Procedure § 382, because there is a well-defined community of interest among the
26 persons who comprise the readily ascertainable classes defined below and because Plaintiff is
27 unaware of any difficulties likely to be encountered in managing this case as a class action.

28 ///

1 9. **Relevant Time Period:** The relevant time period is defined as the time period
2 beginning four years prior to the filing of this action until judgment is entered.

3 **Hourly Employee Class:** All current and former employees of Defendants in hourly
4 or non-exempt positions, in California during the **Relevant Time Period**.

5 **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked
6 in a shift in excess of five hours during the **Relevant Time Period**.

7 **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked
8 a shift of at least three and one-half (3.5) hours during the **Relevant Time**
9 **Period**.

10 **Wage Statement Penalties Sub-Class:** All **Hourly Employee Class**
11 members employed by Defendants in California during the period beginning
12 one year before the filing of this action and ending when final judgment is
13 entered.

14 **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members
15 who separated from their employment with Defendants during the period
16 beginning three years before the filing of this action and ending when final
17 judgment is entered.

18 **Sick Pay Sub-Class:** All **Hourly Employee Class** members employed by
19 Defendants in California who were denied pay for accrued/earned sick time during
20 the **Relevant Time Period**.

21 **UCL Sub-Class:** All **Hourly Employee Class** members employed by
22 Defendants in California during the **Relevant Time Period**.

23 **Expense Reimbursement Sub-Class:** All **Hourly Employee Class** members
24 employed by Defendants in California who incurred business expenses during
25 the **Relevant Time Period**.

26 **Failure to Pay Interest on Deposits Sub-Class:** All **Hourly Employee Class**
27 members employed by Defendants in California who were required to wear
28 uniforms by Defendants and/or from whom Defendants made deductions from
wages for monthly and/or daily parking.during the **Relevant Time Period**.

Vacation Wages Sub-Class: All **Hourly Employee Class** members
employed by Defendants in California who were denied pay for
accrued/earned vacation wages during the **Relevant Time Period**.

10. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
right to amend or modify the class definitions with greater specificity by further division into sub-
classes and/or by limitation to particular issues.

11. **Numerosity:** The class members are so numerous that the individual joinder of each
individual class member is impractical. While Plaintiff does not currently know the exact number of
class members, Plaintiff is informed and believes, and thereupon alleges, that the actual number

1 exceeds the minimum required for numerosity under California law.

2 12. **Commonality and Predominance:** Common questions of law and fact exist as to all
3 class members and predominate over any questions that affect only individual class members. These
4 common questions include, but are not limited to:

- 5 i. Whether Defendants maintained a policy or practice of failing to provide employees
6 with their meal periods;
- 7 ii. Whether Defendants maintained a policy or practice of failing to provide employees
8 with their rest periods;
- 9 iii. Whether Defendants failed to pay premium wages to class members when they have
10 not been provided with required meal and/or rest periods;
- 11 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
12 as a result of policies that fail to provide meal periods in accordance with California
13 law;
- 14 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
15 for all time worked;
- 16 vi. Whether Defendants failed to reimburse class members for all necessary business
17 expenses incurred during the discharge of their duties;
- 18 vii. Whether Defendants failed to provide class members with accurate written wage
19 statements as a result of providing them with written wage statements with
20 inaccurate entries for, among other things, amounts of gross and net wages, and total
21 hours worked;
- 22 viii. Whether Defendants applied policies or practices that result in late and/or incomplete
23 final wage payments;
- 24 ix. Whether class members are entitled to restitution of money or property that
25 Defendants may have acquired from them through unfair competition;
- 26 x. Whether Defendants failed to pay wages to class members in the time required by
27 law during their employment;
- 28 xi. Whether Defendants failed to keep required payroll records for class members;

1 xii. Whether Defendants failed to pay interest on deposits made by class members; and

2 xiii. Whether Defendants failed to pay vacation wages owed to class members.

3 13. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
4 is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing
5 to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

6 14. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in
7 that he has no interests that are adverse to or otherwise conflict with the interests of absent class
8 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
9 and adequately represent and protect the interests of the other class members.

10 15. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
11 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
12 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on
13 behalf of Plaintiff and absent class members.

14 16. **Superiority:** A class action is vastly superior to other available means for fair and
15 efficient adjudication of the class members' claims and would be beneficial to the parties and the
16 Court. Class action treatment will allow a number of similarly situated persons to prosecute their
17 common claims simultaneously and efficiently in a single forum without the unnecessary
18 duplication of effort and expense that numerous individual actions would entail. In addition, the
19 monetary amounts due to many individual class members are likely to be relatively small and would
20 thus make it difficult, if not impossible, for individual class members to both seek and obtain relief.
21 Moreover, a class action will serve an important public interest by permitting class members to
22 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the
23 potential for inconsistent or contradictory judgments inherent in individual litigation.

24 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

25 17. Plaintiff worked for Defendants as an hourly, non-exempt employee from
26 approximately September 26, 2022 through September 28, 2022.

27 **Off-the-clock Work**

28 18. Plaintiff and the putative class were not paid all wages earned as Defendants

1 directed, permitted, or otherwise encouraged Plaintiff and the putative class to perform off-the-
2 clock work.

3 19. Plaintiff and the putative class regularly worked longer than 8 hours/day, worked
4 through lunch periods and rest breaks, and answered work calls outside of regular work hours.

5 20. Plaintiff and the putative class regularly performed work after their scheduled work
6 hours and were not paid for this time.

7 21. As a result of performing off-the-clock work that was directed, permitted, or
8 otherwise encouraged by Defendants, Plaintiff and the putative class should have been paid for this
9 time. Instead, Defendants only paid Plaintiff and the putative class based on the time they were
10 clocked in for their shifts and did not pay Plaintiff and the putative class for any of the time spent
11 working off-the-clock.

12 22. Defendants knew or should have known that Plaintiff and the putative class were
13 performing work before and after their scheduled work shifts and failed to pay Plaintiff and the
14 putative class for these hours.

15 23. Defendants were aware of this practice and directed, permitted, or otherwise
16 encouraged Plaintiff and the putative class to perform off-the-clock work.

17 24. As a result of Defendants' policies and practices, Plaintiff and the putative class were
18 not paid for all hours worked.

19 25. During the applicable limitations period, Waltrip and the putative class members had
20 to work off-the-clock because they were not paid for all hours worked. Defendants did not require
21 Waltrip and the aggrieved employees to clock in / out, so all of their work was off-the-clock.
22 Further, Waltrip and the aggrieved employees regularly worked more than 8 hours per day, and
23 were considered "on call" 24 hours a day, 7 days a week. No matter how much Waltrip and the
24 putative class members worked in one day or week, their rate of pay did not change. Further,
25 Defendants required Waltrip and the aggrieved employees to work through meal and rest periods, as
26 discussed above.

27 26. Waltrip is informed and believes, and based thereon alleges, that Defendants had and
28 has a practice or policy of failing to compensate Waltrip and other putative class members with

1 minimum wages for all hours worked or otherwise under Defendants' control as a result of, without
2 limitation, failing to accurately track and/or pay for all minutes actually worked; engaging,
3 suffering, or permitting employees to work off the clock, including, without limitation, by requiring
4 employees: to come early to work and leave late work without being able to clock in for all that
5 time, to suffer under Defendants' control due to long lines for clocking in, to complete pre-shift
6 tasks before clocking in and post-shift tasks after clocking out, to attend pre-shift meetings and
7 trainings, to clock out for meal periods and continue working, to clock out for rest periods, to don
8 and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock,
9 to make phone calls off the clock and/or go through security screenings and/or temperature checks
10 off the clock; waiting in line to clock-in and/or clock out, responding to work-related inquiries, and
11 arriving to work early to find parking; failing to pay minimum wages insofar as Defendants' policy
12 and practice of requiring putative class members to pay for their own parking costs at work by
13 deducting the cost of parking from their paychecks, reduced the total wage amounts paid to below
14 minimum wage per hour worked; by using tips as a "credit" towards Defendants' obligation to pay
15 minimum wages in violation of Labor Code section 351; detrimental rounding of employee time
16 entries; editing and/or manipulation of time entries to show less hours than actually worked; and
17 failing to pay split shift premiums.

18 27. In addition, Waltrip and other putative class members were required to report to
19 work, and did report, but were not put to work and/or were furnished less than half their usual or
20 scheduled day's work without being paid for half the usual or scheduled work at their regular rate of
21 pay. As such, Waltrip is informed and believes, and based thereon alleges, that Defendants violated,
22 without limitation, Labor Code sections 221, 223, 1197, 1182.12, Cal. Code Regs, title 8, section
23 110404(5)(A), and applicable Wage Orders based on its continued failure to pay minimum wages
24 for all hours worked, entitling Waltrip and other putative class members to actual and liquidated
25 damages under, without limitation, Labor Code sections 1194 and 1194.2. Defendants would also
26 be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

27 28. Waltrip and other putative class members are covered by Labor Code section 510
28 and applicable Wage Orders. Waltrip is informed and believes, and based thereon alleges, that

1 Defendants had and has a policy or practice of requiring its employees to work more than eight (8)
2 hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without
3 paying them proper overtime wages, as a result of, without limitation, failing to accurately track
4 and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work
5 off the clock, including, without limitation, by requiring employees: to come early to work and
6 leave late work without being able to clock in for all that time, to suffer under Defendants' control
7 due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks
8 after clocking out, to attend pre-shift meetings and trainings, to clock out for meal periods and
9 continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment
10 off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock,
11 and/or go through security screenings and/or temperature checks off the clock; failing to include all
12 forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask
13 allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay
14 periods where overtime was worked and the additional compensation was earned for the purpose of
15 calculating the overtime rate of pay; by using tips as a "credit" towards Defendants' obligation to
16 pay wages in violation of Labor Code section 351; failing to pay overtime wages insofar as
17 Defendants' policy and practice of requiring putative class members to pay for their own parking
18 costs at work by deducting the cost of parking from their paychecks, reduced the total overtime
19 wage amounts paid for to below the required overtime wage rate per overtime hour worked;
20 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
21 less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment
22 of Waltrip and other putative class members.

23 29. Consequently, Waltrip is informed and believes, and based thereon alleges, that
24 Defendants violated Labor Code sections 510, 1194, and applicable Wage Orders based on its
25 practice of providing total compensation that is less than the required legal overtime compensation
26 for the overtime worked, entitling Waltrip and other putative class members to damages.
27 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

28 **Missed Meal Periods**

1 30. Plaintiff and the putative class were not provided with meal periods of at least thirty
2 (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling
3 each meal period as part of each work shift; (2) chronically understaffing each work shift with not
4 enough workers; (3) imposing so much work on each employee such that it made it unlikely that an
5 employee would be able to take their breaks if they wanted to finish their work on time; and (4) no
6 formal written meal and rest period policy that encouraged employees to take their meal and rest
7 periods.

8 31. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
9 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours
10 worked due to Defendants' failure to make Plaintiff and the putative class aware of their right to
11 meal periods, and complying with their productivity requirements that required Plaintiff and the
12 putative class to work through their meal periods in order to complete their assignments on time.

13 32. Defendants' written policies failed to advise Waltrip and the putative class members of
14 their legal rights to take meal periods in accordance with California law. Specifically, Defendants
15 required Waltrip and the putative class members to be on duty always. Defendants generally did not
16 allow Waltrip or the putative class members to take off-duty meal periods, so Waltrip and the putative
17 class members regularly had meal periods that were less than thirty minutes and after the fifth hour of
18 work. Accordingly, Waltrip and the putative class members were not provided with legally mandated
19 uninterrupted meal periods of at least thirty minutes pursuant to California law.

20 33. In addition, Waltrip and the putative class members did not execute valid on-duty meal
21 period waivers that complied with California law. Therefore, Waltrip and the putative class members
22 were not provided with an uninterrupted, duty-free meal period of at least thirty minutes.

23 34. Defendants also failed to advise Waltrip and the putative class members of their legal
24 right to take a second meal period when they worked shifts of ten hours or more. Defendants failed to
25 authorize and permit and/or make available to Waltrip and/or other putative class members second
26 meal periods when they worked more than 10 hours.

27 35. In addition, at time when Waltrip and the putative class members were not timely
28 provided with a meal period, Defendants failed to compensate Waltrip and/or other putative class

1 members with an additional hour of pay at their regular rate of pay for every day in which they were
2 denied a compliant meal period, in violation of Labor Code Sections 226.7 and 512, and the applicable
3 IWC Wage Orders. These failures result, in part, from policies and practices that lack adequate
4 safeguards to ensure that employees are relieved of all duty for meal periods and are paid additional
5 wages when meal periods are not provided.

6 36. Waltrip is informed and believes, and based thereon alleges, that Defendants had and
7 have a policy or practice of compelling its employees to work in excess of five (5) and ten (10) hours
8 per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or
9 compensation in lieu thereof including, without limitation: by interrupting meal periods; not providing
10 timely meal periods; failing to provide first and second meal periods; providing short meal periods;
11 requiring that employees carry cellular telephones or walkie-talkies during meal periods; not permitting
12 employees to leave the premises; otherwise requiring on-duty/on-call meal periods; and auto-deducting
13 meal periods that could not be auto-deducted by law or during which employees worked. Waltrip and/or
14 other putative class members frequently had their meal periods shortened, interrupted, late, and/or
15 missed altogether due to Defendants' practice of understaffing and prioritizing work demands over
16 taking compliant breaks.

17 37. For example, Waltrip and/or other putative class members were required to use a cell
18 phone, pager, or walkie-talkie for work purposes during meal periods. Consequently, Waltrip is
19 informed and believes, and based thereon alleges, that Defendants violated Labor Code section 512,
20 entitling Waltrip and other putative class members to premium payments under Labor Code section
21 226.7.

22 38. However, Waltrip is informed and believes that those premium payments under Labor
23 Code section 226.7 were not made, either, for these non-compliant meal periods, either at all or at the
24 proper regular rate of pay. Defendants would thus be liable for civil penalties pursuant to Labor Code
25 sections 558 and 2699 for both failing to authorize the taking of compliant meal periods, as well as for
26 failing to provide premium pay under Labor Code section 226.7.

27 39. Moreover, Defendants rounded Waltrip and/or other putative class members' time
28 punches for meal periods. Accordingly, Defendants failed to authorize and permit and/or make available

1 to Waltrip and/or other putative class members timely, uninterrupted off-duty meal periods for at least
2 30 minutes when they worked more than five (5) hours and/or 10 hours in a workday.

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5 **Missed Rest Periods**

6 40. Plaintiff and the putative class were not provided with rest periods of at least ten (10)
7 minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy
8 of not scheduling each rest period as part of each work shift; (2) chronically understaffing each
9 work shift with not enough workers; (3) imposing so much work on each employee such that it
10 made it unlikely that an employee would be able to take their breaks if they wanted to finish their
11 work on time; and (4) no formal written meal and rest period policy that encouraged employees to
12 take their meal and rest periods.

13 41. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
14 provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked
15 due to Defendants' failure to make Plaintiff and the putative class aware of their right to rest breaks,
16 and complying with Defendants' productivity requirements that required Plaintiff and the putative
17 class to work through their rest periods in order to complete their assignments on time.

18 42. Defendants' written policies failed to advise Waltrip and the putative class members
19 of their legal right to take rest period in accordance with California law. Specifically, Defendants
20 have a policy of requiring Waltrip and the putative class members to work through rest periods.
21 Defendants supply so much work that Waltrip and the putative class members cannot reasonably
22 take rest breaks within the timeframe of a single workday. Defendants generally did not allow
23 Waltrip or the putative class members to take off-duty rest breaks because Defendants required
24 Waltrip and the putative class members to be on duty always.

25 43. Waltrip is informed and believes, and based thereon alleges, that Defendants maintain
26 policies or practices of compelling its non-exempt employees, including, without limitation, Waltrip,
27 to work over four-hour periods (or major fractions thereof) without authorizing and permitting
28 Waltrip and other putative class members to take uninterrupted, timely, and complete ten-minute rest

1 periods in which the employees are completely relieved of all of their duties, including, without
2 limitation: by failing to provide rest periods all together; requiring that they be bundled together
3 and/or with meal periods; interrupting them; requiring that employees carry cellular telephones or
4 walkie-talkies during rest periods not providing them in a timely fashion; and not permitting
5 employees to leave the premises; and otherwise requiring on-duty/on-call rest periods.

6 44. Waltrip and/or other putative class members missed their rest breaks or had them
7 interrupted or governed by Defendants' practices and policies. Defendants also failed to adopt and
8 implement a practice of providing third rest breaks when Waltrip and/or other putative class
9 members worked over 10 hours. As such, Waltrip is informed and believes, and based thereon
10 alleges, that Waltrip and other putative class members are entitled to relief under, without limitation,
11 Labor Code section 226.7.

12 45. However, Waltrip is informed and believes that those premium payments under
13 Labor Code section 226.7 were not made, either, for these non-compliant rest periods, either at all or
14 at the proper regular rate of pay. Defendants would thus be liable for civil penalties pursuant to
15 Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant rest periods,
16 as well as for failing to provide premium pay under Labor Code section 226.7.

17 46. Accordingly, Waltrip and the putative class members were not provided with legally
18 mandated rest periods of at least ten minutes for every four hours worked or major fraction thereof.

19 47. As a result of these policies and practices, Defendants failed to provide Waltrip and
20 the putative class members with net rest periods of at least ten minutes for each four-hour work
21 period, or major fraction thereof, and have failed to pay them premium wages at their regular rates of
22 pay on workdays they failed to provide them with required rest periods. Defendants' policies and
23 practices lack adequate safeguards to ensure that employees are relieved of their duties for all
24 required rest periods and are paid additional wages when rest periods are not provided.

25 **Sick Pay**

26 48. Defendants did not offer sick time to Plaintiff and the putative class. Despite
27 Defendant's written policy allowing for sick time in accordance with California law, Defendant did
28 not in practice adhere to its policy.

1 49. Plaintiff and the putative class members were regularly denied payment for sick time
2 off, even if they had not yet used the three sick days required by CA law.

3 50. California Labor Code §§ 245 et seq. provides for required sick time for all
4 employees who have worked more than 30 days with their employer.

5 51. Plaintiff is informed and believes and thereupon alleges that at all relevant times,
6 Defendants had a practice of disallowing sick time for all employees, regardless of how few sick
7 days they had already used or how long they had worked for Defendants.

8 52. Waltrip is further informed and believes, and based thereon alleges, that Defendants
9 have or had a policy or practice of failing to provide Waltrip and other putative class members with
10 the amount of paid sick leave required to be provided pursuant to California and local laws
11 (including, without limitation, Labor Code section 246, et seq. Defendants failed to permit Waltrip
12 and/or other putative class members to use in any calendar year the employee's accrued and
13 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
14 during six months at the employee's then current rate of entitlement, for the reasons specified in
15 subdivision (a) of Section 246.5. For example, Defendants' absence control policy counted sick
16 leave taken pursuant to Labor Code Section 233 as an absence that may lead to or result in
17 discipline, discharge, demotion, or suspension. Accordingly, Defendants violated Labor Code
18 Sections 233 and 234.

19 53. Waltrip is further informed and believes that the sick pay was not provided at the
20 proper regular of pay as required under California law due to failure to properly calculate the
21 regular rate.

22 54. Defendants failed to calculate sick pay at the regular rate of pay for the workweek in
23 which Waltrip and/or other putative class members used paid sick time, or by dividing the Waltrip
24 and/or other putative class members' total wages, not including overtime premium pay, by the
25 Waltrip and/or other putative class members' total hours worked in the full pay periods of the prior
26 90 days of employment, in violation of Labor Code Sections 246, 246.5, 247, 247.5, and 248.5 and
27 the Healthy Workplaces, Healthy Families Act of 2014. Accordingly, Defendants violated Labor
28 Code Sections 226, 226.3, 1174, and 1174.5.

55. Waltrip is further informed and believes that Defendants did not disclose the accrued sick pay balance available to employees on their wage statements or other writing.

56. Waltrip is further informed and believes that Defendants also did not permit its use upon request by Waltrip and other putative class members as contemplated under California and local laws. Waltrip is additionally informed and believes that the notice requirement of Labor Code section 246 *et seq.* involves a mandatory payroll or workplace injury reporting. As such, Defendants would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code sections 558 and 2699, as well as equitable, injunctive, or restitutive relief, and reasonable attorneys' fees and costs.

Expense Reimbursement

57. Plaintiff and the putative class members were required to utilize their own personal tools to perform their job duties.

58. Plaintiff and the putative class members were not reimbursed for business expenses incurred in purchasing or maintaining their tools.

59. Plaintiff and the putative class were also required to use their own personal vehicles for business errands like making purchases from the hardware store without reimbursement for gas or mileage. Defendants did not offer company vehicles or reimbursement for personal vehicle use.

60. Finally, Defendants required Plaintiff and the putative class members to use their own personal cell phones to communicate with one another during work hours regarding business activities. Defendants did not provide Plaintiff and the putative class with another means to communicate (e.g. radios), and did not reimburse the employees for the cost of using their cell phones.

61. Defendants failed to reimburse Plaintiff and the putative class for such necessary business expenses incurred by them.

62. At all relevant times during the applicable limitations period, Defendants required Waltrip and the putative class members to incur expenses which Defendants failed and/or refused to reimburse them for including, but not limited to, gas and mileage, personal cell phone usage, and the purchase of tools and equipment (e.g., *inter alia*, kitchen knives and cleaning supplies, such as

1 air fresheners, brooms, dust pans, mops, and squeegees).

2 63. Further, Defendants required Waltrip and the putative class members to use their
3 personal cell phones for all communications, as radios were not provided. Defendants also required
4 Waltrip and the putative class members to furnish their own tools for maintenance work, including,
5 but not limited to, supplies like screwdriver, hammers and nails.

6 64. At all relevant times during the applicable limitations period, Defendants required
7 Waltrip and the putative class members to use their personal vehicles for business reasons like
8 getting equipment from the hardware store, making key duplicates, and to run other company
9 errands. Defendants required all of these expenditures without offering reimbursement for any.
10 Defendants told Waltrip and the putative class members that reimbursement for such tools was “not
11 in the budget.” As such, Defendants failed to indemnify Waltrip and the putative class members for
12 such expenses both during and after their employment ended.

13 65. Waltrip is informed and believes, and based thereon alleges that Defendants also
14 failed and refused, and continues to fail and refuse, to reimburse employees, including, without
15 limitation, Waltrip and other putative class members, with their costs incurred for purchasing
16 uniforms, providing uniform, parking and other deposits, parking (i.e., parking costs were deducted
17 from employee paychecks), personal protective equipment, separately laundering mandatory
18 uniforms, the purchasing and maintenance of clothing and footwear in compliance with the dress
19 code, in direct consequence of the discharge of their duties, or of their obedience to the directions of
20 Defendants, as required by Labor Code section 2802, and other statutory and common law offenses.
21 As a result, Defendants are liable to reimburse Waltrip and other putative class members for these
22 costs incurred in furtherance of work duties. In addition, Defendants would be liable for civil
23 penalties pursuant to Labor Code sections 558 and 2699.

24 **Wage Statements**

25 66. Plaintiff and the putative class were not provided with accurate wage statements as
26 mandated by law pursuant to Labor Code § 226.

27 67. Defendants failed to provide wage statements for every pay period to Plaintiff and
28 the putative class. Instead, Defendants proffered wage statements at random, often going multiple

1 pay periods in a row without providing any.

2 68. Defendants also failed to issue proper wage statements in that Plaintiff and the
3 putative class members were signified as “salaried” or “exempt” rather than “hourly” or “non-
4 exempt.”

5 69. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
6 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
7 clock” work were not included.

8 70. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
9 worked by the employee” were not accurately reflected in that all hours worked, including overtime
10 and “off-the-clock” work were not included.

11 71. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
12 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
13 clock” work were not included.

14 72. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
15 hourly rates in effect during the pay period and the corresponding number of hours worked at each
16 hourly rate by the employee” were not accurately reflected in that all hours worked, including
17 overtime and “off-the-clock” work were not included.

18 73. Often, Waltrip and the putative class members received no wage statements at all
19 with their paychecks. When they did receive paystubs, they were still inaccurate and noncompliant.

20 74. By failing to accurately record all hours worked, including “off-the-clock” work
21 described above, by failing to pay employees meal and rest period premiums in accordance with
22 California law, and by failing to reimburse employees for all necessary business expenses,
23 Defendants have failed to provide Waltrip and the aggrieved employees with written wage
24 statements that comply with the requirements of Labor Code section 226(a). The wage statements of
25 Waltrip and the putative class members have not accurately reflected their applicable rates of pay,
26 hours worked, and the amounts of their gross and net wages. The violations include, but are not
27 limited to, the failure to include the total hours worked by Waltrip and other putative class members,
28 including time spent working off-the-clock and during meal and rest periods as discussed above.

75. As a result of, among other things, the Labor Code violations described above, as well as, Defendants' herein-described policy or practice of failing to: accurately record time; failing to pay overtime and minimum wages; provide meal periods; provide rest periods; and provide compensation in lieu of meal or rest periods; as described above, Waltrip is informed and believes, and based thereon alleges, that Defendants also intentionally failed and continues to fail to furnish putative class members, including, without limitation, Waltrip, with itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the other; and other such information as required by Labor Code section 226, subdivision (a). Specifically, Defendants intentionally failed to furnish employees with itemized wage statements that accurately reflect the hours worked by Waltrip and other putative class members and the rates of pay at which they were or should have been paid (including due to failure to pay at the proper regular rate), thus resulting in a failure to reflect gross and net wages earned and paid at each rate, as well. Consequently, since Defendants would have failed to comply with Labor Code section 226, subdivision (a), Waltrip and other putative class members would be entitled to recover penalties under, without limitation, Labor Code section 226, subdivision (e). Defendants would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

Waiting Time Penalties

76. By failing to timely furnish Waltrip and the putative class members with any final paycheck and/or with final paychecks that include all earned and unpaid wages, including, but not limited to, all earned and unpaid hourly, overtime, vacation and/or premium wages, Defendants have violated Labor Code sections 201 and/or 202.

77. As a result of, and in addition to, the foregoing Labor Code violations, Waltrip is informed and believes, and based thereon alleges, that Defendants also failed and refused, and continues to fail and refuse, to timely pay compensation to Waltrip and other terminated or resigned employees, including but not limited to, all overtime wages owed; all minimum wages owed; and all premium pay owed as set out above, including, without limitation, for failure to pay at the proper

1 regular rate of pay, among other things. Consequently, Defendants would be liable for waiting time
2 penalties for having violated California Labor Code sections 201, 202, and 203. Defendants would
3 also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

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5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PROVIDE MEAL PERIODS**

7 **(Lab. Code §§ 204, 223, 226.7, 512 and 1198)**

8 **(Plaintiff and Meal Period Sub-Class)**

9 78. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged
10 herein.

11 79. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
12 non-exempt employees of Defendants entitled to the full meal period protections of both the Labor
13 Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

14 80. Labor Code § 512 and § 11 of the applicable Wage Order impose an affirmative
15 obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal
16 periods of at least thirty minutes for each work period of five hours, and to provide them with two
17 uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

18 81. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers
19 from requiring employees to work during required meal periods and require employers to pay non-
20 exempt employees an hour of premium wages on each workday that the employee is not provided
21 with the required meal period.

22 82. Compensation for missed meal periods constitutes wages within the meaning of
23 Labor Code § 200.

24 83. Labor Code § 1198 makes it unlawful to employ a person under conditions that
25 violate the applicable Wage Order.

26 84. Section 11 of the applicable Wage Order states:

27 “No employer shall employ any person for a work period of more than five (5)
28 hours without a meal period of not less than 30 minutes, except that when a
work period of not more than six (6) hours will complete the day’s work the

meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

85. At all relevant times, Plaintiff was not subject to a valid on-duty meal period agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class** members were not subject to valid on-duty meal period agreements with Defendants.

86. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5) hour work period, as required by Labor Code § 512 and the applicable Wage Order.

87. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-Class** members when they worked five (5) hours without taking any meal period.

88. Moreover, Defendants' written policies do not provide that employees must take their first meal period before the end of the fifth hour of work, that employees are entitled to a second meal period if they work a shift of over ten hours, or that the second meal period must commence before the end of the tenth hour of work, unless waived.

89. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-Class** members additional premium wages, and/or were not paid premium wages at the employees' regular rates of pay when required meal periods were not provided.

90. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of himself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and costs of suit.

91. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Meal Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

SECOND CAUSE OF ACTION

1 **FAILURE TO PROVIDE REST PERIODS**

2 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

3 **(Plaintiff and Rest Period Sub-Class)**

4 92. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

5 93. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
6 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
7 Code and the applicable Wage Order.

8 94. Section 12 of the applicable Wage Order imposes an affirmative obligation on
9 employers to permit and authorize employees to take required rest periods at a rate of no less than
10 ten minutes of net rest time for each four-hour work period, or major fraction thereof, that must be
11 in the middle of each work period insofar as practicable.

12 95. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers
13 from requiring employees to work during required rest periods and require employers to pay non-
14 exempt employees an hour of premium wages at the employees' regular rates of pay, on each
15 workday that the employee is not provided with the required rest period(s).

16 96. Compensation for missed rest periods constitutes wages within the meaning of Labor
17 Code § 200.

18 97. Labor Code § 1198 makes it unlawful to employ a person under conditions that
19 violate the Wage Order.

20 98. Plaintiff alleges that, at all relevant times during the applicable limitations period,
21 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
22 with net rest period of at least ten minutes for each four-hour work period, or major fraction thereof,
23 as required by the applicable Wage Order.

24 99. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-**
25 **Class** members additional premium wages when required rest periods were not provided.

26 100. Defendants written policies do not provide that employees may take a rest period for
27 each four hours worked, or major fraction thereof, nor that rest periods should be taken in the
28 middle of each work period insofar as practicable.

101. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of himself and **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and costs of suit.

102. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Rest Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PAY HOURLY AND OVERTIME WAGES

(Lab. Code §§ 223, 510, 1194, 1197 and 1198)

(Plaintiff and Hourly Employee Class)

103. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

104. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the applicable Wage Order.

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

106. Section 4 of the applicable Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

107. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

108. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the underlying unpaid minimum wages and interest thereon.

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

1 period.

2 110. Labor Code § 1197.1 provides that it is unlawful for any employer or any other
3 person acting either individually or as an officer, agent, or employee of another person to pay an
4 employee, or cause an employee to be paid, less than the applicable minimum wage.

5 111. Labor Code § 1198 makes it unlawful for employers to employ employees under
6 conditions that violate the applicable Wage Order.

7 112. Labor Code § 204 requires employers to pay non-exempt employees their earned
8 wages for the normal work period at least twice during each calendar month on days the employer
9 designates in advance and to pay non-exempt employees their earned wages for labor performed in
10 excess of the normal work period by no later than the next regular payday.

11 113. Labor Code § 223 makes it unlawful for employers to pay their employees lower
12 wages than required by contract or statute while purporting to pay them legal wages.

13 114. Labor Code § 510 and § 3 of the applicable Wage Order require employers to pay
14 non-exempt employees overtime wages of no less than one and one-half times the employees'
15 respective regular rates of pay for all hours worked in excess of eight hours in one workday, all
16 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the
17 seventh consecutive day of one workweek.

18 115. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to
19 pay non-exempt employees overtime wages of no less than two times the employees' respective
20 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
21 worked in excess of eight hours on a seventh consecutive workday during the workweek.

22 116. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
23 centrally devised policies and practices to him and **Hourly Employee Class** members with respect
24 to working conditions and compensation arrangements.

25 117. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
26 **Employee Class** members for all time worked, including but not limited to, overtime hours at
27 statutory and/or agreed rates.

28 118. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**

1 **Employee Class** members all earned wages every pay period at the correct rates, including
2 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and
3 **Hourly Employee Class** members to perform off-the-clock work.

4 119. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
5 members have suffered damages in an amount subject to proof, to the extent they were not paid the
6 full amount of wages earned during each pay period during the applicable limitations period,
7 including overtime wages.

8 120. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
9 behalf of himself and **Hourly Employee Class** members, seeks to recover unpaid straight time and
10 overtime wages, interest thereon, and costs of suit.

11 121. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
12 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Hourly**
13 **Employee Class** members, seeks to recover reasonable attorneys' fees.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE SICK PAY**

16 **(Lab. Code §§ 245, et seq.)**

17 **(Plaintiff, and Sick Pay Sub-Class)**

18 122. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

19 123. Labor Code section 246(a)(1) states in pertinent part:

20 An employee who, on or after July 1, 2015, works in California for the same employer
21 for 30 or more days within a year from the commencement of employment is entitled
22 to paid sick days as specified in this section.

22 124. Labor Code section 246(b)(1) states in pertinent part:

23 An employee shall accrue paid sick days at the rate of not less than one hour per every
24 30 hours worked, beginning at the commencement of employment or the operate date
25 of this article, whichever is later, subject to the use and accrual limitations set forth in
26 this section.

25 125. Plaintiff is informed and believes and thereon alleges that, at all relevant
26 times, Defendants have maintained a practice of not paying **Sick Pay Sub-Class** members paid
27 sick days as required by Labor Code § 245, *et sequitur* during their employment when **Sick Pay**
28 **Sub-Class** members were out due to covered reasons.

126. By reason of the above, Plaintiff and the members of the **Sick Pay Sub-Class** are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of the filing of the Complaint until the date of entry of judgment.

127. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Sick Pay Sub-Class** members, seeks to recover reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code § 2802)

(Plaintiff and Expense Reimbursement Sub-Class)

128. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

129. Labor Code section 2802(a) states:

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

130. At all relevant times during the applicable limitations period, Plaintiff and the **Expense Reimbursement Class** members incurred necessary business-related expenses and costs, including but not limited to, gas and mileage, personal cell phone usage, and maintenance tools.

131. Plaintiff is informed and believes and thereupon alleges that any reimbursement paid by Defendants was insufficient to indemnify Plaintiff for all necessary expenses incurred in the discharge of their duties.

132. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid by Defendants was insufficient to indemnify **Expense Reimbursement Class** members for all necessary business expenses incurred in the discharge of their duties.

133. At all relevant times during the applicable limitations period, Defendants required Plaintiff and the **Expense Reimbursement Class** members to pay for expenses and/or losses caused by Defendants' want of ordinary care. Defendants failed to indemnify Plaintiff and **Expense Reimbursement Class** members for all such expenditures.

134. At all relevant times during the applicable limitations period, Defendants required Plaintiff and **Expense Reimbursement Class** members to purchase and maintain uniforms and apparel unique to Defendants at Plaintiff's and **Expense Reimbursement Class** members' expense. Defendants failed to indemnify Plaintiff and **Expense Reimbursement Class** members for all such expenditures.

135. Plaintiff is informed and believes that, during the applicable limitations period, Defendants maintained a policy or practice of not reimbursing Plaintiff and **Expense Reimbursement Class** members for all necessary business expenses.

136. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to restitution for all unpaid amounts due and owing within four years of the date of the filing of the original Complaint and until the date of entry of judgment.

137. Plaintiff, on behalf of himself , and **Expense Reimbursement Class** members, seeks interest thereon and costs pursuant to Labor Code § 218.6 and reasonable attorneys' fees pursuant to Code of Civil Procedure § 1021.5.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Plaintiff and Wage Statement Penalties Sub-Class)

138. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

139. Labor Code § 226(a) states:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked

1 at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
2 temporary services employer as defined in Section 201.3, the rate of pay and the total
3 hours worked for each temporary services assignment. The deductions made from
4 payment of wages shall be recorded in ink or other indelible form, properly dated,
5 showing the month, day, and year, and a copy of the statement and the record of the
6 deductions shall be kept on file by the employer for at least three years at the place of
7 employment or at a central location within the State of California. For purposes of
8 this subdivision, 'copy' includes a duplicate of the itemized statement provided to an
9 employee or a computer-generated record that accurately shows all of the information
10 required by this subdivision.

11 140. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize
12 the "detachable part of the check" provision and the "accurate itemized statement in writing"
13 provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each
14 employee retains the right to elect to receive a written paper stub or record and that those who are
15 provided with electronic wage statements retain the ability to easily access the information and
16 convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion
17 Letter July 6, 2006.)

18 141. Plaintiff is informed and believes that, at all relevant times during the applicable
19 limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**
20 members with written wage statements as described above.

21 142. Plaintiff is informed and believes that Defendants' failure to provide him and **Wage**
22 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
23 that Defendants had the ability to provide them with accurate wage statements but had intentionally
24 provided them with written wage statements that Defendants knew do not comply with Labor Code
25 § 226(a).

26 143. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,
27 in that Defendants have violated Plaintiff's and **Wage Statement Penalties Sub-Class** members'
28 legal rights to receive accurate wage statements and have misled them about their actual rates of pay
and wages earned. In addition, inaccurate information on their wage statements have prevented
immediate challenges to Defendants' unlawful pay practices, has required discovery and
mathematical computations to determine the amount of wages owed, has caused difficulty and
expense in attempting to reconstruct time and pay records, and/or has led to the submission of

1 inaccurate information about wages and deductions to federal and state government agencies.

2 144. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of himself and **Wage**
3 **Statement Penalties Sub-Class** members, seeks the greater of actual damages or fifty dollars
4 (\$50.00) for the initial pay period in which a violation of Labor Code section 226(a) occurred and
5 one hundred dollars (\$100.00) for each subsequent pay period in which a violation of Labor Code §
6 226(a) occurred, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per class
7 member.

8 145. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
9 the common fund doctrine, Plaintiff, on behalf of himself and **Wage Statement Penalties Sub-**
10 **Class** members, seek awards of reasonable attorneys' fees and costs.

11 **SEVENTH CAUSE OF ACTION**

12 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

13 **(Lab. Code §§ 201–203)**

14 **(Plaintiff and Waiting Time Penalties Sub-Class)**

15 146. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

16 147. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members
17 have been entitled, upon the end of their employment with Defendants, to timely payment of all
18 wages earned and unpaid before termination or resignation.

19 148. At all relevant times, pursuant to Labor Code § 201, employees who have been
20 discharged have been entitled to payment of all final wages immediately upon termination.

21 149. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
22 after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of
23 all final wages at the time of resignation.

24 150. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
25 after giving less than seventy-two (72) hours' notice of resignation have been entitled to payment of
26 all final wages within seventy-two (72) hours' of giving notice of resignation.

27 151. During the applicable limitations period, Defendants failed to pay Plaintiff all of his
28 final wages in accordance with the Labor Code by failing to timely pay him all of his final wages

1 within 72 hours of his separation from the company.

2 152. Plaintiff is informed and believes that, at all relevant times during the applicable
3 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
4 members all of their final wages in accordance with the Labor Code.

5 153. Plaintiff is informed and believes that, at all relevant times during the applicable
6 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
7 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
8 §§ 201 or 202 by failing to timely pay them all final wages.

9 154. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
10 timely pay all final wages to him and **Waiting Time Penalties Sub-Class** members have been
11 willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201
12 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
13 requirements.

14 155. Pursuant to Labor Code §§ 203 and 218.6, Plaintiff, on behalf of himself and
15 **Waiting Time Penalties Sub-Class** members, seeks waiting time penalties from the respective
16 dates that their final wages had first become due until paid, up to a maximum of thirty days, and
17 interest thereon.

18 156. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial
19 benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of himself and **Waiting Time**
20 **Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

21 **EIGHTH CAUSE OF ACTION**

22 **LATE PAYMENT OF WAGES DURING EMPLOYMENT**

23 **(Labor Code § 204)**

24 **(Plaintiff and Hourly Employee Class)**

25 164. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

26 165. At all times herein set forth, California Labor Code section 204 provides that all
27 wages earned by any person in any employment between the 1st and 15th days, inclusive, of any
28

1 calendar month, other than those wages due upon termination of an employee, are due and
2 payable between the 16th and the 26th day of the month during which the labor was performed.

3 166. At all times herein set forth, California Labor Code section 204 provides that all
4 wages earned by any person in any employment between the 16th and the last day, inclusive, of any
5 calendar month, other than those wages due upon termination of an employee, are due and payable
6 between the 1st and the 10th day of the following month.

7 167. At all times herein set forth, California Labor Code section 204 provides that all
8 wages earned for labor in excess of the normal work period shall be paid no later than the payday
9 for the next regular payroll period.

10 168. During the relevant time period, Defendants intentionally and willfully failed to pay
11 Plaintiff and the **Hourly Employee Class** all wages due to them, within any time period permissible
12 under California Labor Code section 204.

13 169. Waltrip is informed and believes, and based thereon alleges that Defendants had and
14 have a policy or practice of failing to pay **Hourly Employee Class** their wages in accordance with
15 Labor Code Section 204, which requires that: "[1]abor performed between the 1st and 15th days,
16 inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during
17 which the labor was performed, and labor performed between the 16th and the last day, inclusive of any
18 calendar month, shall be paid for between the 1st and 10th day of the following month." Waltrip is
19 informed and believes and based thereon alleges that Defendants did not and do not pay Waltrip and
20 other **Hourly Employee Class** in accordance with Labor Code Section 204. As such, Waltrip is
21 informed and believes, and based thereon alleges that Defendants violated Labor Code section 204.
22 Defendants would be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

23 170. Waltrip is informed and believes, and based thereon alleges that Defendants had and has
24 a policy of failing to provide all temporary workers with owed wages weekly by not later than the
25 regular payday of the following week. As a result, pursuant to Labor Code section 201.3, Defendants
26 would be liable for civil penalties pursuant to Labor Code sections 201.3.

27 171. Plaintiffs and the **Hourly Employee Class** are entitled to recover all remedies
28 available for violations of California Labor Code section 204.

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5 **NINTH CAUSE OF ACTION**

6 **FAILURE TO KEEP REQUISITE RECORDS**

7 **(Labor Code § 1174(d))**

8 **(Plaintiff and Hourly Employee Class)**

9 172. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

10 173. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
11 central location in the state or at the plants or establishments at which employees are employed,
12 payroll records showing the hours worked daily by and the wages paid to, and the number of piece-
13 rate units earned by and any applicable piece rate paid to, employees employed at the respective
14 plants or establishments. These records shall be kept in accordance with rules established for this
15 purpose by the commission, but in any case shall be kept on file for not less than two years.

16 174. Defendants have intentionally and willfully failed to keep accurate and complete
17 payroll records showing the hours worked daily and the wages paid, to Plaintiffs and the **Hourly**
18 **Employee Class**.

19 175. In addition to the above, Waltrip is informed and believes, and based thereon
20 alleges that, due to the violations described above, Defendants failed and continue to fail to keep
21 adequate or accurate time records showing the actual hours worked daily and the wages earned by
22 Waltrip and **Hourly Employee Class**, including earned and unpaid minimum, overtime, and
23 premium wages as discussed above, including wage statements and similar payroll documents
24 under Labor Code section 226, documents signed to obtain or hold employment under Labor
25 Code section 432, personnel records under Labor Code section 1198.5, and time records under
26 Labor Code section 1174, making it difficult for Waltrip and other putative class members to
27 calculate their unpaid wages and/or premium payments. Defendants also failed to provide these
28 documents to Waltrip and other aggrieved employees upon request. This would entitle Waltrip

1 and other putative class members to penalties prescribed by Labor Code sections 226 and 1198.5.
2 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558, 1174.5
3 and 2699.

4 176. As a result of Defendants' violation of Labor Code section 1174(d), Plaintiffs and
5 **Hourly Employee Class** have suffered injury and damage to their statutorily-protected rights.

6 177. More specifically, Plaintiffs and **Hourly Employee Class** have been injured by
7 Defendants' intentional and willful violation of Labor Code section 1174(d) because they were
8 denied both their legal right and protected interest, in having available, accurate and complete
9 payroll records pursuant to Labor Code section 1174(d).

10 **TENTH CAUSE OF ACTION**

11 **FAILURE TO PAY INTEREST ON DEPOSITS**

12 **(Labor Code § 404)**

13 **(Plaintiff and Failure to Pay Interest on Deposits Sub-Class)**

14 178. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

15 179. Plaintiff realleges and incorporates by reference all of the allegations contained in
16 the preceding paragraphs as though fully set forth herein.

17 180. At all relevant times, Plaintiff and Class Members were employees or former
18 employees of Defendants covered by Labor Code sections 400 through 410.

19 181. Pursuant to Labor Code section 404, Defendants were required to immediately return
20 amounts deposited for uniforms and parking with accrued interest when Plaintiff and **Failure to**
21 **Pay Interest on Deposits Sub-Class** members returned the required uniforms and parking to
22 Defendants.

23 182. Plaintiff is informed and believes, and based thereon alleges that due to policies and
24 practices adopted by Defendants, Defendants violated Labor Code section 404 by failing to, at
25 times, immediately return accrued interest on deposits made by Plaintiff and **Failure to Pay**
26 **Interest on Deposits Sub-Class** members upon their returning their uniforms to Defendants and
27 stopping the use of monthly and/or daily parking.

28 183. Waltrip is further informed and believes, and based thereon alleges, that Defendants

1 have or had a policy or practice of failing to reimburse deposits made, including uniform deposits and
2 parking deposits together with all interest owed at the separation of employment in violation of Labor
3 Code section 404, entitling Waltrip and **Failure to Pay Interest on Deposits Sub-Class** members to
4 damages in the amount of the deposit and accrued interest. Defendants would also be liable for civil
5 penalties under Labor Code sections 558 and 2699.

6 184. As a result of Defendants' conduct, Plaintiff and **Failure to Pay Interest on**
7 **Deposits Sub-Class** members have suffered damages in an amount subject to proof, to the extent
8 they were not compensated for accrued interest on amounts deposited for mandatory uniforms and
9 parking upon returning their uniforms to Defendants and stopping the use of monthly and/or daily
10 parking.

11 185. Pursuant to Labor Code sections 218, 218.5, and 404. Plaintiff and **Failure to Pay**
12 **Interest on Deposits Sub-Class** members are entitled to recover their unpaid accrued interest on
13 uniform and parking deposits, reasonable attorney's fees and costs of suit.

14 **ELEVENTH CAUSE OF ACTION**
15 **FAILURE TO PAY VACATION WAGES**
16 **(Labor Code § 227.3)**
17 **(Plaintiff and Vacation Wages Sub-Class)**

18 186. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

19 187. According to Labor Code section 227.3, whenever a contract of employment or
20 employer policy provides for paid vacations, and an employee is terminated without having taken
21 off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in
22 accordance with such contract of employment or employer policy respecting eligibility or time
23 served.

24 188. Plaintiff is informed and believes, and based thereon alleges that, at all times relevant
25 hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and
26 that Plaintiffs employment contract with Defendants included paid vacations.

27 189. For at least four (4) years prior to the filing of this action and continuing to the
28 present, Defendants have had a consistent policy of failing to provide Plaintiff and **Vacation Wages**

1 **Sub-Class** members with compensation at their final rate of pay for unused vested paid vacation
2 days pursuant to Labor Code section 227.3.

3 190. Waltrip is informed and believes, and based thereon alleges that Defendants had and
4 has a policy or practice of failing to pay **Vacation Wages Sub-Class** members their paid time off
5 and vacation time owed upon separation of employment as wages at their final rate of pay in
6 violation of Labor Code section 227.3 and applicable Wage Orders. Defendants failed to provide to
7 Waltrip and/or **Vacation Wages Sub-Class** members accrual of vacation wages and failed to pay to
8 Waltrip and/or **Vacation Wages Sub-Class** members vested vacation wages. Accordingly,
9 Defendants violated Labor Code Section 227.3. As such, Defendants would be liable for civil
10 penalties for violation of Labor Code section 227.3 under Labor Code section 558 and 2699.

11 191. As a proximate result of Defendants' failure to pay vested vacation at the final rate of
12 Plaintiff and **Vacation Wages Sub-Class** members upon their resignation or termination,
13 Defendants violated Labor Code section 227.3, entitling Plaintiff and **Vacation Wages Sub-Class**
14 members to all vested and unused vacation pay at their final rate of pay, as set out in Defendants'
15 policy or the contract of employment between Plaintiff and **Vacation Wages Sub-Class** members,
16 on the one hand, and Defendants, on the other hand.

17 192. As a further proximate result of Defendants' above-described acts and/or omissions,
18 Plaintiff and **Vacation Wages Sub-Class** members are entitled to recover reasonable attorneys'
19 fees, costs of suit and prejudgment interest.

20 **EIGHTH CAUSE OF ACTION**

21 **UNFAIR COMPETITION**

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

23 **(Plaintiff and UCL Class)**

24 186. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

25 187. Business and Professions Code § 17200 defines “unfair competition” to include any
26 unlawful business practice.

27 188. Business and Professions Code §§ 17203–17204 allow a person who has lost money
28 or property as a result of unfair competition to bring a class action in accordance with Code of Civil

1 Procedure § 382 to recover money or property that may have been acquired from similarly situated
2 persons by means of unfair competition.

3 189. California law requires employers to pay hourly, non-exempt employees for all hours
4 they are permitted or suffered to work, including hours that the employer knows or reasonably
5 should know that employees have worked.

6 190. Plaintiff, on behalf of himself and the **UCL Class** members, re-alleges and
7 incorporates the FIRST, SECOND, THIRD, FOURTH, FIFTH, causes of action herein.

8 191. Plaintiff lost money and/or property as a result of the aforementioned unfair
9 competition.

10 192. Defendants have or may have acquired money by means of unfair competition.

11 193. Plaintiff is informed and believes and thereupon alleges that, by committing the
12 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,
13 225, 226.6, 354, 408, 553, 1175, 1199 and 2802. Defendants thus committed misdemeanors by
14 violating the Labor Code as alleged herein.

15 194. Defendants have committed criminal conduct through their policies and practices of,
16 *inter alia*, failing to comport with their affirmative obligations as an employer provide non-exempt
17 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
18 of five or more hours, by failing to pay non-exempt employees for all hours worked, and by failing
19 to reimburse them for all expenses.

20 195. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
21 employees and entitled to the full protections of both the Labor Code and the applicable Wage
22 Order.

23 196. Defendants' unlawful conduct as alleged in this Complaint amounts to and
24 constitutes unfair competition within the meaning of Business and Professions Code section 17200
25 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
26 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of
27 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of himself and on
28 behalf of similarly situated persons in a class-action proceeding.

1 197. As a result of Defendants’ violations of the Labor Code during the applicable
2 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
3 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants’
4 conduct.

5 198. Plaintiff is informed and believes that other similarly situated persons have been
6 subject to the same unlawful policies or practices of Defendants.

7 199. Due to the unfair and unlawful business practices in violation of the Labor Code,
8 Defendants have gained a competitive advantage over other comparable companies doing business
9 in the State of California that comply with their legal obligations.

10 200. California’s Unfair Competition Law (“UCL”) permits civil recovery and injunctive
11 relief for “any unlawful, unfair or fraudulent business act or practice,” including a practice or act
12 that violates, or is considered unlawful under, any other state or federal law.

13 201. Accordingly, pursuant to Business & Professions Code §§ 17200 and 17203,
14 Plaintiff requests the issuance of temporary, preliminary, and permanent injunctive relief enjoining
15 Defendants, and each of them, and their agents and employees, from further violations of the Labor
16 Code and applicable Industrial Welfare Commission Wage Orders, and upon a final hearing, an
17 order permanently enjoining Defendants, and each of them, and their respective agents and
18 employees, from further violations of the Labor Code and applicable Industrial Welfare
19 Commission Wage Orders.

20 202. Pursuant to Business and Professions Code § 17203, Plaintiff, on behalf of himself
21 and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully belonging
22 to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair
23 business practices.

24 203. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
25 the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable
26 attorneys’ fees in connection with their unfair competition claims.

27 **THIRTEENTH CAUSE OF ACTION**

28 **CIVIL PENALTIES**

1 (Lab. Code §§ 2698 *et seq.*)

2 (Against all Defendants)

3 204. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

4 205. In addition to the Labor Code violations described above, Defendants willfully failed
5 to timely furnish Waltrip and aggrieved employees with any final paycheck timely and/or with final
6 paychecks that include all earned and unpaid wages, including, but not limited to, all earned and unpaid
7 hourly, overtime, vacation, and/or premium wages. Accordingly, Waltrip now seeks to recover the
8 wages and penalties provided in Labor Code section 256 on behalf of himself and the aggrieved
9 employees.

10 206. As a result of, and in addition to, the foregoing Labor Code violations, Employer has
11 violated Labor Code Section 1199. By failing to timely furnish Waltrip and aggrieved employees with
12 unpaid wages, including, but not limited to, all earned and unpaid hourly, overtime, vacation and/or
13 premium wages at the regular rate of pay, Defendants criminal conduct has violated Labor Code section
14 1199. Accordingly, for all violations of Labor Code section 1199, Defendants are liable for a
15 misdemeanor and are punishable by a fine of \$100 or by imprisonment for not less than thirty days or by
16 both.

17 207. As a result of, and in addition to, the foregoing Labor Code violations, Employer
18 secretly paid Waltrip and/or aggrieved employees less than the statutory or contractual rate.
19 Accordingly, Employer violated Labor Code Sections 221 and 223. Additionally, by deducting a
20 fee every pay period from the paychecks of Waltrip and the aggrieved employees when they were
21 paid via paycard, Defendants violated Labor Code §§ 221–223.

22 208. Waltrip is further informed and believes, and based thereon alleges that Employer
23 failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor
24 Code section 2810.5 (i.e., the Wage Theft Protection Act of 2011) by, among other things, failing to
25 provide Waltrip and other aggrieved employees with the rates of pay and overtime rates of pay
26 applicable to their employment, allowances claimed as part of the minimum wage, the regular
27 payday designated by Employer, the name of the employer, including any "doing business as"
28 names used, the name, address and telephone number of the workers' compensation insurance

1 carrier, information regarding paid sick leave, and other pertinent information required to be
2 disclosed by Employer under Labor Code section 2810.5. Waltrip is informed and believes that
3 failure to provide such information, including rates of pay that are in effect, has permitted Employer
4 to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime
5 wage laws in California. Waltrip is Labor Code section 2810.5 involves a mandatory payroll or
6 workplace injury reporting. Among other relief, employees may collect from Employer in
7 connection with these violations' civil penalties pursuant to Labor Code sections 558 and 2699.

8 209. Waltrip is further informed and believes, and based thereon alleges that Employer
9 had and has a policy or practice of requiring, as a condition of employment, its applicants or
10 employees to waive any right, forum, or procedure for a violation of any provision of the California
11 Fair Employment and Housing Act or the Labor Code, including the right to file and pursue a civil
12 action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law
13 enforcement agency, or any court or other governmental entity of any alleged violation, in violation
14 of Labor Code section 432.6. Waltrip is additionally informed and believes that Employer knew that
15 requiring such a condition was prohibited by law. Accordingly, for violations of Labor Code
16 sections 432.5 and 432.6, Waltrip and aggrieved employees are entitled to attorneys' fees, an
17 injunction, as well as civil penalties pursuant to Labor Code section 2699.

18 210. Waltrip is informed and believes, and based thereon alleges, that Employer maintains
19 policies or practices of failing to permit Waltrip and other aggrieved employees from taking
20 cooldown rest periods as required under California Code of Regulations, Title 8, Section 3395 and
21 premium pay in lieu thereof under Labor Code section 226.7. As a result, Employer would be liable
22 for civil penalties under Labor Code sections 558 and 2699.

23 211. Waltrip is informed and believes, and based thereon alleges, that Employer had and
24 has a practice or policy of relying on the salary history information of an applicant for employment
25 as a factor in determining whether to offer employment to an applicant or what salary to offer the
26 applicant in violation of Labor Code section 432.3 by including, on Employer's application for
27 employment, an inquiry regarding current and/or former salary history information, including,
28 without limitation, compensation and benefits of the applicant for employment. As such, Waltrip is

1 informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor
2 Code section 432.3 entitling Waltrip and other aggrieved employees to damages. Employer would
3 also be liable for civil penalties pursuant to Labor Code sections 432.3 and 2699.

4 212. Waltrip is informed and believes, and based thereon alleges that Employer had and
5 has a policy or practice of failing to furnish and use safety devices and safeguards. And adopt and
6 use practices, means, methods, operations and processes which are reasonably adequate to render
7 such employment and place of employment safe and healthful, pursuant to, including but not
8 limited to, Labor Code section 6401. Waltrip is informed and believes, and based thereon alleges
9 that Employer had and has a policy or practice of requiring or permitting employees to go or be in
10 any employment or place of employment which is not safe and healthful, pursuant to Labor Code
11 section 6402. Waltrip is informed and believes, and based thereon alleges that Employer had and
12 has a policy or practice of failing or neglecting to: provide and use safety devices and safeguards
13 reasonably adequate to render the employment and place of employment safe; adopt and use
14 methods and processes reasonably adequate to render the employment and place of employment
15 safe; and do every other thing reasonably necessary to protect the life, safety, and health of
16 employees, pursuant to Labor Code section 6403. Waltrip is informed and believes, and based
17 thereon alleges that these failures include, without limitation, failing to disinfect time clocks and
18 other surfaces after use by Waltrip and/or other aggrieved employees; failing to provide adequate
19 protection equipment to Waltrip and/or other aggrieved employees; and failing to provide adequate
20 distance in working conditions between Waltrip and/or other aggrieved employees.

21 213. Waltrip is informed and believes, and based thereon alleges that Employer had and
22 has a policy or practice of failing to provide all working employees with suitable seats when the
23 nature of the work reasonably permits the use of seats. Waltrip is further informed and believes, and
24 based thereon alleges that Employer has failed to place an adequate number of seats in reasonable
25 proximity to the work area and/or permitted employees to use such seats when it does not interfere
26 with the performance of their duties when employees are not engaged in the active duties of their
27 employment and the nature of their work requires standing.

28 214. Waltrip is informed and believes, and based thereon alleges that Employer had and

1 has a policy or practice of preventing Waltrip and/or other aggrieved employees from using or
2 disclosing the skills, knowledge and experience they obtained at Employer for purposes of
3 competing with Employer, including, without limitation, preventing them from disclosing their
4 wages in negotiating a new job with a prospective employer, and from disclosing who else works at
5 Employer and under what circumstances that they might be receptive to an offer from a rival
6 employer. As such, Waltrip is informed and believes that this violates Business and Professions
7 Code sections 17200, 16600, and 16700, and, by virtue thereof, various provisions of the Labor
8 Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k). Employer would be
9 liable for civil penalties pursuant to Labor Code section 2699.

10 215. Waltrip is informed and believes, and based thereon alleges that Employer had and has a
11 policy or practice of preventing Waltrip and/or other aggrieved employees from disclosing violations of
12 state and federal law, either within Employer to their managers or outside Employer to private attorneys
13 or government officials, among others, in violation of Business and Professions Code section 17200,
14 and, thus, in violation of Labor Code section 1102.5. In addition, Waltrip is informed and believes that
15 these policies and/or practices prevent Waltrip and/or other aggrieved employees from disclosing
16 information about unsafe or discriminatory working conditions, or about wage and hour violations in
17 violation of Labor Code section 232 and 232.5. These violations of the Labor Code would expose
18 Employer to liability for civil penalties pursuant to Labor Code section 2699.

19 216. Waltrip and/or other aggrieved employees engaged in quintessential protected activity
20 by making complaints to Employer regarding workplace conditions they reasonably believed to be
21 illegal. For example, other aggrieved employees made protected complaints to Employer regarding
22 Employer's supervisors regularly interrupting meal periods and one housekeeper going into rooms not
23 assigned to him and taking gratuities/tips left for other housekeepers. Employer discriminated,
24 retaliated, and/or took adverse actions against those who made such complaints. Accordingly, Employer
25 violated Labor Code Sections 98.6, 232.5(c), and 1102.5.

26 217. Waltrip is informed and believes, and based thereon alleges that Employer had and
27 has a policy or practice of preventing Waltrip and/or other aggrieved employees from engaging in
28 lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose

1 wages, working conditions, and illegal conduct, including, without limitation, Labor Code sections
2 96, subdivision (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Waltrip is informed and believes
3 that this lawful conduct includes the exercise of Waltrip and/or other aggrieved employee's
4 constitutional rights of freedom of speech and economic liberty and would thus expose Employer to
5 liability for civil penalties pursuant to Labor Code section 2699.

6 218. Waltrip is informed and believes, and based thereon alleges, that Employer has or
7 had a policy or practice of unlawfully deducting wages by issuing in payment of wages due, or to
8 become due, or as an advance on wages to be earned: an order, check, draft, note, memorandum,
9 gift card, or other acknowledgement of indebtedness, (unless it was negotiable and payable in cash,
10 on demand, without discount, at some established place of business in the state), the name and
11 address of which must but did not appear on the instrument, and at the time of its issuance and for a
12 reasonable time thereafter, which must be but was not at least 30 days, the maker or drawer did not
13 have sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment or
14 any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or
15 redeemable otherwise than in money. Waltrip is further informed and believes, and based thereon
16 alleges, that such wages were not compensated at the "regular rate" of compensation as provided
17 under Labor Code sections 226.7 and 510, subsection (a). Consequently, Waltrip is informed and
18 believes, and based thereon alleges, that Waltrip and other aggrieved employees are entitled to relief
19 under, without limitation, Labor Code sections 212, 213, 226.7, and 510 subsection (a). Employer
20 would thus be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

21 219. During the relevant time period, Highgate failed to pay Waltrip and other aggrieved
22 employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more
23 than four (4) hours at the employee's regular rate of pay for workdays in which Waltrip and the
24 other aggrieved employees reported to work and were furnished less than half the usual or
25 scheduled day's work. During the relevant time period, Highgate failed to pay Waltrip and other
26 aggrieved employees for two (2) hours at the employee's regular rate of pay on days in which
27 Waltrip and the other aggrieved employees were required to report for work a second time in one
28 workday and were furnished less than two (2) hours of work upon the second reporting.

1 220. During the relevant time period, Waltrip and the aggrieved employees were required
2 to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant
3 time period, Waltrip and the aggrieved employees were required to work in excess of thirty (30)
4 hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they
5 were required to work in excess of six (6) days. During the relevant time period, Waltrip and the
6 aggrieved employees were required to work in excess of six (6) days in a workweek without
7 accumulating or being provided the opportunity to take at least one (1) day of rest, and when
8 Waltrip and the aggrieved employees accumulated days of rest, they were not actually provided the
9 opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

10 221. Employer failed to keep accurate records of all gratuities received by it, whether
11 received directly from the employee or indirectly by means of deductions from the wages of the
12 employee or otherwise. For example, other aggrieved employees complained to Employer that one
13 of its housekeepers was going into rooms not assigned to him and taking gratuities/tips left for other
14 housekeepers, but Employer failed to act on this information. Employer's knowledge and
15 nonfeasance shows that it intentionally failed to keep accurate records of all tips/gratuities.
16 Accordingly, Employer violated Labor Code Section 353.

17 222. During the applicable limitations period, Defendants have violated Labor Code §§
18 96, 98.6, 201, 201.3, 202, 203, 204, 204.1, 204.2, 206, 210, 212, 213, 216, 221, 222, 225.5223, 226,
19 226.2, 226.3, 226.7, 227.3, 232, 232.5, 233, 234, 246, 246.5, 248.5, 256, 351, 353, 404, 432, 432.3,
20 432.5, 510, 511, 512, 515, 551, 552, 558, 1102.5, 1174.5, 1182.12, 1194, 1194.1, 1194.2, 1197,
21 1197.1, 1197.5, 1198, 1198.5, 1199, 2800 and 2802, 2810.5, 6401, 6402, 6403, and 6409.6.

22 223. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
23 himself and other current and former employees, to bring a representative civil action to recover
24 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,
25 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

26 224. Plaintiff, a former employee against whom Defendants committed one or more of the
27 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
28 within the meaning of Labor Code § 2699(c).

225. Plaintiff has complied with the procedures for bringing suit specified in Labor Code § 2699.3. Notice was provided to the California Labor & Workforce Development Agency (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an intent to investigate.

226. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the civil penalties provided by law for Defendants' violations of Labor Code §§ 96, 98.6, 201, 201.3, 202, 203, 204, 204.1, 204.2, 206, 210, 212, 213, 216, 221, 222, 225.5, 223, 226, 226.2, 226.3, 226.7, 227.3, 232, 232.5, 233, 234, 246, 246.5, 248.5, 256, 351, 353, 404, 432, 432.3, 432.5, 510, 511, 512, 515, 551, 552, 558, 1102.5, 1174.5, 1182.12, 1194, 1194.1, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2800 and 2802, 2810.5, 6401, 6402, 6403, and 6409.6.

227. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- (1) An order that the action be certified as a class action;
- (2) An order that Plaintiff be appointed class representative;
- (3) An order that counsel for Plaintiff be appointed class counsel;
- (4) Unpaid wages;
- (5) Actual damages;
- (6) Liquidated damages;
- (7) Restitution;
- (8) Declaratory relief;
- (9) Pre-judgment interest;
- (10) Statutory penalties;
- (11) Civil penalties
- (12) Costs of suit;
- (13) Reasonable attorneys' fees; and

1 (14) Such other relief as the Court deems just and proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby
4 demands a jury trial on all issues so triable.

5
6 Dated: May 7, 2024

SETAREH LAW GROUP

7
8 /s/Shawn Setareh

9 SHAUN SETAREH
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