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BRAULIO CURIEL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

BRAULIO CURIEL, an individual, on behalf
of himself, on behalf of all persons similarly
situated, and on behalf of all aggrieved
employees

Plaintiff,

vs.

THE EDWARD THOMAS HOSPITALITY
CORP., a California corporation; and DOES 1
through 50 inclusive

Defendants.

Case No. **24STCV02181**

CLASS ACTION

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF; ENFORCEMENT ACTION
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA
LABOR CODE § 2698, ET SEQ:**

- 1. FAILURE TO PAY OVERTIME
COMPENSATION AND
LIQUIDATED DAMAGES (Lab.
Code, §§ 510, 1194, 1194.2, & 1198);**
- 2. FAILURE TO PAY MINIMUM
WAGES AND LIQUIDATED
DAMAGES (Lab. Code, §§ 1182.12,
1194; 1194.2; 1197; 1197.1; & 1198
and Cal. Code Regs., tit 8, § 11050);**
- 3. FAILURE TO PAY REPORTING
TIME WAGES AND LIQUIDATED
DAMAGES (CAL. LAB. CODE §§
1197; 1197.1; and 1198 and Cal.**

- Code Regs. § 11050(5)(A));
4. **FAILURE TO PROVIDE MEAL PERIODS** (Lab. Code, § 226.7 & 512, and Cal. Code Regs., tit. 8, § 11050);
 5. **FAILURE TO PROVIDE REST PERIODS** (Lab. Code, §§ 226.7 & 512, and Cal. Code Regs. tit. 8, § 11050);
 6. **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS AND MAINTAIN ACCURATE PAYROLL RECORDS** (Lab. Code, §§ 226, subd. (a), 1174, subd. (d), & 1198);
 7. **FAILURE TO REIMBURSE BUSINESS EXPENSES** (Lab. Code, §§ 2800 & 2802);
 8. **FAILURE TO PROVIDE ADEQUATE SEATING** (Lab. Code, § 1198; Cal. Code Regs., Tit. 8 § 11050(14));
 9. **FAILURE TO PAY WAGES UPON TERMINATION OF EMPLOYMENT** (Lab. Code, § 203);
 10. **VIOLATION OF LABOR CODE SECTION 558;**
 11. **UNFAIR COMPETITION** (Bus. & Prof. Code, §§ 17200, et seq.); and,
 12. **CIVIL PENALTIES FOR VIOLATIONS OF THE CALIFORNIA LABOR CODE, PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT** (CAL. LAB. CODE §§ 2698, et seq.)

DEMAND FOR A JURY TRIAL

All allegations in this Class Action Complaint are based upon information and belief except for those allegations which pertain to the named Plaintiff, BRAULIO CURIEL (referred to as PLAINTIFF) and his counsel. Each allegation has evidentiary support, or is likely to have evidentiary support, after a reasonable opportunity for further investigation and discovery.

1 I.

2 **JURISDICTION AND VENUE**

3 1. The Court has jurisdiction over this Complaint under Code of Civil
4 Procedure section 410.10. This Complaint is brought under Code of Civil Procedure section
5 382, Plaintiff brings this complaint on his own behalf, and on behalf of all persons in the
6 putative Class as defined in Paragraph 12 below, and as an aggrieved employee on behalf
7 of all aggrieved employees.

8 2. Venue is proper in the court under Code of Civil Procedure sections 395 and
9 395.5 because the claims made, and the Labor Code violations as against the persons
10 identified herein, occurred in the County of Los Angeles, California. Further, each of the
11 Defendants operated their businesses in the County of Los Angeles, California.

12 3. The Private Attorney Generals Act (“PAGA”) authorizes aggrieved
13 employees to sue an employer directly as the proxy of the State of California for civil
14 penalties for violations of various provisions in the California Labor Code.

15 II.

16 **THE PARTIES**

17 **PLAINTIFF**

18 4. BRAULIO CURIEL (referred to as PLAINTIFF) is, and at all material times
19 mentioned was:

20 (a) A male individual who resides in the County of Los Angeles,
21 California;

22 (b) Jointly employed as an employee by THE EDWARD THOMAS
23 HOSPITALITY CORP, a California corporation; and DOES 1
24 through 50 inclusive (“DEFENDANTS”), from on or about July 2017
25 to on or about April 2020, and again from on or about July 2, 2020, to on
26 or about July 7, 2023, as a bartender, bar back, mini bar stocker, pool
27 server, pool bartender, room service server, banquet server, and
28 housekeeper at the “Casa del Mar” hotel;

- (c) Was not properly paid for overtime hours worked;
- (d) Was not properly paid minimum wages;
- (e) Was not properly paid reporting time wages;
- (f) Did not receive compliant meal periods or meal-period premiums;
- (g) Did not receive compliant rest periods or rest-period premiums;
- (h) Did not receive accurate itemized wage statements;
- (i) Was not reimbursed for business expenses that he paid;
- (j) Was not properly provided all gratuities received by DEFENDANTS;
- (k) Did not receive adequate seating while on and off duty;
- (l) When terminated from his employment, was not paid for overtime wages owed, minimum wages owed, meal period wages owed, and rest period wages owed within the time limits prescribed by Labor Code section 201.

DEFENDANTS

5. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that THE EDWARD THOMAS HOSPITALITY CORP, is, and at all times mentioned was:

- (a) A California corporation authorized to conduct business, and actually conducting business, in Los Angeles County, California; and,
- (b) The owner and operator of various hotels, restaurants, and bars throughout Los Angeles County, California.

6. THE EDWARD THOMAS HOSPITALITY CORP, and DOES 1 through 50 are collectively referred to as “DEFENDANTS” throughout this Complaint.

7. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of Defendant DOES 1 through 50, inclusive, are unknown to the PLAINTIFF, who therefore sues these Defendants by those fictitious names under Code of Civil Procedure section 474. PLAINTIFF will seek leave to amend the Complaint to allege the true names and capacities of DOES 1 through 50, inclusive, when

1 they are ascertained.

2 8. PLAINTIFF is informed and believes, and based upon that information and
3 belief alleges, that Defendant DOES 1 through 50 are persons, corporations or other entities
4 which reside in, or are otherwise doing business in the State of California. Each of the
5 Defendants DOES 1 through 50 was the managerial agent, employee, predecessor,
6 successor, joint-venturer, co-conspirator, alter ego and/or representative of one or more of
7 the other Defendants named herein, and acted with permission, authorization and/or
8 ratification and consent of other Defendants.

9 9. PLAINTIFF is informed and believes, and based upon that information and
10 belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50,
11 inclusive, are responsible in some manner for one or more of the events and happenings
12 that proximately caused the injuries and damages hereinafter alleged.

13 10. PLAINTIFF is informed and believes, and based upon that information and
14 belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50,
15 inclusive, are, and at all times mentioned herein were, the agents, servants, and/or
16 employees of each of the other Defendants, and that each Defendant was acting within the
17 course of scope of his, hers, or its authority as the agent, servant and/or employee of each
18 of the other Defendants. Consequently, all the Defendants are jointly and severally liable to
19 PLAINTIFF, the putative Class, and all aggrieved employees for their damages sustained as
20 a proximate result of Defendants' conduct.

21 11. PLAINTIFF is informed and believes, and based upon that information and
22 belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50,
23 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
24 themselves and entered into a combination and systemized campaign of activity to inter alia
25 damage PLAINTIFF, the putative Class, and all aggrieved employees, and to otherwise
26 consciously and/or recklessly act in derogation of PLAINTIFF, the putative Class, and all
27 aggrieved employees, and the trust reposed by PLAINTIFF, the putative Class, and all
28 aggrieved employees in each of the Defendants, the acts being negligently and/or

intentionally inflicted. Their conspiracy, and Defendants' concerted actions, were such that, to PLAINTIFF's information and belief, and to all appearances, Defendants represented a unified body so that the actions of one Defendant were accomplished in concert with, and with the knowledge, ratification, authorization and approval of each of the other Defendants.

III.

CLASS ALLEGATIONS

A. The Definition of The Class

12. The Class ("the Class") consists of:

All current and former non-exempt employees, as well as those who were misclassified as exempt employees or independent contractors, of THE EDWARD THOMAS HOSPITALITY CORP., a California corporation, in the State of California, at any time during the period commencing on the date that is within four years prior to the filing of this Complaint and continuing thereafter (the "Class Period").

B. Maintenance Of the Action

13. PLAINTIFF brings the action individually and on behalf of all similarly situated persons under Business and Professions Code sections 17203 and 17024 and Code of Civil Procedure section 382.

C. The Class Requisites

14. At all material times, PLAINTIFF was and is a member of the putative Class.

15. This class action meets the statutory prerequisites for maintaining a class action under Code of Civil Procedure section 382, in that:

- (a) The persons who comprise the Class are so numerous that the joinder of all those persons is impracticable and the disposition of their claims as a class will benefit the parties and the court;
- (b) The factual, legal, statutory, declaratory, and injunctive-relief issues that are raised in this Complaint are common to the Class and will apply uniformly to every Class member;

1 (c) The claims of PLAINTIFF are typical of the claims of each Class
2 member. PLAINTIFF, like all other putative Class members, has
3 sustained damages arising from DEFENDANTS' violations of the
4 laws of the State of California. PLAINTIFF, and the putative Class
5 members, were and are similarly or identically harmed by the same
6 unlawful, deceptive, unfair, systematic and pervasive pattern of
7 misconduct engaged in by the DEFENDANTS;

8 (d) PLAINTIFF has, and will continue to, fairly and adequately represent
9 and protect the interests of the Class, and has retained counsel who
10 are competent and experienced in class action litigation. There are no
11 material conflicts between the claims of PLAINTIFF and the Class
12 members that would make class certification inappropriate. Counsel
13 for the Class will competently and vigorously assert the claims of all
14 Class members.

15 16. The persons who comprise the Class are so numerous that joining all of them
16 is impracticable, and jointly adjudicating their claims will benefit the parties and the court.
17 PLAINTIFF's claims are typical of the claims of the Class that PLAINTIFF seeks to
18 represent. PLAINTIFF will fairly and adequately protect the interests of the Class that she
19 seeks to represent. PLAINTIFF does not have any interests that are antagonistic to the
20 Class that she seeks to represent. Counsel for PLAINTIFF are experienced, qualified, and
21 generally able to conduct complex class action litigation.

22 17. The Court should permit the action to be maintained as a class action under
23 Code of Civil Procedure section 382 because:

24 (a) The questions of law and fact common to the Class predominate over
25 any question affecting only individual members;

26 (b) A class action is superior to any other available method for fairly and
27 efficiently adjudicating the claims of the Class;

28 (c) The Class members are so numerous that it is impractical to bring all

1 of them before the Court;

2 (d) PLAINTIFF and the other Class members will not be able to obtain
3 effective and economic legal redress unless the action is maintained as
4 a class action;

5 (e) There is a community of interest in obtaining appropriate legal and
6 equitable relief for the statutory violations, and in obtaining adequate
7 compensation for the damages and injuries for which DEFENDANTS
8 are responsible in an amount sufficient to adequately compensate the
9 Class members;

10 (f) Without Class certification, the prosecution of separate actions by
11 individual Class members would create a risk of:

- 12 i. Inconsistent or varying adjudications for individual Class
13 members that would establish incompatible standards of
14 conduct for DEFENDANTS; and/or,
15 ii. Adjudications for individual Class members that would, as a
16 practical matter, dispose of other non-party members' interests,
17 or that would substantially impair or impede the non-parties'
18 ability to protect their interests, by, for example, potentially
19 exhausting the funds available from DEFENDANTS; and,

20 (g) DEFENDANTS have acted, or refused to act, on grounds generally
21 applicable to the Class, making final injunctive relief appropriate for
22 the Class as a whole.

23 18. PLAINTIFF contemplates issuing notice to the proposed Class members that
24 would set forth the subject and nature of the action. The DEFENDANTS' own business records
25 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that any
26 further notices may be required, PLAINTIFF would contemplate using additional media and/or
27 mailings to provide notice to all Class members.
28

1 IV.

2 **PAGA REPRESENTATIVE ALLEGATIONS**

3 19. The California Private Attorneys General Act (“PAGA”), codified in Labor Code
4 section 2698 et seq., provides that any civil penalties to be assessed and collected by the LWDA
5 for violations of the Labor Code and applicable Industrial Wage Commission (“IWC”) Wage
6 Orders may be recovered by aggrieved employees, deputized by the State of California, in a
7 civil action brought on behalf of themselves and other current or former employees pursuant to
8 procedures outlined in Labor Code section 2699.3.

9 20. Labor Code section 2699, subdivision (c) defines an “aggrieved employee”
10 under PAGA as “any person who was employed by the alleged violator and against whom
11 one or more of the alleged violations was committed.”

12 21. PLAINTIFF and other current and former employees of DEFENDANTS are
13 “aggrieved employees” as defined by Labor Code section 2699, subdivision (c) in that they
14 are all Defendants’ current or former employees and one or more of the alleged violations
15 were committed against them.

16 22. October 24, 2023, PLAINTIFF provided written notice by online filing to the
17 LWDA and by Certified Mail to THE EDWARD THOMAS HOSPITALITY CORP’s
18 attorneys, of the specific provisions of the California Labor Code alleged to have been
19 violated, including facts and theories to support the alleged violations, in accordance with
20 Labor Code section 2699.3. PLAINTIFF’s notice was accompanied with the applicable
21 filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt
22 of Plaintiff’s notice and assigned Plaintiff PAGA Case Number LWDA-CM-980102-23.

23 23. PLAINTIFF has satisfied the administrative prerequisites under Labor Code
24 sections 2699.3, subdivision (a) and 2699.3, subdivision (c) to recover civil penalties
25 against DEFENDANTS for violations of Labor Code sections 201, 202, 203, 226, 226.7,
26 351, 510, 512, 516, 558, 1182.12, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

27 24. Labor Code section 558, subdivision (a) provides, “Any employer or other
28 person acting on behalf of an employer who violates, or causes to be violated, a section of

1 this chapter or any provision regulating hours and days of work in any order of the
2 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any
3 initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
4 which the employee was underpaid....(2) For each subsequent violation, one hundred
5 dollars (\$100) for each underpaid employee for each pay period for which the employee
6 was underpaid....” Labor Code section 558, subdivision (d) provides, “The civil penalties
7 provided for in this section are in addition to any other civil or criminal penalty provided
8 by law.”

9 25. DEFENDANTS, at all times relevant to this complaint, were employers or
10 persons acting on behalf of an employer(s) who violated PLAINTIFF’s and other aggrieved
11 employees’ rights by violating various sections of the Labor Code as set forth above.

12 26. As set forth below, DEFENDANTS have violated numerous provisions of
13 both the Labor Code sections regulating hours and days of work as well as the applicable
14 IWC Wage Order.

15 27. Pursuant to PAGA, and in particular, Labor Code sections 2699, subdivision
16 (a), 2699.3, subdivision (a), 2699.3, subdivision (c), 2699.5, and 558, PLAINTIFF, acting
17 in the public interest as a private attorney general, seeks assessment and collection of civil
18 penalties for himself, all other aggrieved employees, and the State of California against
19 DEFENDANTS for violations of Labor Code sections 201, 202, 203, 226, 226.7, 351, 510,
20 512, 516, 558, 1182.12, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

21 V.

22 THE CONDUCT

23 28. DEFENDANTS operate the “Casa Del Mar” hotel, including various
24 restaurants and bars within the premises of the hotel, located at 1910 Ocean Way, Santa
25 Monica, California 90405. DEFENDANTS also operate the “Shutters On The Beach” hotel,
26 including various restaurants and bars within the premises of the hotel, located at 1 Pico
27 Blvd., Santa Monica, California 90405.

28 29. DEFENDANTS’ business requires the use of “non-exempt” employees as

1 defined by the California Labor Code and IWC Wage Order No. 5-2001 (as amended),
2 including but not limited to school program directors, teachers, assistants, and clerical
3 employees.

4 30. DEFENDANTS exercised complete and unfettered control over
5 PLAINTIFF's, the putative Class', and all aggrieved employees' work schedules; their
6 hours worked; their rates of pay and methods of payment; dictated how PLAINTIFF, the
7 putative Class, and all aggrieved employees, would actually perform their jobs; and
8 dictated if and when PLAINTIFF, the putative Class, and all aggrieved employees could
9 take lunch or rest breaks. PLAINTIFF, the putative Class, and all aggrieved employees
10 could not exercise discretion and independent judgment regarding the tasks they performed.
11 PLAINTIFF, the putative Class, and all aggrieved employees had to obtain approval on any
12 action taken in the course of working for DEFENDANTS. PLAINTIFF, the putative Class,
13 and all aggrieved employees were not exempt employees. Therefore, the California Wage
14 Order codified in California Code of Regulations, title 8, section 11050, applies to
15 PLAINTIFF, the putative Class, and all aggrieved employees.

16 31. DEFENDANTS jointly employed PLAINTIFF from on or about July 2017 to
17 on or about April 2020, and again from on or about July 2, 2020, to on or about July 7,
18 2023, as a bartender, bar back, mini bar stocker, pool server, pool bartender, room service
19 server, banquet server, and housekeeper.

20 32. From on or about 2017 through on or about 2019, PLAINTIFF worked for
21 DEFENDANTS as a housekeeper. From on or about 2019 to on or about April 2020, and again
22 from on or about July 2, 2020 through on or about December of 2022, PLAINTIFF worked for
23 DEFENDANTS as a pool server / pool bartender approximately three times per week and as a
24 bartender approximately two times per week. During this time period, approximately two times
25 per month, PLAINTIFF would perform room service or stock mini bars.

26 33. From on or about December 2022 through April 2023, PLAINTIFF was
27 primarily employed by DEFENDANTS as a bartender.
28

1 34. From on or about April 2023 through on or about July 7, 2023, PLAINTIFF was
2 primarily employed by DEFENDANTS as a pool server / pool bartender. During this time
3 period, PLAINTIFF was employed by DEFENDANTS as a banquet server approximately once
4 per week.

5 35. DEFENDANTS employed PLAINTIFF on Wednesdays through Sundays.
6 PLAINTIFF was typically scheduled to work for eight-hour shifts. On occasion, PLAINTIFF
7 would work up to 11-hour shifts. On approximately two occasions, on or about 2022,
8 PLAINTIFF was required by DEFENDANTS to work approximately 15 minutes after his
9 scheduled shift, and without proper pay, to calculate tip outs for himself and other employees of
10 DEFENDANT. When PLAINTIFF worked at DEFENDANTS' Casa Del Mar pool, he was
11 required to work approximately three minutes after his scheduled shift, and without proper pay,
12 doffing his required uniform. When PLAINTIFF worked at DEFENDANTS' Casa Del Mar bar,
13 he was required to work approximately five minutes after his scheduled shift, and without
14 proper pay, doffing his required uniform. When PLAINTIFF'S employment with
15 DEFENDANTS ended, his pay was \$19.73 or \$20.09 per hour.

16 36. DEFENDANTS required that PLAINTIFF, the putative Class, and all
17 aggrieved employees work more than 8 hours in a day or more than forty 40 hours per week
18 without proper overtime compensation.

19 37. DEFENDANTS required that PLAINTIFF, the putative Class, and all aggrieved
20 employees work hours without paying compensation at the minimum wage.

21 38. DEFENDANTS failed to pay PLAINTIFFS, the putative Class, and other
22 aggrieved employees reporting time pay when they scheduled PLAINTIFF, the putative
23 Class, and other aggrieved employees for a shift and then abruptly took away that shift
24 immediately before its start. Approximately once every two months, DEFENDANTS
25 provided PLAINTIFF with a scheduled shift, only to revoke that scheduled shift
26 approximately twenty minutes before its scheduled start. This caused PLAINTIFF, who, at
27 times, lived up to one and one-half hours away from DEFENDANTS' place of work, to
28 drive long distances in anticipation of employment. On those occasions, DEFENDANTS

1 failed to pay PLAINTIFF, the putative Class, and other aggrieved employees for half of
2 their regular shifts at the minimum wage.

3 39. DEFENDANTS did not provide PLAINTIFF, the putative Class, and all
4 aggrieved employees, with code-compliant 10-minute rest periods or 30-minute meal
5 periods. DEFENDANTS failed to compensate PLAINTIFF, the putative Class, and all
6 aggrieved employees for the missed rest periods or meal periods and, therefore, for the total
7 hours worked. As a result, PLAINTIFF, the putative Class, and all aggrieved employees did
8 not receive accurate wage statements from DEFENDANTS.

9 40. PLAINTIFF, the putative Class, and all aggrieved employees, were not properly
10 paid for hours worked, were not provided with proper reporting time pay, and were not provided
11 with premium payments for missed rest and meal periods. Thus, DEFENDANTS' wage
12 statements were not in conformity with Labor Code section 226. The wage statements failed to
13 accurately indicate PLAINTIFF's, the putative Class', and all aggrieved employees', hours
14 worked. The wage statements also failed to accurately indicate the reporting time wages owed to
15 PLAINTIFF, the putative Class, and all aggrieved employees. The wage statements also failed
16 to include the meal and rest break premium payments that should have been paid to
17 PLAINTIFF, the putative Class, and all aggrieved employees. Additionally, DEFENDANTS'
18 wage statements failed to list the name of the legal entity of the employer of PLAINTIFF, the
19 putative Class, and all aggrieved employees.

20 41. DEFENDANTS failed to reimburse PLAINTIFF, the putative Class, and all
21 aggrieved employees for all necessary expenditures incurred in their course and scope of
22 employment, including cell phones and cell phone plans. DEFENDANTS required
23 PLAINTIFF to install the "7shifts" application on his phone, which enabled him to view his
24 scheduled shifts, input his days of availability for employment, and trade shifts with other
25 employees. PLAINTIFF's cell phone cost him approximately \$1,000.00 and his cell phone
26 plan cost him approximately \$104.00 per month. On information and belief, DEFENDANTS
27 treated members of the putative Class and aggrieved employees similarly.
28

1 42. PLAINTIFF is informed and believes, and based upon that information and
2 belief alleges, that in violation of DEFENDANTS' tip pooling policy and / or agreement with
3 other employees, DEFENDANTS did not properly distribute tips received, on an hourly basis,
4 at the lobby bar area during the evening ("P.M.") shift to employees who continued to work
5 from the morning ("A.M.") shift to the evening shift. As such, DEFENDANTS' tip pooling
6 policy was in direct violation of Labor Code section 351.

7 43. DEFENDANTS did not provide PLAINTIFF and all aggrieved employees with
8 an adequate number of suitable seats in reasonable proximity to the work area that could be used
9 when using the seats would not interfere with the performance of job duties. PLAINTIFF, the
10 putative Class, and all aggrieved employees spent substantial parts of their workdays behind
11 cash registers or Point of Sale systems, regardless of their actual job titles or descriptions. The
12 nature of the work of an employee performing customer service or cashier duties can reasonably
13 be accomplished from a seated position. However, DEFENDANTS did not provide seats or
14 stools at or near each cash register or Point of Sale System forcing PLAINTIFF, the putative
15 Class, and all aggrieved employees to stand throughout their work shifts.

16 44. DEFENDANTS failed to pay PLAINTIFF, members of the putative Class, and
17 aggrieved employees all wages due upon termination of employment.

18 **FIRST CAUSE OF ACTION**
19 **FOR FAILURE TO PAY OVERTIME COMPENSATION AND LIQUIDATED**
20 **DAMAGES**

21 **(Lab. Code, §§ 510, 1194, 1194.2 & 1198)**

22 **(By PLAINTIFF, on his own behalf, on behalf of all employees similarly situated, and**
23 **against all DEFENDANTS)**

24 45. PLAINTIFF repeats and re-alleges paragraphs 1 through 44, inclusive, of this
25 Complaint and they are incorporated herein by this reference.

26 46. Under the applicable IWC Wage Order 5-2001 (as amended),
27 DEFENDANTS were the joint employers of PLAINTIFF and the putative Class.

28 47. Labor Code section 510 provides that employees in California shall not be

1 employed more than eight (8) hours in any workday or 40 hours in a workweek unless they
2 receive additional compensation beyond their regular wages in amounts specified by law.

3 48. California Code of Regulations, title 8, section 11050, subdivision (3)(A)(3)
4 provides that overtime hours shall be compensated at: (a) One and one-half (1 ½) times the
5 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and
6 including 12 hours in any workday, and for the first eight (8) hours worked on the seventh
7 (7th) consecutive day of work in a workweek; and (b) Double the employee's regular rate
8 of pay for all hours worked in excess of 12 hours in any workday and for all hours worked
9 in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

10 49. Labor Code section 1194 establishes an employee's right to recover unpaid
11 overtime compensation, interest thereon, together with the costs of suit, and attorneys' fees.

12 50. Labor Code Section 1198 states that the employment of an employee for
13 longer hours than those fixed by the IWC is unlawful.

14 51. Labor Code section 1194.2 establishes an employee's right to recover
15 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon
16 in an action for payment of a wage less than the minimum wage fixed by the IWC or by
17 statute.

18 52. At all times relevant hereto, PLAINTIFF and the putative Class worked more
19 than eight (8) hours in a workday, and/or 40 hours in a workweek, as employees of
20 DEFENDANTS.

21 53. At all times relevant hereto, DEFENDANTS failed to pay overtime
22 compensation to PLAINTIFF and the putative Class for the hours they worked in excess of
23 the maximum hours permissible by law as required by Labor Code sections 510, 1194, and
24 1198.

25 54. DEFENDANTS acted intentionally, oppressively, and maliciously toward
26 PLAINTIFF and the putative Class with a conscious disregard of their rights, or the
27 consequences to them, with the intent of depriving them of property and legal rights and
28 otherwise causing them injury. By virtue of DEFENDANTS' unlawful failure to pay

1 overtime wages, PLAINTIFF and the putative Class have suffered, and will continue to
2 suffer, damages in the amounts which are presently unknown to them, but which exceed the
3 jurisdictional limits of the court, and which will be ascertained according to proof at trial.

4 55. PLAINTIFF individually and on behalf of the putative Class, seeks to
5 recover overtime wages according to proof, interest, as well as the assessment of all
6 applicable statutory penalties against DEFENDANTS, in a sum as provided by the Labor
7 Code and/or other statutes. PLAINTIFF individually and on behalf of the putative Class
8 also seeks to recover liquidated damages as provided by Labor Code section 1194.2, and
9 reasonable attorneys' fees and costs.

10 **SECOND CAUSE OF ACTION**

11 **FOR FAILURE TO PAY MINIMUM WAGES AND LIQUIDATED DAMAGES**

12 **(Lab. Code, §§ 1182.12, 1194, 1194.2, 1197, 1197.1, & 1198, and Cal. Code Regs., tit. 8,**
13 **§ 11050)**

14 **(By PLAINTIFF, on his own behalf, on behalf of all employees similarly situated, and**
15 **against all DEFENDANTS)**

16 56. PLAINTIFF repeats and re-alleges paragraphs 1 through 55, inclusive, of this
17 Complaint and they are incorporated herein by this reference.

18 57. Labor Code sections 1182.12, 1197, and 1197.1 require employers to pay
19 employees the minimum wage fixed by the California Industrial Welfare Commission. The
20 payment of a lesser wage than the minimum so fixed is unlawful.

21 58. Compensable work time is defined in Industrial Wage Order No. 5 as "the time
22 during which an employee is subject to the control of an employer, and includes all the time the
23 employee is suffered or permitted to work, whether or not required to do so." (Cal. Code Regs.,
24 tit. 8, § 11050, subd. (2)(K) [defining "Hours Worked"].)

25 59. Labor Code section 1194 establishes an employee's right to recover unpaid wage
26 compensation, interest thereon, together with the costs of suit, and attorneys' fees.

27 60. Labor Code section 1194.2 establishes an employee's right to recover liquidated
28 damages in an amount equal to the wages unlawfully unpaid and interest thereon in an action for

1 payment of a wage less than the minimum wage fixed by the Industrial Welfare Commission or
2 by statute.

3 61. DEFENDANTS failed to properly pay PLAINTIFF for all hours worked at the
4 legal minimum wage.

5 62. DEFENDANTS acted intentionally, oppressively, and maliciously toward
6 PLAINTIFF and the putative Class with a conscious disregard of their rights, or the
7 consequences to them, with the intent of depriving them of property and legal rights and
8 otherwise causing them injury. By virtue of DEFENDANTS' unlawful failure to pay
9 minimum wages, PLAINTIFF and the putative Class have suffered, and will continue to
10 suffer, damages in the amounts which are presently unknown to them, but which exceed the
11 jurisdictional limits of the court, and which will be ascertained according to proof at trial.

12 63. PLAINTIFF individually and on behalf of the putative Class, seeks to
13 recover minimum wages according to proof, interest, as well as the assessment of all
14 applicable statutory penalties against DEFENDANTS, in a sum as provided by the Labor
15 Code and/or other statutes. PLAINTIFF individually and on behalf of the putative Class
16 also seeks to recover liquidated damages as provided by Labor Code section 1194.2, and
17 reasonable attorneys' fees and costs.

18 **THIRD CAUSE OF ACTION**
19 **FOR FAILURE TO PAY REPORTING TIME WAGES AND LIQUIDATED**
20 **DAMAGES**

21 **(Lab. Code, §§ 1197; 1197.1; 1198 and Cal. Code Regs. § 11050(5)(A))**
22 **(By PLAINTIFF, on his own behalf, on behalf of all employees similarly situated, and**
23 **against all DEFENDANTS)**

24 64. PLAINTIFF repeats and re-alleges paragraphs 1 through 63, inclusive, of this
25 Complaint and they are incorporated herein by this reference.

26 65. Labor Code section 1198 states that no employer may employ an employee
27 under conditions of labor that are prohibited by the applicable IWC Wage Order. California
28 Code of Regulations., title 8, section 11050, subdivision (5)(A) provides, "Each workday

1 an employee is required to report for work and does report, but is not put to work or is
2 furnished less than half said employee's usual or scheduled day's work, the employee shall
3 be paid for half the usual or scheduled day's work, but in no event for less than two (2)
4 hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not
5 be less than the minimum wage."

6 66. During PLAINTIFF's and the putative Class's employment, DEFENDANTS
7 frequently caused PLAINTIFF and the putative Class to report to work for a scheduled shift
8 but then failed to put PLAINTIFF and the putative Class to work for at least half of their
9 usual day's work shift or their scheduled day's work shift.

10 67. DEFENDANTS acted intentionally, oppressively, and maliciously toward
11 PLAINTIFF and the putative Class with a conscious disregard of their rights, or the
12 consequences to them, with the intent of depriving them of property and legal rights and
13 otherwise causing them injury. By virtue of DEFENDANTS' unlawful failure to pay
14 reporting time wages, PLAINTIFF and the putative Class have suffered, and will continue
15 to suffer, damages in the amounts which are presently unknown to them, but which exceed
16 the jurisdictional limits of the court, and which will be ascertained according to proof at
17 trial.

18 68. PLAINTIFF individually and on behalf of the putative Class, seeks to
19 recover reporting time wages, interest, as well as the assessment of all applicable statutory
20 penalties against DEFENDANTS, in a sum as provided by the Labor Code and/or other
21 statutes. PLAINTIFF individually and on behalf of the putative Class also seeks to recover
22 liquidated damages as provided by Labor Code section 1194.2, and reasonable attorneys'
23 fees and costs.

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1 **FOURTH CAUSE OF ACTION**

2 **FOR FAILURE TO PROVIDE MEAL PERIODS**

3 **(Lab. Code §§ 226.7 & 512, and Cal. Code Regs., tit. 8, § 11050)**

4 **(By PLAINTIFF, on his own behalf, on behalf of all employees similarly situated, and**
5 **against all DEFENDANTS)**

6 69. PLAINTIFF repeats and re-alleges paragraphs 1 through 68, inclusive, of this
7 Complaint and they are incorporated herein by this reference.

8 70. Labor Code sections 226.7 and 512, and California Code of Regulations, title
9 8, section 11050, subdivision (11)(A) provide that an employee who works more than 5
10 hours in a day is entitled to a meal period of at least 30 minutes, and a second meal period
11 of at least 30 minutes if he or she works more than ten (10) hours in a workday.

12 71. Labor Code section 226.7 and California Code of Regulations, title 8, section
13 11050, subdivision (11)(B) provide that if an employer fails to provide an employee a meal
14 period in accordance with the section, the employer shall pay the employee one hour of pay
15 at the employee's regular rate of compensation for each workday that the meal period is not
16 provided.

17 72. At all times relevant hereto, PLAINTIFF and the putative Class worked more
18 than five hours in a workday for DEFENDANTS.

19 73. DEFENDANTS routinely failed to provide PLAINTIFF and the putative
20 Class, with compliant 30-minute meal periods during shifts in excess of five (5) hours.
21 When meal periods were provided, they were shorter in duration than 30 minutes, were
22 interrupted, or were not provided on or before the fifth (5th) hour worked. On occasion,
23 PLAINTIFF and the putative Class could not leave DEFENDANTS' premises during meal
24 periods as there were no other staff available to relieve PLAINTIFF and the putative Class
25 of their duties. DEFENDANTS effectively maintained control over PLAINTIFF and the
26 putative Class during the meal periods that were provided. On each day where a compliant
27 30-minute meal period was not provided to PLAINTIFF and the putative Class
28 DEFENDANTS failed to pay PLAINTIFF and the putative Class one additional hour of pay

1 at PLAINTIFF'S and the putative Class' regular rate of pay.

2 74. DEFENDANTS intentionally and improperly denied meal periods to
3 PLAINTIFF and the putative Class in violation of Labor Code sections 226.7 and 512 and
4 California Code of Regulations, title 8, section 11050, subdivision (11)(A) and other
5 regulations and statutes.

6 75. By virtue of the DEFENDANTS' unlawful failure to provide meal periods to
7 PLAINTIFF and the putative Class, PLAINTIFF and the putative Class have suffered and
8 will continue to suffer damages in amounts that are presently unknown to PLAINTIFF and
9 the putative Class but which exceed the jurisdictional limits of the court, and which will be
10 ascertained according to proof at trial.

11 76. PLAINTIFF is informed and believes, and based upon that information and
12 belief alleges, that DEFENDANTS purposely elected not to provide meal periods to their
13 hourly paid employees. DEFENDANTS acted intentionally, oppressively, and maliciously
14 toward PLAINTIFF and the putative Class, with a conscious disregard of their rights, or the
15 consequences to PLAINTIFF, with the intent of depriving PLAINTIFF and the putative
16 Class of property and legal rights and otherwise causing PLAINTIFF and the putative Class
17 injury.

18 77. PLAINTIFF individually and on behalf of the putative Class seeks to recover
19 meal-period compensation according to proof, interest, and all applicable statutory
20 penalties against DEFENDANTS, in a sum as provided by the Labor Code and/or other
21 statutes, and reasonable attorneys' fees and costs.

22 **FIFTH CAUSE OF ACTION**

23 **FOR FAILURE TO PROVIDE REST PERIODS**

24 **(Lab. Code, §§ 226.7 & 512, and Cal. Code Regs., tit. 8, § 11050)**

25 **(By PLAINTIFF, on his own behalf, on behalf of all employees similarly situated, and**
26 **against all DEFENDANTS)**

27 78. PLAINTIFF repeats and re-alleges paragraphs 1 through 77, inclusive, of this
28 Complaint and they are incorporated herein by this reference.

1 79. Labor Code section 226.7 and California Code of Regulations, title 8, section
2 11050, subdivision (12)(A) provide that employers shall authorize and permit all employees
3 to take rest periods at the rate of ten (10) minutes net rest time per every four (4) hours or
4 major fraction thereof, of work.

5 80. Labor Code section 226.7 and California Code of Regulations, title 8, section
6 11050, subdivision (12)(B) provide that if an employer fails to provide an employee with
7 rest periods in accordance with those statutes, the employer shall pay the employee one
8 hour of pay at the employee's regular rate of compensation for each workday that the rest
9 period was not provided.

10 81. The applicable Wage Order provides a separate remedy for violations of
11 meal-period requirements and violations of rest-period requirements, and section 226.7
12 allows recovery of up to two premium payments per workday – one for each type of
13 violation. (*United Parcel Service, Inc. v. Superior Court* (2011) 196 Cal.App.4th 57, 69.)

14 82. At all times relevant hereto, PLAINTIFF and the putative Class worked more
15 than four hours in a workday for DEFENDANTS.

16 83. At all times relevant hereto, DEFENDANT failed to provide rest periods to
17 PLAINTIFF and the putative Class as required by Labor Code section 226.7 and California
18 Code of Regulations, title 8, section 11050, subdivision (12)(A).

19 84. DEFENDANTS did not provide PLAINTIFF and the putative Class with a
20 10-minute net rest period for every four (4) hours or major fraction thereof worked. Where
21 rest periods were provided, they were shorter in duration than ten (10) minutes, were
22 interrupted, or were not provided every four (4) hours or major fraction thereof worked. On
23 occasion, PLAINTIFF and the putative Class could not leave DEFENDANTS' premises
24 during rest periods as there were no other staff available to relieve PLAINTIFF and the
25 putative Class of their duties. DEFENDANTS effectively maintained control over
26 PLAINTIFF and the putative Class during rest periods that were provided. On each day
27 where compliant ten (10) minute rest periods were not provided to PLAINTIFF and the
28 putative Class, DEFENDANTS failed to pay PLAINTIFF and the putative Class one

1 additional hour of pay at her regular rate of pay.

2 85. DEFENDANTS have intentionally and improperly denied rest periods to
3 PLAINTIFF and the putative Class in violation of Labor Code sections 226.7 and 512 and
4 California Code of Regulations, title 8, section 11050, subdivision (12)(A).

5 86. By virtue of the DEFENDANTS' unlawful failure to provide rest periods to
6 the PLAINTIFF and the putative Class, PLAINTIFF and the putative Class has suffered and
7 will continue to suffer damages in amounts that are presently unknown to PLAINTIFF and
8 the putative Class, but which exceed the jurisdictional limits of the court, and which will be
9 ascertained according to proof at trial.

10 87. PLAINTIFF is informed and believes, and based upon that information and
11 belief alleges, that DEFENDANTS knew or should have known that PLAINTIFF and the
12 putative Class were entitled to rest periods and purposely elected not to provide rest
13 periods. DEFENDANTS acted intentionally, oppressively, and maliciously toward
14 PLAINTIFF and the putative Class, with a conscious disregard of their rights or the
15 consequences to PLAINTIFF and the putative Class, with the intent of depriving
16 PLAINTIFF and the putative Class of property and legal rights and otherwise causing
17 PLAINTIFF and the putative class injury.

18 88. PLAINTIFF individually and on behalf of the putative Class seeks to recover
19 rest-period compensation according to proof, interest, and all applicable statutory penalties
20 against DEFENDANTS, in a sum as provided by the Labor Code and/or other statutes, and
21 reasonable attorneys' fees and costs.

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SIXTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS AND
MAINTAIN ACCURATE PAYROLL RECORDS

(Lab. Code, 226, subd. (a), 1174, subd. (d), & 1198)

(By PLAINTIFF, on his own behalf, on behalf of all employees similarly situated, and
against all DEFENDANTS)

89. PLAINTIFF repeats and re-alleges paragraphs 1 through 88, inclusive, of this Complaint and they are incorporated herein by this reference.

90. Labor Code section 226, subdivision (a) requires employers to provide non-exempt employees with detailed and accurate wage statements (*i.e.*, “pay stubs”).

Specifically, the statute provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when 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 for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and total hours worked for each temporary services assignment.

91. Labor Code section 226, subdivision (e) provides that for each violation of

1 subdivision (a), an employee is entitled to recover the greater of all actual damages or
2 minimum statutory damages of \$50 for the initial pay period in which a violation occurs
3 and \$100 for each subsequent violation, up to a maximum of \$4,000.

4 92. Labor Code section 1174, subdivision (d) provides, “Every person employing
5 labor in this state shall...[k]eep, at a central location in the state or at the plants or
6 establishments at which employees are employed, payroll records showing the hours
7 worked daily by and the wages paid to, and the number of piece-rate units earned by and
8 any applicable piece rate paid to, employees employed at the respective plants or
9 establishments. These records shall be kept in accordance with rules established for this
10 purpose by the commission, but in any case, shall be kept on file for not less
11 than three years.”

12 93. Labor Code section 1174.5 provides that employers are subject to a \$500
13 civil penalty if they fail to maintain accurate and complete records as required by section
14 1174, subdivision (d).

15 94. DEFENDANTS intentionally failed to furnish to PLAINTIFF and the
16 putative Class, upon the payment of wages, itemized wage statements in conformity with
17 Labor Code section 226. The wage statements failed to accurately reflect PLAINTIFF’s and
18 the putative Class members’ hours worked, including overtime wages, minimum wages,
19 reporting time wages, missed meal periods, and missed rest periods. Additionally, the wage
20 statements provided to PLAINTIFF and the putative Class failed to accurately list the
21 address of the employer entity.

22 95. PLAINTIFF and the putative Class were damaged by these failures because,
23 among other things, the failures led PLAINTIFF and the putative Class to believe that they
24 were not entitled to be paid for all hours worked even though they were so entitled, and
25 because these failures hindered PLAINTIFF and the putative Class from determining the
26 amounts of wages owed to them.

27 96. PLAINTIFF is also informed and believes, and based upon that information
28 and belief alleges, that DEFENDANTS willfully failed to maintain accurate payroll records

1 showing the daily hours PLAINTIFF and the putative Class worked and the wages that
2 should have been paid as a result of failing to record hours that PLAINTIFF and the
3 putative Class worked, as well as PLAINTIFF's and the putative Class members' missed
4 meal periods and rest periods.

5 97. PLAINTIFF individually and on behalf of the putative Class seeks to recover
6 damages, penalties, and interest under Labor Code sections 226, 1174, and 1198, and
7 reasonable attorneys' fees and costs.

8 **SEVENTH CAUSE OF ACTION**
9 **FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

10 **(Lab. Code, §§ 2800 & 2802)**

11 **(By PLAINTIFF, on his own behalf, on behalf of all employees similarly situated, and**
12 **against all DEFENDANTS)**

13 98. PLAINTIFF repeats and re-alleges paragraphs 1 through 97, inclusive, of this
14 Complaint and they are incorporated herein by this reference.

15 99. Labor Code sections 2800 and 2802 provide that an employer must reimburse
16 employees for all necessary expenditures incurred in an employee's course and scope of
17 employment.

18 100. PLAINTIFF and the putative Class incurred necessary business-related
19 expenses and costs that were not fully reimbursed by DEFENDANTS.

20 101. Necessary unreimbursed business-related expenses included but were not limited
21 to cell phones and cell phone plans. DEFENDANTS required PLAINTIFF to install the
22 "7shifts" application on his phone, which enabled him to view his scheduled shifts, input his
23 days of availability for employment, and trade shifts with other employees. PLAINTIFF's cell
24 phone cost him approximately \$1,000.00 and his cell phone plan cost him approximately
25 \$104.00 per month. On information and belief, DEFENDANTS treated members of the putative
26 Class similarly.

27 102. DEFENDANTS intentionally and willfully failed to fully reimburse
28 PLAINTIFF and the putative Class for necessary business-related expenses and costs in

1 violation of Labor Code sections 2800 and 2802.

2 103. Under Labor Code sections 2800 and 2802, PLAINTIFF on his own behalf
3 and on behalf of the putative Class seeks to recover business-related expenses incurred
4 during the course and scope of PLAINTIFF's and the putative Class members' employment
5 with DEFENDANTS, plus interest and penalties. PLAINTIFF on his own behalf and on
6 behalf of the putative Class also seeks reasonable attorneys' fees and costs.

7 **EIGHTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ADEQUATE SEATING**

9 **(Lab. Code, § 1198; Cal. Code Regs., tit. 8, § 11050, subd. (14))**

10 **(By PLAINTIFF, on his own behalf, on behalf of all employees similarly situated, and**
11 **against all DEFENDANTS)**

12 104. PLAINTIFF repeats and re-alleges paragraphs 1 through 103, inclusive, of this
13 Complaint and they are incorporated herein by this reference.

14 105. Labor Code section 1198 makes it illegal to employ an employee under
15 conditions of labor that are prohibited by the applicable wage order.

16 106. Labor Code section 1198 provides in relevant part, "[T]he standard conditions of
17 labor fixed by the commission shall be the...standard conditions of labor for employees. The
18 employment of any employee...under conditions of labor prohibited by the order is unlawful."

19 107. California Code of Regulations, title 8, section 11050, subdivision (14)(A)
20 provides, "All working employees shall be provided with suitable seats when the nature of the
21 work reasonably permits the use of seats."

22 108. California Code of Regulations, title 8, section 11050, subdivision (14)(B)
23 provides, "When employees are not engaged in the active duties of their employment and the
24 nature of the work requires standing, an adequate number of suitable seats shall be placed in
25 reasonable proximity to the work area and employees shall be permitted to use such seats when
26 it does not interfere with the performance of their duties."

27 109. DEFENDANTS violated Labor Code section 1198 and California Code of
28 Regulations, title 8, section 11050, subdivision (14) because DEFENDANTS did not provide

1 PLAINTIFF and the putative Class with an adequate number of suitable seats in reasonable
2 proximity to the work area that could be used when the seats would not interfere with the
3 performance of PLAINTIFF's and the putative Class's job duties. PLAINTIFF and the putative
4 Class spent substantial parts of their workdays behind a cash register or Point of Sale system.
5 The nature of the work of an employee performing customer service or cashier duties can
6 reasonably be accomplished from a seated position. However, DEFENDANTS did not provide
7 seats or stools at or near each cash register or Point of Sale system, forcing PLAINTIFF, and the
8 putative Class, to stand throughout their work shifts.

9 110. PLAINTIFF on his own behalf and on behalf of the putative Class seeks all
10 remedies available for violations of Labor Code section 1198 and California Code of
11 Regulations, title 8, section 11050, subdivision (14).

12 **NINTH CAUSE OF ACTION**
13 **FOR FAILURE TO PAY WAGES UPON TERMINATION OF EMPLOYMENT**

14 **(Lab. Code, § 203)**

15 **(By PLAINTIFF, on his own behalf, on behalf of all employees similarly situated, and**
16 **against all DEFENDANTS)**

17 111. PLAINTIFF repeats and re-alleges paragraphs 1 through 110, inclusive, of this
18 Complaint and they are incorporated herein by this reference.

19 112. Labor Code section 201, subdivision (a) provides that a discharged employee's
20 unpaid wages are due and payable immediately.

21 113. Labor Code section 203, subdivision (a) provides, "If an employer willfully fails
22 to pay, without abatement or reduction, in accordance with Sections [201 and 202], any wages
23 of an employee who is discharged or who quits, the wages of the employee shall continue as a
24 penalty from the due date thereof at the same rate until paid or until an action therefore is
25 commenced; but the wages shall not continue for more than 30 days."

26 114. DEFENDANTS discharged PLAINTIFF, and members of the putative Class,
27 from their employment within the applicable statute of limitations.
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115. DEFENDANTS willfully failed to pay PLAINTIFF, and members of the putative Class, the wages due to them—without abatement or reduction.

116. Under Labor Code section 203, PLAINTIFF, and members of the putative Class, are entitled to one day's wages for each day they were not timely paid all wages due, up to a maximum of 30 days' wages.

117. Because DEFENDANTS failed to pay overtime wages, minimum wages owed, reporting time wages owed, meal period wages owed, and rest period wages owed, PLAINTIFF, on his own behalf, and on behalf of members of the putative Class, seeks to recover 30 days' wages and applicable penalties. PLAINTIFF also seeks reasonable attorneys' fees and costs.

TENTH CAUSE OF ACTION

FOR VIOLATION OF CALIFORNIA LABOR CODE SECTION 558

(Lab. Code, § 558)

(By PLAINTIFF, on his own behalf, on behalf of all employees similarly situated, and against all DEFENDANTS)

118. PLAINTIFF repeats and re-alleges paragraphs 1 through 117, inclusive, of this Complaint and they are incorporated herein by this reference.

119. Labor Code section 558, subdivision (a) provides, "Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Section 558, subdivision (d) provides, "The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

120. At all relevant times, DEFENDANTS violated the rights of PLAINTIFF and

1 the putative Class by violating various sections of the Labor Code. PLAINTIFF on his own
2 behalf and on behalf of the putative Class seeks the remedies set forth in Labor Code
3 section 558, and reasonable attorneys' fees and costs.

4 **ELEVENTH CAUSE OF ACTION**

5 **FOR UNFAIR COMPETITION**

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

7 **(By PLAINTIFF, on his own behalf, on behalf of all employees similarly situated, and**
8 **against all DEFENDANTS)**

9 121. PLAINTIFF repeats and re-alleges paragraphs 1 through 121, inclusive, of
10 this Complaint and they are incorporated herein by this reference.

11 122. Each of the DEFENDANTS is a "person" as that term is defined under
12 Business and Professions Code section 17021.

13 123. Business and Professions Code section 17200 defines unfair competition as
14 any unlawful, unfair, or fraudulent business act or practice. At all relevant times, by and
15 through the conduct described herein, DEFENDANTS have engaged in unfair and unlawful
16 practices by, among other violations, failing to pay overtime wages to PLAINTIFF and the
17 putative Class, failing to pay minimum wages to PLAINTIFF and the putative Class, failing
18 to pay reporting time wages to PLAINTIFF and the putative Class, failing to provide
19 compliant meal periods to PLAINTIFF and the putative Class, failing to provide compliant
20 rest periods to PLAINTIFF and the putative Class, failing to provide accurate wage
21 statements to PLAINTIFF and the putative Class, failing to provide reimbursement of
22 necessary business expenses to PLAINTIFF and members of the putative Class, and failing
23 to provide adequate seating to PLAINTIFF and members of the putative Class, under the
24 applicable Labor Code and Industrial Welfare Commission requirements in violation of
25 Business and Professions Code section 17200 et seq., and have thereby deprived
26 PLAINTIFF and the putative Class of fundamental rights and privileges.

27 124. By and through the unfair and unlawful business practices described herein,
28 DEFENDANTS have obtained valuable property, money, and services from PLAINTIFF

1 and the putative Class and have deprived her of valuable rights and benefits guaranteed by
2 law, all to the detriment of PLAINTIFF and the putative Class.

3 125. All the acts described herein are violations of, among other things, the Labor
4 Code and Industrial Welfare Commission Wage Order 5; are unlawful and in violation of
5 public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and
6 thereby constitute unfair and unlawful business practices in violation of Business and
7 Professions Code section 17200 et seq.

8 126. PLAINTIFF and the putative Class are entitled to and seek such relief as may
9 be necessary to restore to them the money and property that DEFENDANTS have acquired,
10 or of which PLAINTIFF and the putative Class have been deprived by means of the above-
11 described unfair and unlawful business practices.

12 127. PLAINTIFF and the putative Class are further entitled to seek a declaration
13 that the above-described business practices are unfair and unlawful and that an injunctive
14 relief should be issued restraining DEFENDANTS from engaging in any of the above-
15 described unfair and unlawful business practices in the future.

16 128. PLAINTIFF and the putative Class have no plain, speedy, and/or adequate
17 remedy at law to redress the injuries that they have suffered as a consequence of
18 DEFENDANTS' unfair and unlawful business practices. As a result of the unfair and
19 unlawful business practices described above, PLAINTIFF and the putative Class have
20 suffered and will continue to suffer irreparable harm unless DEFENDANTS are restrained
21 from continuing to engage in these unfair and unlawful business practices. In addition,
22 DEFENDANTS should be required to disgorge the unpaid moneys to PLAINTIFF and the
23 putative Class.

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TWELFTH CAUSE OF ACTION
FOR PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT
(Lab. Code, § 2698 et seq.)
(By PLAINTIFF, on his own behalf, on behalf of all employees similarly situated, and
against all DEFENDANTS)

129. PLAINTIFF repeats and re-alleges paragraphs 1 through 128 inclusive, of this Complaint and they are incorporated herein by this reference.

130. PAGA, in Labor Code sections 2698-2699, expressly establishes that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

131. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

132. PLAINTIFF and all persons employed by DEFENDANTS as hourly paid employees, or misclassified employees, are “aggrieved employees” as defined by Labor Code section 2699 in that they are all current or former employees of DEFENDANTS, and one or more of the alleged violations was committed against them.

133. PLAINTIFF asserts all of his claims in this Complaint on his own behalf and on behalf of all aggrieved employees in his capacity as a Private Attorney General and seeks all statutory penalties available under Labor Code sections 2698-2699.

134. On October 24, 2023, PLAINTIFF gave written notice by certified mail to the LWDA and by Certified Mail to THE EDWARD THOMAS HOSPITALITY CORP’s attorneys of the specific code provisions alleged to have been violated, as required by Labor Code section 2699.3. On the same date, PLAINTIFF submitted a “PAGA Claim Notice” to the LWDA

1 through its online portal. PLAINTIFF's PAGA Notice Letter and LWDA Claim Submissions
2 indicated that he, "as an aggrieved employee, on his own behalf and on behalf of other
3 aggrieved employees of The Edward Thomas Hospitality Corp., and any other affiliated entity
4 (collectively referred to herein as "ETHC"), intends to avail himself of the protections granted
5 by the CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004 ("the Act" or
6 PAGA") (Lab. Code, § 2698 et. seq.)." The statutory waiting period for PLAINTIFF to add
7 these allegations to the Complaint has expired. As a result, pursuant to Labor Code section
8 2699.3, PLAINTIFF, on behalf of himself and all aggrieved employees, may now commence a
9 representative civil action under Labor Code section 2699 as the proxy of the State of
10 California.

11 135. DEFENDANTS' conduct, as alleged herein, violates numerous sections of the
12 Labor Code, including, but not limited to, the following:

- 13 A. Violations of Labor Code sections 510, 1194, 1194.2, and 1198 and California Code
14 of Regulations, title 8, section 11050 for DEFENDANTS' failure to pay overtime
15 wages and liquidated damages to PLAINTIFF, and other aggrieved employees;
- 16 B. Violations of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198
17 and California Code of Regulations, title 8, section 11050 for DEFENDANTS'
18 failure to pay minimum wages and liquidated damages to PLAINTIFF, and other
19 aggrieved employees;
- 20 C. Violations of Labor Code sections 1194.2, 1198 and California Code of Regulations,
21 title 8, section 11050 for DEFENDANTS' failure to pay reporting time pay and
22 liquidated damages to PLAINTIFF, and other aggrieved employees;
- 23 D. Violations of Labor Code sections 226.7, 512, and 516, 1198, and California Code of
24 Regulations, title 8, section 11050 for DEFENDANTS' failure to provide meal
25 periods to PLAINTIFF, and other aggrieved employees;
- 26 E. Violations of Labor Code sections 226.7, 512, 516, and 1198, and California Code of
27 Regulations, title 8, section 11050 for DEFENDANTS' failure to provide rest
28 periods to PLAINTIFF, and other aggrieved employees;

- 1 F. Violations of Labor Code sections 226, subdivision (a), 1174, subdivision (d), and
2 1198 for DEFENDANTS' failure to provide accurate itemized wage statements to
3 PLAINTIFF, and other aggrieved employees and to maintain accurate payroll
4 records for PLAINTIFF and other aggrieved employees;
- 5 G. Violations of Labor Code sections 2800 and 2802 for DEFENDANTS' failure to
6 reimburse business expenses to PLAINTIFF, and other aggrieved employees;
- 7 H. Violations of Labor Code section 351 for DEFENDANTS' failure to properly
8 receive and distribute gratuities to other aggrieved employees;
- 9 I. Violations of Labor Code section 1198 and California Code of Regulations, title 8,
10 section 11050 for DEFENDANTS' failure to provide adequate seating to
11 PLAINTIFF, and other aggrieved employees; and,
- 12 J. Violations of Labor Code sections 201, 202, and 203 for DEFENDANTS' failure to
13 timely pay wages to PLAINTIFF, and other aggrieved employees;

14 136. Therefore, PLAINTIFF, on his own behalf and on behalf of all aggrieved
15 employees, can and hereby does seeks recovery of all civil penalties as prescribed by Labor
16 Code sections the Private Attorneys General Act of 2004, as the representative of the State of
17 California, for the illegal conduct perpetrated on PLAINTIFF, and all aggrieved employees by
18 DEFENDANTS.

19 PRAYER

20 WHEREFORE, PLAINTIFF, individually, prays for judgment against each
21 Defendant, jointly and severally, as follows:

22 1. ON THE FIRST CAUSE OF ACTION:

- 23 (a) For overtime wage compensation and liquidated damages;
- 24 (b) For an award of interest, including prejudgment interest at the legal rate;
25 and,
- 26 (c) For statutory penalties, interest, costs of suit and attorneys' fees.

27 2. ON THE SECOND CAUSE OF ACTION:

- 28 (a) For minimum wage compensation, and liquidated damages;

(b) For an award of interest, including prejudgment interest at the legal rate;
and,

(c) For statutory penalties, interest, costs of suit, and attorneys' fees.

3. ON THE THIRD CAUSE OF ACTION:

(a) For reporting time wage compensation and liquidated damages;

(b) For an award of interest, including prejudgment interest at the legal rate;
and,

(c) For statutory penalties, interest, costs of suit and attorneys' fees.

**4. ON THE FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, and NINTH
CAUSES OF ACTION:**

(a) For compensatory damages, including lost wages;

(b) For an award of interest, including prejudgment interest at the legal rate;
and,

(c) For statutory penalties, interest, costs of suit, and attorneys' fees.

5. ON THE TENTH CAUSE OF ACTION:

(a) For statutory penalties, interest, costs of suit and attorneys' fees.

6. ON THE ELEVENTH CAUSE OF ACTION:

(a) For restitution and disgorgement;

(b) For injunctive relief ordering the continuing unfair business acts and
practices to cease, or as the Court otherwise deems just and proper; and,

(c) For other injunctive relief ordering DEFENDANTS to notify Plaintiff that
he has not been paid the proper amounts required in accordance with
California law.

7. ON THE TWELFTH CAUSE OF ACTION:

(a) That the Court declare, adjudge and decree that DEFENDANTS violated
the following Labor Code provisions as to PLAINTIFF and/or other
aggrieved employees:

- 1 1. Labor Code sections 510, 1194, 1194.2, and 1198 and
2 California Code of Regulations, title 8, section 11050 for
3 DEFENDANTS' failure to pay overtime compensation and
4 liquidated damages to PLAINTIFF, and other aggrieved
5 employees;
- 6 2. Labor Code sections 1182.12, 1194; 1194.2; 1197; 1197.1; and
7 1198 and California Code of Regulations, title 8, section 11050
8 for DEFENDANTS' failure to pay minimum wages and
9 liquidated damages to PLAINTIFF, and other aggrieved
10 employees;
- 11 3. Labor Code sections 1194.2, 1198 and California Code of
12 Regulations, title 8, section 11050 for DEFENDANTS' failure
13 to pay reporting time pay and liquidated damages to
14 PLAINTIFF, and other aggrieved employees;
- 15 4. Labor Code sections 226.7 and 512, 516, and California Code
16 of Regulations, title 8, section 11050 for DEFENDANTS'
17 failure to provide meal periods to PLAINTIFF, and other
18 aggrieved employees;
- 19 5. Labor Code sections 226.7 and 512, 516, and California Code
20 of Regulations, title 8, section 11050 for DEFENDANTS'
21 failure to provide rest periods to PLAINTIFF, and other
22 aggrieved employees;
- 23 6. Labor Code sections 226, subdivision (a), 1174, subdivision
24 (d), and 1198 for DEFENDANTS' failure to provide accurate
25 itemized wage statements to PLAINTIFF, and other aggrieved
26 employees and to maintain accurate payroll records for
27 PLAINTIFF and other aggrieved employees;
- 28

1 7. Labor Code sections 2800 and 2802 for DEFENDANTS'
2 failure to reimburse business expenses to PLAINTIFF and
3 other aggrieved employees;

4 8. Labor Code section 351 for DEFENDANTS' failure to
5 properly receive and distribute gratuities to other aggrieved
6 employees;

7 9. Labor Code section 1198 and California Code of Regulations,
8 title 8, section 11050 for DEFENDANTS' failure to provide
9 adequate seating to PLAINTIFF, and other aggrieved
10 employees; and,

11 10. Labor Code sections 201, 202, 203 for DEFENDANTS' failure
12 to timely pay wages to PLAINTIFF, and other aggrieved
13 employees,

14 (b) For civil penalties pursuant to Labor Code sections 210, 226.3, 256, 558,
15 1174.5, 1197.1, and/or 2699, subdivisions (a), (f) and (g), for violations
16 of Labor Code sections 201, 202, 203, 226, 226.7, 351, 510, 512, 516,
17 558, 1182.12, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802;

18 (c) For attorneys' fees and costs pursuant to California Labor Code section
19 2699, subdivision (g)(1), and any and all other relevant statutes, for
20 Defendant's violations of Labor Code sections 201, 202, 203, 226, 226.7,
21 351, 510, 512, 516, 558, 1182.12, 1174, 1194, 1194.2, 1197, 1197.1,
22 1198, 2800, and 2802;

23 (d) For pre-judgment and post-judgment interest as provided by law; and

24 (e) For such other and further relief as the Court may deem equitable and
25 appropriate.

26 **8. ON ALL CAUSES OF ACTION:**

27 (a) For reasonable attorneys' fees;

28 (b) For costs of suit;

- 1 (c) For prejudgment interest; and,
2 (d) For other and further relief their court deems just and proper.
3

4 Dated: January 26, 2024

LAW OFFICES OF DAVID R. GREIFINGER

6
7 By: 
8 DAVID R. GREIFINGER
9 CALVIN A. MARSHALL
10 *Attorneys for Plaintiff*

11 **DEMAND FOR JURY TRIAL**

12 PLAINTIFF demands a jury trial on issues triable to a jury.

13 Dated: January 26, 2024

LAW OFFICES OF DAVID R. GREIFINGER

14 By: 
15 DAVID R. GREIFINGER
16 CALVIN A. MARSHALL
17 *Attorneys for Plaintiff*