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

ADAN GARCIA, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

VHG DELFINA LLC.; MARRIOTT
INTERNATIONAL, INC. and DOES 1
through 50, inclusive,

Defendants.

Case No. 24STCV05278

Assigned for all purposes to:
Honorable Judge Kenneth R. Freeman
Dept. 14

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Pay All Wages;
2. Failure to Provide Meal Periods or
Compensation in Lieu Thereof;
3. Failure to Permit Rest Periods or Provide
Compensation in Lieu Thereof;
4. Failure to Provide Accurate Itemized Wage
Statements;
5. Waiting Time Penalties;
6. Failure to Reimburse Business Expenses;
7. Violations of the Unfair Competition Law;
and
8. Violation of the Private Attorneys General
Act of 2004

JURY TRIAL DEMANDED

1 Plaintiff ADAN GARCIA (“Plaintiff”), individually, and on behalf of all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint (“FAC”)
3 against Defendants VHG DELFINA LLC and MARRIOT INTERNATIONAL, INC.; and DOES
4 1 through 50, inclusive (collectively, “Defendants”), and alleges with knowledge with respect to
5 his own acts and on information and belief as to other matters as follows:

6 **INTRODUCTION**

7 1. This proposed class action, pursuant to California Code of Civil Procedure section
8 382, is brought by Plaintiff individually and on behalf of all current and former non-exempt
9 employees employed by Defendants in California during the Class Period (collectively the “Class”
10 or “Class Members”). The term Class Period is defined as four (4) years, plus the tolled statutory
11 period¹, prior to the filing of this action to the date of class certification.

12 2. Plaintiff also brings this representative action pursuant to the Private Attorneys
13 General Act of 2004, Labor Code sections 2698 *et seq.* (“PAGA”), against Defendants, on behalf
14 of himself individually and other aggrieved employees who are and were employed by Defendants
15 as non-exempt employees throughout California during the PAGA Period (the “aggrieved
16 employees”). The term PAGA Period is defined as one (1) year prior to Plaintiff’s initial notice of
17 Labor Code violations to the Labor and Workforce Development Agency (“LWDA”) and
18 Defendants until judgment.

19 3. This proposed class and representative action seeks, *inter alia*, unpaid wages
20 (including sick pay, vacation pay, prevailing wage pay, minimum, regular, overtime, and double
21 time wages), compensation for non-compliant meal periods, rest periods, recovery periods, waiting
22 time penalties, itemized wage statement penalties, civil penalties, business expense
23 reimbursements, liquidated damages, interest, reasonable attorneys’ fees, and costs. Plaintiff’s
24 action is brought under, *inter alia*, the California Industrial Welfare Commission (“IWC”) Wage
25 Orders and applicable provisions of the California Code of Regulations, California Business &
26 Professions Code sections 17200 *et seq.*, California Civil Code section 3289, California Code of

27
28 ¹ Emergency Rule 9 provides: “Notwithstanding any other law, the statutes of limitations and repose for
civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”

Civil Procedure section 1021.5, and California Labor Code (“Labor Code”) sections 200, 201, 202, 203, 204, 206, 210, 221, 223, 224, 226, 226.3, 226.7, 227.3, 233, 234, 246, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800 and 2802.

4. Under the California Unfair Competition Law, Business and Professions Code sections 17200 *et seq.* (“UCL”), and pursuant to the class action procedures provided for in this statute, Plaintiff, on behalf of himself and the proposed Class, seeks declaratory relief, injunctive relief, and restitution of all benefits Defendants have received from their employees due to their unlawful business practices, including but not limited to, their failure to timely provide minimum, regular, overtime, and double time compensation due for all hours worked during and upon separation of employment, failure to reimburse business expenses, failure to provide compliant meal periods and rest breaks to their employees or compensation in lieu thereof, and failure to provide accurate itemized wage statements.

JURISDICTION AND VENUE

5. This Court has jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, section 10, which grants the Superior Court original jurisdiction in all cases except those given to other trial courts. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law. Further, this is a class action pursuant to California Code of Civil Procedure section 382 and a representative action under PAGA. As such, the monetary damages, restitution, penalties, and other amounts sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. The Court also has jurisdiction over certain causes of action pursuant to California Business & Professions Code sections 17203 and 17204, which provide for exclusive jurisdiction for enforcement of this statute in any court of competent jurisdiction.

6. This Court has jurisdiction over all Defendants because each Defendant is a citizen of California, a corporation or association organized under the laws of the State of California, an association authorized to do business in California and registered with the California Secretary of State, does sufficient business in California, has sufficient minimum contacts with California, and/or intentionally avails itself of the laws and markets of California through the promotion, sale,

1 marketing and distribution of its products and/or services in California to render the exercise of
2 jurisdiction by the California courts permissible.

3 7. Venue in this County is proper under California Business & Professions Code
4 section 17203 and California Code of Civil Procedure section 395.5 because a substantial part of
5 Defendants' unlawful conduct, acts, and omissions alleged herein occurred in this County,
6 Defendants conduct substantial business in this County, Defendants' liability arose in this County,
7 and/or Defendants reside, transact business, maintain offices, and/or have an agent or agents in this
8 County. The relief requested is within the jurisdiction of this Court.

9 **PARTIES**

10 8. Plaintiff is an individual who resides in California. Defendants employed Plaintiff
11 as a non-exempt hourly employee from approximately April 2023 through February 2024.
12 Specifically, Defendants employed Plaintiff as a maintenance worker whose job duties included,
13 without limitation, fulfilling maintenance requests from guests, making repairs, and conducting
14 other maintenance duties.

15 9. Plaintiff is informed, believes and thereon alleges that, at all relevant times, VH
16 DELFINA LLC ("VHG") was and is a California corporation. Plaintiff is informed, believes and
17 thereon alleges that, at all relevant times, VHG was and is an employer subject to California state
18 wage and hour laws.

19 10. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
20 MARRIOTT INTERNATIONAL, INC. ("MARRIOTT") was and is a California corporation. Plaintiff
21 is informed, believes and thereon alleges that, at all relevant times, MARRIOTT was and is an
22 employer subject to California state wage and hour laws.

23 11. Plaintiff is informed, believes and based thereon alleges that Defendants suffered
24 and permitted Plaintiff and Class Members to work, and/or jointly exercised control over the wages,
25 hours, and/or working conditions of Plaintiff and the Class Members.

26 12. Defendants continue to employ non-exempt employees within California.

27 13. Plaintiff is unaware of the true names and capacities of those defendants identified
28 as DOES 1 through 50. Therefore, Plaintiff identifies those defendants fictitiously. Plaintiff is

1 informed, believes and thereon alleges that at all relevant times each DOE defendant was a parent,
2 sister, or related corporate entity of defendants, or an owner, employee or agent of defendants, and
3 each related entity, and was acting with the knowledge and authorization of each of the other
4 defendants. Plaintiff will seek to amend this FAC to allege the true names and capacities of each
5 DOE defendant when their names have been ascertained and identified. Plaintiff is informed,
6 believes and thereon alleges that each of the defendants sued as DOES 1 through 50 participated
7 in, received the benefit of, or was in some way responsible for one or more of the wrongful acts
8 and omissions and some portion of the damages alleged herein.

9 14. Plaintiff is informed, believes and thereon alleges that at all times material hereto,
10 each defendant acted in all respects pertinent to this action as the agent of the other defendant,
11 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
12 each defendant are legally attributable to the other defendant. Furthermore, defendants in all
13 respects acted as the employer and/or joint employer of Plaintiff and the Class Members.

14 15. Plaintiff is informed, believes and thereon alleges that Defendants, each and all of
15 them, at all times material hereto, were the joint employers, parent companies, successor
16 companies, predecessors in interest, affiliates, agents, employees, servants, joint venturers,
17 directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining defendants.
18 Defendants, unless otherwise alleged, at all times material hereto, performed all acts and omissions
19 alleged herein within the course and scope of said relationship(s), and are a proximate cause of
20 Plaintiff's damages as herein alleged.

21 16. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest
22 in ownership between Defendants and DOES 1 through 50, inclusive, such that any individuality
23 and separateness between the individual and the corporation does not exist, as Defendants, and
24 DOES 1 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned
25 herein were mere shells, instrumentalities and conduits through which DOES 1 through 50,
26 inclusive, carried out their business in the business name, exercising complete control and
27 dominance over such business; (2) that Defendants were conceived, intended and used by DOES 1
28 through 50, inclusive, as devices to avoid individual liability and in place of Defendants, and DOES

1 1 through 50, inclusive, and were without the financial solvency and responsibility required by law;
2 and (3) that all of the assets of the Defendants have been transferred to DOES 1 through 50,
3 inclusive, or some other individual or entity which he or she owns or controls, with the intent to
4 hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further,
5 Plaintiff is informed, believes and thereon alleges, that there exists a principal-agency relationship
6 between and among Defendants.

7 17. At all relevant times herein, Defendants were agents of each other and acting within
8 the course and scope of their agency.

9 **CLASS ACTION ALLEGATIONS AND FACTUAL BACKGROUND**

10 18. Pursuant to California Code of Civil Procedure section 382, Plaintiff brings this
11 action individually and as a class action on behalf of a proposed Class defined as follows:

12 Class:

13 All current and former non-exempt employees employed by Defendants in the State
14 of California within four (4) years prior to the commencement of this action, plus
15 the tolled statutory period under Emergency Rule 9, to the date of class certification.

16 19. The Class is also comprised of the following Subclasses:

17 Waiting Time Sub-Class:

18 Those members of the Class who separated from their employment with Defendants
19 within three (3) years prior to the commencement of this action to the date of class
20 certification.

21 20. Plaintiff reserves the right pursuant to California Rules of Court, Rule 3.764 and
22 3.765, to amend or modify the respective definitions of the Class and/or Subclasses to provide
23 greater specificity and/or further division into subclasses or limitation to particular issues based on
24 further investigation and discovery.

25 21. This action is brought, and may properly be maintained, as a class action pursuant
26 to California Code of Civil Procedure section 382 because there is a well-defined community of
27 interest in the litigation, and the proposed class is easily ascertainable. This action presents
28 questions of common interest and satisfies the numerosity, commonality, typicality, adequacy,

1 predominance, and superiority requirements of this provision.

2 22. Through this action, Plaintiff alleges Defendants have consistently maintained and
3 enforced against Plaintiff and Class Members unlawful employment practices and policies which
4 violate the Labor Code and IWC Wage Orders.

5 23. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
6 Defendants failed to pay Plaintiff and Class Members all sick pay, vacation pay, minimum, regular,
7 overtime, and double time wages for all hours worked in violation of the Labor Code and IWC
8 Wage Orders. During the PAGA Period, Plaintiff and Class Members regularly worked more than
9 eight (8) hours and/or 10 hours per workday, over 40 hours per workweek, and/or over eight (8)
10 hours per workday on the seventh consecutive day of work. Defendants' practices and policies
11 deprived Plaintiff and Class Members of minimum, regular, overtime, and/or double time wages
12 for work they performed off the clock. Defendants required Plaintiff and Class Members to
13 complete work- related tasks off the clock, such as communicating with Defendants and donning
14 and doffing duties. Furthermore, Defendants rounded Plaintiff and Class Members' hours worked,
15 thereby depriving them of wages for all hours worked at the legally mandated rates. Defendants did
16 not compensate Plaintiff and Class Members for all hours worked because Plaintiff and Class
17 Members were regularly on-duty during their meal and/or rest periods. For example, Defendants
18 also required Plaintiff and Class Members to carry a cell phone, pager and/or walkie-talkie for work
19 purposes during meal periods and while they were off-the-clock. Finally, Defendants failed to
20 accurately calculate the regular rate of pay by failing to include a remuneration when calculating
21 the rate of pay for overtime, double time, meal and rest period premiums, vacation pay, and sick
22 pay.

23 24. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
24 Defendants deprived Plaintiff and Class Members of the opportunity to take all of their statutorily
25 entitled meal periods within the appropriate time intervals or provide compensation in lieu thereof
26 in violation of the Labor Code and IWC Wage Orders. During the Class Period, Defendants failed
27 to provide timely off-duty 30-minute meal periods within the appropriate time intervals to Plaintiff
28 and other Class Members as required by Labor Code section 512 and section 11 of the applicable

1 Wage Order. Specifically, Plaintiff and Class Members frequently had their meal periods shortened,
2 interrupted, late, and/or missed altogether due to Defendants' practice of understaffing and
3 prioritizing work demands over taking compliant breaks. Further, Claimant and/or other aggrieved
4 employees were regularly on-duty during their meal and/or rest periods. For example, Defendants
5 also required Plaintiff and Class Members to carry a cell phone, pager and/or walkie-talkie for work
6 purposes during meal periods and while they were off-the-clock. Claimant and other aggrieved
7 employees were also restricted to the worksite. Defendants also failed to authorize and permit
8 and/or make available to Plaintiff and Class Members second meal periods when they worked more
9 than 10 hours. Moreover, Defendants rounded Plaintiff and Class Members' time punches for meal
10 periods. Accordingly, Defendants failed to authorize and permit and/or make available to Plaintiff
11 and Class Members timely, uninterrupted off-duty meal periods for at least 30 minutes when they
12 worked more than five (5) hours and/or 10 hours in a workday, and failed to compensate Plaintiff
13 and Class Members with an additional hour of pay at their regular rate of pay for every day in which
14 they were denied a compliant meal period, in violation of the Labor Code and the applicable IWC
15 Wage Orders.

16 25. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
17 Defendants failed to permit Plaintiff and Class Members to take all of their statutorily entitled 10-
18 minute rest periods for every four (4) hours worked or major fraction thereof or provide
19 compensation in lieu thereof in violation of the Labor Code and IWC Wage Orders. Plaintiff and
20 Class Members missed their rest breaks or had them interrupted or governed by Defendants'
21 practices and policies. For example, Defendants also required Plaintiff and Class Members to carry
22 a cell phone, pager and/or walkie-talkie for work purposes during meal periods and while they were
23 off-the-clock. Defendants also failed to adopt and implement a practice of providing third rest
24 breaks when Plaintiff and Class Members worked over 10 hours. Notwithstanding the above rest
25 break violations, Defendants failed to compensate Plaintiff and Class Members with an additional
26 hour of pay at their regular rate of pay for every day in which they suffered a rest period violation.
27 Accordingly, Employer violated the Labor Code and the applicable IWC Wage Orders.

28 26. Plaintiff is informed, believes, and thereon alleges that during the Class Period,

1 Defendants failed to reimburse Plaintiff and Class Members for necessary business expenses
2 incurred in the performance of their duties in violation of the Labor Code and IWC Wage Orders.
3 During the Class Period, Defendants failed to reimburse Plaintiff and Class Members for all
4 business expenses incurred for Defendants' benefit. For example, Plaintiff and Class Members were
5 required to use their personal cell phones to discuss work-related matters with Defendants'
6 representatives and for other work purposes without any reimbursement. Defendants also failed to
7 reimburse. Further, Plaintiff and Class Members were required to clean, wash, and iron their
8 uniforms, which were the Defendants' property, without any reimbursement for the costs of
9 cleaning, washing, and ironing. Also, Plaintiff and Class Members were required to purchase tools
10 and/or safety equipment without reimbursement in order to carry out their job duties. Accordingly,
11 Defendants violated the Labor Code and applicable IWC Wage Orders.

12 27. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
13 Defendants willfully failed to timely pay all wages due to Plaintiff and the Waiting Time Subclass
14 upon separation of employment in violation of the Labor Code and IWC Wage Orders. Plaintiff
15 and Waiting Time Subclass Members were not paid all wages (including minimum, regular,
16 overtime, double time wages, sick pay, and vacation pay), reimbursements, meal period premiums,
17 and/or rest period premiums within the required time period in violation of the Labor Code and
18 applicable IWC Wage Orders.

19 28. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
20 Defendants failed to furnish Plaintiff and Class Members with accurate and complete wage
21 statements in violation of the Labor Code and IWC Wage Orders. Plaintiff and Class Members
22 received wage statements which did not accurately reflect the gross and net wages earned, total
23 hours worked, all applicable rates of pay and the corresponding number of hours worked at each
24 pay rate, and correct entity name and address on wage statements issued to Plaintiff and Class
25 Members, among other things in violation of the Labor Code and IWC Wage Orders.

26 29. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
27 described throughout this FAC were willful.

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31. A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Class are so numerous that joinder of all members is impractical, if not impossible. The identity of Class Members can be ascertained by analysis of Defendants' employee and payroll records.

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(a) Whether Defendants failed to pay Plaintiff and Class Members all minimum, regular, overtime, and double time wages for all hours worked by Plaintiff and Class Members.

(c) Whether Defendants rounded the time worked by Plaintiff and Class Members to Defendants' advantage.

(e) Whether Defendants failed to provide timely, uninterrupted, off-duty 30-minute meal periods to Plaintiff and Class Members without compensation in lieu thereof;

(g) Whether Defendants failed to permit timely, uninterrupted, off-duty 10-minute rest breaks for every four (4) hours or major fraction thereof worked by Plaintiff and Class

1 Members without compensation in lieu thereof;

2 (h) Whether Defendants failed pay premium wages to class members when they
3 have not been provided with required meal and/or rest periods;

4 (i) Whether Defendants failed to timely pay Plaintiff and Waiting Time
5 Subclass Members all wages due either immediately upon termination or within 72 hours after
6 resignation;

7 (j) Whether Defendants' conduct was willful;

8 (k) Whether Defendants failed to issue accurate itemized wage statements to
9 Plaintiff and Class Members;

10 (l) Whether Defendants failed to reimburse Plaintiff and Class Members for
11 necessary business expenditures;

12 (m) Whether Defendants engaged in unfair business practices in violation of
13 California Business & Professions Code sections 17200 *et seq.*;

14 (n) Additional common questions of law and fact that may develop as the
15 litigation progresses.

16 **TYPICALITY**

17 33. Plaintiff is informed, believes, and thereon alleges that Plaintiff's claims are typical
18 of the claims of the Class because: Plaintiff and the Class sustained injuries and damages arising
19 out of and caused by Defendants' unlawful policies and practices; the claims arise out of the same
20 course of conduct by Defendants; Plaintiff's claims are based upon the same legal theories as the
21 claims of the Class; and the legal issues raised under California state law as a result of Defendants'
22 conduct apply equally to Plaintiff and the Class Members.

23 **ADEQUACY OF REPRESENTATION**

24 34. Plaintiff is an adequate representative of the Class, in that Plaintiff's claims (and
25 defenses, if any) are typical of those of the Class. Plaintiff has no conflicts of interest with Plaintiff's
26 fellow Class Members and will be able to fairly and adequately protect the interests of the Class.
27 Plaintiff has the same interests in the litigation of this case as the Class Members; and is committed
28 to vigorous prosecution of this case and has retained competent counsel experienced in class action

1 and wage and hour litigation of this nature.

2 **PREDOMINANCE**

3 35. Defendants have engaged in a common course of wage and hour abuse toward
4 Plaintiff and Class Members. The common issues arising from this conduct that affect Plaintiff and
5 Class Members predominate over any individual issues. Adjudication of these common issues in a
6 single action has important and desirable advantages of judicial economy.

7 **SUPERIORITY OF CLASS ACTION**

8 36. A class action is superior to other available methods for the fair and efficient
9 adjudication of this controversy because individual litigation of the claims of all Class Members is
10 impracticable. Even if every Class Member could afford individual litigation, the court system
11 could not. It would be unduly burdensome to the courts in which individual litigation of numerous
12 cases would proceed. Individualized litigation would also present the potential for varying,
13 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
14 and to the court system resulting from multiple trials of the same complex factual issues. Moreover,
15 individual actions by Class Members may establish inconsistent standards of conduct for
16 Defendants. By contrast, the conduct of this action as a class action, with respect to some or all of
17 the issues presented herein, presents fewer management difficulties, conserves the resources of the
18 parties and the court system, and protects the rights of each Class Member.

19 37. Defendants have acted or refused to act in respects generally applicable to the Class,
20 thereby making appropriate relief with regard to the members of the Class as a whole, as requested
21 herein.

22 **PUBLIC POLICY CONSIDERATIONS**

23 38. Employers in the State of California violate employment and labor laws every day.
24 Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation.
25 Former employees are fearful of bringing actions because they believe their former employers
26 might damage their future endeavors through negative references and/or other means. Class actions
27 provide Class Members who are not named in the action with a type of anonymity that allows for
28 the vindication of their rights while affording them privacy protections.

FIRST CAUSE OF ACTION
(FAILURE TO PAY ALL WAGES)
(Against All Defendants)

39. Plaintiff incorporates by reference all previous paragraphs of this FAC as though fully set forth herein.

40. At all relevant times, Defendants had a duty to comply with Labor Code sections 204, 206, 210, 221, 223, 224, 227.3, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, and the applicable IWC Wage Orders and California Code of Regulations.

41. Labor Code section 204 and the IWC Wage Orders require timely payment of all wages owed on regularly scheduled paydays at least twice during each calendar month, on days designated in advance by the employer as the regular paydays. All wages in earned in excess of the normal work period must be paid no later than the payday for the next regular payroll period.

42. Labor Code section 206 provides that in case of a dispute over wages, the employer shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to the employee all remedies he/she is otherwise entitled to as to any balance claimed.

43. Labor Code section 210 provides:

every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. (b) The penalty shall either be recovered by the employee as a statutory penalty pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the issuance of a citation or pursuant to Section 98.3.

44. Labor Code section 221 provides “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

45. Labor Code section 223 provides “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

46. Labor Code section 224 prohibits any deduction from an employee’s wages which

1 is not either authorized by the employee in writing or permitted by law.

2 47. Labor Code section 246 requires employers to provide and allow employees to use
3 at least 24 hours, or three days, of paid sick leave per year.

4 48. Labor Code section 227.3 requires employers to pay terminated employees for their
5 unused paid vacation time at their final rate of pay.

6 49. At all times relevant, Labor Code section 510, and applicable sections of the
7 California Code of Regulations and the IWC Wage Orders applied to Plaintiff's work with
8 Defendants and continue to apply to Class Members' employment with Defendants. Labor Code
9 section 510 and applicable provisions of the California Code of Regulations and IWC Wage Orders
10 state that any work performed in excess of eight hours in a workday and/or 40 hours in a workweek
11 must be paid at one and one-half times the employee's regular rate of pay. Any work performed in
12 excess of 12 hours in a workday must be compensated at the rate of no less than twice the regular
13 rate of pay for an employee.

14 50. Labor Code section 558 provides "[a]ny employer or other person acting on behalf
15 of an employer who violates, or causes to be violated, a section of this chapter or any provision
16 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
17 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
18 underpaid employee for each pay period for which the employee was underpaid in addition to an
19 amount to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100)
20 for each underpaid employee for each pay period for which the employee was underpaid in addition
21 to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section
22 shall be paid to the affected employee."

23 51. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid
24 to all employees in California for all hours worked. Local minimum wage ordinances may provide
25 for higher minimum wage rates that must be paid to employees for all hours worked in those locales
26 where each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful to pay
27 less than the state or local minimum wage, whichever is higher, for any hour of work.

28 52. Labor Code section 1194 provides that any employee receiving less than the legal

1 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover
2 in a civil action the unpaid balance of the full amount of the minimum wage or overtime
3 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

4 53. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an
5 amount equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

6 54. Labor Code section 1197 provides that the minimum wage for employees fixed by
7 the commission is the minimum wage to be paid to the employees, and the payment of a less wage
8 than minimum so fixed is unlawful.

9 55. Labor Code section 1198 prohibits employers from employing for longer hours or
10 less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise
11 set by the Labor Commissioner.

12 56. The failure to pay at least minimum wages to Plaintiff and Class Members for each
13 and every hour worked violates Labor Code sections 1182.11-1812.12, 1194, 1194.2, and 1197;
14 the applicable IWC wage order section 4; and Business & Professions Code.

15 57. The failure to pay designated wages to Plaintiff and Class Members for each and
16 every hour worked violates Labor Code sections 221 and 223; the applicable IWC wage order
17 section 3; and Business & Professions Code.

18 58. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
19 Plaintiff and Class Members regularly worked in excess of eight (8), 10, and/or 12 hours per
20 workday and over 40 hours per workweek and were not paid all wages at their proper rate of pay
21 for overtime, double time, sick pay, vacation pay, and meal and rest period premiums, and off-the-
22 clock work including due to rounding, among other things.

23 59. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
24 Defendants failed to pay Plaintiff and Class Members all wages for hours worked (including sick
25 pay, vacation pay, prevailing wage pay, and minimum, regular, overtime, and double time wages)
26 by failing to accurately record all time worked, time shaving, auto-deducting missed or short meal
27 periods, rounding time and meal period punches, and requiring off-the-clock work without
28 compensation, among other things.

60. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss of earnings from minimum, regular, overtime, and double time compensation due, in an amount to be established at trial, plus prejudgment interest, attorneys' fees, and costs pursuant to statute.

61. Plaintiff is informed, believes, and thereon alleges that Defendants, through their conduct described herein, have committed an “intentional theft of wages in an amount greater than nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period” within the meaning of California Penal Code section 487m. Specifically, Defendants have intentionally deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200, gratuities, as defined in Labor Code section 350, benefits, or other compensation, by unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff and Class Members under the law. Plaintiff and the Class Members he seeks to represent are thus entitled to recover from Defendants treble damages and costs, including reasonable attorneys’ fees, pursuant to California Penal Code section 496(c).

62. WHEREFORE, Plaintiff and the Class Members Plaintiff seeks to represent request relief as described herein and below.

SECOND CAUSE OF ACTION

(FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU

THEREOF)

(Against All Defendants)

63. Plaintiff incorporates by reference all previous paragraphs of this FAC as though fully set forth herein.

64. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.7 and 512, and the applicable IWC Wage Orders and California Code of Regulations.

65. Labor Code section 512 and Section 11 of the IWC Wage Orders prohibit an employer from employing any person for a work period of more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes (commencing before the

1 employee's fifth hour of work), except that if the total work period per day is no more than 6 hours,
2 the meal period may be waived by mutual consent of the employer and employee. A second meal
3 period of not less than 30 minutes is required if an employee works more than 10 hours per day and
4 must begin before the employee's tenth hour of work, except if the total hours worked is no more
5 than 12 hours, the second meal period may be waived by mutual consent of the employer and
6 employee, but only if the first meal period was not waived.

7 66. Section 11 of the applicable IWC Wage Orders state that "[u]nless the employee is
8 relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on
9 duty' meal period and counted as time worked."

10 67. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from
11 requiring any employee to work during a meal period mandated by any California statute,
12 regulation, standard or order. If an employer fails to provide an employee with a meal period in
13 accordance with state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the
14 employer pay the employee one additional hour of pay at the employee's regular rate of
15 compensation for each workday that the meal period is noncompliant.

16 68. Throughout the Class Period, Plaintiff and Class Members did not receive compliant
17 meal periods when working more than five (5) hours and/or 10 hours per workday because their
18 first and second meal periods were missed, late, interrupted, short, and/or not free of all duties.

19 69. During the Class Period, Defendants failed to pay Plaintiff and Class Members meal
20 period premiums for noncompliant meal periods pursuant to Labor Code section 226.7(b) and the
21 applicable IWC Wage Order and California Code of Regulations.

22 70. Plaintiff is informed, believes, and thereon alleges that Class Members did not
23 voluntarily waive their meal periods.

24 71. As a direct and proximate result of Defendants' unlawful conduct, as set forth
25 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss
26 of premium pay for meal period violations and earnings, in an amount to be established at trial, plus
27 prejudgment interest pursuant to statute. To the extent such unpaid premiums or meal period
28 violations are deemed unpaid wages, Plaintiff will also seek attorneys' fees and costs pursuant to

1 statute.

2 72. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
3 conduct described herein, have committed an “intentional theft of wages in an amount greater than
4 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
5 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month
6 period” within the meaning of California Penal Code section 487m. Specifically, Defendants have
7 intentionally deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200,
8 gratuities, as defined in Labor Code section 350, benefits, or other compensation, by unlawful
9 means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to
10 Plaintiff and Class Members under the law Plaintiff is informed, believes, and thereon alleges that
11 meal period premiums are wages, gratuities, benefits, or other compensation within the meaning of
12 California Penal Code section 487m. Plaintiff and the Class Members he seeks to represent are thus
13 entitled to recover from Defendants treble damages and costs, including reasonable attorneys’ fees,
14 pursuant to California Penal Code section 496(c).

15 73. WHEREFORE, Plaintiff and the Class Members Plaintiff seeks to represent request
16 relief as described herein and below.

17 **THIRD CAUSE OF ACTION**

18 **(FAILURE TO PERMIT REST PERIODS OR PROVIDE COMPENSATION IN LIEU**
19 **THEREOF)**

20 **(Against All Defendants)**

21 74. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
22 fully set forth herein.

23 75. At all relevant times, Defendants had a duty to comply with Labor Code section
24 226.7 and the applicable IWC Wage Orders and California Code of Regulations.

25 76. Labor Code section 226.7(a) states “No employer shall require any employee to
26 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
27 Commission.”

28 77. Section 12 of the applicable IWC Wage Order provides in relevant part that:

1 (A) Every employer shall authorize and permit all employees to
2 take rest periods, which insofar as practicable shall be in the middle
3 of each work period. The authorized rest period time shall be based
4 on the total hours worked daily at the rate of ten (10) minutes net rest
5 time per four (4) hours or major fraction thereof. However, a rest
6 period need not be authorized for employees whose total daily work
7 time is less than three and one-half (3 1/2) hours. Authorized rest
8 period time shall be counted as hours worked for which there shall be
9 no deduction from wages.

10 (B) If an employer fails to provide an employee a rest period in
11 accordance with the applicable provisions of this order, the employer
12 shall pay the employee one (1) hour of pay at the employee's regular
13 rate of compensation for each work day that the rest period is not
14 provided.

15 78. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
16 Plaintiff and Class Members worked in excess of three-and-a-half (3.5) hours, six (6) hours, and/or
17 10 hours per workday.

18 79. During the Class Period, Plaintiff and Class Members did not receive compliant 10-
19 minute rest periods for every four hours worked or major fraction thereof because rest breaks were
20 missed, interrupted, shortened, restricted to the worksite, and/or not free of all duties.

21 80. During the Class Period, Defendants failed to pay Plaintiff and Class Members rest
22 period premiums for noncompliant rest periods pursuant to Labor Code section 226.7(b) and the
23 applicable IWC Wage Order.

24 81. As a direct and proximate result of Defendants' unlawful conduct, as set forth
25 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss
26 of earnings, in an amount to be established at trial plus prejudgment interest pursuant to statute. To
27 the extent such unpaid premiums or rest period violations are deemed unpaid wages, Plaintiff will
28 also seek attorneys' fees and costs pursuant to statute.

82. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
conduct described herein, have committed an "intentional theft of wages in an amount greater than
nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month
period" within the meaning of California Penal Code section 487m. Specifically, Defendants have

1 intentionally deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200,
2 gratuities, as defined in Labor Code section 350, benefits, or other compensation, by unlawful
3 means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to
4 Plaintiff and Class Members under the law Plaintiff is informed, believes, and thereon alleges that
5 rest period premiums are wages, gratuities, benefits, or other compensation within the meaning of
6 California Penal Code section 487m. Plaintiff and the Class Members he seeks to represent are thus
7 entitled to recover from Defendants treble damages and costs, including reasonable attorneys' fees,
8 pursuant to California Penal Code section 496(c).

9 83. WHEREFORE, Plaintiff and the Class Members Plaintiff seeks to represent request
10 relief as described herein and below.

11 **FOURTH CAUSE OF ACTION**

12 **(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)**

13 **(Against All Defendants)**

14 84. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
15 fully set forth herein.

16 85. At all relevant times, Defendants had a duty to comply with Labor Code section 226
17 and the applicable IWC Wage Orders and California Code of Regulations.

18 86. Labor Code section 226(a) requires that, semimonthly or at the time of each payment
19 of wages, employers must furnish each employee with an accurate itemized wage statement in
20 writing that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the
21 number of any piece-rate units earned and all applicable piece rates, (4) all deductions made from
22 wages, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name and last four
23 digits or employment identification number of the employee, (8) the name and address of the legal
24 entity that is the employer, and (9) all applicable hourly rates in effect and the corresponding
25 number of hours worked at each hourly rate.

26 87. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of
27 a knowing and intentional failure by an employer to provide an accurate itemized wage statement
28 to recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each

1 violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee,
2 in addition to an award of costs and attorneys' fees.

3 88. Section 7 of the IWC Wage Orders requires Defendants to maintain time records
4 showing, among other things, when the employee begins and ends each work period, meal periods
5 taken, and total daily hours worked in an itemized wage statement, and must show all deductions
6 and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff
7 and Class Members. Plaintiff is informed, believes, and thereon alleges that Defendants have
8 knowingly and intentionally failed to comply with the IWC Wage Orders.

9 89. Throughout the Class Period, Defendants provided wage statements that did not
10 accurately reflect the total number of hours worked by Plaintiff and Class Members at each
11 corresponding pay rate, the gross and net wages earned, and the correct entity name and address on
12 wage statements, among other things, making it difficult for Plaintiff and Class Members to
13 determine whether they were paid correctly for all hours worked, which deductions were made, and
14 the extent of any underpayment. Plaintiff has had to file this lawsuit in order to determine the
15 extent of the underpayment of wages, thereby causing Plaintiff to incur expenses and lost time.
16 Plaintiff would not have had to engage in these efforts and incur these costs had Defendants
17 provided the accurate wages earned. This has also delayed Plaintiff's ability to demand and recover
18 the underpayment of wages from Defendants. Defendants' violations of Labor Code section 226(a)
19 prevented Plaintiff and Class Members from knowing, understanding and disputing the wages paid
20 to them, and resulted in an unjustified economic enrichment to Defendants.

21 90. Defendants knowingly and intentionally failed to provide accurate, itemized wage
22 statements to Plaintiff and Class Members, and as such Plaintiff and Class Members are deemed to
23 have suffered injury in accordance with Labor Code section 226. Plaintiff and the Class are
24 therefore entitled to the damages and penalties provided for under Labor Code section 226(e).

25 91. Plaintiff and Class Members are also entitled to injunctive relief under Labor Code
26 section 226(h), compelling Defendants to comply with Labor Code section 226, and seek the
27 recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

28 92. WHEREFORE, Plaintiff and the Class Members Plaintiff seeks to represent request

1 relief as described herein and below.

2 **FIFTH CAUSE OF ACTION**
3 **(WAITING TIME PENALTIES)**
4 **(Against All Defendants)**

5 93. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
6 fully set forth herein.

7 94. At all relevant times, Defendants had a duty to comply with Labor Code
8 sections 201, 202, and 203, and the applicable IWC Wage Orders and California Code of
9 Regulations. Defendants failed to comply with these final paycheck requirements with respect to
10 Plaintiff and Waiting Time Subclass Members.

11 95. Labor Code section 201 requires that if an employer discharges an employee, the
12 wages earned and unpaid at the time of discharge are due and payable immediately.

13 96. Labor Code section 202 requires that if “an employee not having a written contract
14 for a definite period” quits, the employee’s wages shall become due and payable no later than
15 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention
16 to quit, in which case the employee is entitled to his or her wages at the time of quitting.

17 97. Labor Code section 203 provides that if an employer willfully fails to pay, without
18 abatement or reduction, any wages of an employee who is discharged or quits, the wages of the
19 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
20 an action therefor is commenced, but that the wages shall not continue for more than 30 days per
21 employee.

22 98. Plaintiff is informed, believes, and thereon alleges, that at all relevant times,
23 Defendants willfully failed to timely pay Plaintiff and Waiting Time Subclass Members all of their
24 unpaid wages earned, including, but not limited to, minimum, regular, overtime, and double time
25 wages, compensation for non-compliant meal periods and rest periods, and unpaid expense
26 reimbursements upon separation of employment. Plaintiff and Waiting Time Subclass Members
27 are entitled to timely compensation upon separation of their employment for any outstanding
28 unpaid wages, reimbursements, and premiums but to date have not received such compensation

1 from Defendants, therefore entitling them to penalties pursuant to Labor Code section 203.

2 99. As a consequence of Defendants' willful conduct in failing to pay all earned wages,
3 Plaintiff and Waiting Time Subclass Members are entitled to up to 30 days' wages as a penalty for
4 Defendants' failure to timely pay wages upon separation of employment, in addition to prejudgment
5 interest, attorneys' fees, and costs in amounts that will be established at trial.

6 100. WHEREFORE, Plaintiff and the Class Members Plaintiff seeks to represent request
7 relief as described herein and below.

8 **SIXTH CAUSE OF ACTION**

9 **(FAILURE TO REIMBURSE BUSINESS EXPENSES)**

10 **(Against All Defendants)**

11 101. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
12 fully set forth herein.

13 102. At all relevant times, Defendants had a duty to comply with Labor Code
14 sections 2800 and 2802 and the applicable IWC Wage Orders and California Code of Regulations.

15 103. Labor Code section 2800 requires employers to indemnify employees for losses
16 caused by the employer's want of ordinary care. To the extent Defendants claim that Plaintiff and
17 Class Members failed to request, demand, notify or otherwise seek reimbursement for their
18 expenses and losses, Defendants were obligated to nevertheless indemnify Plaintiff and Class
19 Members due to their own negligence.

20 104. Labor Code section 2802(a) requires that employers indemnify and reimburse
21 employees for all business expenses, which are defined as all necessary expenditures or losses
22 incurred by the employee in direct consequence of the discharge of the employee's duties or
23 otherwise incurred based on the employee's obedience to the employer's directions. Labor Code
24 section 2802(b) authorizes employees to recover in a court action interest which shall accrue from
25 the date on which the employee incurred the necessary expenditure or loss. Labor Code
26 section 2802(c) authorizes employees, who to enforce their right to reimbursements under Labor
27 Code section 2802, to also recover attorneys' fees and costs.

28 105. During the Class Period, Defendants failed to reimburse Plaintiff and Class

1 Members for all business expenses incurred for Defendants' benefit. For example, Plaintiff and
2 Class Members were required to use their personal cell phones to discuss work-related matters with
3 Defendants' representatives and for other work purposes without any reimbursement. Further,
4 Plaintiff and Class Members were required to clean, wash, and iron their uniforms, which were the
5 Defendants' property, without any reimbursement for the costs of cleaning, washing, and ironing.
6 Also, Plaintiff and Class Members were required to purchase tools and/or safety equipment without
7 reimbursement in order to carry out their job duties.

8 106. As a consequence of Defendants' willful conduct, Plaintiff and Class Members have
9 sustained damages for unreimbursed out-of-pocket business expenses, due in an amount to be
10 established at trial, plus prejudgment interest, attorney's fees, and costs pursuant to statute.

11 107. WHEREFORE, Plaintiff and the Class Members Plaintiff seeks to represent request
12 relief as described herein and below.

13 **SEVENTH CAUSE OF ACTION**

14 **(VIOLATION OF THE UNFAIR COMPETITION LAW)**

15 **(Against All Defendants)**

16 108. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
17 fully set forth herein.

18 109. California Business & Professions Code Section 17200, *et seq.* prohibits unfair
19 competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

20 110. Defendants' conduct, as alleged herein, has been and continues to be unfair,
21 unlawful and harmful to Plaintiff, Class Members, and Defendants' competitors. Plaintiff seeks to
22 enforce important rights affecting the public interest within the meaning of California Code of Civil
23 Procedure section 1021.5.

24 111. Defendants' activities, as alleged herein, violate California law and constitute
25 unlawful business acts or practices in violation of California Business and Professions Code
26 sections 17200, *et seq.*

27 112. A violation of Business and Professions Code sections 17200, *et seq.* may be
28 predicated on the violation of any state or federal law.

1 113. Plaintiff brings this action individually and on behalf of all members of the general
2 public, including the Class Members, pursuant to the UCL. Defendants' conduct alleged below
3 constitutes false, fraudulent, unlawful, unfair, and/or deceptive business practices, in violation of
4 the UCL. Defendants' policies and practices have violated state law in at least the following
5 respects:

6 (a) Failing to pay all sick pay, vacation pay, and minimum, regular, overtime,
7 and double time wages due to Plaintiff and Class Members in violation of Labor Code sections 204,
8 206, 210, 218, 221, 223, 224, 227.3, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, and the
9 applicable IWC Wage Orders and California Code of Regulations;

10 (b) Failing to provide compliant meal periods or compensation in lieu thereof in
11 violation of Labor Code sections 226.7 and 512;

12 (c) Failing to authorize or permit rest breaks and/or provide compensation in
13 lieu thereof in violation of Labor Code section 226.7;

14 (d) Intentionally failing to provide Plaintiff and Class Members with accurate
15 itemized wage statements in violation of Labor Code section 226;

16 (e) Failing to timely pay all earned wages to Plaintiff and Waiting Time
17 Subclass Members upon separation of employment in violation of Labor Code sections 201, 202,
18 and 203;

19 (f) Failing to reimburse Plaintiff and Class Members all necessary business
20 expenses in violation of Labor Code sections 2800 and 2802; and

21 (g) Violations of the IWC Wage Orders for the same conduct above.

22 114. Defendants' course of conduct, acts, and practices in violation of California law
23 mentioned above each constitute a separate and independent violation of the UCL. Defendants'
24 conduct described herein violates the policy or spirit of such laws or otherwise significantly
25 threatens or harms competition. The substantial harm to Plaintiff and Class Members in being
26 wrongfully denied earned wages, meal and rest periods, premium pay, and reimbursements
27 outweighs the utility, if any, of Defendants' policies or practices and, therefore, Defendants' actions
28 described herein constitute an unfair business practices or acts within the meaning of the UCL.

1 115. Plaintiff further brings this cause of action on behalf of the proposed Class, seeking
2 statutory and injunctive relief to stop the misconduct of Defendants, as complained herein, and to
3 compel restitution and disgorgement of all profits (i.e., unpaid wages, reimbursements, and
4 premiums, etc.) obtained by Defendants through the unfair and unlawful business practices
5 described herein pursuant to, *inter alia*, Business and Professions Code sections 17202, 17203, and
6 17208. Under the circumstances alleged, it would be inequitable and result in a miscarriage of
7 justice for Defendants to continue to retain the property of Plaintiff and Class Members.

8 116. Defendants' failure to adopt and implement policies in accordance with and/or
9 adhere to these laws, all of which are binding upon and burdensome to Defendants' competitors,
10 engenders an unfair competitive advantage for Defendants against its competitors, thereby
11 constituting an unfair business practice, as set forth in the UCL.

12 117. Pursuant to California Business and Professions Code section 17203, as a direct and
13 proximate result of the unfair business practices of Defendants, Plaintiff, individually, and on behalf
14 of others similarly situated, is entitled to equitable and injunctive relief, against such unlawful
15 practices in order to prevent future damage, for which there is no adequate remedy at law, and to
16 avoid a multiplicity of lawsuits. Plaintiff also seeks an order enjoining Defendants to cease and
17 desist from engaging in the practices described herein.

18 118. Plaintiff and Class Members also request any other such legal and equitable relief
19 from Defendants' unlawful and willful conduct as the Court deems just and proper, including an
20 injunction prohibiting Defendants from engaging in the unfair, unlawful, and/or fraudulent
21 practices alleged in this FAC.

22 119. As a result of Defendants' unlawful and unfair business practices, Plaintiff and Class
23 Members are entitled to and seek other appropriate relief available under California Business &
24 Professions Code sections 17200 *et seq.* Plaintiff, on behalf of himself and the Class, also seeks
25 recovery of attorneys' fees and costs of this action to be paid by Defendants as provided by
26 California Code of Civil Procedure section 1021.5.

27 120. WHEREFORE, Plaintiff and the Class Members Plaintiff seeks to represent request
28 relief as described herein and below.

EIGHTH CAUSE OF ACTION

**VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004
(AGAINST ALL DEFENDANTS)**

121. Plaintiff incorporates by reference all previous paragraphs of this FAC as though fully set forth herein.

122. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate or after 65 days have passed without notice from the LWDA.

123. On January 31, 2024, Plaintiff gave written notice of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. This written notice was provided via certified mail to Defendants and to the LWDA by electronically filing the notice via the Department of Industrial Relations' website. More than 65 days have passed since Plaintiff submitted his PAGA notice to the LWDA without notice from the LWDA. Accordingly, Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3 as to Defendants and is therefore able to pursue a claim for penalties individually and all other aggrieved employees under PAGA.

124. Under Labor Code section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

125. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

126. Pursuant to Labor Code sections 2699.3 and 2699.5, Plaintiff may seek civil

1 penalties for any alleged violation of the following provisions: subdivision (k) of section 96,
2 sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,
3 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of section 213, sections 221, 222, 222.5, 223,
4 and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of section 226, sections
5 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of section
6 232, subdivision (c) of section 232.5, sections 233, 234, 351, 353, and 403, subdivision (b) of
7 section 404, sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603,
8 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026,
9 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of section 1174, sections 1194, 1197,
10 1197.1, 1197.5, and 1198, subdivision (b) of section 1198.3, sections 1199, 1199.5, 1290, 1292,
11 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5,
12 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of section 1695.5, sections 1695.55,
13 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31,
14 1700.32, 1700.40, and 1700.47, sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and
15 2673, subdivision (a) of section 2673.1, sections 2695.2, 2800, 2801, 2802, 2806, and 2810,
16 subdivision (b) of section 2929, and sections 3073.6, 6310, 6311, and 6399.7.

17 127. Defendants' conduct violates numerous Labor Code sections, including, but not
18 limited to, the following:

19 (a) Violation of Labor Code sections 201-204, 206, 210, 221, 223, 227.3, 246,
20 510, 558, 1194, 1197, 1197.1, and 1198 for failure to timely pay all sick pay, vacation pay, and
21 earned wages (including minimum, regular, overtime, and double time wages) owed to Plaintiff
22 and other aggrieved employees during employment and upon separation of employment;

23 (b) Violation of Labor Code sections 226.7 and 512 for failure to provide meal
24 periods to Plaintiff and/or other Aggrieved Employees and failure to pay premium wages for missed
25 meal periods;

26 (c) Violation of Labor Code section 226.7 for failure to permit rest breaks to
27 Plaintiff and/or other Aggrieved Employees and failure to pay premium wages for missed rest
28 periods;

1 (d) Violation of Labor Code sections 226 and 226.3 for failure to provide
2 accurate itemized wage statements to Plaintiff and/or other Aggrieved Employees;

3 (e) Violation of Labor Code sections 226, 226.3, 1174, and 1174.5 for failure to
4 calculate sick pay at the regular rate of pay for the workweek in which Plaintiff and/or other
5 Aggrieved Employees used paid sick time, or by dividing the Plaintiff and/or other Aggrieved
6 Employees' total wages, not including overtime premium pay, by the Plaintiff and/or other
7 Aggrieved Employees' total hours worked in the full pay periods of the prior 90 days of
8 employment, in violation of Labor Code Sections 246, 246.5, 247, 247.5, and 248.5 and the Healthy
9 Workplaces, Healthy Families Act of 2014;

10 (f) Violation of Labor Code sections 233 and 234 for failure to permit Plaintiff
11 and/or Aggrieved Employees to use in any calendar year the employee's accrued and available sick
12 leave entitlement;

13 (g) Violation of Labor Code sections 227.3 for failure to provide to Plaintiff
14 and/or Aggrieved Employees accrual of vacation wages and failure to pay to Plaintiff and/or
15 Aggrieved Employees vested vacation wages;

16 (h) Violation of Labor Code sections 221, 223, and 224 for secretly paying
17 Plaintiff and/or Aggrieved Employees less than the statutory or contractual rate;

18 (i) Violation of Labor Code sections 1174 and 1174.5 for failure to maintain
19 accurate records regarding the employment of Plaintiff and/or other Aggrieved Employees;

20 (j) Violation of Labor Code sections 2800 and 2802 for failure to reimburse
21 business expenses to Plaintiff and other Aggrieved Employees;

22 (k) Violation of Labor Code section 1199 for the foregoing Labor Code
23 violations.

24 128. Labor Code section 226.3 provides: "[a]ny employer who violates subdivision (a)
25 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
26 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
27 each violation in a subsequent citation, for which the employer fails to provide the employee a
28 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

1 The civil penalties provided for in this section are in addition to any other penalty provided by law.”

2 129. Labor Code section 558(a) provides “[a]ny employer or other person acting on
3 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
4 provision regulating hours and days of work in any order of the Industrial Welfare Commission
5 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
6 underpaid employee for each pay period for which the employee was underpaid . . . (2) For each
7 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period
8 for which the employee was underpaid.”

9 130. Labor Code section 1174.5 provides a \$500 penalty for an employer’s failure to
10 maintain accurate and complete payroll records showing the hours worked daily by and the wages
11 paid to employees.

12 131. Labor Code section 1197.1 also provides “[a]ny employer or other person acting
13 either individually or as an officer, agent, or employee of another person, who pays or causes to be
14 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by
15 an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial
16 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee
17 for each pay period for which the employee is underpaid . . . (2) For each subsequent violation for
18 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
19 pay period for which the employee is underpaid regardless of whether the initial violation is
20 intentionally committed.

21 132. As set forth above, Defendants have violated numerous provisions of the Labor
22 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff
23 also seeks the civil penalties set forth in Labor Code sections 226.3, 226.8, 558, 1174.5, and 1197.1
24 individually, on behalf of all aggrieved employees, and the State of California.

25 133. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
26 violators and had one or more of the alleged violations committed against Plaintiff, and therefore
27 is properly suited to represent the interests of all other aggrieved employees.

28 134. Plaintiff has exhausted the procedural requirements under Labor Code section

1 2699.3 as to Defendants and is therefore able to pursue a claim for penalties individually and on
2 behalf of all other aggrieved employees under the PAGA.

3 135. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
4 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited
5 above.

6 136. Plaintiff is also entitled to attorneys' fees and costs.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of himself and the proposed Class, prays for judgment
9 and the following specific relief against Defendants, jointly and severally, as follows:

10 1. That the Court certify the proposed Class and Subclasses, and any other class or
11 subclasses as appropriate under California Code of Civil Procedure section 382;

12 2. That Plaintiff be appointed as the Class Representative;

13 3. That David Alami and Daniel J. Hyun of TORUS LLP be appointed as Class
14 Counsel for all purposes;

15 4. For compensatory damages in an amount according to proof with interest thereon;

16 5. For such general, economic, and/or special damages in an amount according to proof
17 with interest thereon;

18 6. For damages, monetary relief, wages, premiums, reimbursements, benefits and
19 penalties, including interest thereon;

20 7. For treble damages pursuant to Penal Code section 496(c) for violation of Penal
21 Code section 487m;

22 8. For waiting time penalties pursuant to Labor Code section 203;

23 9. For statutory penalties to the extent permitted by law, including those pursuant to
24 the Labor Code and IWC Wage Orders;

25 10. For the amounts provided for in Labor Code section 226.7;

26 11. For attorney's fees, costs of suit, including expert fees, and interest pursuant to
27 Labor Code sections 218.6, 226, 1194, 2802 and California Code of Civil Procedure section 1021.5;

28 12. For restitution to Plaintiff and Class Members of all money and property unlawfully

1 acquired by Defendants through unfair or unlawful business practices pursuant to Business and
2 Professions Code sections 17200 *et seq.*;

3 13. For an order requiring Defendants to restore and disgorge all funds to each employee
4 acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent
5 and, therefore, constituting unfair competition under Business and Professions Code sections
6 17200, *et seq.*;

7 14. For liquidated damages pursuant to Labor Code section 1194.2;

8 15. For permanent injunctive relief described in the UCL cause of action;

9 16. For prejudgment interest on all sums recovered pursuant to Labor Code
10 section 218.6, California Civil Code sections 3287 and 3289, and applicable law;

11 17. For post-judgment interest on all amounts awarded to Plaintiff and Class Members
12 as provided by law; and

13 18. A declaratory judgment that the practices complained of herein are unlawful under
14 California law.

15 19. For PAGA penalties; and

16 20. An award of such other and further relief as this Court may deem appropriate.

17 Dated: April 9, 2024

TORUS LLP

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21 By: 

David Alami

Daniel J. Hyun

Attorneys for Plaintiff ADAN GARCIA

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: April 9, 2024

TORUS LLP

By: 

David Alami

Daniel J. Hyun

Attorneys for Plaintiff ADAN GARCIA