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 on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES

MANUEL CUEVAS, on behalf of himself
 and others similarly situated,

Plaintiff,

vs.

THE BELVEDERE HOTEL PARTNERSHIP
 dba PENINSULA BEVERLY HILLS, an
 entity of unknown form; PENINSULA
 BEVERLY HILLS, INC. dba THE
 PENINSULA BEVERLY HILLS, a
 Delaware corporation; THE HONGKONG
 AND SHANGHAI HOTELS, LIMITED, an
 entity of unknown form; and DOES 1 through
 50, inclusive,

Defendants.

Case No. 23STCV29987

CLASS ACTION

Assigned for All Purposes To:

Hon. David S. Cunningham III

Dept.: 11

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Pay Vacation Wages;
6. Failure to Comply with Labor Code §§ 245 *et seq.* and 246;
7. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
8. Violation of Labor Code § 226(a);
9. Failure to Keep Required Payroll Records Under Labor Code §§ 1174, and 1174.5;
10. Failure to Produce Requested Employment Records Under Labor Code §§ 226 and 1198.5;
11. Penalties Pursuant to Labor Code § 203; and
12. Violation of Business & Professions Code § 17200 *et seq.*; and
13. Penalties Pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

FILED
 Superior Court of California
 County of Los Angeles
01/25/2024

David W. Slayton, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

1 Plaintiff MANUEL CUEVAS (hereinafter “Plaintiff”) on behalf of himself and all others
2 similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants The Belvedere
8 Hotel Partnership dba Peninsula Beverly Hills, an entity of unknown form; Peninsula Beverly
9 Hills, Inc. dba The Peninsula Beverly Hills, a Delaware corporation; The HongKong and Shanghai
10 Hotels, Limited, an entity of unknown form; and DOES 1 through 50 (all defendants being
11 collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of
12 them, violated various provisions of the California Labor Code, relevant orders of the Industrial
13 Welfare Commission (IWC) and California Business & Professions Code, and seeks redress
14 therefore.

15 2. Plaintiff is a resident of California and during the time period relevant to this
16 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
17 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
18 worked for Defendants in Los Angeles County, and in other nonexempt positions, throughout
19 California, and consistently worked at Defendants’ behest without being paid all wages due. More
20 specifically, Plaintiff and the other similarly situated Class members were employed by
21 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
22 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
23 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
24 subjected to the same policies and practices, and (3) endured similar violations at the hands of
25 Defendants as the other Employee Class members who served in similar and related positions.

26 3. Defendants required Plaintiff and Employees in the Class to perform work while
27 remaining under Defendants’ control before and after being on the clock for their daily work
28 shifts. Defendants also required Employees to perform work during their meal and rest breaks.

Defendants thus failed to pay Plaintiff and the Class members for all hours worked, and provided them with inaccurate wage statements that prevented Plaintiff and the Class from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods, as employees were not provided with the opportunity to take timely, uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

THE PARTIES

A. The Plaintiff

4. Plaintiff MANUEL CUEVAS has resided in California and during the time period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant THE BELVEDERE HOTEL PARTNERSHIP dba PENINSULA BEVERLY HILLS is an entity of unknown form and has been listed as the employer on the wage statements issued to Plaintiff during the relevant time period. THE BELVEDERE HOTEL PARTNERSHIP dba PENINSULA BEVERLY HILLS does not list a California address with the California Secretary of State but lists an address in Beverly Hills, California on Plaintiff's wage statements, and employs Plaintiff and the Employees in Los Angeles County, including at Defendants' offices and facilities in Beverly Hills, California, and throughout California and Defendants conduct business throughout California.

6. Defendant PENINSULA BEVERLY HILLS, INC. dba THE PENINSULA BEVERLY HILLS is a Delaware corporation with its principle executive offices in Beverly Hills California, and is listed in Plaintiff's personnel file during the relevant time period. PENINSULA BEVERLY HILLS, INC. dba THE PENINSULA BEVERLY HILLS lists an address in Beverly Hills, California with the California Secretary of State and employs Plaintiff and Employees in Los Angeles County, including at Defendants' offices and facilities in Beverly Hills, California, and throughout California and Defendants conduct business throughout California.

7. Defendant THE HONGKONG AND SHANGHAI HOTELS, LIMITED, is an entity of unknown form and is listed in Plaintiff's personnel file during the relevant time period.

1 THE HONGKONG AND SHANGHAI HOTELS, LIMITED does not list a California address
2 with the California Secretary of State but THE HONGKONG AND SHANGHAI HOTELS,
3 LIMITED employs Plaintiff and Employees in Los Angeles County, including at Defendants'
4 offices and facilities in Beverly Hills, California, and throughout California and Defendants
5 conduct business throughout California.

6 8. The true names and capacities, whether individual, corporate, associate, or
7 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
8 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
9 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
10 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
11 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
12 this Complaint to reflect the true names and capacities of the Defendants designated herein as
13 Does 1 through 50 when their identities become known.

14 9. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
15 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
16 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
17 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
18 all respects as the employers or joint employers of Employees. Defendants, and each of them,
19 exercised control over the wages, hours or working conditions of Employees, or suffered or
20 permitted Employees to work, or engaged, thereby creating a common law employment
21 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
22 employed Employees.

23 JURISDICTION AND VENUE

24 10. This Court has jurisdiction over this Action pursuant to California Code of Civil
25 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
26 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
27 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
28 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the

1 obligations and liabilities giving rise to this lawsuit occurred at least in part in Los Angeles
2 County and Defendants maintain and operate company offices and facilities in Los Angeles
3 County, and employ Plaintiff and other Class members in Los Angeles County and throughout
4 California.

5 **FACTUAL BACKGROUND**

6 11. The Employees who comprise the Class and Collective, including Plaintiff, are
7 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
8 Employees who work in nonexempt positions at the direction of Defendants in the State of
9 California. Plaintiff and the Class members were either not paid by Defendants for all hours
10 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
11 Plaintiff and Employees were not paid for the time that they worked “pre-shift” and “post-shift”
12 without compensation by: (1) being required to put on their uniforms, including a shirt, gloves,
13 and an apron, before clocking in; (2) being required to take their uniforms off after clocking out;
14 (3) having to undergo bag checks before clocking in and after clocking out for their shifts; and (4)
15 waiting in line to clock in for shifts. Plaintiff and Employees were also not compensated time
16 spent working while clocked out for meal breaks, specifically having to undergo bag checks at the
17 start and end of meal periods, waiting in line to clock back in at the end of meal breaks, and
18 having to keep walkie-talkies on during meal breaks. Plaintiff also contends that Defendants failed
19 to pay Plaintiff and the Class members all wages due and owing, failed to provide meal and rest
20 breaks, and failed to furnish accurate wage statements, all in violation of various provisions of the
21 California Labor Code and applicable Wage Orders. Additionally, Defendants paid Plaintiff and
22 Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses.
23 However, upon information and belief, Defendants failed to incorporate all remunerations,
24 including nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the
25 calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore,
26 during times when Plaintiff and Employees worked overtime and received nondiscretionary
27 commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all
28 overtime wages by paying a lower overtime rate than required.

1 12. From at least four (4) years prior to the filing of this lawsuit and continuing to the
2 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
3 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
4 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
5 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
6 sick pay. Therefore, during times when Plaintiff and Employees worked overtime and received
7 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
8 to pay all sick pay by paying a lower overtime rate than required.

9 13. From at least four (4) years prior to the filing of this lawsuit and continuing to the
10 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
11 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
12 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
13 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
14 vacation pay. Therefore, during times when Plaintiff and Employees worked overtime and
15 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
16 Defendants failed to pay all vacation pay by paying a lower overtime rate than required.

17 14. During the course of Plaintiff and the Class members' employment with
18 Defendants, they were not paid all wages they were owed, including for all work performed and
19 for all overtime hours worked and were forced to work during their meal and rest breaks to keep
20 labor budgets low.

21 15. As a matter of uniform Company policy, Plaintiff and the Class members were
22 required to work during their meal and rest breaks which were not compensated by Defendants in
23 violation of the California Labor Code. Plaintiff and the Class members were also not paid
24 regular wages and overtime for the time they were required to comply with other requirements
25 imposed upon them, which they had to complete while working through their meal and rest
26 breaks without compensation. As a result, Plaintiff and the Class members worked shifts over
27 eight (8) hours in a day and over forty (40) hours in a work week, but they were not paid at the
28 appropriate overtime rate for all such hours, including by being required to perform work duties

1 and tasks without pay and while off-the-clock. As a result, Plaintiff and the Class members
2 worked substantial overtime hours during their employment with Defendants for which they were
3 not compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

4 16. As a result of the above described, the daily work demands and pressures to work
5 through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the
6 Class members were not properly paid for all wages earned and for all wages owed to them by
7 Defendants, including when working more than eight (8) hours in any given day and/or more than
8 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,
9 Plaintiff and Class members incurred overtime hours worked for which they were not adequately
10 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and
11 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
12 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
13 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
14 Labor Code, applicable IWC Wage Orders.

15 17. Therefore, from at least four (4) years prior to the filing of this lawsuit and
16 continuing to the present, Defendants had a consistent policy or practice of failing to pay
17 Employees for all hours worked and failing to pay minimum wage for all time worked as required
18 by California Law.

19 18. Additionally from at least four (4) years prior to the filing of this lawsuit and
20 continuing to the present, Defendants had a consistent policy or practice of failing to pay
21 Employees overtime compensation at premium overtime rates for all hours worked in excess of
22 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
23 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
24 sections of IWC Wage Orders.

25 19. Additionally from at least four (4) years prior to the filing of this lawsuit and
26 continuing to the present, Defendants have regularly required Employees to work shifts in excess
27 of five (5) hours without providing them with timely and uninterrupted meal periods of not less
28 than thirty (30) minutes and shifts in excess of ten (10) hours without providing them with second

1 meal periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,”
2 i.e. one hour of wages at each Employee’s effective regular rate of pay, for each meal period that
3 Defendants failed to provide or deficiently provided.

4 20. From at least four (4) years prior to the filing of this lawsuit and continuing to the
5 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
6 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
7 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
8 provided or were deficiently provided at one hour of wages at each Employee’s effective regular
9 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

10 21. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
11 continuing to the present, Defendants have consistently failed to provide Employees with timely,
12 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.
13 Specifically, the overtime earnings listed on Plaintiff’s wage statements were wrongfully
14 calculated based on the overtime rates and hours listed therein. Defendants also failed in their
15 affirmative obligation to keep accurate records of the correct overtime wages based on proper
16 regular rate calculations that included nondiscretionary commissions, incentive pay, and/or
17 nondiscretionary bonuses earned, and the total amount of compensation of their Employees.
18 Moreover, the wage statements given to Employees by Defendants failed to accurately account for
19 wages, overtime, and premium pay for deficient meal periods and rest breaks all of which
20 Defendants knew or reasonably should have known were owed to Employees, as alleged
21 hereinabove. The wage statements provided to Employees were confusing and required
22 Employees to engage in discovery and refer to outside sources to verify whether their pay was
23 correct, potentially resulting in a miscalculation by the Employees.

24 22. From at least four (4) years prior to the filing of this lawsuit and continuing to the
25 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
26 performance of their job duties for Defendants including, the cost of uniforms, which were
27 necessary to perform their duties under Defendants’ employ in violation of Labor Code § 2802.

28 23. Additionally, from at least three (3) years prior to the filing of this lawsuit, and

1 continuing to the present, Defendants have consistently failed to keep accurate time and wage
2 records as required by California wage-and-hour laws.

3 24. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
4 to the present, Defendants have had a consistent policy of denying Employees the right to inspect
5 and receive all of their payroll records, timecards, and personnel records.

6 25. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
7 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to
8 Employees at the time of their termination of within seventy-two (72) hours of their resignation, as
9 required by California wage-and-hour laws.

10 26. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
11 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1,
12 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1198.5, 1199, 2698, 2699, *et seq.* and 2802.

13 27. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
14 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
15 enjoyed from their violations of Labor Code.

16 CLASS ALLEGATIONS

17 28. Plaintiff brings this class action on behalf of himself and all others similarly
18 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as
19 follows: all individuals employed by Defendants, at any time within four (4) years of the filing of
20 this lawsuit and have been employed by Defendants within the State of California.

21 29. Further, Plaintiff seeks to represent the following Subclasses composed of and
22 defined as follows:

23 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
24 compensated for all hours worked for Defendants at the applicable minimum wage.

25 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
26 compensated for all hours worked for Defendants at the required rates of pay, including for all
27 hours worked in excess of eight in a day and/or forty in a week.

28 c. Subclass 3. Meal Period Subclass. All Class members who were subject to

Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

e. Subclass 5. Vacation Wages Subclass. All Class Members who were not compensated at the Employee's regular rate of pay for their vacation wages.

f. Subclass 6. Sick Pay Subclass. All Class Members who were not compensated at the Employee's regular rate of pay for their sick pay wages.

g. Subclass 7. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

h. Subclass 8. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

h. Subclass 9. Failure to Reimburse for Necessary Business Expenditures Subclass. All Class members who were subject to Defendants failing to reimburse for expenses necessarily incurred in the performance of Employees job duties for Defendants which were necessary to perform their duties under Defendants' employ.

i. Subclass 10. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

j. Subclass 11. Failure To Produce Requested Employment Records Subclass. All Class members who, within the applicable limitations period, were denied the right to inspect and receive all of their payroll records, timecards, and personnel records.

k. Subclass 12. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to

1 be unlawful, deceptive, and/or unfair.

2 30. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
3 modify the class description with greater particularity or further division into subclasses or
4 limitation to particular issues.

5 31. This action has been brought and may properly be maintained as a class action
6 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
7 of interest in litigation and the proposed class is easily ascertainable.

8 **A. Numerosity**

9 32. The potential members of the class as defined are so numerous that joinder of all
10 the member of the class is impracticable. While the precise number of class member has not been
11 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
12 time period relevant to this lawsuit, employed more than 100 individuals within the State of
13 California.

14 33. Accounting for employee turnover during the relevant time period increases this
15 number substantially. Plaintiff alleges that Defendants' employment records will provide
16 information as to the number and location of all class members.

17 **B. Commonality**

18 34. There are questions of law and fact common to the class that predominate over any
19 questions affecting only individual class members. These common questions of law and fact
20 include:

- 21 a. Whether Defendants failed to pay Employees minimum wages;
- 22 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 23 c. Whether Defendants failed to pay Employees overtime as required under Labor
24 Code § 510;
- 25 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
26 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
27 premium pay in lieu thereof;
- 28 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage

Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;

f. Whether Defendants failed to pay Employees vacation wages as required under Labor Code § 227.3;

g. Whether Defendants failed to pay Employees sick pay as required under Labor Code § 245;

h. Whether Defendants violated Labor Code § 226(a);

i. Whether Defendants violated Labor Code §§ 1174 and 1174.5;

j. Whether Defendants failed to reimburse Employees for necessary business expenses;

k. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;

l. Whether Defendants violated Labor Code §§ 226 and 1198;

m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

n. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*; and

o. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*;

C. Typicality

35. The claims of the named plaintiff are typical of those of the other Employees.

Employees all sustained injuries and damages arising out of and caused by Defendants' common course of conducts in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

36. Plaintiff will fairly and adequately represent and protect the interest of Employees.

Counsel who represents Employees are experienced and competent in litigating employment class actions.

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1 **E. Superiority of Class Action**

2 37. A class action is superior to other available means for the fair and efficient
3 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
4 questions of law and fact common to all Employees predominate over any questions affecting only
5 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
6 Defendants' illegal policies or practices of failing to compensate Employees properly.

7 38. Class action treatment will allow those persons similarly situated to litigate their
8 claims in the manner that is most efficient and economical for the parties and the judicial system.
9 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGES**

12 **(Against All Defendants)**

13 39. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

15 40. Defendants failed to pay Employees minimum wages for all hours worked.
16 Defendants had a consistent policy of misstating Employees time records and failing to pay
17 Employees for all hours worked. Employees would work hours and not receive wages, including
18 as alleged above in connection with working during meal breaks and working "pre-shift" and
19 "post-shift" without compensation by (1) having to put on a uniform shirt, gloves, and an apron
20 before clocking in; (2) having to take off the uniform shirt, gloves, and apron after clocking out;
21 (3) undergoing bag checks before clocking in and after clocking out; and (4) waiting in line to
22 clock-in. Plaintiff and Employees also performed other off-the-clock work including undergoing
23 bag checks at the start and end of meal periods, having to wait in line to clock back in after meal
24 breaks, and keeping their work-issued walkie-talkies on during meal breaks. Additionally,
25 Defendants had a consistent policy of failing to pay Employees for hours worked during alleged
26 meal periods for which Employees were consistently denied, interrupted, and/or late, as also
27 addressed herein. Moreover, Defendants did not pay Plaintiff and Employees at the applicable
28 minimum wage for all hours worked. Defendants' uniform pattern of unlawful wage and hour

1 practices manifested, without limitation, applicable to the Class as a whole, as a result of
2 implementing a uniform policy and practice that denied accurate compensation to Plaintiff and
3 the other members of the Class as to minimum wage pay.

4 41. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
5 states:

6 The minimum wage for employees fixed by the commission is the
7 minimum wage to be paid to employees, and the payment of a less
8 wage than the minimum so fixed is unlawful.

9 42. The applicable minimum wages fixed by the commission for work during the
10 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
11 therefore entitled to double the minimum wage during the relevant period.

12 43. The minimum wage provisions of California Labor Code are enforceable by private
13 civil action pursuant to California Labor Code § 1194(a) which states:

14 Notwithstanding any agreement to work for a lesser wage, any
15 employee receiving less than the legal minimum wage or the legal
16 overtime compensation applicable to the employee is entitled to
17 recover in a civil action the unpaid balance of the full amount of
18 this minimum wage or overtime compensation, including interest
19 thereon, reasonable attorney’s fees and costs of suit.

20 44. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
21 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

22 45. California Labor Code § 1194.2 also provides for the following remedies:

23 In any action under Section 1194 . . . to recover wages because of
24 the payment of a wage less than the minimum wages fixed by an
25 order of the commission, an employee shall be entitled to recover
26 liquidated damages in an amount equal to the wages unlawfully
27 unpaid and interest thereon.

28 46. Defendants have the ability to pay minimum wages for all time worked and have
willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

47. Wherefore, Employees are entitled to recover the unpaid minimum wages
(including double minimum wages), liquidated damages in an amount equal to the minimum
wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant
to California Labor Code § 1194(a).

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

3 **(Against All Defendants)**

4 48. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 49. By their conduct, as set forth herein, Defendants violated California Labor Code §
7 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
8 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
9 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
10 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
11 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
12 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
13 paying Employees wages for all hours worked including time off the clock working “pre-shift”
14 and “post-shift” without compensation by (1) having to put on a uniform shirt, gloves, and an
15 apron before clocking in; (2) having to take off the uniform shirt, gloves, and apron after
16 clocking out; (3) undergoing bag checks before clocking in and after clocking out; and (4)
17 waiting in line to clock-in. Plaintiff and Employees also performed other off-the-clock work
18 including, undergoing bag checks at the start and end of meal periods, having to wait in line to
19 clock back in after meal breaks, and keeping their work-issued walkie-talkies on during meal
20 breaks. Employees regularly worked over 8 hours on a given day without receiving overtime
21 compensation.

22 50. Furthermore, on information and belief, Defendants did not pay Plaintiff and
23 Employees the correct overtime rate for the recorded overtime hours that they generated. In
24 addition to an hourly wage, Defendants paid Plaintiffs and Employees nondiscretionary
25 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and
26 belief, Defendants failed to incorporate all remunerations, including nondiscretionary
27 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular
28 rate of pay for purposes of calculating the overtime wage rate.

1 51. Therefore, during times when Plaintiffs and Employees worked overtime and
2 received nondiscretionary commission, incentive pay, and/or nondiscretionary bonuses,
3 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

4 52. Defendants' failure to pay compensation in a timely fashion also constituted a
5 violation of California Labor Code § 204, which requires that all wages shall be paid
6 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
7 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
8 and overtime compensation earned by Employees. Each such failure to make a timely payment of
9 compensation to Employees constitutes a separate violation of California Labor Code § 204.

10 53. Employees have been damaged by these violations of California Labor Code §§
11 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

12 54. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
13 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
14 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
15 reasonable attorneys' fees and costs.

16 **THIRD CAUSE OF ACTION**

17 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

18 **(Against All Defendants)**

19 55. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
20 full herein.

21 56. Employees regularly worked shifts greater than five (5) hours and greater than ten
22 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
23 more than five (5) hours without providing him or her with a meal period of not less than thirty
24 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
25 meal period of not less than thirty (30) minutes.

26 57. Defendants failed to provide Employees with meal periods as required under the
27 Labor Code. Employees were consistently required to work through their meal periods due to
28 Defendants policy requiring that Employees carry walkie-talkies and keep them on during meal

1 periods. Employees were also required to take meal periods after working well beyond the five (5)
2 hour shifts and what meal breaks were provided were routinely interrupted. Furthermore,
3 Employees were regularly required to work for more than 10 hours in a given shift without
4 receiving a second uninterrupted thirty (30) minute meal period as required by law.

5 58. Moreover, Defendants failed to compensate Employees for each meal period not
6 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
7 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
8 employee a meal period in accordance with this section, the employer shall pay the employee one
9 hour of pay at the employee's regular rate of compensation for each workday that the meal period
10 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
11 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
12 and 20 of the applicable IWC Wage Order. Additionally, as detailed above, when Defendants did
13 pay meal period premiums, they did so at the normal regular rate of pay without factoring in all
14 forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

15 59. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
16 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
17 period not provided or deficiently provided, a sum to be proven at trial.

18 **FOURTH CAUSE OF ACTION**

19 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

20 **(Against All Defendants)**

21 60. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 61. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
24 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
25 not less than ten (10) minutes for each consecutive four (4) hour shift.

26 62. Defendants failed to provide Employees with timely, uninterrupted rest breaks of
27 not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants also had a
28 policy requiring that Employees carry walkie-talkies and keep them on during rest breaks resulting

1 in on-duty rest breaks.

2 63. Moreover, Defendants failed to compensate Employees for each rest period not
3 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
4 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
5 accordance with this section, the employer shall pay the employee one hour of pay at the
6 employee's regular rate of compensation for each workday that the rest period is not provided.
7 Defendants failed to compensate the Employees in the Class for each rest period not provided or
8 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
9 Order. Additionally, as detailed above, when Defendants did pay rest period premiums, they did
10 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
11 or by otherwise incorrectly calculating the regular rate.

12 64. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
13 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
14 worked without the required rest breaks, a sum to be proven at trial.

15 **FIFTH CAUSE OF ACTION**
16 **FAILURE TO PAY VACATION WAGES**
17 **(Against All Defendants)**

18 65. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
19 full herein.

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

24 67. Defendants paid nondiscretionary commissions, incentive pay, and/or
25 nondiscretionary bonuses to Employees but Defendants failed to include these forms of
26 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

27 68. Therefore, pursuant to, Plaintiff and Employees seek to recover penalties pursuant
28 to Labor Code § 227.3.

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO COMPLY WITH LABOR CODE §§ 245 *ET SEQ.* AND 246**

3 **(Against All Defendants)**

4 69. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 70. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time
7 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
8 times relevant, Defendants have failed to compute the amount due for paid sick time in
9 conformance with the pay calculation under California Labor Code § 246(1).

10 71. Defendants paid nondiscretionary commissions, incentive pay, and/or
11 nondiscretionary bonuses to Employees but Defendants failed to include these forms of
12 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than
13 calculating the amount of paid sick time due when sick time is used according to the requirements
14 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower
15 rate, in violation of the law.

16 72. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
17 Code §§ 245 *et seq.* and 246.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

20 **IN VIOLATION OF LABOR CODE § 2802**

21 **(Against All Defendants)**

22 73. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
23 full herein.

24 74. Under Labor Code § 2802(a) an employer must indemnify its employees for all
25 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
26 of his or her duties, or of his or her obedience to the directions of the employer.

27 75. Employees incurred necessary expenditures in the performance of their job duties
28 for Defendants, namely the cost of uniforms, which were necessary to perform their duties under

1 Defendants' employ. From four (4) years prior to the original filing of this lawsuit and continuing
2 to the present, Defendants consistently failed to reimburse Employees for these necessarily
3 incurred business expenses.

4 76. As a result of the unlawful acts of Defendants, Employees have been deprived of
5 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
6 plus interest and penalties thereon, attorneys' fees, and costs.

7 **EIGHTH CAUSE OF ACTION**
8 **VIOLATION OF LABOR CODE § 226(a)**
9 **(Against All Defendants)**

10 77. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 78. California Labor Code § 226(a) requires an employer to furnish each of his or her
13 employees with an accurate, itemized statement in writing showing the gross and net earnings,
14 total hours worked, and the corresponding number of hours worked at each hourly rate; these
15 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
16 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
17 statements may be given to the employee separately from the payment of wages; in either case the
18 employer must give the employee these statements twice a month or each time wages are paid.

19 79. Defendants failed to provide Employees with accurate itemized wage statements in
20 writing, as required by the Labor Code. The wage statements given to Employees by Defendants
21 did not include the total hours worked in violation of Labor Code § 226(a)(2) and failed to
22 accurately set forth all applicable hourly rates in effect during the pay period, the corresponding
23 number of hours worked at each such rate, and the resulting gross wages, specifically for overtime
24 worked, in violation of Labor Code §§ 226(a)(1) and 226(a)(9). The wage statements given to
25 Employees by Defendants also failed to accurately account for wages, overtime, and premium pay
26 for deficient meal periods and rest breaks, all of which Defendants knew or reasonably should
27 have known were owed to Employees, as alleged hereinabove. Additionally, Defendants failed in
28 their affirmative obligation to keep accurate records of the correct overtime wages based on proper

1 regular rate calculations that included nondiscretionary commissions, incentive pay, and/or
2 nondiscretionary bonuses earned, and the total amount of compensation of their Employees. As a
3 result, the wage statements provided to Employees were confusing and required Employees to
4 engage in discovery and refer to outside sources to verify whether their pay was correct and
5 potentially resulting in a miscalculation by the Employees.

6 80. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
7 Employees suffered injuries, including among other things confusion over whether they received
8 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
9 forcing them to make mathematical computations to analyze whether the wages paid in fact
10 compensated them correctly for all hours worked.

11 81. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
12 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
13 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
14 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
15 award of costs and reasonable attorneys' fees.

16 82. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
17 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
18 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
19 employee for each pay period.

20 83. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
21 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
22 shown according to proof.

23 **NINTH CAUSE OF ACTION**

24 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174**
25 **and 1174.5**

26 **(Against All Defendants)**

27 84. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 85. California Labor Code § 1174 requires that all employers shall keep accurate time
2 and wage records for all employees. California Labor Code § 1174.5 further requires that any
3 employee suffering injury due to a willful violation of the aforementioned obligations may seek
4 damages, including civil penalties, from the employer.

5 86. During the course of Plaintiff's and Employees' employment, Defendants
6 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
7 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
8 overtime, and premium pay as discussed above.

9 87. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
10 knew wages to be due but failed to pay them.

11 88. Accordingly, Defendants are liable for civil penalties pursuant to the California
12 Labor Code including §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

13 **TENTH CAUSE OF ACTION**

14 **FAILURE TO PRODUCE REQUESTED EMPLOYMENT RECORDS UNDER LABOR**

15 **CODE §§ 226 and 1198**

16 **(Against All Defendants)**

17 89. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
18 full herein.

19 90. Pursuant to California Labor Code § 226, current and former employees have the
20 right to inspect or receive a copy of their records pertaining to their employment, upon reasonable
21 request to their employer. Under this statute, an employer that receives a request to inspect or
22 receive a copy of records pertaining to a current or former employee must comply with the request
23 as soon as practicable, but no later than twenty-one (21) calendar days from the date of the
24 request..

25 91. Pursuant to California Labor Code § 1198.5(a), every current and former employee,
26 or his or her representative, has the right to inspect and receive a copy of the personnel records
27 that the employer maintains relating to the employee's performance or to any grievance concerning
28 the employee. Under this statute, upon written request from a current or former employee or his or

1 her representative, an employer must make the contents of those personnel records available for
2 inspection or provide a copy of the personnel records to the current or former employee, or his or
3 her representative, not later than thirty (30) calendar days from the date the employer receives the
4 written request, subject to some limited exceptions. Failure to comply with these requests allows
5 for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and
6 226(f).

7 92. Plaintiff sent written requests through his counsel to Defendants for their payroll
8 records, timecards, and personnel records. However, Plaintiff did not received his requested
9 records by the thirty day deadline provided in Labor Code § 1198.5(a).

10 93. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
11 produce the required records requested by Plaintiff.

12 94. On information and belief, Defendants' failure to provide Plaintiff with all of his
13 requested employment records is not an isolated incident, but was instead consistent with
14 Defendants' policy and practice that applied to Plaintiff and Employees.

15 95. Pursuant to California Labor Code § 1198.5, Plaintiff and Employees are entitled to
16 a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

17 96. Pursuant to California Labor Code § 226, Plaintiff is entitled to a penalty of seven
18 hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost.

19 **ELEVENTH CAUSE OF ACTION**
20 **VIOLATION OF LABOR CODE § 203**
21 **(Against All Defendants)**

22 97. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
23 full herein.

24 98. Numerous Employees are no longer employed by Defendants; they either quit
25 Defendants' employ or were fired therefrom.

26 99. Defendants failed to pay these Employees all wages due and certain at the time of
27 termination or within seventy-two (72) hours of resignation.

28 100. The wages withheld from these Employees by Defendants remained due and owing

1 for more than thirty (30) days from the date of separation of employment.

2 101. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
3 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
4 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
5 to thirty (30) days from the date they were due.

6 **TWELFTH CAUSE OF ACTION**

7 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

8 **(Against All Defendants)**

9 102. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 103. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim
12 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in
13 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
14 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
15 meaning of Code of Civil Procedure § 1021.5.

16 104. Plaintiff is a "person" within the meaning of Business & Professions Code
17 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
18 relief, restitution, and other appropriate equitable relief.

19 105. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
20 business practices.

21 106. Wage-and-hour laws express fundamental public policies. Paying employees their
22 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
23 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
24 to enforce minimum labor standards, to ensure that employees are not required or permitted to
25 work under substandard and unlawful conditions, and to protect law-abiding employers and their
26 employees from competitors who lower costs to themselves by failing to comply with minimum
27 labor standards.

28 107. Defendants have violated statutes and public policies. Through the conduct alleged

1 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
2 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
3 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
4 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
5 guaranteed to all employees under the law.

6 108. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
7 violation of the Business & Professions Code § 17200 *et seq.*

8 109. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
9 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
10 care should have known that their conduct was unlawful; therefore their conduct violates the
11 Business & Professions Code § 17200 *et seq.*

12 110. As a proximate result of the above-mentioned acts of Defendants, Employees have
13 been damaged, in a sum to be proven at trial.

14 111. Unless restrained by this Court, Defendants will continue to engage in such
15 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
16 should make such orders or judgments, including the appointment of a receiver, as may be
17 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
18 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
19 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
20 have unlawfully failed to pay.

21 **THIRTEENTH CAUSE OF ACTION**

22 **PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.***

23 **(Against All Defendants)**

24 112. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 113. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
27 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
28 alleged violators, Defendants.

1 114. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
2 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
3 penalty provisions, without limitation, based on the following California Labor Code sections:
4 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174,
5 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198.5, 1199, 2698, 2699, *et seq.* and 2802.

6 115. The penalties shall be allocated as follows: 75% to the Labor and Workforce
7 Development Agency (LWDA) and 25% to the affected employee.

8 116. Employees also seek any and all penalties and remedies set forth in Labor Code §
9 558, which states:

10 (a) Any employer or other person acting on behalf of an employer who
11 violates, or causes to be violated, a section of this chapter or any provision
12 regulating hours and days of work in any order of the Industrial Welfare
13 Commission shall be subject to a civil penalty as follows: (1) For any initial
14 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
15 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. (3)
Wages recovered pursuant to this section shall be paid to the affected employee.

16 (b) If upon inspection or investigation the Labor Commissioner determines that
17 a person had paid or caused to be paid a wage for overtime work in violation of any
18 provision of this chapter, or any provision regulating hours and days of work in any
19 order of the Industrial Welfare Commission, the Labor Commissioner may issue a
citation. The procedures for issuing, contesting, and enforcing judgments for
20 citations or civil penalties issued by the Labor Commissioner for a violation of this
chapter shall be the same as those set out in Section 1197.1.

21 (c) The civil penalties provided for in this section are in addition to any other
22 civil or criminal penalty provided by law.

23 117. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
24 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
25 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
26 for each violation in a subsequent citation, for which the employer fails to provide the employee a
27 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the
28 extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

118. Plaintiff has exhausted his administrative remedy by sending a certified letter to the

1 LWDA and Defendants postmarked on November 21, 2023. The LWDA has not provided notice
2 of its intent to investigate the alleged violations within 65 calendar days of the postmark date of
3 the letters.

4 **RELIEF REQUESTED**

5 WHEREFORE, Plaintiff prays for the following relief:

- 6 1. For an order certifying this action as a class action;
- 7 2. For compensatory damages in the amount of the unpaid minimum wages for work
8 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
9 the filing of this action, as may be proven;
- 10 3. For liquidated damages in the amount equal to the unpaid minimum wage and
11 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 12 4. For compensatory damages in the amount of the hourly wage made by Employees
13 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
14 years prior to the filing of this action, as may be proven;
- 15 5. For compensatory damages in the amount of the hourly wage made by Employees
16 for each day requisite rest breaks were not provided or were deficiently provided and where no
17 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
18 be proven;
- 19 6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 20 7. For penalties pursuant to Labor Code § 226.3, as may be proven;
- 21 8. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;
- 22 9. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
23 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 24 10. For penalties pursuant to Labor Code § 227.3, as may be proven;
- 25 11. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;
- 26 12. For penalties pursuant to Labor Code § 1174.5, as may be proven;
- 27 13. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;
- 28 14. For restitution for unfair competition pursuant to Business & Professions Code

1 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

2 15. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

3 16. For compensatory damages in the amount of all previously unreimbursed business
4 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
5 from four (4) years prior to the original filing of this action, as may be proven;

6 17. For an order enjoining Defendants and their agents, servants, and employees, and
7 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
8 duties adumbrated in this Complaint;

9 18. For all general, special, and incidental damages as may be proven;

10 19. For an award of pre-judgment and post-judgment interest;

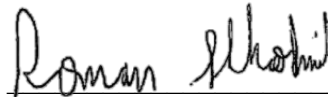
11 20. For an award providing for the payment of the costs of this suit;

12 21. For an award of attorneys' fees; and

13 22. For such other and further relief as this Court may deem proper and just.

14
15 DATED: January 25, 2024

D.LAW, INC.

16
17 By 

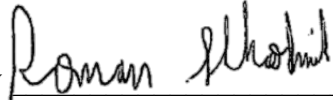
18 David Yeremian
19 Roman Shkodnik
20 Emma Geesaman
21 Attorneys for Plaintiff
22 MANUEL CUEVAS
23 and the putative class
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: January 25, 2024

D.LAW, INC.

By 

David Yeremian
Roman Shkodnik
Emma Geesaman
Attorneys for Plaintiff
MANUEL CUEVAS
and the putative class

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

On January 25, 2024, I served the foregoing: **FIRST AMENDED CLASS ACTION COMPLAINT** on Interested Parties in this action by placing a true copy thereof,

The Belvedere Hotel Partnership

dba Peninsula Beverly Hills

Ali Kasikci, Agent for Service
9882 S Santa Monica Blvd.
Beverly Hills, CA 90212

The HongKong and Shanghai Hotels

Ali Kasikci, Agent for Service
9882 S Santa Monica Blvd.
Beverly Hills, CA 90212

Peninsula Beverly Hills, Inc.

dba The Peninsula Beverly Hills

Daisy Montengro, Agent for C.T. Corporation System
330 N Brand Blvd., Ste. 700
Glendale, CA 91203

Peter Choi

pchoi@grsm.com

GORDON REES SCULLY MANSUKHANI, LLP

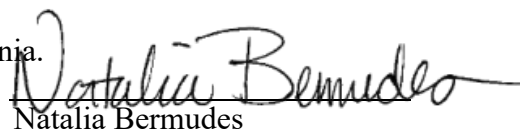
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071

☒ **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☐ **(ONLY BY ELECTRONIC TRANSMISSION)** I electronically served the foregoing document in PDF format. I caused a true copy of the foregoing document(s) listed above to be served by electronic email transmission at the time shown on each transmission, to each interested party at the email address(es) shown above. Each transmission was reported as complete and without error.

☒ **(STATE)** I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 25, 2024, at Glendale, California.


Natalia Bermudes