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Case #23CV417680
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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

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

FIRST 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. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
9. 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 9. **Relevant Time Period:** The relevant time period is defined as the time period

beginning four years prior to the filing of this action until judgment is entered.

Hourly Employee Class: All persons employed by Defendants and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions in California during the **Relevant Time Period**.

Misclassification Class: All persons employed by Defendants and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions who were misclassified as exempt during the **Relevant Time Period**.

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

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

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

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

Sick Pay Class: All persons employed by Defendants in California who were denied pay for accrued/earned sick time during the **Relevant Time Period**.

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

Expense Reimbursement Class: All persons employed by Defendants in California who incurred business expenses 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 exceeds the minimum required for numerosity under California law.

12. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions that affect only individual class members. These

1 common questions include, but are not limited to:

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

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

26 14. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in
27 that he has no interests that are adverse to or otherwise conflict with the interests of absent class
28 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly

1 and adequately represent and protect the interests of the other class members.

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

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

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

17 17. Plaintiff worked for Defendants as an hourly, non-exempt employee from
18 approximately January 5, 2022 through September 27, 2022.

19 **Misclassification as Exempt**

20 18. Waltrip and the aggrieved employees were misclassified as exempt employees when
21 in fact they were non-exempt. Waltrip and the aggrieved employees regularly worked more than
22 eight-hour workdays and forty-hour workweeks, entitling them to overtime pay under the Labor
23 Code. Waltrip and the aggrieved employees did not perform duties, more than 50% of the time, that
24 would qualify them as exempt employees under the Executive or Administrative exemptions (Labor
25 Code 515). Waltrip and the aggrieved employees were paid a fixed yearly salary regardless of the
26 number of hours they worked.

27 19. Waltrip and the aggrieved employees may have had titles that indicated management
28 over a department, but their job duties and responsibilities did not match those titles. Waltrip and

1 the aggrieved employees did not have the authority to direct the work of other employees, nor did
2 they have hiring or firing power or the power to discipline employees. Rather, these responsibilities
3 were left to the general manager and/or other supervisors in charge of these aggrieved employees.

4 20. Moreover, according to the California Court of Appeal, “exemptions from statutory
5 mandatory overtime provisions are narrowly construed, and the employer bears the burden of
6 proving the employee's exemption as an affirmative defense.” *Kizer v. Tristar Risk Management*
7 (2017) 13 Cal.App.5th 830, 839, quoting *Walsh v. IKON Office Solutions, Inc.* (2007) 148
8 Cal.App.4th 1440, 1453, fn. 8., as modified (July 26, 2017).

9 21. Because Defendants cannot show that Waltrip and the aggrieved employees were
10 exempted from overtime provisions, Defendants are required to comply with the Labor Code and
11 Wage Orders in regards to these employees.

12 22. Accordingly, Plaintiff and the putative class were entitled to all the protections
13 afforded to them as non-exempt employees under California law.

14 23. As a result of being misclassified as exempt employees, the time worked by
15 Plaintiff and the putative class were not accurately recorded by the timekeeping system utilized by
16 Defendants and therefore resulted in the failure to pay Plaintiff and the putative class for all hours
17 actually worked and overtime compensation.

18 **Off-the-clock Work**

19 24. Plaintiff and the putative class were not paid all wages earned as Defendants
20 directed, permitted, or otherwise encouraged Plaintiff and the putative class to perform off-the-
21 clock work.

22 25. Defendants did not have Plaintiff and the putative class clock in or out, but rather
23 were paid the same wages regardless of number of hours worked.

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

26 27. Plaintiff and the putative class regularly performed work after their scheduled work
27 hours and were not paid for this time.

28 28. As a result of performing off-the-clock work that was directed, permitted, or

1 otherwise encouraged by Defendants, Plaintiff and the putative class should have been paid for this
2 time. Instead, Defendants only paid Plaintiff and the putative class based on the time they were
3 clocked in for their shifts and did not pay Plaintiff and the putative class for any of the time spent
4 working off-the-clock.

5 29. Defendants knew or should have known that Plaintiff and the putative class were
6 performing work before and after their scheduled work shifts and failed to pay Plaintiff and the
7 putative class for these hours.

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

10 31. As a result of Defendants' policies and practices, Plaintiff and the putative class were
11 not paid for all hours worked.

12 **Missed Meal Periods**

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

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

25 **Missed Rest Periods**

26 34. Plaintiff and the putative class were not provided with rest periods of at least ten
27 (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants'
28 policy of not scheduling each rest period as part of each work shift; (2) chronically understaffing

1 each work shift with not enough workers; (3) imposing so much work on each employee such that
2 it made it unlikely that an employee would be able to take their breaks if they wanted to finish their
3 work on time; and (4) no formal written meal and rest period policy that encouraged employees to
4 take their meal and rest periods.

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

10 **Sick Pay**

11 36. Defendants did not offer sick time to Plaintiff and the putative class. Despite
12 Defendant's written policy allowing for sick time in accordance with California law, Defendant did
13 not in practice adhere to its policy.

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

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

18 39. Plaintiff is informed and believes and thereupon alleges that at all relevant times,
19 Defendants had a practice of disallowing sick time for all employees, regardless of how few sick
20 days they had already used or how long they had worked for Defendant.

21 **Expense Reimbursement**

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

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

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

43. 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.

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

Wage Statements

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

46. Defendants failed to provide wage statements for every pay period to Plaintiff and the putative class. Instead, Defendants proffered wage statements at random, often going multiple pay periods in a row without providing any.

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

48. Defendants failed to comply with Labor Code 0167 226(a)(1) as “gross wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

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

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

51. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that all hours worked, including

overtime and “off-the-clock” work were not included.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

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

(Plaintiff, Hourly Employee Class, and Meal Period Sub-Class)

52. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged herein.

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

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

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

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

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

58. Section 11 of the applicable Wage Order states:

“No employer shall employ any person for a work period of more than five (5) 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

1 to. The written agreement shall state that the employee may, in writing, revoke
2 the agreement at any time.”

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

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

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

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

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

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

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

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1 middle of each work period insofar as practicable.

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

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

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

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

11 **(Plaintiff, Misclassification Class, and Hourly Employee Class)**

12 77. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

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

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

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

28 83. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than

1 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
2 period.

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

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

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

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

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

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

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

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

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

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

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

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

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE SICK PAY**

17 **(Lab. Code §§ 245, et seq.)**

18 **(Plaintiff, and Sick Pay Class)**

19 96. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

20 97. Labor Code section 246(a)(1) states in pertinent part:

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

24 98. Labor Code section 246(b)(1) states in pertinent part:

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

29 99. Plaintiff is informed and believes and thereon alleges that, at all relevant
30 times, Defendants have maintained a practice of not paying **Sick Pay Sub-Class** members paid
31 sick days as required by Labor Code § 245, *et sequitur* during their employment when **Sick Pay**

1 **Sub-Class** members were out due to covered reasons.

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

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

8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO INDEMNIFY**

10 **(Lab. Code § 2802)**

11 **(Plaintiff and Expense Reimbursement Class)**

12 102. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

13 103. Labor Code section 2802(a) states:

14 An employer shall indemnify his or her employee for all necessary expenditures or
15 losses incurred by the employee in direct consequence of the discharge of his or her
16 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.

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

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

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

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

1 **Reimbursement Class** members for all such expenditures.

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

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

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

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

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

18 **(Lab. Code § 226)**

19 **(Plaintiff, Hourly Employee Class, and Wage Statement Penalties Sub-Class)**

20 112. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

21 113. Labor Code § 226(a) states:

22 An employer, semimonthly or at the time of each payment of wages, shall furnish to
23 his or her employee, either as a detachable part of the check, draft, or voucher paying
24 the employee's wages, or separately if wages are paid by personal check or cash, an
25 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
26 worked by the employee, except as provided in subdivision (j), (3) the number of
27 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
28 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

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

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

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

23 116. Plaintiff is informed and believes that Defendants' failure to provide him and **Wage**
24 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
25 that Defendants had the ability to provide them with accurate wage statements but had intentionally
26 provided them with written wage statements that Defendants knew do not comply with Labor Code
27 § 226(a).

28 117. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,
in that Defendants have violated Plaintiff's and **Wage Statement Penalties Sub-Class** members'
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

1 expense in attempting to reconstruct time and pay records, and/or has led to the submission of
2 inaccurate information about wages and deductions to federal and state government agencies.

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

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

12 SEVENTH CAUSE OF ACTION

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

14 **(Lab. Code §§ 201–203)**

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

16 120. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

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

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

28 125. During the applicable limitations period, Defendants failed to pay Plaintiff all of his

1 final wages in accordance with the Labor Code by failing to timely pay him all of his final wages
2 within 72 hours of his separation from the company.

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

6 127. Plaintiff is informed and believes that, at all relevant times during the applicable
7 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
8 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
9 §§ 201 or 202 by failing to timely pay them all final wages.

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

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

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

22 **EIGHTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

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

25 **(Plaintiff and UCL Class)**

26 131. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

27 132. Business and Professions Code § 17200 defines "unfair competition" to include any
28 unlawful business practice.

1 133. Business and Professions Code §§ 17203–17204 allow a person who has lost money
2 or property as a result of unfair competition to bring a class action in accordance with Code of Civil
3 Procedure § 382 to recover money or property that may have been acquired from similarly situated
4 persons by means of unfair competition.

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

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

10 136. Plaintiff lost money and/or property as a result of the aforementioned unfair
11 competition.

12 137. Defendants have or may have acquired money by means of unfair competition.

13 138. Plaintiff is informed and believes and thereupon alleges that, by committing the
14 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,
15 225, 226.6, 354, 408, 553, 1175, 1199 and 2802. Defendants thus committed misdemeanors by
16 violating the Labor Code as alleged herein.

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

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

25 141. Defendants’ unlawful conduct as alleged in this Complaint amounts to and
26 constitutes unfair competition within the meaning of Business and Professions Code section 17200
27 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
28 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of

1 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of himself and on
2 behalf of similarly situated persons in a class-action proceeding.

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

7 143. Plaintiff is informed and believes that other similarly situated persons have been
8 subject to the same unlawful policies or practices of Defendants.

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

12 145. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
13 relief for "any unlawful, unfair or fraudulent business act or practice," including a practice or act
14 that violates, or is considered unlawful under, any other state or federal law.

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

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

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

1 **NINTH CAUSE OF ACTION**

2 **CIVIL PENALTIES**

3 **(Lab. Code §§ 2698 *et seq.*)**

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

5 150. During the applicable limitations period, Defendants have violated Labor Code §§
6 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, 1198, and 2802.

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

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

14 153. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
15 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
16 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
17 intent to investigate.

18 154. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
19 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510,
20 512, 1194, 1197, 1198 and 2802:

21 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 1194, 1198 and
22 2802, one hundred dollars (\$100) for each employee per pay period for each
23 initial violation and two hundred dollars (\$200) for each employee per pay
24 period for each subsequent violation (penalties set by Labor Code §
25 2699(f)(2));

26 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
27 thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);

28 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each

1 employee for each initial violation that was neither willful nor intentional,
2 two hundred dollars (\$200) for each employee, plus 25% of the amount
3 unlawfully withheld from each employee, for each initial violation that was
4 either willful or intentional, and two hundred dollars (\$200) for each
5 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
6 from each employee, for each subsequent violation, regardless of whether the
7 subsequent violation was either willful or intentional (penalties set by Labor
8 Code § 210);

9 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
10 employee for each initial violation that was neither willful nor intentional,
11 two hundred dollars (\$200) for each employee, plus twenty-five percent
12 (25%) of the amount unlawfully withheld from each employee, for each
13 initial violation that was either willful or intentional, and two hundred dollars
14 (\$200) for each employee, plus twenty-five percent (25%) of the amount
15 unlawfully withheld from each employee, for each subsequent violation,
16 regardless of whether the subsequent violation was either willful or
17 intentional (penalties set by Labor Code § 225.5);

18 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
19 citation, two hundred and fifty dollars (\$250) for each employee for each
20 violation. Alternatively, if an initial citation or its equivalent occurred before
21 the filing of this action, one thousand dollars (\$1,000) for each employee for
22 each violation (penalties set by Labor Code § 226.3);

23 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
24 employee for each initial pay period for which the employee was underpaid,
25 and one hundred dollars (\$100) for each employee for each subsequent pay
26 period for which the employee was underpaid (penalties set by Labor Code §
27 558);

28 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each

aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);

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

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1 **PROOF OF SERVICE**

2 I am a citizen of the United States and am employed in the County of Los Angeles, State
3 of California. I am over the age of 18 and not a party to the within action. My business address
4 is 9665 Wilshire Boulevard, Suite 430 Beverly Hills, CA 90212.

5 On August 28, 2023, I served the foregoing documents described as:

6 **FIRST AMENDED COMPLAINT**

7 in this action by transmitting a true copy thereof to the email addresses as follows:

8 Christopher W. Decker
9 Carolyn B. Hall
10 christopher.decker@ogletreedeakins.com
11 carolyn.hall@ogletreedeakins.com
12 leticia.rivera@ogletreedeakins.com
13 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
14 400 South Hope Street, Suite 1200
Los Angeles, CA 90071
Attorneys for Defendant
HIGHGATE HOTELS, L.P.

15 **[X] BY E-MAIL OR ELECTRONIC TRANSMISSION**

16 Based on a court order or an agreement of the parties to accept service by electronic
17 transmission, I electronically served the document(s) to the persons at the electronic service
18 addresses listed above.

19 **[X] STATE**

20 I declare under penalty of perjury under the laws of the State of California that the above
21 is true and correct.

22 Executed on August 28, 2023, at Beverly Hills, California.

23
24 /s/ Diana Maytorena
25 Diana Maytorena
26
27
28