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

ROCHA, OSCAR, an individual, on behalf of
himself and all others similarly situated;

Plaintiff,

v.

PENDRY WEST HOLLYWOOD, LLC a
Delaware limited liability company; and
DOES 1 through 10, inclusive;

Defendants.

CASE NO.: 24STCV03351

**FRIST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Provide Paid Time Off Under the West Hollywood Minimum Wage Ordinance;
2. Failure to Provide Sick Pay Under the West Hollywood Minimum Wage Ordinance;
3. Failure to Distribute Service Charges Under the West Hollywood Minimum Wage Ordinance;
4. Failure to Pay Minimum Wages [Labor Code §§ 1194, 1194.2, 1197.1];
5. Failure to Pay Overtime [Labor Code §§ 510, 1194, 1198];
6. Failure to Provide Meal Periods [Labor Code §§ 226.7, 512]
7. Failure to Provide Rest Periods [Labor Code § 226.7]
8. Failure to Provide Accurate Wage Statements [Lab. Code § 226(a)];
9. Unlawful Competition/Unlawful Business Practices [Bus. & Prof. Code § 17200 et seq.]; and
10. Violations of the Private Attorneys General Act [Labor Code 2698 et seq.]

JURY TRIAL DEMANDED

Dept. 7

1 Plaintiff OSCAR ROCHA on behalf of himself and all others similarly situated, alleges as
2 follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this action as a Class Action pursuant to California Code of Civil
5 Procedure section 382 on behalf of himself and all other current and former non-exempt California
6 employees of Defendant, and DOES 1 through 10, inclusive (collectively “Defendants”). This action
7 arises from Defendants’ unlawful employment practices, including failing to provide these
8 employees with paid time off and sick pay in violation of the West Hollywood Minimum Wage
9 Ordinance (“WHMWO”), failing to distribute services charges correctly to these employees in
10 violation of the WHMWO, failing to pay these employees minimum wages and overtime for all
11 hours worked, failing to provide them with compliant meal and rest periods, failing to timely pay
12 them the correct rates for overtime and meal and rest period premiums, and failing to provide them
13 with accurate wages statements.

14 2. All allegations in this Complaint are based upon information and belief except those
15 allegations specifically pertaining to Plaintiff and/or his counsel, which are based upon personal
16 knowledge. Each allegation in this Complaint has evidentiary support and/or is likely to have
17 evidentiary support after reasonable opportunity for further investigation and formal discovery.

18 3. Defendants have engaged in a systematic pattern of wage and hour abuse towards
19 Plaintiff and other current and former non-exempt employees by denying them specific rights
20 afforded to them under California law, including the California Labor Code and applicable Industrial
21 Welfare Commission (“IWC”) Wage Order.

22 4. At all relevant times, Defendants maintained uniform and consistent policies and
23 practices of:

- 24 a. failing to provide Plaintiff and similarly situated employees with paid time
25 off in violation of the WHMO;
26 b. failing to provide Plaintiff and similarly situated employees with sick pay in
27 violation of the WHMO;

- c. failing to distribute all service charges to Plaintiff and similarly situated employees in violation of the WHMO;
- d. failing to pay Plaintiff and similarly situated employees minimum wages for all hours worked;
- e. failing to pay Plaintiff and similarly situated employees overtime wages and to pay overtime at the correct rates;
- f. failing to provide Plaintiff and similarly situated employees compliant meal periods and to pay meal period premiums at the correct rates;
- g. failing to provide Plaintiff and similarly situated employees compliant rest periods and to pay rest period premiums at the correct rates;
- h. failing to pay Plaintiff and similarly situated employees sick pay at the correct rates; and,
- i. failing to provide Plaintiff and similarly situated employees with accurate wage statements.

JURISDICTION AND VENUE

5. Venue as to each Defendant is proper in this judicial district pursuant to Code of Civil Procedure 395(a). Defendants conduct business in Los Angeles County, maintain offices, transact business, and/or have an agent in Los Angeles County. Defendants employed Plaintiff and similarly situated employees, and committed the unlawful activities subject to this Complaint, in Los Angeles County.

6. This Court has jurisdiction over this matter because the value of the claims of each individual member of the classes stated herein is less than the seventy-five (\$75,000) jurisdictional threshold for federal courts. No federal question is at issues, as the claims pled are solely based on California law.

THE PARTIES

7. Plaintiff OSCAR ROCHA is, and at all relevant times, was a resident of Los Angeles County, California.

8. Defendant PENDRY WEST HOLLYWOOD LLC is a Delaware limited liability company that owns and operates a hotel with approximately 149 rooms located at 8430 W Sunset Blvd, West Hollywood, CA 90069.

9. The true names and capacities of Defendants sued herein as DOES 1-10, inclusive, are currently unknown to Plaintiff, who therefore sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of Defendants designated as DOES when those identities become known.

10. At all relevant times, each Defendant acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venturer of the other Defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture. Each of the Defendant's acts alleged herein was done with the permission and consent of each of the other Defendants.

GENERAL ALLEGATIONS

11. Plaintiff has been employed by Defendants as a non-exempt banquet server from approximately April 2022 – present.

12. During his employment, Defendants failed to provide Plaintiff with paid time off (“PTO”) and sick leave as required by the WHMO. Defendants only provided Plaintiff with 24 hours of sick leave per year.

13. Similarly, Defendants did not pay Plaintiff all service charges that he was owed in violation of the WHMO. Instead, Defendants retained these services charged for their own benefit or paid them to others who were entitled to receive the services charges under the WHMO.

14. Defendants also failed to pay Plaintiff minimum wages for all hours that he worked. Plaintiff is also informed and believes that Defendants engaged in time shaving or non-neutral rounding of his work hours.

15. Similarly, Defendants did not pay Plaintiff for all overtime hours that he worked.

1 When Defendants paid Plaintiff overtime, they did so at the incorrect rates by failing to include all
2 forms of non-discretionary pay into the regular rate, including the full amount of services charges
3 Plaintiff was due.

4 16. Defendants failed to provide Plaintiff with compliant meal periods. Plaintiff was
5 frequently subjected to late, interrupted, shortened or no meal periods. Defendants did not pay
6 Plaintiff a meal period premium for all non-compliant meal periods. When Defendants paid meal
7 period premiums, they often did so at the wrong rates by failing to include all forms of non-
8 discretionary pay into the regular rate.

9 17. Similarly, Plaintiff did not receive compliant rest periods during his employment.
10 He was frequently required to take shortened, interrupted or no rest periods. Defendants did not pay
11 Plaintiff rest period premiums for all non-compliant meal periods. When Defendants paid rest
12 period premiums, they often did so at the wrong rates by failing to include all forms of non-
13 discretionary pay into the regular rate.

14 18. During his employment, Defendants failed to issue Plaintiff accurate wage
15 statements. Among other things, his wage statements failed to correctly state his total hours worked,
16 rates of pay, and regular and overtime hours.

17 **CLASS ACTION ALLEGATIONS**

18 19. Plaintiff brings this action on behalf of himself, and all others similarly situated as a
19 Class Action pursuant to Code of Civil Procedure section 382. The Class that Plaintiff seeks to
20 represent is defined as: All non-exempt employees who were employed by Defendants in the State
21 of California at any time in the four-year period preceding the filing of this Complaint.

22 20. The “Class Period” is four years from the filing of this Class Action complaint to
23 present.

24 21. Plaintiff reserves the right under California Rules of Court, Rule 3.765(b) to amend
25 or modify the class definition with greater specificity or to further divide the Class into subclasses.

26 22. Defendants have engaged in the same unlawful acts and omissions described herein
27 with respect to each member of the Class during the Class Period.

23. This action may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest among many persons, and it is impractical to bring individual suits before this Court.

24. **Ascertainable Class:** The potential members of the Class are ascertainable because they can be identified and located using Defendants' payroll and personnel records.

25. **Numerosity:** The potential members of the Class are so numerous that joining all members would be impractical and unfeasible. The disposition of their claims in a single lawsuit will benefit both the parties and the Court. The number of Class members is unknown to Plaintiff, who is informed and believes that the Class exceeds 100 individuals.

26. **Typicality:** The claims of Plaintiff are typical of the claims of Class members, because Plaintiff and Class members were subjected to the same violations of the Labor Code and applicable IWC Wage Order committed by Defendants, and they sustained similar injuries and damages arising out of Defendants' common policies and practices.

27. **Adequacy:** Plaintiff is an adequate representative of the Class, will fairly protect the interest of Class members, has no interests antagonistic to the members of the Class, and will vigorously pursue the suit. Plaintiff's attorney is competent, skilled and experienced in litigating employment law class actions.

28. **Superiority:** Class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class members is not practicable or feasible, and questions of law and fact common to the Class predominate over questions affecting only individual Class members. All Class members have been damaged by the unlawful policies and practices discussed herein. A class action will allow the Class members to determine the legality of these uniform policies and practices in a single lawsuit, which is the most efficient and economical process for the Court and the parties.

29. The predominating common questions or law in fact include:

a. whether Defendants provided Class Members with PTO in compliance with the WHMO;

b. whether Defendants provided Class Members with sick pay in compliance with the WHMO;

c. whether defendants distributed services charges to Class Members in compliance with the WHMO;

d. whether Defendants paid Class members minimum wages for all hours worked;

e. whether Defendants paid Class members overtime for all overtime hours worked;

f. whether Defendants provided Class members with compliant meal periods;

g. whether Defendants provided Class members with compliant rest periods;

h. whether Defendants paid Class Members for overtime, meal and rest periods, and sick pay at the correct rates;

i. whether Defendants provided Class members with accurate itemized wage statements; and,

j. whether Defendants engaged in unfair competition.

30. All of the acts and omissions committed by Defendants as alleged herein were intentional and willful because Defendants were advised by counsel as to these unlawful practices and there is no good faith dispute concerning the validity of these practices.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Failure to Provide PTO in Violation of WHMO)
[Plaintiff and Class Against Defendants]

31. Plaintiff incorporate each of the preceding paragraphs of this Complaint.

32. The WHMO requires West Hollywood employers to provide 96 compensated hours of time off per year for sick leave, vacation, or personal necessity and a pro rata amount for part-time employees.

33. Unused accrued compensated time off will carry over until the time off reaches a maximum of 192 hours, unless the employer establishes a more generous policy.

34. During the Class Period, Defendants failed to provide Plaintiff and the Class members with PTO as required by the WHMO.

35. As a result, Plaintiff and the Class members have been injured as they have not received all of the PTO to which they were entitled.

36. Plaintiff and the Class members seek to recover damages, including payment of the PTO unlawfully withheld, penalties of \$1000 per Class Member per day pursuant to the WHMO, treble damages for willful violations under the WHMO, costs, and attorney's fees.

SECOND CAUSE OF ACTION
(Failure to Provide Sick Leave in Violation of WHMO)
[Plaintiff and Class Against Defendants]

37. Plaintiff incorporate each of the preceding paragraphs of this Complaint.

38. The WHMO further requires West Hollywood employers to provide an additional 80 uncompensated hours of time off per year for sick leave, vacation, or personal necessity and a pro rata amount for part-time employees.

39. Unused accrued compensated time off will carry over until the time off reaches a maximum of 80 hours, unless the employer establishes a more generous policy.

40. During the Class Period, Defendants failed to provide Plaintiff and the Class members with sick leave as required by the WHMO.

41. As a result, Plaintiff and the Class members have been injured as they have not received all of the sick leave to which they were entitled.

42. Plaintiff and the Class members seek to recover damages, including payment of the sick days unlawfully withheld, penalties of \$1000 per Class Member per day pursuant to the WHMO, treble damages for willful violations under the WHMO, costs, and attorney's fees.

THIRD CAUSE OF ACTION
(Failure to Distribute Service Charges in Violation of WHMO)
[Plaintiff and Class Against Defendants]

43. Plaintiff incorporate each of the preceding paragraphs of this Complaint.

44. The WHMO requires that West Hollywood employers distribute all service charges collected for hotel banquets or hotel-catered meetings to the employees who actually work the

1 banquets/meetings. In addition, no amount of the service charges may be distributed to
2 managerial/supervisory employees.

3 45. The WHMO further requires the services charges to be paid to the employees no
4 later than the next payroll following collection of the amounts from customers, except any
5 amounts paid in cash shall be paid to employees at the close of business on the day the amounts
6 are collected.

7 46. In addition, employers are required to disclose in writing to each employee its plan
8 of distribution of the service charges; and, shall report to employees on each payroll date the
9 amount of service charges collected and the amounts distributed to the employees for the pay
10 period in question.

11 47. During the Class Period, Defendants failed to timely pay all service charges
12 collected for hotel banquets or hotel-catered meetings to Plaintiff and the Class members who
13 worked the banquets/meeting.

14 48. Defendants also did not provide Plaintiff and the Class Members with a report each
15 payroll date specifying the amount of service charges collected and distributed.

16 49. As a result, Plaintiff and the Class members have been injured as they have not
17 timely received all of the service charges to which they were entitled.

18 50. Plaintiff and the Class members seek to recover damages, including payment of the
19 service charges unlawfully withheld, penalties of \$1000 per Class Member per day pursuant to the
20 WHMO, treble damages for willful violations under the WHMO, costs, and attorney's fees.

21 **FOURTH CAUSE OF ACTION**
22 **(Failure to Pay Minimum Wages for All Hours Worked)**
23 **[Plaintiff and Class Against Defendants]**

24 51. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

25 52. California Labor Code section 1194 provides that "[n]otwithstanding any
26 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or
27 the legal overtime compensation applicable to the employee is entitled to recover in a civil action
28 the unpaid balance of the full amount of this minimum wage or overtime compensation, including

1 interest thereon, reasonable attorney's fees, and costs of suit."

2 53. California Labor Code section 1197.1 provides in relevant part that "[i]n any action
3 under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less
4 than the minimum wage fixed by an order of the commission or by statute, an employee shall be
5 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
6 interest thereon."

7 54. Defendants failed to pay Plaintiff and Class members minimum wages for all hours
8 worked. Among other things, Defendants engaged in unlawful practice of time shaving/rounding
9 and/or did record all hours that employees worked, including time spent working during meal
10 periods.

11 55. As a result, Plaintiff and the Class have been damaged and have not been paid
12 minimum wages for all hours they worked.

13 **FIFTH CAUSE OF ACTION**
14 **(Failure to Pay Overtime)**
[Plaintiff and Class Against Defendants]

15 56. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

16 57. California Labor Code section 510(a) provides in relevant part that "[e]ight hours
17 of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work
18 in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of
19 work in any one workweek shall be compensated at the rate of no less than one and one-half times
20 the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
21 compensated at the rate of no less than twice the regular rate of pay for an employee. In addition,
22 any work in excess of eight hours on any seventh day of a workweek shall be compensated at the
23 rate of no less than twice the regular rate of pay of an employee."

24 58. California Labor Code section 1198 provides that "[t]he maximum hours of work
25 and the standard conditions of labor fixed by the commission shall be the maximum hours of work
26 and the standard conditions of labor for employees. The employment of any employee for longer
27 hours than those fixed by the order or under conditions of labor prohibited by the order is

1 unlawful.”

2 59. The applicable IWC Wage Order, Section 3(A) requires employers to pay non-
3 exempt employees (1) one and one half times the employee’s regular rate of pay for all hours
4 worked in excess of eight hours up to and including twelve hours in any workday, and for the first
5 eight hours worked on the seventh consecutive day of work in a workweek, and (2) double the
6 employee’s regular rate of pay for all hours worked in excess of twelve hours in any workday and
7 for all hours worked in excess of eight hours on the seventh consecutive day of work in a
8 workweek.

9 60. Defendants failed to pay Plaintiff and Class members overtime for all overtime
10 hours that they worked. Among other things, Defendants engaged in unlawful practice of time
11 shaving/rounding and/or did record all hours that employees worked, including time spent
12 working during meal periods. When Defendants paid overtime, they did so at the wrong rates. In
13 particular, Defendants failed to include all service charges and other forms of non-discretionary
14 pay into the regular rates when calculating overtime.

15 61. As a result, Plaintiff and the Class members have been injured and have not been
16 paid overtime for all of the overtime hours that they worked.

17 **SIXTH CAUSE OF ACTION**
18 **(Failure to Provide Meal Periods)**
19 **[Plaintiff and Class Against Defendants]**

20 62. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

21 63. Labor Code section 512(a) provides “[a]n employer shall not employ an employee
22 for a work period of more than five hours per day without providing the employee with a meal
23 period of not less than 30 minutes, except that if the total work period per day of the employee is
24 no more than six hours, the meal period may be waived by mutual consent of both the employer
25 and employee. An employer shall not employ an employee for a work period of more than 10
26 hours per day without providing the employee with a second meal period of not less than 30
27 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
28 may be waived by mutual consent of the employer and the employee only if the first meal period

was not waived.”

64. The applicable IWC Wage Order, section 11(A) similarly provides that “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the- job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

65. The applicable IWC Wage Order, section 11(B) provides that “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

66. Labor Code section 226.7(a) provides that “[n]o employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

67. Labor Code section 226.7(b) provides that “[i]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

68. Defendants failed to provide Plaintiff and Class members with an opportunity to take compliant meal periods. Plaintiff and the Class members frequently received late, interrupted, shortened or no meal periods.

69. Defendants did not pay Plaintiff and Class Members premium pay for all of these

1 non-compliant meal periods. When Defendants did so, Defendants paid them at the incorrect rates
2 by failing to include service charges and other forms of non-discretionary pay into the regular
3 rates of pay.

4 70. As a result, Plaintiff and Class members were injured and did not receive the meal
5 period premium pay to which they are entitled.

6 **SEVENTH CAUSE OF ACTION**
7 **(Failure to Provide Rest Periods)**
8 **[Plaintiff and Class Against Defendants]**

9 71. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

10 72. The applicable IWC Wage Order section 12(A) provides that “[e]very employer
11 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
12 in the middle of each work period. The authorized rest period time shall be based on the total
13 hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction
14 thereof. However, a rest period need not be authorized for employees whose total daily work time
15 is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours
16 worked for which there shall be no deduction from wages.”

17 73. The applicable IWC Wage Order section 12(B) provides that “[i]f an employer fails
18 to provide an employee a rest period in accordance with the applicable provisions of this order, the
19 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
20 compensation for each workday that the rest period is not provided.”

21 74. Labor Code section 226.7(a) provides that “[n]o employer shall require any
22 employee to work during any meal or rest period mandated by an applicable order of the Industrial
23 Welfare Commission.”

24 75. Labor Code section 226.7(b) provides that “[i]f an employer fails to provide an
25 employee a meal period or rest period in accordance with an applicable order of the Industrial
26 Welfare Commission, the employer shall pay the employee one additional hour of pay at the
27 employee s regular rate of compensation for each work day that the meal or rest period is not
28 provided.”

76. Defendants failed to provide Plaintiff and Class members with an opportunity to take compliant rest periods. Plaintiff and the Class Members often received shortened, interrupted or no rest periods.

77. Defendants did not pay Plaintiff and Class Members premium pay for all of these non-compliant meal periods. When Defendants did so, Defendants paid them at the incorrect rates by failing to include service charges and other forms of non-discretionary pay into the regular rates of pay.

78. As a result, Plaintiff and Class members have been injured and did not receive the rest period premium pay to which they are entitled.

EIGHTH CAUSE OF ACTION
(Failure to Provide Accurate Wage Statements)
[Plaintiff and Class Against Defendants]

79. Plaintiff incorporates the preceding paragraphs of the Complaint.

80. An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay

1 and the total hours worked for each temporary services assignment. (Labor Code § 226(a).)

2 81. Defendants failed to provide Plaintiff and the Class Members with accurate wage
3 statements in violation of Labor Code section 226(a). Among other things, Employer failed to
4 correctly list the total hours worked, regular hours worked, overtime hours worked and correct
5 rates of pay.

6 **NINTH CAUSE OF ACTION**
7 **(Unfair Competition)**
8 **[Plaintiff and Class Against Defendants]**

8 82. Plaintiff incorporates the preceding paragraphs of the Complaint.

9 83. Defendants' employment acts, omissions and practices discussed herein further
10 constitute unlawful, unfair and/or fraudulent business acts or practices withing of California
11 Business and Professions Code section 17200.

12 84. As a result of Defendants' unlawful, unfair and/or fraudulent business acts or
13 practices, (1) Defendants have gained a competitive advantage over other comparable companies
14 doing business in the State of California that comply with their obligations under the California
15 Labor Code and applicable IWC Wage Orders; and (2) Plaintiff and Class Members have been
16 injured and have lost wages and other compensation as described herein.

17 85. Accordingly, Plaintiff seeks to enjoin Defendants' unlawful, unfair and/or
18 fraudulent business acts or practices and seeks restitution to restore to her all money which she has
19 been denied.

20 **TENTH CAUSE OF ACTION**
21 **(Violation of the Private Attorneys General Act)**
22 **[Plaintiff Against Defendants]**

23 86. Plaintiff incorporates the preceding paragraphs of the Complaint.

24 87. During the PAGA period (one year and sixty-five days from the filing of this First
25 Amended Complaint), Defendants subjected Plaintiff and similarly situated non-exempt
26 Aggrieved Employees to the same unlawful wage and hour, Labor Code/Wage Order practices as
27 discussed herein. Defendants committed the same wage and hour violations discussed above
28 against the Aggrieved Employees.

1 88. Under California law, an employer must maintain accurate time and pay records,
2 including (1) time records showing when employees begin and ends each work periods, meal
3 periods, split shift intervals, and total hours worked, and (2) pay records showing its employees'
4 hours worked and applicable rates of pay during each pay period. (Labor Code § 1174 and IWC
5 Wage Orders § 7). Defendant failed to maintain these records. Defendant failed to keep records of
6 all hours worked for Plaintiff and similarly situated Aggrieved Employees, including meal periods
7 and hours worked.

8 89. Labor Code section 204 requires an employer to pay all wages that are due and
9 owing to employees twice during each calendar month on days designated in advance by the
10 employer as regular paydays. Defendants violated this statute by failing to pay Plaintiff and
11 Aggrieved Employees all wages that are due and owing during their employment, including, all
12 service charges they were owed, wages due under the West Hollywood Minimum Wage
13 Ordinance, waged for "off-the-clock" work, and meal and rest period premiums. Defendants are
14 therefore subject to civil penalties under labor Code section 2699.

15 90. If an employer discharges an employee, the wages earned and unpaid at the time of
16 discharge are due and payable immediately. (Labor Code § 201.) If an employee not having a
17 written contract for a definite period quits his or her employment, his or her wages shall become
18 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
19 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
20 wages at the time of quitting. (Labor Code § 202.) If an employer willfully fails to pay, without
21 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202,
22 and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee
23 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
24 therefor is commenced; but the wages shall not continue for more than 30 days. (Labor Code §
25 203.)

26 91. Defendants violated the foregoing Labor Code sections by failing to timely pay all
27 Aggrieved Employees (who are former employees) all wages that were due and owing upon
28

1 separation of employment, including wages and accrued vacation/PTO under the West Hollywood
2 Minimum Wage Ordinance, unpaid meal and rest period premiums, unpaid service charges, and
3 wages for off-the-clock work. Defendant is therefore subject to civil penalties.

4 92. California law requires an employer to provide paid sick days to employees. (Labor
5 Code § 246.) Paid sick leave must be calculated as set forth in Labor Code section 246(l).

6 93. Defendants failed to provide Plaintiff and the Aggrieved Employees with required
7 sick days or to accrue sick days for them at the required rate. Defendants also failed to pay
8 Plaintiff and the Aggrieved Employees sick pay at the correct rates. Defendant are therefore
9 subject to penalties under Labor Code §§2699(a)/(f) and or/ 558.

10 94. In sum, during the PAGA period, Defendants violated Labor Code sections 201-
11 203, 204, 210, 226, 226.7, 246, 510, 512, 516, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802
12 and the applicable Wage Order, Sections 3, 4, 7, 11, 12, and 20. These violations subject
13 Defendants to civil penalties as set forth in, inter alia, Labor Code section 2699.

14 95. Plaintiff complied with the procedures for bringing suit specified in Labor Code
15 sections 2699.3 and 2699.5 by letter dated October 30, 2023. Plaintiff gave written notice to the
16 LWDA via electronic submission, and via certified mail to all Defendants, of the specific
17 provisions of the Labor Code and applicable Wage Order allegedly violated, including the facts
18 and theories to support the alleged violations.

19 96. Under Labor Code section 2699.3, the LWDA must give written notice to the
20 parties it intends to investigate the alleged violations within 60 days of the date of the Plaintiff's
21 written notice. As of the filing of this complaint, the LWDA has not provided the parties with any
22 notice of its intention to investigate these claims.

23 97. Under Labor Code section 2699.3, Defendants has 33 days after the date of written
24 notice to cure the alleged violations. As of the filing of this complaint, Defendant has not
25 responded to Plaintiff's PAGA notice in an attempt to cure.

26 98. Plaintiff seeks civil penalties in the amounts set forth in the Labor Code for each of
27 the aforesaid violations and/or default penalties as provided by Labor Code section 2699.

1 99. Under Labor Code section 2699(g), Plaintiff is also entitled to an award of
2 reasonable attorney's fees and costs in connection with his claims for civil penalties.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for relief on behalf of herself and the Class members as
5 follows:

- 6 (1) for an order that this lawsuit be certified as a class action;
7 (2) for an order that Plaintiff be appointed the class representative;
8 (3) for an order that undersigned counsel for Plaintiff be appointed class counsel;
9 (4) for compensatory damages according to proof;
10 (5) for liquidated damages according to proof;
11 (6) for treble damages pursuant to the WHMO;
12 (7) for statutory and civil penalties according to proof;
13 (8) for an order requiring Defendants to make restitution of all amount wrongfully
14 withheld from Plaintiff and the Class as a result of Defendant's unlawful, unfair or fraudulent
15 employment acts and practices;
16 (9) for an order enjoining Defendants from further engaging in their unlawful, unfair or
17 fraudulent employment acts and practices;
18 (10) for prejudgment interest as permitted by laws;
19 (11) for attorneys' fees and costs incurred in prosecuting this action; and,
20 (12) for such further relief that the Court deems appropriate.

21
22 Dated: March 28, 2024

BLAKE JONES LAW, PC.

23
24 By: 
25 Blake R. Jones
26 Attorneys for Plaintiff
27

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on claims where a jury is allowed.

Dated: March 28, 2024

BLAKE JONES LAW, PC.

By: 
Blake R. Jones
Attorneys for Plaintiff