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Case #26CV493216
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Attorneys for Plaintiff MARCEL MCGEE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

MARCEL MCGEE, on behalf of himself and
all other current and former non-exempt
employees, and the general public,

Plaintiff,

v.

CH SAN JOSE LLC, a Washington Limited
Liability Company; COLUMBIA
HOSPITALITY, INC., a Washington Stock
Corporation; MARRIOTT
INTERNATIONAL, INC., a Delaware Stock
Corporation; MARRIOTT HOTEL
SERVICES, LLC, a Delaware Limited
Liability Company; MARRIOTT
INTERNATIONAL FRANCHISING, L.L.C.,
a Delaware Limited Liability Company;
ABRAHAM HERNANDEZ, an individual;
FERNANDO VAZQUEZ, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 26CV493216

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

1. Sexual Harassment in Violation of Gov. Code § 12940 et seq.;
2. Retaliation in Violation of Gov. Code § 12940(h);
3. Failure to Prevent Discrimination and Harassment in Violation of Gov. Code § 12940(k);
4. Violation of Labor Code § 1102.5;
5. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
6. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
7. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
8. Failure to Pay Vacation Wages (Lab. Code § 227.3);
9. Failure to Indemnify (Lab. Code § 2802);
10. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
11. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
12. Wrongful Termination in Violation of Public Policy;
13. Intentional Infliction of Emotional Distress;
14. Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.);
15. Civil Penalties (Lab. Code § 2698, et seq.)

JURY TRIAL DEMANDED

1 Plaintiff MARCEL MCGEE ("Plaintiff"), on behalf of himself and all other current and
2 former non-exempt employees, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this action against defendants CH SAN JOSE LLC, a Washington
5 Limited Liability Company; COLUMBIA HOSPITALITY, INC., a Washington Stock
6 Corporation; MARRIOTT INTERNATIONAL, INC., a Delaware Stock Corporation; MARRIOTT
7 HOTEL SERVICES, LLC, a Delaware Limited Liability Company; MARRIOTT
8 INTERNATIONAL FRANCHISING, L.L.C., a Delaware Limited Liability Company;
9 ABRAHAM HERNANDEZ, an individual; FERNANDO VAZQUEZ, an individual; and DOES 1
10 through 50, inclusive, (collectively referred to as "Defendants") for alleged violations of the Labor
11 Code, Cal. Gov. Code § 12940 *et seq.*, common law, and the Business and Professions Code §
12 17200. As set forth below, Plaintiff alleges that Defendants have

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

23 Based on these alleged violations, Plaintiff now brings this action to recover unpaid wages,
24 restitution, civil and statutory penalties, and related relief on behalf of himself and all others
25 similarly situated, all other aggrieved employees, and the State of California.

26 **JURISDICTION AND VENUE**

27 2. This Court has subject matter jurisdiction to hear this case because the unpaid wages,
28 actual damages, liquidated damages, restitution, and penalties sought by Plaintiff from Defendants

exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

3. Venue is proper in County of SANTA CLARA pursuant to Code of Civil Procedure §§ 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices, transacts business, and/or has an agent therein.

PARTIES

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

5. Plaintiff is informed and believes, and thereupon alleges, that Defendant CH SAN JOSE LLC is, and at all relevant times mentioned herein, a Washington Limited Liability Company doing business in the State of California.

6. Plaintiff is informed and believes, and thereupon alleges, that Defendant COLUMBIA HOSPITALITY, INC. is, and at all relevant times mentioned herein, a Washington Stock Corporation doing business in the State of California.

7. Plaintiff is informed and believes, and thereupon alleges, that Defendant MARRIOTT INTERNATIONAL, INC. is, and at all relevant times mentioned herein, a Delaware Stock Corporation doing business in the State of California.

8. Plaintiff is informed and believes, and thereupon alleges, that Defendant MARRIOTT HOTEL SERVICES, LLC is, and at all relevant times mentioned herein, a Delaware Limited Liability Company doing business in the State of California.

9. Plaintiff is informed and believes, and thereupon alleges, that Defendant MARRIOTT INTERNATIONAL FRANCHISING, L.L.C. is, and at all relevant times mentioned herein, a Delaware Limited Liability Company doing business in the State of California.

10. Plaintiff is informed and believes, and thereupon alleges that Defendant ABRAHAM HERNANDEZ is and at all relevant times mentioned herein remains, an individual residing in the State of California.

11. Plaintiff is informed and believes, and thereupon alleges that

1 Defendant FERNANDO VAZQUEZ is and at all relevant times mentioned herein remains, an
2 individual residing in the State of California.

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

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

17 **FACTUAL BACKGROUND**

18 14. Plaintiff was hired by Defendants in or around July 11, 2025. Plaintiff was a
19 hardworking and steadfast employee, who performed his job duties competently and efficiently,
20 within the Defendants' rules, requirements, and policies.

21 15. In or about early October 2025, Plaintiff filed a formal complaint with upper
22 management reporting sexual harassment by a female coworker, Kathleen, whose regular duties
23 were assigned to guest rooms.

24 16. In his complaint, Plaintiff reported that, during the period approximately between
25 October 6 and October 10, 2025, Kathleen engaged in unwelcome and inappropriate physical
26 contact toward him, including placing her arms around him and made unsolicited and inappropriate
27 comments about his appearance and scent, including, "You look good," and "You smell good."
28 Plaintiff did not welcome this conduct and found it offensive and inappropriate in the workplace.

1 17. Following Plaintiff's complaint, Human Resources received written summaries of
2 the internal investigation concerning Plaintiff's report.

3 18. Shortly after Plaintiff reported the harassment, Defendants, including their managers
4 and coworkers, began making verbal accusations against Plaintiff, asserting that he "smelled like
5 marijuana" and "failed to respond to radio calls," allegations that Plaintiff denied.

6 19. At no time prior to his complaint of sexual harassment was Plaintiff ever formally
7 disciplined or written up regarding any performance deficiencies.

8 20. On or around October 15, 2025, shortly after Plaintiff's complaint, Kathleen began
9 targeting Plaintiff at his assigned security station at the hotel entrance, despite her duties being in
10 guest rooms. Kathleen made disparaging remarks about Plaintiff in the presence of hotel guests,
11 including referring to him as an "angry security guard."

12 21. On or around October 28, 2025, Plaintiff met with ABRAHAM HERNANDEZ,
13 People and Culture Manager, and FERNANDO VAZQUEZ, General Manager, to further report and
14 discuss the ongoing harassment, retaliation, and hostile treatment he was experiencing.

15 22. Leslie, a friend of Kathleen and an employee of Defendants, also filed false reports
16 by claiming that Plaintiff smelled like marijuana.

17 23. On or about December 8, 2025, Leslie aggressively approached Plaintiff in an
18 attempt to incite an argument while Plaintiff was on duty at the entrance security station.

19 24. Plaintiff de-escalated the encounter by disengaging and walking away from Leslie to
20 avoid confrontation.

21 25. Following this incident, Leslie escalated the situation by getting her boyfriend to the
22 hotel premises, who then physically threatened Plaintiff. Plaintiff again acted reasonably and
23 avoided any physical confrontation.

24 26. Plaintiff promptly reported Leslie's conduct and the threat posed by her boyfriend to
25 management.

26 27. On or about December 11, 2025, in response to Plaintiff's report of the threat,
27 management placed Plaintiff on paid leave. Shortly after, Defendants terminated Plaintiff's
28 employment for complaining about harassment and for exercising his rights under FEHA.

1 **CLASS ALLEGATIONS**

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

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

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

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

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

14 **Wage Statement Penalties Sub-Class:** All **Hourly Employee Class**
15 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.

16 **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members
17 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.

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

20 **Expense Reimbursement Class:** All persons employed by Defendants in California
21 who incurred business expenses during the **Relevant Time Period**.

22 **Vacation Pay Class:** All persons employed by Defendants in California who earned
23 paid vacation days, including but not limited to, "Floating Holidays," without
receiving compensation for each vested paid vacation day during the **Relevant Time**
Period.

24 **Floating Holiday Class:** All persons employed by Defendants in California who were
25 eligible to receive compensation for "floating holidays" during the **Relevant Time**
Period.

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

1 31. **Numerosity**: The class members are so numerous that the individual joinder of each
2 individual class member is impractical. While Plaintiff does not currently know the exact number of
3 class members, Plaintiff is informed and believes, and thereupon alleges, that the actual number
4 exceeds the minimum required for numerosity under California law.

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

- 8 i. Whether Defendants maintained a policy or practice of failing to provide employees
9 with their meal periods;
- 10 ii. Whether Defendants maintained a policy or practice of failing to provide employees
11 with their rest periods;
- 12 iii. Whether Defendants failed to pay premium wages to class members when they have
13 not been provided with required meal and/or rest periods;
- 14 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
15 as a result of policies that fail to provide meal periods in accordance with California
16 law;
- 17 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
18 for all time worked;
- 19 vi. Whether Defendants failed to provide proportionate accruals for vested vacation time
20 for class members as required by California law;
- 21 vii. Whether Defendants subjected the vacation time and/or floating holidays they offer
22 to class members to forfeiture;
- 23 viii. Whether Defendants failed to reimburse class members for all necessary business
24 expenses incurred during the discharge of their duties;
- 25 ix. Whether Defendants failed to provide class members with accurate written wage
26 statements as a result of providing them with written wage statements with
27 inaccurate entries for, among other things, amounts of gross and net wages, and total
28 hours worked;

x. Whether Defendants applied policies or practices that result in late and/or incomplete final wage payments;

xi. Whether Defendants are liable to class members for waiting time penalties under Labor Code section 203;

xii. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;

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

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

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

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

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

2 37. Plaintiff worked for Defendants as an hourly, non-exempt employee from
3 approximately July 11, 2025 through December 8, 2025.

4 **Missed Meal Periods**

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

12 39. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
13 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours
14 worked due to complying with Defendants' productivity requirements that required Plaintiff and
15 the putative class to work through their meal periods in order to complete their assignments on
16 time.

17 **Missed Rest Periods**

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

25 41. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
26 provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked
27 due to complying with Defendants' productivity requirements that required Plaintiff and the
28 putative class to work through their rest periods in order to complete their assignments on time.

Vacation Pay

42. Plaintiff and the putative class accrued vacation wages during their employment with Defendants.

43. Vacation wages are considered a form of wages under Labor Code § 200. Vested vacation pay and other similar forms of paid time off earned based on labor performed are considered wages that cannot be subject to forfeiture without compensation for forfeited days at the applicable rates required by law.

44. At all relevant times, Defendants maintained policies that provide for the unlawful forfeiture of vested vacation pay in violation of Labor Code § 227.3 and *Suastez v. Plastic Dress-Up Co.*, (1982) 31 Cal. 3d 774.

45. Plaintiff and the putative class are entitled to vacation accrued during their employment with Defendants. Upon termination, Plaintiff and the putative class were not paid all accrued vacation pay.

Expense Reimbursement

46. Plaintiff and the putative class members were required to utilize their own personal cell phones to perform their job duties.

47. Plaintiff and the putative class members were not reimbursed for business expenses incurred in using their personal cell phones to perform work-related tasks.

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

Wage Statements

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

50. 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.

51. 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

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

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

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

9 **FIRST CAUSE OF ACTION**

10 **SEXUAL HARASSMENT IN VIOLATION OF GOV. CODE § 12940 ET SEQ**

11 **(Against All Defendants)**

12 54. Plaintiffs reallege and incorporate all preceding paragraphs, as though set forth
13 in full herein.

14 55. The actions of Defendants, as described in this Complaint, constitute
15 unlawful sexual harassment against Plaintiff.

16 56. The harassment by Defendants created a hostile, intimidating, and oppressive work
17 environment for Plaintiff, whereby the conditions of their employment were adversely affected.
18 Moreover, the harassment impeded Plaintiffs’ process and the enjoyment of their employment for
19 Defendants.

20 57. Defendants’ harassment and discrimination described in this Complaint violates the
21 Fair Employment and Housing Act as promulgated in Government Code section 12940 *et seq.* and
22 other state and federal statutes that prohibit harassment and discrimination in employment,
23 including the California Constitution and Civil Rights Act, as amended.

24 58. As a direct and proximate result of Defendants’ harassment and discrimination,
25 Plaintiffs have suffered and will continue to suffer damages in an amount within the jurisdiction of
26 this Court, the exact amount to be proven at trial. Such damages include loss of salary and other
27 valuable employment benefits, prejudgment interest and interest on the sum of damages at the legal
28 rate, and other consequential damages, including damages for shame, humiliation, mental anguish,

1 and emotional distress caused by the conduct of Defendants and each of them.

2 59. In addition, pursuant to Government Code section 12965(b), Plaintiff is entitled
3 to his attorneys' fees in prosecuting this lawsuit.

4 60. Because the wrongful acts against Plaintiff were carried out, authorized, or ratified
5 by Defendants' directors, officer and/or managing agents, acting with malice, oppression or fraud,
6 or were deliberate, willful, and in conscious disregard of the probability of causing injury to
7 Plaintiff, as reflected by the actions as described earlier in this Complaint, Plaintiff seeks punitive
8 damages against Defendants, and each of them, in order to deter them from such and similar
9 conduct in the future.

10 **SECOND CAUSE OF ACTION**

11 **RETALIATION IN VIOLATION OF GOV. CODE §12940(h)**

12 **(Against All Defendants)**

13 61. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
14 forth herein.

15 62. At all times herein mentioned, FEHA, Government Code section 12940(h), was in
16 full force and effect and binding on Defendants. These statutes require Defendants to refrain from
17 retaliating against Plaintiff.

18 63. Defendants' adverse actions against Plaintiff as described in this Complaint
19 constitute unlawful retaliation against Plaintiff for reporting his qualified disability to Defendants.

20 64. As a direct and proximate cause of Defendants' violation of California Government
21 Code section 12940(h), Plaintiff has suffered and will continue to suffer damages in an amount
22 within the jurisdiction of this court, the exact amount to be proven at trial.

23 65. As a further direct and legal result of the acts and conduct of Defendants, Plaintiff
24 has been caused to, and did, suffer and continues to suffer severe emotional and mental distress and
25 anguish, humiliation, embarrassment, anger, shock, pain, discomfort, and anxiety. The exact nature
26 and extent of these injuries is presently unknown to Plaintiff, who will pray leave of court to assert
27 the same when they are ascertained.

28 66. The aforementioned acts of Defendants were willful, wanton, malicious, intentional,

1 oppressive, and despicable, and were done in willful and conscious disregard of the rights of
2 Plaintiff and were done by managerial agents and employees of Defendants, or with the express
3 knowledge, consent, and ratification of managerial employees of Defendants, and thereby justify the
4 awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT**

7 **IN VIOLATION OF GOV. CODE § 12940(k)**

8 **(Against All Defendants)**

9 67. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth
10 in full herein.

11 68. At all times mentioned herein, California Government Code section 12940 *et*
12 *seq.* was in full force and effect and binding on Defendants. These sections require Defendants to
13 take reasonable steps to prevent discrimination from occurring.

14 69. As alleged herein, Plaintiff suffered unlawful discrimination and harassment at the
15 hands of Defendants.

16 70. Defendants, and each of them, failed to take all reasonable steps to prevent such
17 harassment and discrimination in violation of Government Code section 12940(k).

18 71. Defendants failed to take appropriate and/or reasonable steps to train
19 and/or monitor its employees, supervisors and/or managers regarding disability discrimination
20 by failing to enforce a policy against unlawful discrimination, and by failing to take prompt and
21 appropriate disciplinary action against the perpetrators of discrimination.

22 72. As a direct and proximate result of Defendants' failure to take all reasonable steps to
23 prevent harassment and discrimination, Plaintiff has suffered and will continue to suffer damages in
24 an amount within the jurisdiction of this Court, the exact amount to be proven at trial. Such
25 damages include loss of salary and other valuable employment benefits, prejudgment interest and
26 interest on the sum of damages at the legal rate, and other consequential damages, including
27 damages for shame, humiliation, mental anguish, and emotional distress caused by the conduct of
28 Defendants and each of them.

1
2 73. In addition, pursuant to Government Code section 12965(b), Plaintiff is entitled to
3 his attorneys' fees in prosecuting this lawsuit.

4 74. Because the wrongful acts against Plaintiff were carried out, authorized, or ratified
5 by Defendants' directors, officers and/or managing agents, acting with malice, oppression or fraud,
6 or were deliberate, willful, and in conscious disregard of the probability of causing injury to
7 Plaintiff, as reflected by the actions as described earlier in this Complaint, Plaintiff seeks punitive
8 damages against Defendants, and each of them, in order to deter them from such and similar
9 conduct in the future.

10 **FOURTH CAUSE OF ACTION**
11 **VIOLATION OF LABOR CODE § 1102.5**
12 **(Against All Defendants)**

13 75. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth
14 in full herein.

15 76. Plaintiff attempted to disclose and remedy Defendants' violations of Cal. Gov.
16 Code section 12940 *et seq.*, and Business and Professions Code section 17200 governing
17 discrimination, harassment, retaliation and unfair business practices. Plaintiff disclosed the
18 violations to persons with authority over him, and to another employee who had authority to
19 investigate, discover, or correct the violation or noncompliance.

20 77. Defendants violated Labor Code § 1102.5 by, inter alia:

- 21 a. Making, adopting or enforcing a rule, regulation or policy preventing Plaintiff
22 from disclosing information to a government or law enforcement agency, or to a
23 person with authority over the employee, or to another employee who has
24 authority to investigate, discover, or correct the violation or noncompliance,
25 where Plaintiff had reasonable cause to believe that the information disclosed
26 was a violation of state or federal statute, or a violation or noncompliance with a
27 state of federal regulation:
- 28 b. Retaliating against Plaintiff for disclosing information to a government or law

1 enforcement agency, to a person with authority over the employee or another
2 employee who has the authority to investigate, discover, or correct the violation
3 or noncompliance, where Plaintiff had reasonable cause to believe that the
4 information discloses a violation of state or federal statute, or a violation or
5 noncompliance with a state or federal rule or regulation;

6 c. Retaliating against Plaintiff for refusing to participate in an activity that would
7 result in a violation of state or federal statute, or a violation or noncompliance
8 with a state or federal rule or regulation; and

9 d. Retaliating against Plaintiff for having exercised her rights under the foregoing
10 paragraphs 77 a, b, and c.

11 78. Defendants resisted and opposed Plaintiff's attempts to disclose and remedy its
12 violations of Labor Code § 1102.5. Indeed, Defendants retaliated against Plaintiff
13 for disclosing Defendants violations and unlawful practices by terminating him.

14 79. As a direct and proximate cause of Defendants' violation of Labor Code § 1102.5,
15 Plaintiff has suffered and will continue to suffer damages in an amount within the jurisdiction of
16 this court, the exact amount to be proven at trial.

17 80. As a further direct and legal result of the acts and conduct of Defendants, Plaintiff
18 has been caused to, and did, suffer and continues to suffer severe emotional and mental distress and
19 anguish, humiliation, embarrassment, anger, shock, pain, discomfort, and anxiety. The exact nature
20 and extent of these injuries is presently unknown to Plaintiff, who will pray leave of court to assert
21 the same when they are ascertained.

22 81. The aforementioned acts of Defendants were willful, wanton, malicious, intentional,
23 oppressive, and despicable, and were done in willful and conscious disregard of the rights of
24 Plaintiff and were done by managerial agents and employees of Defendants, or with the express
25 knowledge, consent, and ratification of managerial employees of Defendants, and thereby justify the
26 awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

5 82. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged
6 herein.

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

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

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

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

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

22 88. Section 11 of the applicable Wage Order states:

23 "No employer shall employ any person for a work period of more than five (5)
24 hours without a meal period of not less than 30 minutes, except that when a
25 work period of not more than six (6) hours will complete the day's work the
26 meal period may be waived by mutual consent of the employer and employee.
27 Unless the employee is relieved of all duty during a 30 minute meal period, the
28 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."

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

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

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

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

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

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

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

24 **SIXTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE REST PERIODS**

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

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

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

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

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

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

12 100. Compensation for missed rest periods constitutes wages within the meaning of Labor
13 Code § 200.

14 101. Labor Code § 1198 makes it unlawful to employ a person under conditions that
15 violate the Wage Order.

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

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

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

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

28 106. 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.

SEVENTH CAUSE OF ACTION

FAILURE TO PAY HOURLY AND OVERTIME WAGES

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

(Plaintiff and Hourly Employee Class)

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

108. 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.

109. 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."

110. 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.

111. 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.

112. 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.

113. 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 period.

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

1 115. Labor Code § 1198 makes it unlawful for employers to employ employees under
2 conditions that violate the applicable Wage Order.

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

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

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

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

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

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

24 122. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
25 **Employee Class** members all earned wages every pay period at the correct rates, including
26 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and
27 **Hourly Employee Class** members to perform off-the-clock work.

28

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

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

125. 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 **Hourly Employee Class** members, seeks to recover reasonable attorneys' fees.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY VACATION WAGES

(Lab. Code § 227.3)

(Plaintiff and Vacation Pay Class)

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

127. California Labor Code section 227.3 provides:

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

128. At all relevant times during the applicable limitations period, Plaintiff and members of the **Vacation Pay Class** accrued vacation time during their employment with Defendants.

129. As a result of Defendants' reimbursement policies and practices, Plaintiff is informed and believes and thereon alleges that Defendants failed to reimburse him and **Vacation Pay Class** members for all accrued vacation wages.

130. By reason of the above, Plaintiff and the members of the **Vacation Pay Class** are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of

1 the filing of the original Complaint until the date of entry of judgment.

2 131. Plaintiff, on behalf of himself and the members of the **Vacation Pay Class**, seeks
3 interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California
4 Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of Civil
5 Procedure section 1021.5.

6 **NINTH CAUSE OF ACTION**

7 **FAILURE TO INDEMNIFY**

8 **(Lab. Code § 2802)**

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

10 132. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

11 133. Labor Code section 2802(a) states:

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

15 134. At all relevant times during the applicable limitations period, Plaintiff and the
16 **Expense Reimbursement Class** members incurred necessary business-related expenses and costs,
17 including, but not limited to, personal cell phone usage.

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

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

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

138. 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.

139. 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.

140. 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.

141. 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.

TENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Plaintiff and Wage Statement Penalties Sub-Class)

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

143. 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.

11 144. 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.)

18 145. 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.

21 146. 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).

26 147. 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.

2 148. 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.

8 149. 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 **ELEVENTH CAUSE OF ACTION**

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

13 **(Lab. Code §§ 201–203)**

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

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

16 151. 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.

19 152. 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.

21 153. 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.

24 154. 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.

27 155. 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.

163. Defendants discharged Plaintiff in violation of the aforementioned public policies,
under:

- a. California Government Code § 12940, *et seq.*;
- b. California Government Code § 12940(m);
- c. California Government Code § 12940(n);
- d. California Government Code § 12940(h);
- e. California Government Code § 12940(k);
- f. California Labor Code § 98.6;
- g. California Labor Code § 1102.5;
- h. California Labor Code § 232.5;
- i. California Labor Code § 6310; and
- j. California Labor Code § 6311.

164. As a direct and proximate cause of his wrongful discharge, Plaintiff has suffered and will continue to suffer damages in an amount within the jurisdiction of this court, the exact amount to be proven at trial.

165. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered and continues to suffer actual, consequential, and incidental financial losses, including without limitation, loss of salary and benefits, emotional distress, humiliation, mental anguish, anger, and embarrassment, all in an amount subject to proof at the time of trial.

166. The aforementioned acts of Defendants were willful, wanton, malicious, intentional, oppressive, and despicable, and were done in willful and conscious disregard of the rights of Plaintiff and were done by managerial agents and employees of Defendants, or with the express knowledge, consent, and ratification of managerial employees of Defendants, and thereby justify the awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

THIRTEENTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(Against All Defendants)

167. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth

1 in full herein.

2 168. Defendants discriminatory, harassing, and retaliatory actions against
3 Plaintiffs constituted severe and outrageous misconduct and caused Plaintiffs extreme emotional
4 distress.

5 169. Defendants had the intention of causing and/or recklessly disregarded the probability
6 of causing emotional distress to Plaintiffs and did, in fact, cause emotional distress to
7 Plaintiffs. Defendants' misconduct caused Plaintiff severe emotional distress, including, but not
8 limited to, depression and anxiety.

9 170. As a proximate result of Defendants extreme and outrageous conduct, Plaintiff has
10 suffered and will continue to suffer severe emotional distress. Plaintiff has sustained and continues
11 to sustain substantial losses of earnings and other employment benefits as a result of being
12 emotionally distressed.

13 171. As a proximate result of Defendants extreme and outrageous conduct, Plaintiff has
14 suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and
15 anguish, all to his/her damages in a sum according to proof.

16 172. The aforementioned acts of Defendants were willful, wanton, malicious, intentional,
17 oppressive, and despicable, and were done in willful and conscious disregard of the rights of
18 Plaintiff and were done by managerial agents and employees of Defendants, or with the express
19 knowledge, consent, and ratification of managerial employees of Defendants, and thereby justify the
20 awarding of punitive and exemplary damages in an amount to be determined at the time of trial.

21 **FOURTEENTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

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

24 **(Plaintiff and UCL Class)**

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

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

28 175. Business and Professions Code §§ 17203–17204 allow a person who has lost money

1 or property as a result of unfair competition to bring a class action in accordance with Code of Civil
2 Procedure § 382 to recover money or property that may have been acquired from similarly situated
3 persons by means of unfair competition.

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

7 177. Plaintiff, on behalf of himself and the **UCL Class** members, re-alleges and
8 incorporates the FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH,
9 NINTH, TENTH, ELEVENTH, TWELFTH, and THIRTEENTH causes of action herein.

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

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

13 180. 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.

17 181. Defendants have committed criminal conduct through their policies and practices of,
18 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-
19 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
20 work period of five or more hours; provide non-exempt employees with rest periods of at least ten
21 minutes for each four-hour work period; pay non-exempt employees for all hours worked; pay
22 vacation wages; reimburse them for all necessary business-related expenses; provide accurate
23 written wage statements; and timely pay all final wages.

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

27 183. Defendants' unlawful conduct as alleged in this Complaint amounts to and
28 constitutes unfair competition within the meaning of Business and Professions Code section 17200

1 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
2 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of
3 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of himself and on
4 behalf of similarly situated persons in a class-action proceeding.

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

9 185. Plaintiff is informed and believes that other similarly situated persons have been
10 subject to the same unlawful policies or practices of Defendants.

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

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

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

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

28 190. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine

1 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
2 reasonable attorneys' fees in connection with their unfair competition claims.

3 **FIFTEENTH CAUSE OF ACTION**

4 **CIVIL PENALTIES**

5 **(Lab. Code §§ 2698 *et seq.*)**

6 191. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

7 192. During the applicable limitations period, Defendants have violated Labor Code §§
8 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1198, and 2802.

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

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

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

20
21 196. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
22 penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7,
23 227.3, 510, 512, 1194, 1197, 1198 and 2802:

- 24 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1194, 1198
25 and 2802, one hundred dollars (\$100) for each employee per pay period for
26 each initial violation and two hundred dollars (\$200) for each employee per
27 pay period for each subsequent violation (penalties set by Labor Code §
28 2699(f)(2));

- 1 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
2 thirty (30) days' pay as waiting time (penalties set by Labor Code § 256);
- 3 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
4 employee for each initial violation that was neither willful nor intentional,
5 two hundred dollars (\$200) for each employee, plus 25% of the amount
6 unlawfully withheld from each employee, for each initial violation that was
7 either willful or intentional, and two hundred dollars (\$200) for each
8 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
9 from each employee, for each subsequent violation, regardless of whether the
10 subsequent violation was either willful or intentional (penalties set by Labor
11 Code § 210);
- 12 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
13 employee for each initial violation that was neither willful nor intentional,
14 two hundred dollars (\$200) for each employee, plus twenty-five percent
15 (25%) of the amount unlawfully withheld from each employee, for each
16 initial violation that was either willful or intentional, and two hundred dollars
17 (\$200) for each employee, plus twenty-five percent (25%) of the amount
18 unlawfully withheld from each employee, for each subsequent violation,
19 regardless of whether the subsequent violation was either willful or
20 intentional (penalties set by Labor Code § 225.5);
- 21 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
22 citation, two hundred and fifty dollars (\$250) for each employee for each
23 violation. Alternatively, if an initial citation or its equivalent occurred before
24 the filing of this action, one thousand dollars (\$1,000) for each employee for
25 each violation (penalties set by Labor Code § 226.3);
- 26 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
27 employee for each initial pay period for which the employee was underpaid,
28 and one hundred dollars (\$100) for each employee for each subsequent pay

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period for which the employee was underpaid (penalties set by Labor Code § 558);

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.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of himself, all other current and former non-exempt
3 employees, and the general public, prays for relief and judgment against Defendants as follows:

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

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff, on behalf of himself, all other current and former non-exempt employees, and the
20 general public, hereby demands a jury trial on all issues so triable.

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22 Dated: April 30, 2026

SETAREH LAW GROUP

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26 SHAUN SETAREH
27 ERIC HAN
28 Attorneys for Plaintiff
MARCEL MCGEE