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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

YADIRA RODRIGUEZ ROMAN and
DONAL CLEVINGER, as individuals and on
behalf of all employees similarly situated,

Plaintiffs,
v.

TC CALIFORNIA HOSPITALITY LLC, a
California Limited Liability Company; and
DOES 1 through 50, inclusive,
Defendant.

Case No. 37-2024-00010785-CU-OE-CTL

SECOND AMENDED COMPLAINT

1. Failure to Pay All Wages;
2. Failure to Provide Meal Periods;
3. Failure to Provide Rest Periods;
4. Failure to Keep Accurate Itemized Wage Statements;
5. Failure to Pay Wages Upon Termination of Employment;
6. Failure to Reimburse for Necessary Expenditures;
7. Violation of Bus. & Prof. Code § 17200 *et seq.* (Unfair Business Practices); and
8. Violation of the Private Attorneys General Act, Labor Code sections 2698, *et seq.*

DEMAND FOR JURY TRIAL

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Plaintiffs YADIRA RODRIGUEZ ROMAN and DONALD CLEVENGER (hereinafter referred to as “Plaintiffs”) on behalf of themselves and all others similarly situated, and as representatives of the State of California and the Labor and Workforce Development Agency (“LWDA”), based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, complains and alleges as follows:

INTRODUCTION

1. This is a class action brought on behalf of Plaintiffs and the class they seek to represent (“Class” or “Class Members”). Class Members consist of all non-exempt, hourly-paid employees currently and/or formerly employed by TC CALIFORNIA HOSPITALITY LLC (“Defendant”) in the State of California during the Class Period. The term “Class Period” is defined as four (4) years prior to the filing of this Complaint through the date final judgment is entered. Plaintiffs reserve the right to amend this Complaint to reflect a different “Class Period” or “Class” as further discovery is conducted.

2. Plaintiffs, individually and on behalf of the class they seek to represent, seek relief against Defendant for Defendant's failure to pay all hourly, minimum, and overtime wages due in violation of Labor Code Sections 204, 210, 218, 218.5, 222-224, 510, 1194 1194.2, 1197, 1997.1 and 1998; failure to provide meal periods or compensation in lieu thereof pursuant to Labor Code Sections 204, 226.7, 512 and 1198, the applicable Industrial Welfare Commission Wage Orders, and Code of Regulations, Title 8, Section 11000 et seq.; failure to provide rest periods or compensation in lieu thereof pursuant to Labor Code Sections 204, 226.7, 512 and 1198, the applicable Industrial Welfare Commission Wage Orders, and Code of Regulations, Title 8, Section 11000 et seq.; failure to provide accurate itemized wage statements upon payment of wages pursuant to Labor Code Sections 226, subdivision (a), 1174, and 1175; making unlawful paycheck deductions and failure to reimburse for necessary expenditures pursuant to Labor Code Sections 221 and 2802; and failure to pay wages of terminated or resigned employees pursuant to Labor Code Sections 201, 202, 203, 204 and 210.

1 3. Plaintiffs seek equitable remedies in the form of declaratory relief and injunctive
2 relief, and relief under Business and Professions Code Section 17200 et seq. for unfair business
3 practices.

4 4. At all relevant times herein, Defendant has consistently maintained and enforced
5 against Plaintiffs and Class the following unlawful practices and policies:

6 (a) willfully refusing to pay Plaintiffs and Class for all hours worked, including
7 regular and overtime;

8 (b) willfully refusing to permit Plaintiffs and Class from taking meal periods or
9 compensation in lieu thereof;

10 (c) willfully refusing to permit Plaintiffs and Class from taking rest periods or
11 compensation in lieu thereof;

12 (d) willfully refusing to maintain accurate records and to furnish to Plaintiffs and
13 Class accurate itemized wage statements upon payment of wages;

14 (e) willfully refusing to compensate certain members of the Class wages due and
15 owing at the time of Class Members' employment with Defendant ended;
16 and;

17 (f) willfully refusing to reimburse Plaintiffs and Class for necessary
18 expenditures and making unlawful deductions.

19 5. On information and belief, Defendant was on actual and constructive notice of the
20 improprieties alleged herein and intentionally refused to rectify their unlawful policies.
21 Defendant's violations, as alleged above, during all relevant times herein were willful and
22 deliberate.

23 6. At all relevant times, Defendant was and is legally responsible for all of the
24 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
25 foregoing paragraphs as the employer of Plaintiffs and Class. Further, Defendant is responsible
26 for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat
27 superior".
28

1 7. Plaintiffs further bring this action as a representative of the State of California
2 and the Labor and Workforce Development Agency (“LWDA”) to recover civil penalties
3 pursuant to the Private Attorneys General Act (“PAGA”), Labor Code sections 2698, et seq., for
4 violations of numerous Labor Code provisions, including, but not limited to, sections 201-203,
5 204, 208, 210, 216, 221-223, 225.5, 226, 226.7, 227.3, 233-234, 245-248.6, 256, 351, 353, 432.5,
6 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2699, 2699.3,
7 2802,,2810.5 as well as violations of the applicable Wage Order.

8 **JURISDICTION AND VENUE**

9 8. Venue is proper in this judicial district and in the County of San Diego, California
10 because Defendant maintained its location and/or transacted business in this county, the
11 obligations and liability arise in this county, and work was performed by members of the proposed
12 class made the subject of this action in this county.

13 9. The wages, statutory penalties, monetary damages and restitution sought by
14 Plaintiffs exceed the minimal jurisdictional limits of the Superior Court and will be established
15 according to proof at trial. This Court has jurisdiction over this action pursuant to the California
16 Constitution, article VI, Section 10. The statutes under which this action is brought do not specify
17 any other basis for jurisdiction.

18 10. The California Superior Court has jurisdiction in the matter because the individual
19 claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional threshold for
20 Federal Court and the five million dollars (\$5,000,000.00) aggregate jurisdictional threshold for
21 Federal Court and, upon information and belief, Plaintiffs and Defendant are residents of,
22 domiciled in, or otherwise subject to jurisdiction in the State of California. Further, there is no
23 federal question at issue as the issues herein are based solely on California statutes and law
24 including the Labor Code, Industrial Welfare Commission (“IWC”) Wage Orders, the Code of
25 Civil Procedure, the Rules of Court, and the Business and Professions Code.

THE PARTIES

A. Plaintiffs

11. Plaintiffs, at all relevant times herein, were Defendant's employees and were entitled to compensation for all hours worked, including regular time and overtime compensation, and penalties from Defendant. Plaintiffs were employed by Defendant as a non-exempt, hourly paid employee during the Class Period. Specifically, Plaintiff Yadira Rodriguez Roman worked as a housekeeping employee from May 26, 2021 to December 3, 2023 in San Diego County. Plaintiff Donald Clevenger worked as a market attendant from August 10, 2021 to February 19, 2025. Each of the Class Members are identifiable, current and/or former similarly situated persons who were employed in non-exempt hourly positions in California by Defendant during the Class Period.

B. Defendant

12. Plaintiffs are informed and believe, and based thereon allege, that Defendant is California limited liability company, registered and doing business in California. Plaintiffs also allege that Defendant is conducting business in good standing in California.

13. Plaintiffs are ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that these Defendants are legally responsible for the payment of overtime compensation, rest and meal period compensation, and wages to Plaintiffs and Class by virtue of their unlawful practices, and therefore sues these Defendant by such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of each DOE Defendant when ascertained.

14. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendant. Furthermore, Defendant in all respects acted as the employer and/or joint employer of Plaintiffs and Class.

1 15. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
2 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
3 managing agent, and/or principal of the other Defendant, and in performing the actions mentioned
4 below was acting, at least in part, within the course and scope of that authority as such agent,
5 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
6 permission and consent of the Defendant. Plaintiffs also allege the acts of each Defendant are
7 legally attributable to the other Defendant.

8 16. Plaintiffs are informed and believe, and based thereon allege, that each of the
9 Defendant sued herein was, at all times relevant hereto, the employer, owner, shareholder,
10 principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing
11 agent, joint employer and/or alter-ego of the remaining Defendant, and was acting, at least in part,
12 within the course and scope of such employment and agency, with the express and implied
13 permission, consent, and knowledge, approval and/or ratification of the other Defendant.

14 **ADMINISTRATIVE PREREQUISITE**

15 17. On March 7, 2024, prior to filing this complaint, Plaintiff Yadira Rodriguez
16 Roman gave written notice by electronically filing the notice with the Labor Workforce
17 Development Agency (“LWDA”) (LWDA Case No. LWDA-1015308-24), and on June 7, 2024
18 Plaintiff Donald Clevenger gave written notice by electronically filing the notice with the LWDA
19 (LWDA Case No. LWDA-CM-1032616-24) and by certified mail to Defendant of the specified
20 provisions alleged to have been violated, including the facts and theories to support the alleged
21 violations as required by Labor Code Section 2699.3.

22 18. A true and correct copy of Plaintiffs’ letters sent to the LWDA dated March 7, 2024
23 and June 7, 2024, is attached hereto as “**Exhibit A**” and incorporated herein by reference. As of
24 the filing of this complaint, LWDA has not responded to the written notice.

25 19. Under Labor Code Section 2699.3 subsection (a), Plaintiffs may bring a cause of
26 action under PAGA only after giving notice to the Labor Workforce Development Agency
27 (“LWDA”) and the employer of the Labor Code Sections alleged to have been violated, and
28 after receiving notice from the LWDA of its intention not to investigate, or after 65 days have

1 passed without notice.

2 20. More than sixty-five (65) days have passed without notice from the LWDA.
3 Accordingly, all administrative prerequisites for filing this First Amended Complaint have been
4 fulfilled.

5 **GENERAL ALLEGATIONS**

6 21. Plaintiffs were employed by Defendant as a housekeeping employee and as a
7 market attendant, non-exempt employees that were paid on an hourly basis for the time counted
8 by Defendant as hours worked.

9 22. Labor Code Section 1194 provides that notwithstanding any agreement to work
10 for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to
11 recover in a civil action the unpaid balance of his or her overtime compensation, including interest
12 thereon, reasonable attorneys' fees, and costs of suit.

13 23. Labor Code Section 204 requires employers to pay employees all earned wages two
14 times per month on days designated in advance by the employer as regular paydays. Pursuant to
15 Labor Code Section 204 (a) labor performed between the 1st and 15th days, inclusive, of any
16 calendar month shall be paid for between the 16th and the 26th day of the month during which the
17 labor was performed, and labor performed between the 16th and the last day, inclusive, of any
18 calendar month, shall be paid for between the 1st and 10th day of the following month. Pursuant
19 to Labor Code Section 204 (d) the requirements of this Section shall be deemed satisfied by the
20 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
21 than seven calendar days following the close of the payroll period. Plaintiffs and Class were also
22 entitled to be paid twice a month at their regular rates, including all meal period premium wages
23 owed, rest period premium wages owed, and wages owed for hours worked. Defendant
24 systematically failed and refused to pay the employees all wages due, and failed to pay those wages
25 twice a month, in that employees were not paid all wages for all meal periods not provided by
26 Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages
27 for all hours worked.

28 24. Further, Business and Professions Code Section 17203 provides that any person

1 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
2 Business and Professions Code Section 17204 provides that any person who has suffered actual
3 injury and has lost money or property as a result of the unfair competition may bring an action in
4 a court of competent jurisdiction.

5 25. **Unpaid wages.** During all, or a portion of the Class Period, Plaintiffs and each
6 member of the Class were employed by Defendant in the State of California.

7 26. Plaintiffs and Class Members were non-exempt employees covered under one or
8 more IWC Wage Order(s), and Labor Code Section 510, and/or other applicable Wage Orders,
9 regulations and statutes, and each Class Member was not subject to an exemption for executive,
10 administrative or professional employees, which imposed obligations on the part of Defendant to
11 pay Plaintiffs and Class Members lawful overtime compensation.

12 27. Plaintiffs and Class were covered by one or more IWC Wage Order(s), and Labor
13 Code Section 226.7 and other applicable Wage Orders, regulations and statutes which imposed
14 an obligation on the part of Defendant to pay Plaintiffs and Class rest and meal period
15 compensation.

16 28. During the Class Period, Defendant was obligated to pay Plaintiffs and Class
17 Members overtime compensation for all hours worked in excess of eight (8) hours of work in one
18 (1) day or forty (40) hours in one (1) week and double-time compensation for hours worked in
19 excess of twelve (12) in one (1) day. However, often times Plaintiffs and Class Members were
20 required to work overtime in excess of eight (8) hours per workday and in excess of forty (40)
21 hours per workweek but were not paid at the proper overtime rate of pay.

22 29. During the Class Period, Defendant was obligated to pay Plaintiffs and Class
23 Members for all hours worked. However, Defendant failed to pay Plaintiffs and Class Members
24 for all hours worked at the legally mandated wage rates, including minimum, regular wages and
25 overtime wages. Throughout the Class Period, Defendant maintained a policy and practice of
26 failing to pay Plaintiffs and Class Members for all hours worked. Defendant paid additional
27 remuneration to Plaintiffs and Class Members in the form of gratuities (service charges),
28 additional pay titled "Extra Rooms", "CA Sppl", "Referral", shift differential pay, bonus pay

1 and/or other non-discretionary pay but failed to include additional remuneration in the regular
2 rate of pay for purposes of calculating overtime rate of pay and sick pay.

3 30. Throughout the Class Period, Defendant also maintained a policy and practice of
4 requiring Plaintiffs and Class Members to perform work “off-the-clock”.

5 31. Based on information and belief, Defendant required Class Members to undergo
6 COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
7 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock
8 work.

9 32. Based on information and belief, Defendant failed to compensate Class Members
10 for all time spent completing Defendant’s required trainings and/or courses (e.g., food safety
11 and/or food handler courses) and/or testings and/or certifications (e.g., food handler
12 certifications).

13 33. Plaintiffs and Class Members were also required to enter the main entrance, walk
14 to the fourth floor where the timeclock machine was located and wait in a line with other
15 employees to use the machine to clock in to work. Defendant failed to compensate for the time
16 spent walking to the area where the timeclock machine was located and for the time spent in a
17 line to clock in to work. Additionally, Defendant’s biometric/electronic employee time-keeping
18 system malfunctioned such that Plaintiffs and Class Members were required to either reinitiate
19 and/or otherwise troubleshoot the system, prior to being able to clock in and/or were unable to
20 clock in at all for the start of their shifts and/or clock back in from meal periods resulting in off-
21 the-clock work and underpayment of wages. Based on information and belief, Plaintiff and Class
22 Members experienced the same issues when clocking out for shifts and/or back in for meal
23 periods. This time spent under Defendant’s control was not recorded and not compensated and
24 resulted in unpaid minimum wages owed to Class Members.
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26 34. Moreover, based on information and belief, Plaintiffs and/or Class Members who
27 opened their work locations were required to first unlock the doors, turn on all the lights in the
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1 facility and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock
2 work and the underpayment of wages owed to Plaintiffs and/or Class Members. Based on further
3 information and belief, Plaintiffs and/or Class Members in charge of closing their location(s) were
4 required to first clock out for their shifts before enabling the alarm, turning off all the lights in the
5 facility and/or locking the doors. This resulted in additional off-the-clock post-shift work that was
6 not compensated and the underpayment of wages owed to Plaintiffs and/or Class Members.

7 35. Plaintiffs and Class Members would also clock out at the end of their shifts and
8 continue working to prepare the reports or complete daily assignments in order not to create
9 overtime. Plaintiffs and Class Members were not compensated for that time.

10 36. Defendant also required Plaintiffs and Class members to be at their assigned
11 workstations at the start of a scheduled shift, thereby forcing Plaintiffs and Class Members to
12 gather work-related equipment and/or safety gear, make necessary adjustments to
13 tools/equipment and/or perform maintenance/cleaning tasks, don work clothing/uniforms and/or
14 protective equipment, and complete administrative tasks and/or complete other work tasks prior
15 to their scheduled shift and or prior to clicking in/signing in, thereby resulting in pre-shift off-the-
16 clock work.

17 37. Based on information and belief, Defendant did not compensate Plaintiffs and
18 Class Members for time spent donning and doffing personal protective equipment and/or
19 uniforms (e.g., rubber gloves, hairnets, aprons, hats, and/or face masks) during meal periods,
20 before the start of a scheduled shift, and/or after completing a scheduled shift, resulting in the
21 underpayment of wages owed to Class Members.

22 38. Plaintiffs and Class Members were required to complete other off-the-clock work
23 tasks after clocking out after the end of their shifts to continue working due to the need to
24 return/maintain tools, clean and/or organize their work stations/areas, provide shift status updates
25 and/or debriefings and/or participate in work meetings, respond to work-related communications
26 and/or complete administrative tasks off-the-clock and/or during uncompensated meal periods.
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1 39. Based on information and belief, Defendant failed to pay Plaintiffs and Class
2 Members for time they were required to spend completing orientation, policy questionnaires,
3 and/or time spent completing the onboarding process including but not limited to reviewing
4 various documents and policies provided by Defendant. Based on information and belief, this
5 work time was completed off-the-clock and not compensated.

6 40. Additionally, Plaintiffs and Class Members were also required to wash their
7 uniforms after the scheduled hours and receive/respond to work related messages on their phones
8 regarding scheduling and/or other work tasks off-the-clock, without compensation. In
9 maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate
10 records of the hours Plaintiffs and Class Members worked. In doing so, Defendant also failed to
11 maintain accurate records of the hours Plaintiffs and Class Members worked.

12 41. Defendant also failed to compensate Plaintiff and Class Members for all hours
13 worked by virtue of Defendant's automatic deduction and time rounding policies, and failure to
14 relieve employees of all duties/employer control during unpaid meal periods or otherwise
15 unlawful practices for missed or improper meal periods. Based on information and belief,
16 Defendant implemented a policy and/or practice of rounding meal period start and end times
17 and/or automatically deducting at least thirty minutes per shift for meal periods, despite having
18 actual and/or constructive knowledge that Plaintiff and other Class Members were subject to
19 Defendant's control during purported meal periods and/or were otherwise not afforded lawful
20 meal periods, depriving Plaintiff and Class Members of all wages owed.

21 42. During the Class Period, Defendant also failed to pay Plaintiffs and Class
22 Members split shift premium wages when they worked split shifts. For example, based on
23 information and belief, at times, Defendant required Plaintiffs and/or other Class Members to
24 work two separate shifts in the same day. Based on information and belief, Defendant failed to
25 pay Plaintiffs and/or other Class Members split shift compensation whenever Plaintiffs' and/or
26 other Class Members' work schedules were interrupted by non-paid non-working periods
27 established by Defendant, which resulted in a violation of the applicable Wage Order (See section
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1 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the
2 minimum wage shall be paid in addition to the minimum wage for that workday...). See also,
3 Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the
4 minimum wage shall be paid in addition to the minimum wage for that workday, except when the
5 employee resides at the place of employment). Defendant also failed to separately itemize these
6 split shift premium wages on Plaintiffs' and/or other Class Members' wage statements, in
7 violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders. See,
8 https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment
9 on the pay stub provided to the employee, and it should be shown as a separate category such as
10 "Split Shift Premium" and should not be lumped into another category such as wages, bonus, etc.
11 Defendant failed to separately account for the split shift premiums earned by Plaintiffs and/or
12 Class Members on their wage statements.

13 43. Based on information and belief, Defendant failed to pay Plaintiffs and Class
14 Members the applicable minimum wage for the county and/or city within which Plaintiffs and the
15 Class Members worked in California.

16 44. **Meal Period Violations.** During the Class Period, Defendant was obligated to
17 provide Plaintiffs and Class Members with a work-free meal period within the first five (5)
18 hours of a shift no later than the start of sixth hour of work in a workday, and to allow employees
19 to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour
20 of work in the workday.

21 45. Plaintiffs and Class Members consistently worked shifts of at least five and one-half
22 hours or more, entitling them to at least one meal period. However, Plaintiffs and Class
23 Members would not receive legally compliant thirty (30) minute first and second meal periods.
24 Based on information and belief, Plaintiffs and Class Members were consistently unable to take
25 timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal
26 periods, interrupted meal periods, and/or work through part or all their meal periods due to
27 understaffing, the nature and constraints of their job duties and/or commentary from supervisors
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1 pressuring them to take non-compliant meal periods or skip meal periods completely. Plaintiffs'
2 and Class Members' meal periods were cut short by approximately a five-minute walking
3 distance to the meal break room located outside of the hotel building where Plaintiffs and Class
4 Members were required to take their meal periods and were provided meals.

5 46. For example, based on information and belief, Plaintiffs and Class Members were
6 frequently forced to take late meal periods in order to complete assigned job duties.

7 47. Based on information and belief, Plaintiffs and Class Members were frequently, if
8 not always, interrupted during purported meal periods and/or required to work through their
9 owed meal periods and/or had meal periods cut short and/or restricted to Defendant's premises
10 due to the need to continue assigned job duties.

11 48. Additionally, Plaintiffs and Class Members were actually not allowed to leave the
12 hotel premises during their meal periods as they were instructed to take their meal periods in
13 the designated meal break area where they were provided meals.

14 49. Additionally, Plaintiffs and Class Members were also restricted from taking duty-
15 free, uninterrupted meal and rest periods and were not actually relieved of their duties during
16 breaks as they were not allowed to turn off their phones during their meal and rest periods.

17 50. Plaintiffs' and Class Members' meal periods were also cut short by the waiting time
18 to stay in a line to use the clock in machine located near the break room to clock out and clock
19 in back from meal periods. Accordingly, Defendant' policy and practice was to not provide
20 meal periods to Plaintiffs and Class Members in compliance with California law.

21 51. **Rest Period Violations.** Additionally, Defendant was obligated to provide
22 Plaintiffs and Class Members with a ten (10) minute rest break for every four (4) hours, or major
23 fraction thereof, worked each day. Defendant prevented Plaintiffs and Class Members from taking
24 rest breaks throughout their shifts. Defendant, however, wrongfully failed to authorize and permit
25 Plaintiffs and Class Members to take timely and duty-free rest periods. Defendant regularly
26 required Plaintiffs and Class Members to work in excess of four consecutive hours a day without
27 Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted,
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1 rest period for every four hours of work (or major fraction of four hours), or without compensating
2 Plaintiffs and Class Members for rest periods that were not authorized or permitted. Most
3 importantly, Plaintiffs' and Class Members' rest periods were cut short by approximately a five-
4 minute walking distance to the designated rest break room located outside of the hotel building.
5 Plaintiffs and Class Members were instructed to take their rest breaks in a designated area.
6 Accordingly, Defendant's policy and practice was for Plaintiffs and Class Members to not
7 authorize or permit them to take compliant rest periods.

8 52. Furthermore, Defendant failed and/or refused to pay Plaintiffs and Class Members
9 one (1) hour's pay at the employees' regular rate of pay as premium compensation for
10 Defendant's failure to provide lawful thirty (30) minute, off-duty meal periods and failure to
11 provide lawful ten (10) minute rest periods within the statutory time frames.

12 53. **Unreimbursed Business Expenses.** Defendant also failed to indemnify Plaintiffs
13 and Class Members for all necessary expenditures incurred in direct discharge of their duties
14 without reimbursement. During the Class Period, Plaintiffs and Class Members were required to
15 use their personal cell phones for work as Defendant either did not provide phones, or the work
16 phones provided by Defendant were often not working, but Plaintiffs and Class Members were not
17 reimbursed for a reasonable portion of their personal cell phone bills. Defendant required Plaintiffs
18 to use their personal cell phone / mobile device for work, including but not limited to, for
19 downloading and regularly using work-related applications. Additionally, Plaintiffs and Class
20 Members were required to purchase tools necessary to perform their work including but not limited
21 to staplers without reimbursement. Defendant required Plaintiffs to purchase and/or maintain
22 uniforms, work clothing, work shoes and/or protective and/or safety gear (e.g., face masks) without
23 providing Plaintiffs with any and/or full reimbursement for the business expenses Plaintiffs
24 incurred in connection therewith. Based on information and belief, at times, Defendant required
25 Plaintiffs and Class Members to use their personal vehicles to carry out their assigned job duties
26 without reimbursing them for the personal vehicle expenses they incurred in connection therewith,
27 including but not limited to, mileage, cost of fuel and/or vehicle wear and tear. Plaintiffs and Class
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Members incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant have failed to indemnify Plaintiffs and Class Members for these employment-related expenses.

54. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

55. Defendant’s locations/facilities are generally similar in layout and design, and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. Defendant could have provided Plaintiffs and Class Members with a resting facility within Defendant’s facilities/locations with reasonable or no modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a suitable breakroom). As a result, Plaintiffs and Class Members were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the wall, or search for facilities outside of Defendant’s premises which are not designated or reserved for their rest, such as their personal vehicles.

56. Defendant did not provide Plaintiffs and Class Members with suitable resting facilities during their hours of work, particularly during meal and/or rest periods. Defendant’s failure to provide suitable resting facilities to Plaintiffs and Class Members violated and continues to violate the applicable Wage Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

57. **Violation of Labor Code Sections 351 and 353.** Labor Code Section 351 prohibits employers and their agents from sharing in or keeping any portion of a gratuity left for or given to one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353 mandates employers to keep accurate records of all

1 gratuities received.

2 58. Based on information and belief, Defendant failed to ensure that Plaintiffs and Class
3 Members fully received the gratuities left for them by patrons, in that Defendant's and its agents
4 would collect and/or take a portion of the gratuities for themselves, in violation of Labor Code
5 Section 351. Based on further information and belief, Defendant also failed to keep accurate
6 records of all tips received, in violation of Labor Code Section 353. Based on information and
7 belief, Defendant failed to pay gratuities paid by customers using credit cards to Plaintiffs and
8 Class Members by the next regular payday following the credit card payment, in violation of
9 Labor Code section 351.

10 59. Based on information and belief, Defendant charges an additional service charge to
11 its customers/patrons. Customers are led to believe that the service charge will be paid to Plaintiffs
12 and Class Members. Instead, Defendant keeps a majority (if not the entirety) of the service charge,
13 thereby depriving Plaintiffs and Class Members of the service charge/gratuity that is left by the
14 patron/customer for Plaintiffs and Class Members. *See O'Grady v Merchant Exchanges*
15 *Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can constitute a gratuity
16 that is intended to the employees providing the service).

17 60. **Unlawful Deductions.** During the Class Period, Defendant was prohibited from
18 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
19 to said employee." Labor Code § 221. Based on information and belief, Defendant made unlawful
20 deductions from Plaintiffs' and Class Members' paychecks, including deducting business costs
21 and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully
22 deducting wages for negligently damaged property and/or unlawfully deducting transaction
23 fees/pay/money card fees, and/or deducting costs advanced by Defendant.

24 61. **Sick Leave Violations.** Throughout the relevant time period, Defendant also
25 failed to provide proper paid sick leave to Plaintiffs and Class Members. Defendant either failed
26 to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave
27 rate of pay owed to Plaintiffs and Class Members by failing to base the accrued sick leave hours
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1 on the correct number of hours worked (as a result of the rounding/automatic deduction policies
2 and practices for meal periods and/or shift start and end times/other required off-the-clock work
3 including but not limited to unpaid meal periods) and by failing to incorporate multiple rates of
4 pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary
5 bonuses, shift differential pay, and/or other non-discretionary compensation into the sick leave pay
6 rate calculation.

7 62. Upon information and belief, Defendant further failed to place Plaintiffs and
8 Class Members on notice of their paid sick leave rights – or thereby putting their entitlement to
9 sick leave in a Labor Code section 2810.5 notice. Based on information and belief, Defendant
10 failed to provide notice of the correct sick leave amount balance available to Plaintiffs and Class
11 Members on their wage statements or other written statement. Moreover, based on information
12 and belief, Defendant failed to maintain accurate records of used sick leave and the balance of paid
13 sick leave. Based on information and belief, throughout the relevant time period, Defendant failed
14 to provide notice of the balance of sick leave pay left for Plaintiffs and Class Members, thus
15 affecting their intelligent exercise of their paid sick leave. But for this failure, Plaintiffs and Class
16 Members would have used their paid sick leave at least prior to their respective separations, for as
17 on several occasions thereafter, he or she would have been entitled to use the banked sick leave
18 and earn appropriate compensation.

19 63. Upon information and belief, Defendant failed and continue to fail to comply
20 with Labor Code section 246, by failing to provide Plaintiffs and Class Members with a Labor
21 Code section 226 wage statement, or separate writing containing the amount of paid sick leave
22 available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
23 wages. As such, Defendant has violated California's paid sick leave laws and unlawfully retained
24 and continue to retain paid sick leave that should have been paid and was not as a result of
25 Defendant's failure to properly institute a lawful paid sick leave program. These unlawful practices
26 and polices violate Labor Code sections 245-248.5.
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1 **64. Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
2 provides as follows: (A) Each workday an employee is required to report for work and does report,
3 but is not put to work or is furnished less than half said employee's usual or scheduled day's
4 work, the employee shall be paid for half the usual or scheduled day's work, but in no event for
5 less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which
6 shall not be less than the minimum wage. (B) If an employee is required to report for work a
7 second time in any one workday and is furnished less than two (2) hours of work on the second
8 reporting said employee shall be paid for two hours at the employee's regular rate of pay, which
9 shall not be less than the minimum wage.

10 **65.** Plaintiffs and Class Members were not paid reporting time wages in accordance with
11 California law, including but not limited to the applicable IWC Wage Order. For example, based
12 on information and belief, at times, Plaintiffs and Class Members reported to work for a scheduled
13 shift but were sent home and/or were not put to work and were not paid all owed reporting time
14 pay wages in accordance with California law. Based on information and belief, Defendant has a
15 policy and practice of failing to pay all reporting time wages to Plaintiffs and Class Members, in
16 violation of California law, including but not limited to, the applicable IWC Wage Order, Section
17 5. Defendant's failure to pay all reporting time wages to Plaintiffs and Class Members violated
18 and continues to violate the applicable Wage Order, and the California Labor Code, including but
19 not limited to section 1198.

21 **66. Seating Violations.** Per section 14(A-B) of all applicable IWC Wage Orders,
22 employees shall be provided with suitable seats when the nature of the work reasonably permits
23 the use of seats and when they are not actively engaged in the work duties that would not permit
24 them to be seated. All applicable IWC Wage Orders, Section 14(A-B) provides: (A) All working
25 employees shall be provided with suitable seats when the nature of the work reasonably permits
26 the use of seats. (B) When employees are not engaged in the active duties of their employment and
27 the nature of the work requires standing, an adequate number of suitable seats shall be placed in
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1 reasonable proximity to the work area and employees shall be permitted to use such seats when it
2 does not interfere with the performance of their duties. Suitable seating is one of the worker
3 protections covered by California's Wage Orders, which have the same dignity as statutes, are
4 remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort
5 and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027
6 (2012).

7 67. Based on information and belief, Defendant failed to provide Plaintiffs and Class
8 Members with suitable seating, and when such employees were not engaged in duties which
9 required them to stand, no seating was placed in reasonable proximity to their workstations.
10 Moreover, based on information and belief, the nature of the work reasonably permitted the use of
11 seats for at least part of the time that Plaintiffs and Class Members were working. Lastly, there
12 were periods of time when Plaintiffs and Class Members were not engaged in active duties of their
13 employment, yet there were no suitable seats in reasonable proximity to the work area and use of
14 seats would not interfere with the performance of their duties.

15 68. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
16 Defendant has and continues to have a uniform policy and practice of failing to allow Plaintiffs
17 and Class Members to use their earned vacation/paid time off during their employment and/or
18 failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation
19 pay/paid time off paid at the final rate including non-discretionary compensation, including but
20 not limited to, shift differentials) to Plaintiffs and Class Members upon separation of employment,
21 in violation of California law, including but not limited to, Labor Code section 227.3.

22 69. **Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every
23 employee who is discharged shall be paid at the place of discharge, and every employee who quits
24 shall be paid at the office or agency of the employer in the county where the employee has been
25 performing labor. All payments shall be made in the manner provided by law. Based on
26 information and belief, Defendant has a policy and practice of failing to provide Plaintiffs and
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1 Class Members who are terminated with their final paychecks at the place of discharge and/or of
2 failing to provide Plaintiffs and Class Members with their final paychecks at the office or agency
3 of Defendant in the county where the work was performed, in violation of Labor Code Section
4 208.

5 **70. Unlawful Agreements-Unlawful Criminal History Inquiries.** Labor Code section
6 432.5 provides that “no employer...shall require any employee or applicant for employment to
7 agree, in writing, to any term or condition which is known by such employer...to be prohibited by
8 law.” Based on information and belief, Defendant required Plaintiffs and Class Members to agree
9 in writing to unlawful conditions of employment including but not limited to, unlawful non-
10 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements,
11 unlawful releases and/or waivers, including but not limited to, unlawful meal period waivers,
12 unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful
13 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
14 violation of Labor Code section 432.5.

15 **71. Violation of Labor Code Section 432.6.** Labor Code section 432.6(a), provides that
16 “a person shall not, as a condition of employment, continued employment, or the receipt of any
17 employment-related benefit, require any applicant for employment or any employee to waive any
18 right...”Based on information and belief, Defendant required Plaintiffs and Class Members to sign
19 meal period waivers that were universally signed as a condition of employment, including but not
20 limited to, during the onboarding process. By requiring Plaintiffs and Class Members to sign
21 unlawful meal period waivers as a condition of obtaining and/or maintaining employment,
22 Defendant violated Labor Code section 432.5. Further, these invalid waivers are otherwise
23 unlawful under Labor Code section 432.6. By requiring Plaintiffs and Class Members to agree in
24 writing to unlawful provisions as a condition of employment, Defendant violated including but not
25 limited to, Labor Code section 432.5.

26 **72.** Labor Code section 432.7 prohibits an employer from asking applicants about past
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1 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
2 information and belief, Defendant asked Plaintiffs and Class Members about arrests not resulting
3 in convictions on its employment application, in violation of California law.

4 73. Upon information and belief, Defendant, in violation of California law, including
5 but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
6 (“FEHA”), asked Plaintiffs and Class Members about convictions prior to extending an offer of
7 employment and/or otherwise impermissibly inquired into criminal history on its employment
8 application in violation of California law, and in violation of Labor code section 432.5.

9 74. Additionally, Defendant violated Labor Code section 432.5 by requiring Plaintiffs
10 and Class Members to agree in writing to other unlawful agreements, including but not limited to,
11 an unlawful waiver of PAGA and or representative actions as a condition of employment. An
12 action pursuant to PAGA “...is a representative action on behalf of the state” *Kim v Reins Int’l*
13 *California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements purporting to waive
14 an employee’s right to a trial of PAGA claims is contrary to California law and unenforceable. See
15 *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384 (“We conclude that
16 where, as here, an employment agreement compels the waiver of representative claims under the
17 PAGA, it is contrary to public policy and unenforceable as a matter of state law.”) Upon
18 information and belief, Defendant required Plaintiffs and Class Members to agree in writing to
19 waive their right to a trial of PAGA claims in violation of California law. By requiring Plaintiffs
20 and Class Members to agree, in writing, to an unlawful PAGA waiver, Defendant required written
21 agreement to an unlawful provision as a condition of employment which is a violation of labor
22 code section 432.5.

24 75. **Failure to Timely Pay All Wages Upon Separation of Employment.** Defendant
25 continues to employ non-exempt, hourly-paid employees within California. Plaintiffs and Class
26 Members primarily performed non-exempt work, often in excess of the maximum regular rate
27 hours set forth in the applicable IWC Wage Order(s), regulations or statutes, and therefore entitled
28 the Plaintiffs and Class Members to overtime compensation at the rate of one and a half times

1 their regular rate of pay and, when applicable, double time compensation as set forth by the
2 applicable IWC Wage Order(s), regulations and/or statutes.

3 76. During the Class Period, Defendant required Plaintiffs and Class Members to work
4 regular hours, off the clock hours, and overtime hours without lawful compensation in violation
5 of the applicable IWC Wage Order(s), regulations and statutes, and Defendant: (1) willfully failed
6 and refused, and continue to fail and refuse to pay compensation for all hours worked, including
7 lawful regular time and overtime compensation, to Plaintiffs and Class Members; and (2) willfully
8 failed and refused, and continue to fail and refuse to pay due and owing wages promptly upon
9 termination of employment to Plaintiffs and affected Class Members.

10 77. Plaintiffs and Class Members who ended their employment with Defendant during
11 the Class Period but were not paid the above due compensation for all hours worked timely upon
12 the termination of their employment as required by Labor Code Sections 201, 202, and 203 are
13 entitled to penalties as provided by Labor Code Section 203.

14 78. **Inaccurate Records.** During the Class Period, Defendant failed to furnish
15 Plaintiffs and Class Members with accurate, itemized wage statements showing all applicable
16 hourly rates, and all gross and net wages earned including employees' total hours worked,
17 correct hours worked, correct wages earned for hours worked, correct overtime hours worked,
18 correct wages for meal periods that were not provided in accordance with California law,
19 correct wages for rest periods that were not authorized and permitted to take in accordance
20 with California law. As a result of these violations of California Labor Code § 226(a),
21 Plaintiffs and Class Members are owed the amounts provided for in California Labor Code §
22 226(e), including actual damages.

23 79. Defendant knew or should have known that Plaintiffs and Class members were
24 entitled to receive accurate wage statements, which would include meal break premiums, and/or
25 rest break premiums, as required by Labor Code 226.

26 80. Defendant knew or should have known that Plaintiffs and Class Members were
27 entitled to timely payment of all wages earned upon termination. Plaintiffs and Class Members
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1 did not receive payment of all wages, including but not limited to, meal and rest break premiums,
2 in violation of the Labor Code.

3 **CLASS ALLEGATIONS**

4 81. Plaintiffs bring this action on behalf of themselves and all other similarly situated
5 persons as a class action pursuant to Code of Civil Procedure Section 382. The Class is composed
6 of and defined as follows:

- 7 (a) All persons who are employed or have been employed by Defendant in the
8 State of California, and who, within the four (4) years of the filing of this
9 Complaint to the present, have worked as non-exempt employees and were not
10 paid all wages owed, including but not limited to the legally requisite regular
11 time rate, overtime rate and/or double-time rate;
- 12 (b) All persons who are employed or have been employed by Defendant in the
13 State of California, and who, within the four (4) years of the filing of this
14 Complaint to the present, have worked as non-exempt employees and have not
15 been provided a meal period for shifts in excess of five (5) hours within the
16 first five (5) hours such shifts, and were not provided one (1) hour's pay for
17 each day during which a lawful meal period was not provided;
- 18 (c) All persons who are employed or have been employed by Defendant in the
19 State of California, and who, within the four (4) years of the filing of this
20 Complaint to the present, have worked as non-exempt employees and have not
21 been provided a rest period for every four (4) hours, or major fraction thereof,
22 worked per day, and were not provided compensation of one (1) hour's pay for
23 each day on which such rest period(s) was not provided;
- 24 (d) All persons who are employed or have been employed by Defendant in the
25 State of California, and who, within the four (4) years of the filing of this
26 Complaint to the present, have worked as non-exempt employees and have not
27 been reimbursed expenditures in discharge of their duties or have had unlawful
28 deductions made from their paychecks;

1 (e) All persons who are employed or have been employed by Defendant in the
2 State of California, and who, within the three (3) years of the filing of this
3 Complaint to the present, have worked as non-exempt employees and have
4 been terminated or resigned, and have not been paid wages pursuant to Labor
5 Code Section 203 and are owed restitution and waiting time penalties for
6 unpaid wages;

7 (f) All persons who are employed or have been employed by Defendant in the
8 State of California, and who, within the one (1) year of the filing of this
9 Complaint to the present have worked as non-exempt employees and were not
10 provided an accurate payroll record or wage statement as required under Labor
11 Code Sections 226 and 1174;

12 (g) All persons who are employed or have been employed by Defendant in the
13 State of California, and who, within the four (4) years of the filing of this
14 Complaint to the present, have worked as non-exempt employees and were
15 subjected to unlawful and unfair business practices within the meaning of
16 California's Unfair Competition Law and who suffered injury, including lost
17 money, as a result of Defendant's unlawful and unfair business practices.

18 82. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or
19 necessary to amend the definition of the Class. Plaintiffs will formally define and designate a
20 class definition at such time when Plaintiffs seeks to certify the Class alleged in this Complaint.

21 83. This action has been brought and may be maintained as a class action pursuant to
22 Code of Civil Procedure Section 382 because there is a well-defined common interest of many
23 persons and it is impractical to bring them all before the court.

24 84. The Court should permit this action to be maintained as a class action pursuant to
25 Code of Civil Procedure Section 382 because:

26 (a) The questions of law and fact common to Class predominate over any
27 question affecting only individual class members;

- 1 (b) A class action is superior to any other available method for the fair and
2 efficient adjudication of the claims of the Class members;
- 3 (c) Class is so numerous that it is impractical to bring all members of the
4 Class before the Court;
- 5 (d) Plaintiffs and Class Members will not be able to obtain effective and
6 economic legal redress unless the action is maintained as a class action;
- 7 (e) There is a community of interest in obtaining appropriate legal and
8 equitable relief for the common law and statutory violations and other
9 improprieties and in obtaining adequate compensation for the damages
10 and injuries which Defendant's actions have inflicted upon Class;
- 11 (f) There is a community of interest in ensuring that the combined assets and
12 available insurance of the Defendant are sufficient to adequately
13 compensate Class Members for the injuries sustained;
- 14 (g) Without class certification, the prosecution of separate actions by
15 individual members of the Class would create a risk of:
- 16 (1) Inconsistent or varying adjudications with respect to individual
17 members of the Class which would establish an incompatible
18 standard of conduct for Defendant; and/or
- 19 (2) Adjudications with respect to the individual members which
20 would, as a practical matter, be dispositive of the interests of other
21 members not parties to the adjudications, or would substantially
22 impair or impede their ability to protect their interests, including
23 but not limited to the potential for exhausting the funds available
24 from those parties who are, or may be, responsible Defendant; and
- 25 (h) Defendant has acted or refused to act on grounds generally applicable to
26 Class, thereby making final injunctive relief appropriate with respect to
27 Class as a whole.

28 85. There is a well-defined community of interest in the litigation and Class is readily

ascertainable:

(a) Numerosity: The members of Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiffs at this time, however, the Class is estimated to be greater than 200 individuals and the identity of such membership is readily ascertainable by inspection of Defendant's records.

(b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest, and Plaintiffs' claims (or defenses, if any) are typical of all Class Members' claims as demonstrated herein.

(c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs have no conflicts with or interests antagonistic to any Class Member. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: A Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1. The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
2. The extent and nature of any litigation concerning the

1 controversy already commenced by or against members of the
2 Class;

- 3 3. The desirability or undesirability of concentrating the litigation
4 of the claims in the particular forum; and
5 4. The difficulties likely to be encountered in the management of
6 a class action.

7 (e) Public Policy Considerations: The public policy of the State of California is
8 to resolve the California Labor Code claims of many employees through a
9 class action. Indeed, current employees are often afraid to assert their rights
10 out of fear of direct or indirect retaliation. Former employees are also fearful
11 of bringing actions because they believe their former employers might damage
12 their future endeavors through negative references and/or other means. Class
13 actions provide the Class Members who are not named in the complaint with
14 a type of anonymity that allows for the vindication of their rights at the same
15 time as their privacy is protected.
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17 86. Plaintiffs contemplate the eventual issuance of notice to the proposed members of
18 the Class that would set forth the subject and nature of the instant action. Defendant's own
19 business records may be utilized for assistance in the preparation and issuance of the contemplated
20 notices. To the extent that any further notices may be required, Plaintiffs would contemplate the
21 use of additional techniques and forms commonly used in class actions, such as published notice,
22 e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods
23 suitable to Class and deemed necessary and/or appropriate by the Court.

24 **FIRST CAUSE OF ACTION**

25 **Failure to Pay All Wages for All Hours Worked**

26 **(Against Defendant, DOES 1 through 50, and each of them)**

27 87. Plaintiffs and Class Members re-allege and incorporate by reference all preceding
28 paragraphs of this complaint as though fully set forth herein.

1 88. Labor Code Section 510, subdivision (a) states in pertinent part: “Any work in
2 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek...
3 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for
4 any employee.”

5 89. Labor Code Section 1194, subdivision (a) states: “Notwithstanding any agreement
6 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
7 overtime compensation applicable to the employee is entitled to recover in a civil action the
8 unpaid balance of the full amount of this minimum wage or overtime compensation, including
9 interest thereon, reasonable attorney's fees, and costs of suit.”

10 90. Further, pursuant to Labor Code Section 1197, payment of less than the minimum
11 wage fixed by the Labor Commission is unlawful.

12 91. Pursuant to Labor Code Section 1198, it is unlawful to employ persons for longer
13 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
14 IWC Wage Order(s).

15 92. Pursuant to the IWC Wage Order(s), Defendant is required to pay Plaintiffs and
16 Class Members for all hours worked, meaning the time during which an employee is subject to
17 the control of an employer, including all the time the employee is suffered or permitted to work,
18 whether or not required to do so.

19 93. Labor Code Section 204 requires employers to pay employees all earned wages two
20 times per month on days designated in advance by the employer as regular paydays. Pursuant to
21 Labor Code Section 204 (a) labor performed between the 1st and 15th days, inclusive, of any
22 calendar month shall be paid for between the 16th and the 26th day of the month during which the
23 labor was performed, and labor performed between the 16th and the last day, inclusive, of any
24 calendar month, shall be paid for between the 1st and 10th day of the following month. Pursuant
25 to Labor Code Section 204 (d) the requirements of this Section shall be deemed satisfied by the
26 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
27 than seven calendar days following the close of the payroll period. Plaintiffs and Class were also
28 entitled to be paid twice a month at their regular rates, including all meal period premium wages

owed, rest period premium wages owed, and wages owed for hours worked. However, during Class period, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked.

94. During the Class Period, Defendant was obligated to pay Plaintiffs and Class Members for all hours worked. However, Defendant failed to pay Plaintiff and Class Members for all hours worked at the legally mandated wage rates, including regular wages and overtime wages. Throughout the Class Period, Defendant maintained a policy and practice of failing to pay Plaintiffs and Class Members for all hours worked. Defendant paid additional remuneration to Plaintiffs and Class Members in the form of gratuities (service charges), additional pay titled “Extra Rooms”, “CA Spsl”, “Referral”, but failed to include additional remuneration in the regular rate of pay for purposes of calculating overtime rate of pay and sick pay. Throughout the Class Period, Defendant maintained a policy and practice of requiring Plaintiffs and Class Members to perform work “off-the-clock”. Plaintiffs and Class Members were required to enter the main entrance, walk to the fourth floor where the timeclock machine was located and wait in a line with other employees to use the machine to clock in to work. Defendant failed to compensate for the time spent walking to the area where the timeclock machine was located and for the time spent in a line to clock in to work. Plaintiffs and Class Members would also clock out at the end of their shifts and continue working to prepare the reports or complete daily assignments in order not to create overtime. Plaintiffs and Class Members were not compensated for that time. Additionally, Plaintiffs and Class Members were also required to wash their uniforms after the scheduled hours off-the-clock, without compensation. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiffs and Class Members worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiffs and Class Members worked.

1 95. Plaintiffs and Class Members were required to work overtime in excess of eight (8)
2 hours per workday and in excess of forty (40) hours per workweek but were not paid at the proper
3 overtime rate of pay.

4 96. Defendant's pattern, practice and uniform administration of corporate policy
5 regarding illegal employee compensation as described herein is unlawful and creates an
6 entitlement, pursuant to Labor Code Section 218, to recovery by Plaintiffs and the members of
7 the Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
8 the appropriate rate.

9 97. Pursuant to Labor Code Section 1194.2(a) (which provides that in any action under
10 Labor Code § 1194, an employee shall be entitled to recover liquidated damages), the members
11 of Class seek recovery of liquidated damages on the straight-time portion of uncompensated hours
12 of work (not including the overtime portion thereof) in an amount equal to the wages unlawfully
13 unpaid and interest thereon.

14 98. That calculation of individual damages for Plaintiffs and Class Members may at
15 some point be required does not foreclose the possibility of taking common evidence on questions
16 regarding their entitlement to overtime compensation. *Collins v. Rocha* (1972) 7 Cal.3d 232;
17 *Hypolite v. Carleson* (1975) 52 Cal.App.3d 566; *Employment Development Dept. v. Superior*
18 *Court* (1981) 30 Cal.3d 256).

19 99. Pursuant to Labor Code Sections 218.6 and 1194(a) and Civil Code Section 3287,
20 Plaintiffs and Class Members seek recovery of pre-judgment interest on all amounts recovered
21 herein.

22 100. Pursuant to Labor Code Sections 218.5 and/or 1194, Plaintiffs and Class Members
23 request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

24 **SECOND CAUSE OF ACTION**

25 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

26 **(Against Defendant, DOES 1 through 50, and each of them)**

27 101. Plaintiffs and Class Members re-allege and incorporate by reference all preceding
28 paragraphs of this complaint as though fully set forth herein.

1 102. Labor Code Sections 226.7 and 512 provide that no employer shall employ any
2 person for a work period of more than five (5) hours without providing a meal period of not less
3 than thirty (30) minutes within the fifth (5th) hour of work, or employ any person for a work
4 period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30)
5 minutes.

6 103. Labor Code Section 226.7 provides that if an employer fails to provide an
7 employee a meal period in accordance with this Section, the employer shall pay the employee one
8 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
9 period is not provided in accordance with this Section.

10 104. Defendant failed to schedule for Plaintiffs and Class Members compliant meal
11 periods. In so doing, Defendant has intentionally and improperly denied meal periods to Plaintiffs
12 and Class Members in violation of Labor Code Sections 226.7 and 512, and other regulations and
13 statutes.

14 105. At all times relevant hereto, Plaintiffs and Class have worked more than five (5)
15 hours in a workday.

16 106. By virtue of Defendant's failure to schedule Plaintiffs and Class Members in such
17 a way as to provide a timely and/or work free meal period to Plaintiffs and Class Members,
18 Plaintiffs and Class Members have suffered, and will continue to suffer, damages in an amount
19 which is presently unknown, but which exceed the jurisdictional limits of this Court and which
20 will be ascertained according to proof at trial.

21 107. Plaintiffs, individually and on behalf of Class Members, requests recovery of meal
22 period compensation pursuant to Labor Code Section 226.7 for the four (4) years prior to filing
23 this complaint, as well as the assessment of any statutory penalties against Defendant in a sum as
24 provided by the Labor Code and/or other statutes.

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1 **FOURTH CAUSE OF ACTION**

2 **Failure to Provide Accurate Itemized Wage Statements**

3 **(Against Defendant, DOES 1 through 50, and each of them)**

4 115. Plaintiffs and Class Members re-allege and incorporate by reference all preceding
5 paragraphs of this complaint as though fully set forth herein.

6 116. Labor Code Section 1174, subdivision (d) requires an employer to keep at a central
7 location in California, or at the plant or establishment at which the employee is employed, payroll
8 records showing the hours worked daily by, and the wages paid to, each employee.

9 117. Labor Code Section 226, subdivision (a) requires an employer to provide
10 employees—either as a detachable part of the check, draft, or voucher paying the employee’s
11 wages, or separately when wages are paid by personal check or cash—an accurate itemized wage
12 statement in writing showing

13 (1) gross wages earned, (2) total hours worked by the employee . . . , (4) all
14 deductions . . . , (5) net wages, (6) the inclusive dates of the period for which
15 the employee is paid, (7) the name of the employee and only the last four
16 digits of his or her social security number or an employee identification
17 number other than a social security number, (8) the name and address of the
18 legal entity that is the employer . . . , and (9) all applicable hourly rates in
19 effect during the pay period and corresponding number of hours worked at
20 each hourly rate by the employee

21 118. Moreover, the IWC Wage Orders require that every employer shall keep accurate
22 information with respect to each employee, including time records showing when each employee
23 begins and ends each work period, when each employee takes a meal period, the total daily hours
24 worked by each employee and the total hours worked in each payroll period, and applicable rates
25 of pay.

26 119. Plaintiffs are informed and believe that Defendant willfully and intentionally
27 failed to make and/or keep records which accurately reflect the total hours worked by Plaintiffs
28 and Class. Specifically, Plaintiffs believes that Defendant’s records do not accurately reflect

1 when Plaintiffs and Class worked during their meal and rest periods and/or took untimely meal
2 periods or worked for hours not paid.

3 120. Labor Code Section 226, subdivision (e) provides that if an employer knowingly
4 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
5 the total hours worked by the employee, causing the employee injury, then the employee is
6 entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the initial
7 violation and one hundred dollars (\$100.00) for each subsequent violation, up to four thousand
8 dollars (\$4,000.00). Plaintiffs are informed and believe that Defendant willfully failed to make
9 or keep accurate records for Plaintiffs and Class.

10 121. Plaintiffs are informed and believe that Defendant's failure to keep accurate
11 payroll records, as described above, violated Labor Code Section 1174, subdivision (d) and
12 Section 226, subdivision (a), and the applicable IWC Wage Order(s). Pursuant to Labor Code
13 Section 2699, subdivision (f)(2), Plaintiffs and Class are entitled to penalties of \$100.00 and for
14 the initial violation and \$200.00 for each subsequent violation for every pay period during which
15 these records and information were not kept by Defendant.

16 122. Plaintiffs are informed and believes that Defendant's failure to keep and maintain
17 accurate records and information, as described above, was willful, and Plaintiffs and Class are
18 entitled to statutory penalties pursuant to Labor Code Section 1174.5.

19 **FIFTH CAUSE OF ACTION**

20 **Failure to Pay Wages upon Termination of Employment**

21 **(Against Defendant, DOES 1 through 50, and each of them)**

22 123. Plaintiffs and Class re-allege and incorporate by reference all preceding
23 paragraphs of this complaint as though fully set forth herein.

24 124. Plaintiffs and certain Class Members who ended their employment with Defendant
25 during the Class Period, were entitled to be promptly paid for all hours worked, including lawful
26 regular time compensation, overtime compensation, double-time compensation, and other
27 premiums, as required by Labor Code Sections 201 through 203. They are also entitled to meal
28 period and rest period premium pay in accordance with Labor Code Sections 226 and 226.7.

125. Plaintiffs and Class Members were not compensated for their unlawful and/or missed meal periods and/or rest periods, and were not paid proper regular time compensation, overtime compensation or double-time compensation in accordance with law as a result of Defendant's Labor Code violations.

126. To date, Plaintiffs and Class Members who ended their employment with Defendant during the Class Period have not been compensated for all hours worked.

127. Plaintiffs and Class Members seek the payment of penalties pursuant to Labor Code Section 203, according to proof.

128. Plaintiffs are also entitled to attorneys' fees and costs, pursuant to Labor Code Section 1194, and prejudgment interest.

SIXTH CAUSE OF ACTION

Failure to Reimburse for Necessary Business Expenditures

(Against Defendant, DOES 1 through 50, and each of them)

129. Plaintiffs and Class Members re-allege and incorporate by reference all the above paragraphs of this complaint as if fully alleged herein.

130. California Labor Code §2802, states "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

131. Plaintiffs and Class incurred expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiffs and Class for these employment-related expenses.

132. Defendant knowingly, willingly and intentionally attempted to offset the cost of doing business on the Plaintiffs and Class.

133. Defendant had a corporate practice and policy of requiring Plaintiffs and Class to shoulder the burden of Defendant's cost of doing business by failing to reimburse Plaintiffs and Class for necessary expenditures.

134. Accordingly, Plaintiffs and Class are entitled to an award of “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s

1 fees and interest.

2 **SEVENTH CAUSE OF ACTION**

3 **Unfair Business Practices**

4 **(Against Defendant, DOES 1 through 50, and each of them)**

5 135. Plaintiffs and Class re-allege and incorporate by reference all preceding
6 paragraphs of this complaint as though fully set forth herein.

7 136. Business and Professions Code Section 17200 et seq. (also referred to herein as
8 the “Unfair Business Practices Act” or “Unfair Competition Law”) prohibits unfair competition
9 in the form of any unlawful, unfair or fraudulent business act or practice.

10 137. Business and Professions Code Section 17204 allows “a person who has suffered
11 injury in fact and has lost money or property as a result of the unfair competition” to prosecute a
12 civil action for violation of the Unfair Competition Law (“UCL”).

13 138. Labor Code Section 90.5, subdivision (a) states that it is the public policy of
14 California to vigorously enforce minimum labor standards in order to ensure employees are not
15 required to work under substandard and unlawful conditions, and to protect employers who
16 comply with the law from those who attempt to gain competitive advantage at the expense of their
17 workers by failing to comply with minimum labor standards.

18 139. Beginning at an exact date unknown to Plaintiffs, but at least since the date four
19 (4) years prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as
20 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent
21 business practices and acts described in this Complaint including but not limited to violations of
22 Labor Code Sections 201-204, 226, 226.7, 510, 558, 1174.5, 1194, 1197.1, 1198, 2802, 2699(f)(2)
23 as well as other statutes.

24 140. The violations of these laws and regulations, as well as of the fundamental
25 California public policies protecting workers, serve as unlawful predicate acts and practices for
26 purposes of Business and Professions Code Section 17200 et seq.

27 141. The acts and practices described above constitute unfair, unlawful and fraudulent
28 business practices, and unfair competition, within the meaning of Business and Professions Code

1 Section 17200 et seq. Among other things, the acts and practices have forced Plaintiffs and other
2 similarly situated employees to labor for many consecutive hours without receiving the meal and
3 rest periods and overtime compensation to which they are entitled by law, while enabling
4 Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

5 142. As a result of Defendant's acts, Plaintiffs and Class Members have suffered injury
6 in fact in being denied their statutorily entitled meal and rest periods and full compensation for
7 hours worked.

8 143. As a direct and proximate result of the aforementioned acts and practices, Plaintiffs
9 and Class have suffered lost wages in an amount to be proven at trial.

10 144. Business and Professions Code Section 17203 provides that a court may make
11 such orders or judgments as may be necessary to prevent the use or employment by any person
12 of any practice which constitutes unfair competition. Injunctive relief is necessary and
13 appropriate to prevent Defendant from repeating its unlawful, unfair and fraudulent business acts
14 and business practices alleged above.

15 145. Business and Professions Code Section 17203 provides that the Court may restore
16 to any person in interest any money or property that may have been acquired by means of such
17 unfair competition. Plaintiffs and Class are entitled to restitution pursuant to Business and
18 Professions Code Section 17203 for all wages and payments unlawfully withheld from
19 employees, including the fair value of the meal and rest periods taken away from them during the
20 four-year period prior to the filing of this Complaint, as well as for all expenses or losses incurred
21 by Plaintiffs and Class in direct consequence of the discharge of their duties, or of their obedience
22 to the directions of the employer.

23 146. Business and Professions Code Section 17202 provides, "Notwithstanding Section
24 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
25 forfeiture, or penal law in a case of unfair competition." Plaintiffs and Class are entitled to enforce
26 all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code
27 Section 17202.

147. Plaintiffs' success in this action will enforce important rights affecting public interest, and in that regard, Plaintiffs sue on behalf of the general public, as well as themselves and other similarly situated employees. Plaintiffs and Class seek and are entitled to restitution, civil penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

148. Plaintiffs herein take upon themselves enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action. The action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiffs by forcing them to pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure Section 1021.5 and otherwise.

EIGHTH CAUSE OF ACTION

Violation of California Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.*
(Against Defendant, DOES 1 through 50, and each of them)

149. Plaintiffs re-allege and incorporate by reference all preceding paragraphs herein, as if fully alleged herein.

150. Plaintiffs seek recovery of penalties under the Labor Code Private Attorney General Act of 2004 (“PAGA.”) (Labor Code sections 2698 et seq.)

151. PAGA permits an “aggrieved employee” to recover penalties on behalf of himself/herself and other employees subject to violations of the Labor Code, including violations of sections 201-203, 204, 208, 210, 216, 221-223, 225.5, 226, 226.7, 227.3, 233-234, 245-248.6, 256, 351, 353, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5 as well as violations of the applicable Wage Order.

152. Plaintiffs are informed and believes Defendant at all relevant times employed one or more employees.

153. For those code sections that provide for the recovery of civil penalties, Plaintiffs will seek on behalf of all aggrieved employees those penalties. For those sections of the Labor Code that do not specifically provide for civil penalties, Plaintiffs will seek civil penalties of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation

1 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
2 subsequent violation pursuant to Labor Code section 2699, subdivision (f).

3 154. Section 2699, subdivision (a) provides that civil penalties may be “recovered
4 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
5 current or former employees.” (Code Civ. Proc., § 2699, subd. (a).) Section 2699, subdivision (g),
6 provides that an employee who prevails in a civil action under section 2699 shall be entitled to an
7 award of reasonable attorneys’ fees and costs.

8 155. The State of California, Plaintiffs and aggrieved employees are, therefore, entitled
9 to civil penalties, attorneys’ fees and costs, according to proof.

10 **PRAYER FOR RELIEF**

11 Plaintiffs, individually, and on behalf of all others similarly situated only with respect
12 to the class claims, prays for relief and judgment against Defendant as follows:

13 **Class Certification**

14 1. That this action be certified as a class action with respect to the First, Second,
15 Third, Fourth, Fifth, Sixth and Seventh Causes of Action;

16 2. That Plaintiffs be appointed as the representatives of the Class; and

17 3. That counsel for Plaintiffs be appointed as Class Counsel.

18 **As to the First Cause of Action**

19 4. That the Court declare, adjudge and decree that Defendant violated California
20 Labor Code §§ 204, 210, 218, 218.5, 222-224, 510, 1194, 1194.2, 1197, 1997, 1998 and
21 applicable IWC Wage Orders by willfully failing to pay all wages due;

22 5. For general unpaid wages as may be appropriate;

23 6. For pre-judgment interest on any unpaid compensation commencing from the
24 date such amounts were due;

25 7. For liquidated damages;

26 8. For reasonable attorneys’ fees and for costs of suit incurred herein pursuant to
27 California Labor Code § 1194(a); and,
28

1 9. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 As to the Second Cause of Action

4 10. That the Court declare, adjudge and decree that Defendant violated California
5 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

6 11. For unpaid meal period premium wages as may be appropriate;

7 12. For pre-judgment interest on any unpaid compensation commencing from the
8 date such amounts were due;

9 13. For reasonable attorneys' fees under California Code of Civil Procedure §
10 1021.5, and for costs of suit incurred herein; and

11 14. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 As to the Third Cause of Action

14 15. That the Court declare, adjudge and decree that Defendant violated California
15 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

16 16. For unpaid rest period premium wages as may be appropriate;

17 17. For pre-judgment interest on any unpaid compensation commencing from the
18 date such amounts were due;

19 18. For reasonable attorneys' fees under California Code of Civil Procedure §
20 1021.5, and for costs of suit incurred herein; and

21 19. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 As to the Fourth Cause of Action

24 20. That the Court declare, adjudge and decree that Defendant violated the record
25 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders,
26 and willfully failed to provide accurate itemized wage statements thereto;
27
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- 1 21. For penalties and actual damages pursuant to California Labor Code § 226(e);
2 22. For injunctive relief to ensure compliance with this Section, pursuant to
3 California Labor Code § 226(h);
4 23. For reasonable attorneys' fees and for costs of suit incurred herein; and
5 24. For such other and further relief as the Court may deem equitable and
6 appropriate.

7 As to the Fifth Cause of Action

8 25. That the Court declare, adjudge and decree that Defendant violated California
9 Labor Code §§ 201, 202, 203 by willfully failing to pay all compensation owed at the time
10 of termination of the employment;

11 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
12 employees who have left Defendant's employ;

13 27. For pre-judgment interest on any unpaid wages from the date such amounts were
14 due;

15 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

16 29. For such other and further relief as the Court may deem equitable and
17 appropriate.
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19 As to the Sixth Cause of Action

20 30. That the Court declare, adjudge and decree that Defendant violated Labor Code §
21 2802 and the IWC Wage Orders;

22 31. For general unpaid wages and reimbursement of business expenses as may be
23 appropriate;

24 32. For pre-judgment interest on any unpaid compensation commencing from the
25 date such amounts were due;

26 33. For reasonable attorneys' fees and for costs of suit incurred herein; and
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28

1 34. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 As to the Seventh Cause of Action

4 35. That the Court declare, adjudge and decree that Defendant violated California
5 Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked,
6 failing to provide meal periods, failing to maintain accurate records of meal periods, failing
7 to authorize and permit rest periods, and failing to maintain accurate records of all hours
8 worked and meal periods, failing to furnish accurate wage statements, and failing to
9 indemnify necessary business expenses;

10 36. For restitution of unpaid wages to Plaintiffs and all Class Members and
11 prejudgment interest from the day such amounts were due and payable;

12 37. For the appointment of a receiver to receive, manage and distribute any and all
13 funds disgorged from Defendant and determined to have been wrongfully acquired by
14 Defendant as a result of violations of California Business & Professions Code §§ 17200 *et*
15 *seq.*;

16 38. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
17 California Code of Civil Procedure § 1021.5;

18 39. For injunctive relief to ensure compliance with this Section, pursuant to
19 California Business & Professions Code §§ 17200, *et seq.*; and,

20 40. For such other and further relief as the Court may deem equitable and
21 appropriate.
22

23 As to the Eighth Cause of Action

24 41. That the Court declare, adjudge and decree that Defendant violated the California
25 Labor Code by failing to pay wages for all hours worked, failing to provide meal periods,
26 failing to maintain accurate records of meal periods, failing to authorize and permit rest
27 periods, failing to maintain accurate records of all hours worked and meal periods, failing to
28

1 indemnify necessary business expenses, failing to pay final wages at termination, and failing
2 to furnish accurate wage statements;

3 42. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all
4 other applicable Labor Code provisions;

5 43. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Labor Code § 2699;

7 44. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 As to all Causes of Action

10 45. For any additional relief that the Court deems just and proper.

11
12 Dated: May 14, 2025

TUNYAN LAW, APC

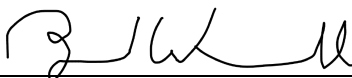
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16 Lilit Tunyan
17 Artur Tunyan

18 Attorneys for Plaintiff YADIRA RODRIGUEZ ROMAN

19 Dated: May 7, 2025

CROSNER LEGAL, PC

20
21 By: 

22 Raymond Wendell
23 Brandon Brouillette
24 Zachary Crosner

25 Attorneys for Plaintiff DONALD CLEVINGER
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DEMAND FOR JURY TRIAL

Plaintiffs YADIRA RODRIGUEZ ROMAN and DONALD CLEVINGER hereby
demand a jury trial on all issues so triable.

Dated: May 14, 2025

TUNYAN LAW, PAC

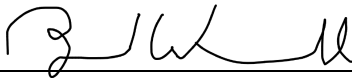


Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiffs YADIRA RODRIGUEZ ROMAN

Dated: May 7, 2025

CROSNER LEGAL, PC

By: 

Raymond Wendell
Brandon Brouillette
Zachary Crosner

Attorneys for Plaintiff DONALD CLEVINGER

Exhibit “A”



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Glendale, CA 91203
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

March 7, 2024

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

TC California Hospitality LLC
11777 San Vincente Blvd, Ste 900
Los Angeles, CA 90049

VIA CERTIFIED MAIL

Return Receipt Requested

CSC-Lawyers Incorporating Service
Agent for Service of Process for
TC California Hospitality LLC
2710 Gateway Oaks Drive, Suite 150N
Sacramento, California 95833-3505

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: Rodriguez v. TC California Hospitality LLC

To Whom It May Concern:

Please be advised that my office has been retained by Yadira Rodriguez Roman ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against her former employer TC California Hospitality LLC ("Defendant"). Pursuant to the joint prosecution and fee sharing agreement entered between Tunyan Law, APC and Majarian Law Group, APC and Plaintiff's written consent to joint prosecution and fee sharing agreement, Tunyan Law, APC and Majarian Law Group, APC will be jointly prosecuting Plaintiff's action against Defendant. The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which Plaintiff alleges Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including San Diego County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a housekeeping employee from May 26, 2021 to December 3, 2023 in San Diego. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5-6 days per week and over 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory time period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked. Throughout the statutory period, Defendant paid additional remuneration to Plaintiff and the Aggrieved Employees in the

form of gratuities (service charges), additional pay titled “Extra Rooms”, “CA Spst”, “Referral”, but failed to include additional remuneration in the regular rate of pay for purposes of calculating overtime rate of pay and sick pay. Throughout the statutory period, Defendant maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work “off-the-clock”. Plaintiff and the Aggrieved Employees were required to enter the main entrance, walk to the fourth floor where the timeclock machine was located and wait in a line with other employees to use the machine to clock in to work. Defendant failed to compensate for the time spent walking to the area where the timeclock machine was located and for the time spent in a line to clock in to work. Plaintiff and the Aggrieved Employees would also clock out at the end of their shifts and continue working to prepare the reports or complete daily assignments in order not to create overtime. Plaintiff and the Aggrieved Employees were not compensated for that time. Additionally, Plaintiff and the Aggrieved Employees were also required to wash their uniforms after the scheduled hours off-the-clock, without compensation. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Plaintiff’s and the Aggrieved Employees’ meal periods were cut short by approximately a five-minute walking distance to the meal break room located outside of the hotel building where Plaintiff and the Aggrieved Employees were required to take their meal periods and were provided meals. Additionally, Plaintiff and the Aggrieved Employees were actually not allowed to leave the hotel premises during their meal periods as they were instructed to take their meal periods in the designated meal break area where they were provided meals. Additionally, Plaintiff and the

Aggrieved Employees were also restricted from taking duty-free, uninterrupted meal and rest periods and were not actually relieved of their duties during breaks as they were not allowed to turn off their phones during their meal and rest periods. Plaintiff's and the Aggrieved Employees meal periods were also cut short by the waiting time to stay in a line to use the clock in machine located near the break room to clock out and clock in back from meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Most importantly, Plaintiff's and the Aggrieved Employees' rest periods were cut short by approximately a five-minute walking distance to the designated rest break room located outside of the hotel building. Plaintiff and the Aggrieved Employees were instructed to take their rest breaks in a designated area. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to not authorize or permit them to take compliant rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred as a direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement. Plaintiff and the Aggrieved Employees were required to use their

personal cell phones for work as work phones provided by Defendant were often not working but were not reimbursed for a reasonable portion of their personal cell phone bills. Additionally, Plaintiff and the Aggrieved Employees were required to purchase tools necessary to perform their work including but not limited to staplers without reimbursement. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continue to fail to pay to Plaintiff and the Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time, missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (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 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 (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. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to list employees’ total hours worked, the failure to correctly list gross wages earned, the failure to correctly list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’ failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the

16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements;
8. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 558, 1174.5, 1197.1, 2802, 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to their corporate address and address of the agent for service as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendant or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
TUNYAN LAW, APC

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for submission of your PAGA Case.
Date: Thursday, March 7, 2024 12:08:33 PM

3/7/2024

LWDA Case No. LWDA-CM-1015308-24
Law Firm : Tunyan Law, APC
Plaintiff Name : Yadira Rodriguez Roman
Employer: TC California Hospitality LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (424) 335-5236
office: (866) 276-7637
fax: (310) 510-6429

June 7, 2024

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAfilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

CSC Lawyers Incorporating Service
Agent for Service of Process for:
**TC California Hospitality LLC; Hotel
Circle Property, LLC; and Coraltree
Hospitality Group LLC**
Attn: CA Registered Agent Authorized
Employees: Becky DeGeorge, Koy Saechao,
Lai Saevang, Nicole Stauss, Jenn Bautista,
Trudy Desbiens, Rebecca Vang, Wendy
Harris, Melissa Dekoven, Carolyn Valle, Kaci
Ransom, Kelli Shortte, Annette Kuhlman,
Brejet Stephens, Crystal Chapman, Janette
McIntyre, Jerome Suarez, Samantha Wiltz,
and Parid Kurbini
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

**TC California Hospitality LLC; Hotel
Circle Property, LLC; and Coraltree
Hospitality Group LLC**

Attn: Human Resources / Legal Department
11777 San Vicente Blvd, Ste 900
Los Angeles, CA 90049

**TC California Hospitality LLC; Hotel
Circle Property, LLC; and Coraltree
Hospitality Group LLC**

Attn: Human Resources / Legal Department
500 Hotel Circle North
San Diego, CA 92108

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; TC California Hospitality
LLC; Hotel Circle Property, LLC; and Coraltree Hospitality Group LLC
Date: June 7, 2024
Subject: *Donald Clevenger v. TC California Hospitality LLC, et. al.*

Introduction

This office represents PLAINTIFF, Donald Clevenger (hereinafter “PLAINTIFF”) in connection with PLAINTIFF’s claims under the California Labor Code. PLAINTIFF was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: TC California Hospitality LLC; Hotel Circle Property, LLC; and Coraltree Hospitality Group LLC (hereinafter, these entities and their managing agents are collectively referred to as “DEFENDANTS”). DEFENDANTS may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, PLAINTIFF, on behalf of PLAINTIFF, and on behalf of all current and former non-exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of PLAINTIFF’s claims against DEFENDANTS. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and DEFENDANTS via certified mail to their Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State and/or the address of the Secretary of State of the State of incorporation and/or the entity address as provided on wage statements issued by DEFENDANTS to NON-EXEMPT AGGRIEVED EMPLOYEES.

This NOTICE also serves to demonstrate PLAINTIFF’s reasonable attempt at settlement with DEFENDANTS. If DEFENDANTS are interested in settling this matter before a lawsuit is filed, DEFENDANTS may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by PLAINTIFF to amend this notice to include, amend, or add further charges upon discovery of new violations of

any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—PLAINTIFF reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, DEFENDANTS are on notice that PLAINTIFF continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that DEFENDANTS intend to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the DEFENDANTS shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, PLAINTIFF will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which PLAINTIFF will base PLAINTIFF's claims, PLAINTIFF requests that the LWDA regard this NOTICE as written notice of PLAINTIFF's intent to seek civil penalties against DEFENDANTS. Under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, a PAGA representative has authority to seek penalties for all known violations committed by the employer – regardless of whether the representative experienced all violations personally. *Id.* at 760-761. Moreover, under *Johnson v. Maxim Healthcare Servs., Inc.*, (2021) 66 Cal. App. 5th 924, 929, an employee may pursue a claim under PAGA even when that employee's individual claim is time-barred.

PLAINTIFF, on behalf of PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that DEFENDANTS have violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 208, 216, 221-223, 226, 226.7, 227.3, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

PLAINTIFF is informed and believes and thereon alleges that at all relevant times DEFENDANTS and unknown entities operated as a single integrated enterprise with common ownership and

centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

PLAINTIFF believes and hereon asserts that DEFENDANTS and unknown entities must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. For example, DEFENDANTS, and each of them, maintain the same agent for service of process and principal business office as provided to the Secretary of State of California and/or the state of incorporation and/or based on information and belief, maintain some of the same attorneys and/or human resources personnel to oversee employment related matters. By reason of their status as joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, DEFENDANTS are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. DEFENDANTS, at all relevant times, were an employer or person acting on behalf of employer(s) who violated PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

PLAINTIFF intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. PLAINTIFF will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. PLAINTIFF asks and demands that DEFENDANTS put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative,

PLAINTIFF also offers to DEFENDANTS to place those individuals on notice if DEFENDANTS voluntarily provides their contact information.

General Information

DEFENDANTS own, operate, manage and/or staff its employees to work at the resorts, lifestyle hotels/hotels, residences, offices and/or facilities and/or other location(s) in California, including but not limited to the resorts, lifestyle hotels/hotels, offices and/or facilities in cities throughout California, including but not limited to, resorts, lifestyle hotels/hotels, offices, facilities and/or other locations operating under the following brand name(s) and located in the following California cities: “Terranea Resort” in Rancho Palos Verdes, California, “Tommy Bahama Miramonte Resort & Spa” in Indian Wells, California; “Town & Country Resort” and/or “Town and Country San Diego” in San Diego, California, “Hyatt Regency Sonoma Wine Country” in Santa Rosa, California; “Galleria Park Hotel” in San Francisco, California. DEFENDANTS, through its various locations serve the hospitality industry.¹ Although DEFENDANTS may operate a successful company or have a noble mission, DEFENDANTS do not comply with California’s labor laws.

PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title of market attendant and/or a similar title(s) and/or job position(s) from in or around 2020 and continuing through the present . PLAINTIFF worked for DEFENDANTS at DEFENDANTS’ San Diego, California location(s), which operates under the name(s) “Town & Country Resort” and/or “Town and Country San Diego”. PLAINTIFF regularly worked at least six (6) to eight (8) hours per day, at least five (5) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked.

Among other things, DEFENDANTS (1) failed and continue to fail to keep accurate and complete time records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continue to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continue to fail to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continue to refuse to make and/or falsely denied the amount of payments due to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continue to fail to place PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continue to fail to provide legally compliant wage statements to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES;

¹ See <http://www.coralreefresort.com/> and <https://www.towncountry.com/>. Last visited on June 7, 2024.

(9) made unlawful deductions from PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continue to fail to timely pay wages to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continue to fail to reimburse PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of DEFENDANTS; (12) required and continue to require PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continue to inquire into PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (13) failed and continue to fail to provide suitable seating; and (14) required and continue to require PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which allowed meal periods were provided each day.

Based on information and belief, DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of DEFENDANTS' time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by virtue of DEFENDANTS' failure to relieve PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, DEFENDANTS further failed, and continue to fail, to record the true start and end times of PLAINTIFF's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

Based on further information and belief, DEFENDANTS further failed and continue to fail, to record the true start and end times of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

Additionally, DEFENDANTS failed, and continue to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES.

DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, DEFENDANTS failed to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. Based on information and belief, DEFENDANTS failed and continue to fail to timely produce complete payroll and personnel records when requested by NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, PLAINTIFF did not sign a valid meal period waiver throughout PLAINTIFF's employment by DEFENDANTS.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision 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"); *Brinker, supra*, 53 Cal.4th 1004.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were frequently forced to take late meal periods in order to complete assigned job duties.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were frequently, if not always, interrupted during purported meal periods and/or required to work through their owed meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned job duties.

For example, at times, PLAINTIFF was required to work through his meal periods and/or take his meal periods late (i.e. after working more than five (5) hours).

Based on information and belief, DEFENDANTS failed to pay PLAINTIFF a proper meal period penalty for each missed and/or otherwise legally non-compliant meal period.

Based on further information and belief, DEFENDANTS would unlawfully edit the clock in and out times for NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods in order to display at least a thirty minute, timely, off-duty meal period during most if not all shifts worked, notwithstanding the fact that DEFENDANTS had actual and/or constructive knowledge that DEFENDANTS had required NON-EXEMPT AGGRIEVED EMPLOYEES' to perform work-related tasks during their meal periods.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and expectations.

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during unpaid meal periods.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that their policies and practices resulted in the denial of uninterrupted meal periods which were free of DEFENDANTS' control owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per DEFENDANTS' uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break.

Based on information and belief, despite DEFENDANTS' failure to provide lawful meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end times of PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to DEFENDANTS' premises), despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, DEFENDANTS failed to keep accurate records of the true start and end times of PLAINTIFF's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, DEFENDANTS did not have a compliant written meal break policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

PLAINTIFF is further informed and believes and thereon alleges that DEFENDANTS had actual and/or constructive knowledge that their time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for

each workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ DEFENDANTS' failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest 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 work day that the rest period is not provided").

Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). Id.; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.”).

DEFENDANTS did not properly authorize and provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were frequently, if not always, unable to take compliant rest periods due to their need to complete assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to DEFENDANTS’ premises.

For example, PLAINTIFF was frequently, if not always, required to work through his owed rest periods each shifts due to the need to complete assigned job duties.

Moreover, DEFENDANTS expressly discouraged NON-EXEMPT AGGRIEVED EMPLOYEES from taking compliant rest periods and/or any rest periods at all. Based on information and belief, DEFENDANTS have a policy and practice of reprimanding and/or threatening to reprimand NON-EXEMPT AGGRIEVED EMPLOYEES for taking their owed rest periods, resulting in denied rest periods, among other violations of California law.

Based on information and belief, DEFENDANTS did not have a lawful policy, instruction, or practice as to the taking, timing, or duty-free nature of rest periods. For example, based on information and belief, DEFENDANTS failed to authorize and permit rest periods that were a “net” ten minutes in a suitable rest area, and instead, to the extent rest periods were provided, DEFENDANTS limited PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving their work stations , in violation of California rest period law.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES’ rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, DEFENDANTS failed to provide any form of a third rest period on shifts lasting longer than ten hours.

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during rest periods.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were restricted to the worksite premises and/or were required to monitor work communication devices and/or respond to work communications during purportedly off-duty rest periods, and as such, were not relieved of all duties and DEFENDANTS' control during any rest periods, in violation of California rest period law.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, DEFENDANTS failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. DEFENDANTS either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Failure to Provide Suitable Resting Facilities: Per section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); and All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

DEFENDANTS' locations/facilities are generally similar in layout and design, and there was, and continue to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. DEFENDANTS could have provided NON-EXEMPT AGGRIEVED EMPLOYEES with a resting facility within DEFENDANTS' facilities/locations with reasonable or no modification, but instead denied and continue to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, NON-EXEMPT AGGRIEVED EMPLOYEES were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the wall, or search for facilities outside of DEFENDANTS' premises which are not designated or reserved for rest, such as their personal vehicles.

DEFENDANTS did not provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

DEFENDANTS' failure to provide suitable resting facilities to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

Minimum Wage Violations: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit." Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, "Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period..." The applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." *See* §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

DEFENDANTS failed to compensate PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of DEFENDANTS' automatic deduction and time rounding policies for shift start and shift end times and meal period start and end times, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, DEFENDANTS implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to DEFENDANTS' control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

For example, as explained above, based on information and belief, DEFENDANTS would unlawfully edit the clock in and out times for NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods in order to display at least a thirty minute off-duty meal period during most if not all shifts worked, notwithstanding the fact that DEFENDANTS had actual and/or constructive knowledge that DEFENDANTS had required NON-EXEMPT AGGRIEVED EMPLOYEES' to perform work-related tasks during their meal periods.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to be at their assigned workstations at the start of a scheduled shift, thereby forcing NON-EXEMPT AGGRIEVED EMPLOYEES to gather work-related equipment and/or safety gear, make any necessary adjustments to tools/equipment and/or perform maintenance/cleaning tasks, don work clothing/uniforms and/or protective equipment, and/or complete administrative tasks and/or complete other work tasks prior to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock work.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete other off-the-clock work tasks after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to clock out for the end of their shifts but to continue working due to the need to return/maintain tools, clean and/or organize their work stations/areas, provide shift status updates and/or debriefings and/or participate in work meetings, respond to work-related communications and/or complete administrative tasks and/or complete other work tasks off-the-clock, resulting in the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, DEFENDANTS did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment and/or uniforms (e.g., rubber gloves, hairnets, aprons, hats, and/or face masks) during meal periods, before the start of a scheduled shift, and/or after completing a scheduled shift, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-related phone calls and/or messages they received to their phones/mobile devices and were required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform other off-the-clock work for which they were not compensated.

For example, based on information and belief, at times, DEFENDANTS' biometric/electronic employee time-keeping system malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were required to either reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES who opened their work locations were required to first unlock the doors, turn on all the lights in the facility and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on further information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES in charge of closing their location(s) were required to first clock out for their shifts before enabling the alarm, turning off all the lights in the facility and/or locking the doors. This resulted in additional off-the-clock post-shift work that was not compensated and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

Based on information and belief, DEFENDANTS failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all time spent completing DEFENDANTS' required trainings and/or courses (e.g., food safety and/or food handler courses) and/or testings and/or certifications (e.g., food handler certifications).

Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES the applicable minimum wage for the county and/or city within which the NON-EXEMPT AGGRIEVED EMPLOYEE worked in California.

Moreover, based on information and belief, DEFENDANTS failed to pay PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES split shift premium wages when they worked split shifts during the relevant period.

For example, based on information and belief, at times, DEFENDANTS required PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES to work two separate shifts in the same day. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES split shift compensation whenever PLAINTIFF's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' work schedules were interrupted by non-paid non-working periods established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday..."). See, also, Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment). DEFENDANTS also failed to separately itemize these split shift premium wages on PLAINTIFF's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' wage statements, in violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders. See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on the pay stub provided to the employee, and it should be shown as a separate category such as "Split Shift Premium" and should not be lumped into another category such as wages, bonus, etc. DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements.

Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by DEFENDANTS. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on further information and belief, DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by DEFENDANTS would almost always, if not always, result in understating actual compensable work time. DEFENDANTS' failure to pay for all time worked by virtue of their time-rounding practices resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

DEFENDANTS' failure to pay for all time worked by virtue of their time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that their time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject DEFENDANTS, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, DEFENDANTS violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, DEFENDANTS' automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to DEFENDANTS' premises and/or subject to DEFENDANTS' control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, DEFENDANTS failed and continue to fail to pay a premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, DEFENDANTS failed and continue to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

(12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, DEFENDANTS calculated the owed overtime rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s) based on the minimum wage established for the cities and/or counties within which NON-EXEMPT AGGRIEVED EMPLOYEES worked, resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES who worked in cities and/or counties in California with minimum wage rates above the California minimum wage rate.

Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES earned shift differential pay, non-discretionary bonuses/incentive pay and/or other non-discretionary compensation during pay periods in which they worked overtime, yet DEFENDANTS failed to incorporate all non-discretionary compensation into the regular rate(s) used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, DEFENDANTS failed to provide proper paid sick leave to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES. DEFENDANTS either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, DEFENDANTS further failed to provide notice of the correct sick leave amount balance available to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statements.

Based on information and belief, DEFENDANTS failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, DEFENDANTS failed to provide notice of sick leave amount balance left for PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and PLAINTIFF seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, DEFENDANTS further failed and continue to fail to comply with Labor Code section 246, by failing to provide PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

DEFENDANTS unlawfully retained and continue to retain paid sick leave that should have been paid but was not, as a result of DEFENDANTS' failure to properly institute a paid sick leave program.

On information and belief, PLAINTIFF alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

PLAINTIFF requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to

DEFENDANTS' sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. PLAINTIFF requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

DEFENDANTS violated and continue to violate Labor Code section 216 by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (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; (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 (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. Cal. Lab. Code. section 226(a).

As DEFENDANTS failed to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

⁷ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

DEFENDANTS' issued wage statements to PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES that also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a).

Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Separately, and independent of the above allegations, based on information and belief, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES that failed to list the total hours worked, in violation of including but not limited to, Labor Code section 226 (a)(2).

Based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid.

For example, based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE is being paid in violation of including but not limited to, Labor Code section 226(a)(2) and/or Labor Code section 226(a)(6). For example, based on information and belief, at times, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES containing payment for hours worked during previous pay periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate pay period for that retroactive pay, further failing to list the total hours worked for the pay period, including but not limited to, the total hours worked for the pay period the retroactive pay corresponds with.

Based on information and belief, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES that fail to accurately list all deductions, in violation of Labor Code section 226(a)(4).

DEFENDANTS' failure to accurately list all hours worked on all wage statements caused confusion to PLAINTIFF and caused and continue to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by DEFENDANTS' failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based

on information and belief, DEFENDANTS also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, wage statements issued by DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9) due to DEFENDANTS' failure to list an overtime rate category at all and/or failure to list a category containing the proper overtime rate.

Moreover, based on information and belief, DEFENDANTS issued wage statements to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject DEFENDANTS to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

Unlawful Deductions: Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee.” Based on information and belief DEFENDANTS made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES paychecks during the relevant period including without limitation, deducting business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property and/or unlawfully deducting transaction fees/pay/money card fees and/or deducting costs advanced by DEFENDANTS. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated. See Lab. Code §225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

⁸ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. DEFENDANTS violated this section by, including but not limited to, failing to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject DEFENDANTS to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

Reporting Time Pay Violations: Section 5 of all applicable IWC Wage Orders, provides as follows:

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage. (B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting

NON-EXEMPT AGGRIEVED EMPLOYEES were not paid reporting time wages in accordance with California law, including but not limited to the applicable IWC Wage Order. For example, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES reported to work for a scheduled shift but were sent home and/or were not put to work and were not paid all owed reporting time pay wages in accordance with California law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California law, including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 5(A)-(B) and the California Labor Code, including but not limited to section 1198.

Seating Violations: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be

permitted to use such seats when it does not interfere with the performance of their duties.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

Based on information and belief, DEFENDANTS failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

DEFENDANTS' NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

Violation of Labor Code section 351 and 353: Labor Code Section 351 prohibits employers and their agents from sharing in or keeping any portion of a gratuity left for or given to one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353 mandates employers to keep accurate records of all gratuities received.

Based on information and belief, DEFENDANTS failed to ensure that NON-EXEMPT AGGRIEVED EMPLOYEES fully received the gratuities left for them by patrons, in that DEFENDANTS and their agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor Code Section 351. Based on further information and belief, DEFENDANTS also failed/fails to keep accurate records of all tips received, in violation of Labor Code Section 353. Based on information and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to NON-EXEMPT AGGRIEVED EMPLOYEES by the next regular payday following the credit card payment, in violation of Labor Code section 351.

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Based on information and belief, DEFENDANTS charge an additional service charge to their customers/patrons. Customers are led to believe that the service charge will be paid to DEFENDANTS' NON-EXEMPT AGGRIEVED EMPLOYEES. Instead, DEFENDANTS keeps a majority (if not the entirety) of the service charge, thereby depriving NON-EXEMPT AGGRIEVED EMPLOYEES of the service charge/gratuity that is left by the patron/customer for the NON-EXEMPT AGGRIEVED EMPLOYEES. *See O'Grady v Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can constitute a gratuity that is intended to the employees providing the service).

Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period payable to each NON-EXEMPT AGGRIEVED EMPLOYEE for the first violation of Labor Code Sections 351 and 353 they experienced within the statutory period, and \$200 per pay period for each additional violation.

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, DEFENDANTS' violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, business expenses, and other violations described herein result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, DEFENDANTS paid PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off: California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and

belief, DEFENDANTS had and continue to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials) to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, DEFENDANTS failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, DEFENDANTS untimely provide final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES’ final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials).

Based on further information and belief, DEFENDANTS failed to timely provide all owed wages immediately upon discharge of employment. Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES experienced breaks in employment caused by DEFENDANTS whereby NON-EXEMPT AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to DEFENDANTS’ lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet,

DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

These violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

Violation of Labor Code Section 208: Labor Code Section 208 provides: Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES who are terminated with their final paychecks at the place of discharge and/or of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES with their final paychecks at the office or agency of DEFENDANTS in the county where the work was performed, in violation of Labor Code Section 208.

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145

California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

Further, “any contract or agreement, express or implied, made by any employee to waive the

¹⁰ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

Based on information and belief, PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, DEFENDANTS shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for their business expenses including but not limited to, uniforms/work clothing/work shoes, personal protective/safety gear and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ personal mobile phone and data usage for work-related purposes including but not limited to downloading and using work-related applications and/or receiving and responding to work-related messages and/or phone calls. For example, on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES received calls/messages to their personal cell phones/mobile devices from supervisors and/or other employees regarding scheduling and/or other work tasks but were not provided any and/or full reimbursement from DEFENDANTS for this personal cell phone use.

For example, DEFENDANTS required PLAINTIFF to use his personal cell phone / mobile device for work, including but not limited to, for downloading and regularly using work-related applications.

For example, DEFENDANTS required PLAINTIFF to download onto his personal cell phone/mobile device a work-related application for accessing his wage statements (e.g., UKG Pro) and further required PLAINTIFF to download work-related application(s) for work scheduling purposes and/or other work purposes. However, DEFENDANTS did not provide PLAINTIFF with any and/or full reimbursement for the business expenses PLAINTIFF incurred in connection with being required by DEFENDANTS to use his personal cell phone / mobile device(s) for work.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear and/or work tools (e.g., hand tools) and/or equipment required to carry out their assigned job duties.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the costs of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear, such as, but not limited to, face masks, gloves, hairnets and/or work shoes.

For example, DEFENDANTS required PLAINTIFF to purchase and/or maintain uniforms, work clothing, work shoes and/or protective and/or safety gear (e.g., face masks) without providing PLAINTIFF with any and/or full reimbursement for the business expenses PLAINTIFF incurred

in connection therewith.

For example, DEFENDANTS required PLAINTIFF to purchase and/or maintain work shoes and/or other uniforms, work clothing and/or protective and/or safety gear (e.g., face masks) without providing PLAINTIFF with any and/or full reimbursement for the business expenses PLAINTIFF incurred in connection therewith.

Based on information and belief, at times, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to use their personal vehicles to carry out their assigned job duties without reimbursing them for the personal vehicle expenses they incurred in connection therewith, including but not limited to, mileage, cost of fuel and/or vehicle wear and tear.

As explained above, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of DEFENDANTS.

As a pattern and practice, DEFENDANTS regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

As described herein, DEFENDANTS regularly failed to reimburse and indemnify PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. DEFENDANTS' failure to provide PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements and/or Unlawful Waivers:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, DEFENDANTS required PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or

nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful meal period waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

Labor Code section 432.6(a), provides that “a person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right...”Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to sign meal period waivers that were universally signed as a condition of employment, including but not limited to, during the onboarding process. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES to sign unlawful meal period waivers as a condition of obtaining and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these invalid waivers are otherwise unlawful under Labor Code section 432.6.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful provisions as a condition of employment, DEFENDANTS violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, DEFENDANTS asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on their employment application, in violation of California law.

Upon information and belief, DEFENDANTS, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on their employment application in violation of California law.

By asking about arrests not resulting in convictions, DEFENDANTS violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

Unlawful PAGA Waiver

Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

An action pursuant to PAGA “...is a representative action on behalf of the state” *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384 (“We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is no individual component to a PAGA action because ‘every PAGA action ... is a representative action on behalf of the state.’”)

Upon information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.

As such, PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

DEFENDANTS have violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys’ fees, and costs. The civil penalties PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, PLAINTIFF will seek these penalties in a civil action, on behalf of PLAINTIFF and all NON-EXEMPT

AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of DEFENDANTS within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco, Esq.
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 866.276.7637
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in cursive script that reads "Kiara Bramasco".

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "prelit@crosnerlegal.com" <prelit@crosnerlegal.com>

Fri, Jun 7, 2024 at 9:44 AM

6/7/2024

LWDA Case No. LWDA-CM-1032616-24
Law Firm : Crosner Legal, PC
Plaintiff Name : Donald Clevenger
Employer: TC California Hospitality LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On the date indicated below, I served the document described as: **SECOND AMENDED COMPLAINT** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

Attorneys for Defendant TC CALIFORNIA HOSPITALITY LLC

[✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via electronic mail. I did not receive an error message.

Executed on May 14, 2025, at Glendale, California.

Frank

Signature