

1 **LAW OFFICE OF SCOTT ERNEST WHEELER**

2 Scott Ernest Wheeler (SBN 187998)
3 Justin A. Wheeler (SBN 342226)
4 250 West First Street, Suite 216
5 Claremont, California 91711
6 Telephone: (909) 621-4988
7 Facsimile: (909) 621-4622
8 Email: sew@scottwheelerlawoffice.com
9 jaw@scottwheelerlawoffice.com

10 *Attorneys for Plaintiff and all other*
11 *aggrieved employees*

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 5/13/2024
By /s/ Hessen Ladcani
Deputy Clerk

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY SAN MATEO

LUCELIA M. PEREZ MURILLO,
individually, and on behalf of all other
aggrieved employees,

Plaintiff,

v.

LOTUS HOSPITALITY, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. 24-CIV-02908

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 ("PAGA")**

[California Labor Code § 2698 *et seq.*]

1 This is a representative action brought by Lucelia M. Perez Murillo (“Plaintiff”), on behalf of
2 herself and all other aggrieved employees and the State of California, relating to systemic violations of
3 California wage and hour laws by her employers Lotus Hospitality, Inc., (“Defendant”). Plaintiff makes
4 the following allegations on information and belief, except as to allegations pertaining to Plaintiff
5 individually, which are based on her personal knowledge.

6 **INTRODUCTION**

7 1. Defendant is a private, for-profit business which operates several hotels throughout the
8 state of California.

9 2. In an effort to conserve labor costs, and thereby maximize profits, Defendant has
10 implemented policies and practices that have resulted in systematic violations of California’s wage and
11 hour laws.

12 3. For example, Defendant has implemented unlawful policies with respect to meal and
13 rest breaks. Defendant requires its non-exempt employees, who are informed that the needs of the
14 businesses take top priority, to work through meal and rest breaks, to take untimely meal periods and
15 to remain on call during such breaks. As a result, Plaintiff and other aggrieved employees have been
16 denied the ability to take the meal and rest breaks that they were and are legally entitled to take.

17 4. Moreover, Defendant has uniformly failed to pay Plaintiff and other aggrieved
18 employees proper overtime wages due the fact that they have willfully turn a blind eye to off-the-clock
19 work that Plaintiff and other non-exempt employees perform as a direct consequence of Defendant’s
20 understaffing and imposition of an unreasonable workload.

21 **JURISDICTION AND VENUE**

22 5. The Superior Court of the State of California has jurisdiction in this matter because
23 Plaintiff is a citizen of the State of California, and Defendant is licensed to do business under the laws
24 of the State of California. No federal question is at issue because Plaintiff’s claims are based solely on
25 California law.

26 6. Venue is proper in this judicial district and the County of San Mateo because Defendant
27 maintained its principle place of business in the City of South San Francisco, which is a city located in
28

1 the County of San Mateo.

2 7. The State of California, San Mateo County, has jurisdiction in this matter because the
3 individual claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional
4 threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal court
5 diversity jurisdiction. Further, there is no federal question at issue as the issues herein are based solely
6 on the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure
7 and Rules of Court. Thus, the State of California, San Mateo County Superior Court maintains the
8 appropriate jurisdiction to hear this matter.

9 **THE PARTIES**

10 8. During the statute of limitations period, Plaintiff was employed by Defendant as a
11 Custodian, an hourly, non-exempt position, at its location in Belmont, California. In particular, Plaintiff
12 was hired by Defendant and performed janitorial duties at its location at 275 South Airport Boulevard,
13 South San Francisco, California 94080.

14 9. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times
15 relevant hereto was, a corporation organized and existing under the laws of the State of California.

16 10. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
17 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is
18 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner
19 highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees'
20 injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE
21 defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
22 capacities of such DOE defendants when ascertained.

23 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
24 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
25 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
26 attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer
27 and/or joint employer of Plaintiff and the other aggrieved employees.

1 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
2 in all respects as the agent, servant, partner, joint venture, employee, proxy, managing agent, and/or
3 principal of the co-Defendants, and in performing the acts mentioned below was acting, at least in part,
4 within the course and scope of that authority as such agent, proxy, servant, partner, joint venture,
5 employee, managing agent, and/or principal with the permission and consent of the above co-
6 Defendants. Plaintiff also alleges that the acts of each Defendant are legally attributable to the other
7 Defendants.

8 13. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
9 sued herein were, at all relevant times, the employers, owners, shareholders, principals, joint ventures,
10 alter-egos, employees, proxies, managing agents, and/or principals of the remaining Defendants, and
11 were acting, at least in part, within the course and scope of such employment and agency, with the
12 express and implied permission, consent and knowledge, approval and/or ratification of the other
13 Defendants. The above co-Defendants, managing agents, and supervisors, aided, abetted, condoned,
14 permitted, approved, authorized, and/or ratified the unlawful acts described herein.

15 14. As a direct and proximate result of the unlawful actions of Defendants, Plaintiff and the
16 other aggrieved employees have suffered and continue to suffer penalties in amounts as yet
17 unascertained but subject to proof at trial and within the jurisdiction of this Court.

18 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

19 15. On March 6, 2024, Plaintiff gave written notice by certified mail pursuant to California
20 Labor Code § 2699.3, to the California Labor and Workforce Development Agency (“LWDA”) and
21 Defendant, of the specific provisions of the California Labor Code and IWC Wage Order alleged to
22 have been violated, including the facts and theories to support the alleged violations. Plaintiff has not
23 received any response from the LWDA. As Plaintiff has waited more than sixty-five (65) days from
24 the March 6, 2024, postmark date of her written notice before filing this action, Plaintiff has complied
25 with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative
26 action under the California Private Attorneys General Act of 2004 (“PAGA”).

27 16. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
28

1 action on behalf of the State of California, and all other aggrieved employees (e.g., current and former
2 non-exempt employees of Defendant) who performed work for Defendant in the State of California at
3 any time within the period beginning one (1) year prior to the March 6, 2024 notice Plaintiff provided
4 to the LWDA and, and ending at the time this action proceeds to final judgment (“statute of limitations
5 period”).

6 **FACTUAL ALLEGATIONS**

7 **Failure to Provide Required Meal Periods**

8 **[Cal. Lab. Code §§ 226.7, 512, 558; § 11 of the Applicable IWC Wage Order]**

9 17. During the statute of limitations period, as part of Defendant’s illegal policies and
10 practices to minimize labor costs and maximize corporate profits, Defendant has required, permitted or
11 otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods, to
12 completely skip their meal periods, to take late and short meal periods, and Defendant has otherwise
13 failed to provide the required meal periods to Plaintiff and aggrieved employees as required under
14 California Labor Code §§ 226.7, 512 and § 11 of the applicable IWC Order.

15 18. Defendant has implemented several practices that have caused Plaintiff and aggrieved
16 employees to systematically miss and otherwise take non-compliant meal periods. Defendant
17 systematically understaffs its work sites such that non-exempt employees are given so much work to
18 complete that they regularly miss or otherwise take non-compliant meal periods. As a direct
19 consequence of this understaffing, Plaintiff and aggrieved employees have so much work to complete
20 within their scheduled shifts that they are forced to skip their meal periods altogether, to take them after
21 working longer than five (5) hours, to perform work during their meal periods, or return to work after
22 taking less than a thirty (30) minute meal period. Moreover, Plaintiff and other aggrieved employees
23 need to secure permission before taking a meal period, which is often denied by supervisors. Defendant
24 also did not properly notify its non-exempt employees of their rights under California law to take
25 timely, uninterrupted meal periods (including the right to second meal periods during shifts of longer
26 than ten (10) hours), and thus, aggrieved employees like Plaintiff were left in the dark as to when or
27 for how long they could take their meal periods.

1 19. There are also frequent occasions when Plaintiff and aggrieved employees need to
2 perform other duties immediately before the time during which they are legally entitled to take a meal
3 period. Pursuant to Defendant's policies, Plaintiff and aggrieved employees cannot simply drop their
4 job duties and leave stop working in order to take a meal period. Consequently, Plaintiff and aggrieved
5 employees regularly miss meal periods, take late meal periods, return early from meal periods, and
6 even clock out for meal periods but continue working. Plaintiff is informed and believes Defendant
7 failed to maintain records of meal periods allegedly taken by Plaintiff and the other aggrieved
8 employees.

9 20. Despite the foregoing, Defendant has implemented a policy and practice of actively
10 discouraging the issuance of meal period premium payments, and in the process, Defendant has
11 violated California Labor Code §§ 226.7, and § 11 of the applicable IWC Wage Order, by failing to
12 compensate Plaintiff and aggrieved employees who were not authorized and permitted to take a
13 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper regular
14 rate of pay (taking into consideration nondiscretionary commission and bonus payments) for each
15 workday that such a meal period was not authorized or permitted.

16 **Failure to Provide Required Rest Breaks**

17 **[Cal. Lab. Code §§ 226.7, 512; § 12 of the Applicable IWC Wage Order]**

18 21. During the statute of limitations period, as part of Defendant's illegal policies and
19 practices to minimize labor costs and maximize corporate profits, Defendant has failed to authorize
20 and permit Plaintiff and other aggrieved employees to take rest breaks as required under California
21 Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

22 22. The same or similar policies and practices that deprive Plaintiff and other aggrieved
23 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
24 take their first and second and third rest breaks. As alleged herein, Defendant understaffs its hotels,
25 which creates so much work for Plaintiff and other aggrieved employees that they are frequently unable
26 to take rest breaks, or their breaks are interfered with and they are unable to complete their breaks.

27 23. Defendant also do not provide adequate training regarding its legal obligations with
28

1 respect to the provision of rest breaks, does not implement a schedule regarding rest breaks for non-
2 exempt employees, and often interrupts staff who try to take rest periods. In short, Defendant
3 essentially has a non-existent rest break policy, as there is no guidance or specification as to when
4 Plaintiff and other aggrieved employees are authorized and permitted to take rest breaks during their
5 shifts.

6 24. Defendant also violated California Labor Code § 226.7, and § 12 of the applicable IWC
7 Order, by failing to pay Plaintiff and other aggrieved employees who were not provided with a rest
8 break, in accordance with the applicable wage order, one additional hour of compensation at the proper
9 regular rate of pay (taking into consideration nondiscretionary bonus and commission payments) for
10 each workday that a rest break was not provided.

11 **Failure to Pay Overtime Wages**

12 **[Cal. Lab. Code §§ 510, 1194, 1198; § 3 of the Applicable IWC Wage Order]**

13 25. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order,
14 Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime, which
15 is calculated at one and one-half (1½) times the regular rate of pay for all hours worked in excess of
16 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh
17 consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any
18 workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work
19 in any workweek.

20 26. During the statute of limitations period, Defendant failed to compensate Plaintiff and
21 other aggrieved employees for all overtime hours worked as required under the foregoing provisions
22 of the California Labor Code and IWC Wage Order by, among other methods: failing to pay overtime
23 at one and one-half (1½) or double the regular rate of pay as provided by California Labor Code §§
24 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or suffering Plaintiff and other
25 aggrieved employees to work off-the-clock, and to work through meal and rest breaks, but not
26 compensating them for this time, improperly calculating the regular rate of pay based on shift
27 differential and other remuneration, illegally rounding hours to the benefit of Defendant, and other
28

1 methods to be discovered.

2 27. In a short-sighted attempt to maximize profits, Defendant has understaffed its hotels and
3 worksites. Not only has this practice resulted in widespread missed meal and rest breaks, but it has also
4 caused Plaintiff and other aggrieved employees to perform work while off-the-clock. Defendant has
5 actual or constructive knowledge of this off-the-clock work and subtly condones it. Plaintiff and other
6 aggrieved employees routinely arrive to work early to check so that they are prepared and ready to
7 begin performing their duties promptly at the start of their shifts, as they must be pursuant to the
8 requirements of Defendant. Defendant knows that Plaintiff and other aggrieved employees perform
9 this work off-the-clock.

10 28. Defendant has knowingly and willfully refused to perform its obligations to
11 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
12 violation of California Labor Code §§ 510, 1194 and 1198, and § 3 of the applicable IWC Order.

13 **Failure to Pay Minimum Wages**

14 **[Cal. Lab. Code §§ 1194, 1197; § 4 of the IWC Wage Orders]**

15 29. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order,
16 payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
17 period is unlawful.

18 30. During the statute of limitations period, the hourly rates for Plaintiff and other aggrieved
19 employees were precisely at California minimum wage. Based on this common practice, Defendant
20 failed to pay Plaintiff and other aggrieved employees minimum wages for all hours worked by
21 requiring, permitting or suffering Plaintiff and other aggrieved employees to work off the clock, such
22 as requiring them to work through meal and rest breaks but not compensating them for this time,
23 deducting time from their hours worked; failing to include this time in all hours worked, and other
24 methods to be discovered.

25 31. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4
26 of the applicable IWC Wage Order. As a proximate result of the aforementioned violations, Plaintiff
27 and other aggrieved employees have been damaged in an amount according to proof at trial. Therefore,
28

1 pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other applicable law,
2 Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of wages owed to
3 them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

4 **Failure to Timely Pay Wages During Employment**

5 **[Cal. Lab. Code § 204]**

6 32. Pursuant to California Labor Code § 204, for all labor performed between the 1st and
7 15th days of any calendar month, Defendant is required to pay its nonexempt employees between the
8 16th and 26th day of the month during which the labor was performed. California Labor Code § 204
9 also provides that for all labor performed between the 16th and 26th days of any calendar month,
10 Defendant is required to pay its non-exempt employees between the 1st and 10th day of the following
11 calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in
12 excess of the normal work period shall be paid no later than the payday of the next regular payroll
13 period.

14 33. During the statute of limitations period, Defendant has knowingly and willfully failed
15 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
16 regular payroll period as required by California Labor Code § 204, including but not limited to,
17 compensation for missed meal and rest breaks, proper overtime wages due to an unlawful calculation
18 of the regular rate of pay, and for work performed off-the-clock.

19 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

20 **[Cal. Lab. Code §§ 201 - 203]**

21 34. Pursuant to California Labor Code §§ 201, 202 and 203, Defendant is required to pay
22 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates
23 that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of
24 discharge are due and payable immediately.

25 35. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all
26 accrued wages due to an employee no later than 72 hours after the employee quits his or her
27 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
28

1 which case the employee is entitled to his or her wages at the time of quitting.

2 36. California Labor Code § 203 provides that if an employer willfully fails to pay, in
3 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
4 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
5 employee at the same rate for up to 30 workdays.

6 37. During the statute of limitations period, Defendant has willfully failed to pay accrued
7 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
8 California Labor Code §§ 201 and 202. Defendant also willfully failed and continues to fail to pay
9 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance with
10 California Labor Code §§ 201 and 202.

11 **Failure to Furnish Accurate Itemized Wage Statements**

12 **[Cal. Lab. Code §§ 226(a); 248.2, § 7 of the Applicable IWC Wage Order]**

13 38. During the statute of limitations period, Defendant has routinely failed to provide
14 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
15 Defendant's pay stubs have violated California Labor Code § 226. Defendant's wage statements are
16 non-compliant with Labor Code §226 since Defendant was and is not providing Plaintiff and other
17 aggrieved employees with proper meal periods and rest breaks and intentionally failed to include in
18 their wage statements one (1) additional hour of compensation at their highest regular rates of pay
19 taking into consideration incentive, nondiscretionary bonus and commission payments for each non-
20 compliant meal period or rest break. Further, Defendant failed to pay proper overtime wages by failing
21 to pay the highest regular rate of pay based upon nondiscretionary bonus and/or commission payments
22 to Plaintiff and other aggrieved employees, and their wage statements therefore fail to reflect the correct
23 hourly rates worked by Plaintiff and other aggrieved employees and wages earned by failing to pay the
24 regular rate of pay.

25 39. In order to conceal their wage theft, Defendant knowingly and intentionally failed to
26 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements in
27 accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

1 40. Plaintiff and other aggrieved employees suffered injury as a result of the failure of
2 Defendant to provide timely and accurate itemized wage statements because they prevented them from
3 discovering the scope and extent of Defendant's violations of California wage and hour laws, prevented
4 them from being able to accurately determine the gross wages earned, the total hours worked, all
5 deductions made, the net wages earned, all applicable hourly rates in effect during each pay period and
6 the corresponding number of hours worked at each hourly rate.

7 **Failure to Maintain Required Records**

8 **[Cal. Lab. Code §§ 226(a), 248.2, 1174(d), 2810.5; § 7 of the Applicable IWC Wage Order]**

9 41. During the statute of limitations period, as part of Defendant's illegal payroll policies
10 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
11 Defendant knowingly and intentionally failed to maintain records as required under California Labor
12 Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but not limited to the
13 following records: total daily hours worked by each employee; applicable rates of pay; all deductions;
14 meal periods; time records showing when each employee begins and ends each work period; the
15 balance and available amount of sick leave and accurate itemized statements. Defendant had knowledge
16 that it was not providing its non-exempt employees with proper meal and rest periods, but knowingly
17 failed to include in the wage statements one (1) extra hour of compensation for each missed meal and
18 rest period. Defendant also illegally and inaccurately recorded the time in which Plaintiff and other
19 aggrieved employees worked. Defendant has also failed to maintain accurate, itemized wage
20 statements, as alleged above.

21 **Failure to Provide Suitable Seating**

22 **[§ 14 of the Applicable IWC Wage Order]**

23 42. IWC Wage Order No. 4-2001, § 14 provides:

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

26 (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
28 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.”

1
2 43. Defendant failed to provide suitable seating by not providing any seats or stools at areas
3 operated by Plaintiff and other aggrieved employees. The nature of the work reasonably permits the
4 use of seats. To the extent that the use of seats could interfere with their work duties, at all times herein
5 it is and has been reasonable for Defendant to place seats in reasonable proximity to the work areas
6 used by Plaintiff.

7 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

8 **[Cal. Lab. Code § 2802]**

9 44. California Labor Code § 2802(a) requires an employer to indemnify an employee for all
10 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
11 his or her duties, or of his or her obedience to the directions of the employer.

12 45. During the Statute of Limitations Period, Defendant have failed to reimburse aggrieved
13 employees for the usage of their personal cellular phones in addition to uniform maintenance and other
14 supplies. Defendant did not reimburse Plaintiff and other aggrieved employees for the costs of the
15 expenditures relating to their cellular phones, uniform maintenance, and other supplies.

16 **Failure to Maintain Required Records**

17 **[Cal. Lab. Code § 2810.5]**

18 46. During the statute of limitations period, as part of Defendant's illegal payroll policies
19 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
20 Defendant knowingly and intentionally failed to maintain records as required under California Labor
21 Code §2801.5, which requires a California employer to provide written notice at the time of hiring of
22 certain employment related information, including but not limited to:

23 “(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift,
24 day, week, salary, piece, commission, or otherwise, including any rates for overtime,
as applicable.

25 (B) Allowances, if any, claimed as part of the minimum wage, including meal
or lodging allowances.

26 (C) The regular payday designated by the employer in accordance with the
27 requirements of this code.
28

1 (D) The name of the employer, including any “doing business as” names used
2 by the employer.

3 (E) The physical address of the employer’s main office or principal place of
4 business, and a mailing address, if different.

5 (F) The telephone number of the employer.

6 (G) The name, address, and telephone number of the employer’s workers’
7 compensation insurance carrier.

8 (H) That an employee: may accrue and use sick leave; has a right to request
9 and use accrued paid sick leave; may not be terminated or retaliated against for using
10 or requesting the use of accrued paid sick leave; and has the right to file a complaint
11 against an employer who retaliates.

12 (I) Any other information the Labor Commissioner deems material and
13 necessary.”

14 47. Defendant failed to comply with California Labor Code § 2810.5 by failing to
15 maintain records regarding Plaintiff and the aggrieved employees with the statutorily required notice
16 regarding wage information, rate of pay, overtime rate of pay, and in other ways that have been yet to
17 be discovered. Defendant also failed to maintain records regarding the amendments to Labor Code §
18 2810.5 effective January 1, 2024.

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

21 **[Cal. Lab. Code § 2698 *et seq.*]**

22 **(On Behalf of Plaintiff and the Aggrieved Employees Against Defendant)**

23 48. Plaintiff incorporates herein by specific reference, as though fully set forth, the
24 allegations in paragraphs 1 through 47 above.

25 49. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
26 2699(c), and a proper representative to bring a civil action on behalf of herself and other aggrieved
27 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff
28 was employed by Defendant and one or more of the alleged California Labor Code violations was
committed against Plaintiff during the statute of limitations period.

50. Plaintiff seeks to recover civil penalties through a representative action permitted by
PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class

1 certification is not required.

2 51. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
3 penalties from Defendant in a representative action for the violations set forth above, including but not
4 limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558,
5 1174, 1194 and for the violations of the applicable IWC Wage Order alleged above.

6 52. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
7 against Defendant for violations of California Labor Code provisions for which a civil penalty is
8 specifically provided, including but not limited to, the following:

9 a. Pursuant to California Labor Code § 210, for violations of California Labor
10 Code § 204, Defendant is subject to a civil penalty in the amount of one
11 hundred dollars (\$100) for the initial violation for each failure to pay each
12 employee, and two hundred dollars (\$200) per employee for violations in
13 subsequent pay periods.

14 b. Pursuant to California Labor Code § 1174.5, for violations of California Labor
15 Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars
16 (\$500).

17 53. California Labor Code § 2699(f) provides that for all California Labor Code violations
18 for which a civil penalty is not specifically provided, the following civil penalties are established: one
19 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
20 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

21 54. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for
22 Defendant's violations of California Labor Code provisions for which a civil penalty is not specifically
23 provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204, 226.7, 1197, and
24 for the violations of the applicable IWC Wage Order alleged above.

25 55. All civil penalties sought and recovered under this action will be allocated as follows:
26 seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and
27 aggrieved employees.

1 56. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
2 Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
5 for relief against Defendant, as follows:

- 6 1. For civil penalties according to proof;
- 7 2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g),
8 California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for
9 attorneys' fees and costs; and
- 10 3. For such further relief that the Court may deem just and proper.

11 DATED: May 10, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

12
13 By: 

SCOTT E. WHEELER
JUSTIN A. WHEELER

Attorneys for Plaintiff