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11 persons similarly situated and similarly aggrieved employees

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

14 JOSE M. OLMOS, individually and on behalf
15 of other persons similarly situated and
16 similarly aggrieved employees,

17 Plaintiffs,

18 v.

19 EVOLUTION HOSPITALITY, LLC, an active
20 California Limited Liability Company; and
21 DOES 1 through 10,

22 Defendants.

Case No.: 30-2024-01384192-CU-OE-CXC

Assigned to: Hon. William D. Cluster
Department: CX-101

**FIRST AMENDED COMPLAINT –
CLASS AND REPRESENTATIVE
ACTION
JURY TRIAL DEMANDED**

1. Failure to Provide Meal Periods;
2. Failure to Provide Paid Rest Periods;
3. Failure to Pay Wages;
4. Failure to Timely Pay Wages at Termination/Separation;
5. Failure to Timely Pay Vacation Wages at Termination;
6. Failure to Provide Accurate Wage Statements;
7. Failure to Reimburse Business Expenses;

8. Violation of Unfair Business Practices Act – Bus. & Prof. Code §§ 17200, *et seq.*; and
9. Penalties Pursuant to Private Attorneys General Act (“PAGA”)

Plaintiff JOSE M. OLMOS (“Plaintiff”), on behalf of himself and all others similarly situated, based on information and belief, complains and alleges:

I.

INTRODUCTION

1. This class and representative action lawsuit arises out of the failure of Defendant EVOLUTION HOSPITALITY, LLC (referred here as “EVOLUTION” or “Defendant”) to provide meal periods at the proper intervals, to provide rest periods at the proper intervals, to pay all wages owed including overtime, to provide accurate wage statements, to pay all wages owed to terminated or separated employees in a timely manner, to pay all vacation pay owed to terminated or separated employees, and to reimburse employee business expenses.
2. Defendant employed Plaintiff during the applicable time period, utilizing consistent policies and procedures in violation of Labor Code §200, *et seq.*, Labor Code §500, *et seq.*, Labor Code §1194, *et seq.*, Labor Code §2800, *et seq.*, and the applicable Wage Orders issued by the California Industrial Welfare Commission.
3. Defendant is engaged in the hospitality industry. Plaintiff was hired around December 9, 2019 and separated on or about March 10, 2023. At all times during said employment, Plaintiff had a non-exempt classification. Plaintiff was working at the Cambria Hotel Anaheim Resort Area located at 101 East Katella Avenue in Anaheim, California 92802.
4. At the time of his separation, Plaintiff was not paid all his wages, including all accrued and vested vacation pay.

- 1 5. Plaintiff was also deprived of lawful meal and rest periods, not paid all wages
2 he was entitled to, and failed to receive accurate and compliant itemized wage
3 statements.
- 4 6. Defendant had a consistent policy of not paying wages for all hours worked,
5 including overtime and double time wages to the extent applicable, including
6 failing to calculate overtime and double time with respect to an employee's
7 regular rate of compensation.
- 8 7. Defendant had a consistent policy of requiring its employees, including
9 Plaintiff, to work through meal periods or work without a meal period for at
10 least five (5) hours of a shift and failing to pay such employees one (1) hour of
11 pay at the employees' regular rate of compensation for each workday that the
12 meal period was not provided or as required by California state wage and hour
13 laws.
- 14 8. Defendant had a consistent policy of failing to allow its employees, including
15 Plaintiff, rest periods for at least ten (10) minutes per four (4) hours, or a major
16 fraction worked, and failing to pay such employees one (1) hour of pay at their
17 regular rate of compensation for each workday that the rest period was not
18 provided, or other compensation, as required by California state and wage and
19 hour laws.
- 20 9. Defendant knowingly provided inaccurate wage statements to its
21 employees, including Plaintiff, that did not correctly include the correct wages,
22 including compensation for meal periods not provided and rest period not
23 authorized or permitted as required by California state wage and hour laws.
- 24 10. Defendant had a consistent policy of failing to pay its employees, including
25 Plaintiff, all wages including unpaid premium wages and accrued and vested
26 vacation pay, due at the termination or separation, in violation of California
27 state wage and hour laws.
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- 1 11. Defendants had a consistent policy of failing to reimburse their employees,
2 including Plaintiff, for all business expenses incurred in the discharge of their
3 duties.
- 4 12. Plaintiff, on behalf of himself and all Class Members, brings this action
5 pursuant to Lab. Code §§ 201, 202, 203, 204, 210, 226, 226.7, 227.3, 510, 512, 1194,
6 1194.2, 2800, and 2802 seeking unpaid wages, penalties, equitable relief, and
7 reasonable attorneys' fees and costs.
- 8 13. Plaintiff, on behalf of himself and the putative class members, also brings
9 this action pursuant to Bus. & Prof. Code §§ 17200, *et seq.*, seeking injunctive
10 relief, restitution, and disgorgement of all benefits obtained by Defendant as a
11 result of Labor Code and applicable Wage Order violations.
- 12 14. Plaintiff, on behalf of the State of California, himself, and other similarly
13 aggrieved employees, also brings this action pursuant to California Private
14 Attorney General Act ("PAGA"), Cal. Lab. Code §2698, *et seq.* seeking unpaid
15 wages and other compensation, penalties, and reasonable attorneys' fees and
16 costs.

17 **II.**

18 **JURISDICTION AND VENUE**

- 19 15. Venue as to as to each defendant is proper in this judicial district, pursuant to
20 Code of Civil Procedure § 395. The County of Orange is the proper venue,
21 because work for Defendant was performed by Plaintiff and other class
22 members in the County of Orange and the legal obligations owed by Defendant
23 to Plaintiff and other class members were breached in the County of Orange.
- 24 16. The California Superior Court has jurisdiction in this matter, because Plaintiff is
25 a resident of California, Defendant is qualified to do business in California and
26 regularly conducts business in California.

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III.

THE PARTIES

17. Plaintiff JOSE M. OLMOS is a resident of the State of California, and was employed by Defendant in Orange County from on or about December 9, 2019 through on or about March 10, 2023.
18. Defendant EVOLUTION HOSPITALITY, LLC was an active California Limited Liability Company Corporation at all times during the claims of Plaintiff and the putative class and was doing business in California.
19. Plaintiff is 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 10, but he is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will amend this First Amended Complaint to allege their true names and capacities when ascertained.
20. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, 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 Defendants.

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IV.

GENERAL ALLEGATIONS

21. At all times relevant here and as set forth in the following paragraphs of this First Amended Complaint, Defendant employed more than 100 people; and Plaintiff and each member of the putative class was employed by Defendant, and each of them, in the State of California.
22. The employees of Defendant have not been provided: uninterrupted thirty-minute meal periods for work periods of more than five (5) hours per day;

1 second uninterrupted thirty-minute meal periods for work periods of more
2 than ten (10) hours per day; and have not been permitted to take ten-minute
3 (10) rest periods for work periods of four (4) hours or major fractions, pursuant
4 to the Labor Code, and applicable IWC Wage Orders.

5 23. Defendant failed to pay employees wages owed for all hours worked, including
6 overtime and double time hours as applicable, as well as failing to calculate any
7 overtime wages with respect to an employee's regular rate of compensation.

8 24. Defendant failed to pay Plaintiff and the members of his putative class upon
9 separation the wages earned and unpaid at the time of discharge, including
10 unpaid premium wages and accrued and vested vacation pay or "PTO."

11 25. Defendant failed to provide Plaintiff and the putative members of his class, at
12 the time of each payment of wages, an accurate itemized statement in writing,
13 showing the gross wages earned and/or paid, including premium wages owed
14 for failing to provide meal and/or rest periods at the proper intervals.

15 26. Defendants failed to fully reimburse Plaintiff and putative members of his class
16 for all their business-related expenditures. In violation of the Labor Code,
17 Plaintiff and putative members of his class did not receive indemnification for
18 all business-related expenditures.

19 27. Plaintiff asserts claims for relief on behalf of himself and other similarly
20 situated persons as a class action pursuant to Code of Civil Procedure § 382.
21 Plaintiff and all members of his putative class are described below with
22 specificity and fall in several categories of subclasses whose rights have been
23 violated under the law. Defendant has made no effort as of the filing of this
24 First Amended Complaint to correct or remedy the violations of law specified
25 here.

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V.

CLASS ACTION ALLEGATIONS

28. Plaintiff brings this action on behalf of himself and all other employees of EVOLUTION who are similarly-situated persons as a class action pursuant to California Code of Civil Procedure § 382. There is a well-defined common interest by and among Plaintiff and the putative class members, and it is impractical to bring all those individuals before the court under separate, different and repetitive actions. Plaintiff also reserves the right to amend or modify the class descriptions set forth below in greater specificity or clarity if required in the future in accordance with Rule 3.765 (b), California Rules of Court. The class which Plaintiff seeks to represent is composed of and defined as follows:

“Plaintiff Class” – All of Defendant’s current and former non-exempt employees who worked for Defendant in California, during the four years before the filing of the Complaint through the time of class certification.

29. Plaintiff seeks to certify the following subclasses of employees:

- a) “Meal Period Subclass” – All members of Plaintiff Class who worked each period exceeding five (5) hours without an uninterrupted, off duty, thirty (30) minute meal period and/or periods in excess of ten (10) hours without a second uninterrupted, off duty, thirty (30) minute meal periods; and were not provided compensation of one hour’s pay at the employee’s regular rate for each day that a meal period was not provided.
- b) “Rest Period Subclass” – All members of Plaintiff Class who worked periods of four (4) hours or major fraction thereof without a duty free rest period of at least 10-minutes and who were not compensated one

1 hour's pay at the employee's regular rate for each day that a rest period
2 was not permitted.

- 3 c) "Unpaid Wage Subclass" – All members of Plaintiff Class who were
4 not paid their minimum/actual wages, including any time that was
5 unlawfully rounded by Defendant or otherwise considered as off-the-
6 clock, as well as overtime wages for hours worked in excess of eight
7 hours per day at the one and a half rate (of an employee's regular rate
8 of pay) or at a double time rate (of an employee's regular rate of pay)
9 as applicable.
- 10 d) "Waiting Time Subclass" – All members of Plaintiff Class to whom
11 Defendant failed to pay all wages due to them upon termination or
12 resignation under Labor Code §§ 201-203.
- 13 e) "Vacation Pay Subclass" – All members of Plaintiff Class to whom
14 Defendant failed to pay all vacation wages owed, vested or agreed to
15 upon termination or resignation as required by Labor Code §227.3.
- 16 f) "Wage Statement Subclass" – All members of Plaintiff Class to whom
17 Defendant improperly failed to provide accurate itemized wage
18 statements under Labor Code §§ 226.
- 19 g) "Expense Reimbursement Subclass" – All members of Plaintiff Class to
20 whom Defendants failed to fully reimburse employee business
21 expenses as required by Labor Code §2802.
- 22 h) "UCL Subclass" – All members of the Meal Period, Rest Period,
23 Unpaid Wage, Waiting Time, Vacation Pay, Wage Statement, and
24 Expense Reimbursement Subclasses who were subject to unlawful,
25 illegal, unfair and/or deceptive business acts and practices by
26 Defendant and are entitled to disgorgement and restitution of unpaid
27 wages.
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1 30. There is a well-defined community of interest among many persons who
2 comprise a readily ascertainable class:

- 3 a) Numerosity -The potential members of the Class and Subclasses as
4 defined here are so numerous that the individual joinder of all of them as
5 named plaintiffs is impracticable. The number of members of the Class
6 and Subclasses is unknown to Plaintiff. It is however estimated that the
7 members are more than 100 individuals, and their identities may readily
8 be ascertained from Defendant's records.
- 9 b) Typicality – The claims of Plaintiff are typical of the claims of all
10 members of the Class and Subclasses, who sustained similar damages
11 arising out of Defendant's common course of conduct in violation of law
12 as alleged.
- 13 c) Ascertainable Class – The proposed Class and Subclasses are
14 ascertainable as the members can readily be identified and located based
15 on the Defendant's payroll and personnel records.
- 16 d) Adequacy – Plaintiff is an adequate representative of the Class and
17 Subclasses: Plaintiff will fairly protect the interests of the members, he
18 has no interest adverse to the members, and he will vigorously pursue
19 this lawsuit on behalf of all the members of the Class and Subclasses.
20 Plaintiff's attorneys are competent, skilled and experienced in litigating
21 large employment law class actions.
- 22 e) Superiority - Class action treatment will allow a large number of
23 similarly situated persons to prosecute their common claims in a single
24 forum simultaneously, efficiently, and without the unnecessary
25 duplication of effort and expense that numerous individual actions
26 would require. Further, the monetary amounts due to many individual
27 members of the Class and Subclasses are likely to be relatively small, and
28 the burden and expense of individual litigation would make it difficult

1 or impossible for the members to seek and obtain relief. A class action
2 will serve an important public interest by permitting employees harmed
3 by Defendant's unlawful practices to effectively pursue recovery of the
4 sums owed to them.

- 5 f) Common Questions of Law and Fact – There are common questions of
6 law and fact as to the members of the Class and Subclasses which are
7 superior to questions affecting only individual members of the Class and
8 Subclasses. The common questions of law and fact may be summarized
9 as follows and if necessary will be refined with the progress of formal
10 discovery in the case:
- 11 g) Whether Defendant failed to provide members of Plaintiff Class who
12 ceased employment with Defendant all wages owed at the time of the
13 cessation of the employee-employer relationship?
- 14 h) Whether Defendant violated California law and applicable Wage Orders
15 by failing to provide Plaintiff Class members with paid ten-minute (10)
16 rest periods for each four hours worked?
- 17 i) Whether the remedy for an employer's failure to provide rest breaks as
18 required by law is a premium wage for hardship of missing a lawful rest
19 break?
- 20 j) Whether Defendant violated California law and applicable Wage Orders
21 by failing to provide Plaintiff Class members with thirty minute (30)
22 meal period for more than five hours of work?
- 23 k) Whether Defendant violated California law and applicable Wage Orders
24 by failing to provide members of Plaintiff Class with a second meal
25 period?
- 26 l) Whether the remedy for an employer's failure to provide meal period as
27 required by law is a premium wage for hardship of missing a lawful
28 meal period?

- 1 m) Whether Defendant violated California law, including the applicable
2 wage orders by failing to properly compensate Plaintiff Class members
3 for all hours worked, including overtime and double time hours as
4 applicable?
- 5 n) Whether Plaintiff Class is entitled to waiting time penalties under Labor
6 Code § 203?
- 7 o) Whether Defendant violated Labor Code §227.3 by its failure to provide
8 Plaintiff Class with all vacation wages or PTO owed, vested or agreed to
9 upon termination or separation?
- 10 p) Whether Defendant violated California law by its failure to provide
11 Plaintiff Class with accurate and itemized wage statements?
- 12 q) Whether Defendants have violated Labor Code §2802 by failing to
13 reimburse Plaintiff and the Plaintiff Class for all business expenses
14 incurred by them in direct consequence of the discharge of their duties?
- 15 r) Whether Defendant violated Business and Professions Code §§ 17200 et.
16 seq., Labor Code §§ 201, 202, 203, 204, 210, 212, 213, 226, 226.7, 227.3, 510,
17 512, 1194, 1194.2, 2800, 2802, and applicable Wage Orders which
18 constitute violations of the public policy?
- 19 s) Whether Plaintiff Class is entitled to an equitable relief in accordance
20 with Business and Professions Code §§ 17200 et. seq.
- 21 t) Whether Defendant's affirmative defenses, if any, raise common issues
22 of law and fact as to Plaintiff Class as a whole and/or Subclasses in
23 particular?

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VI.

FIRST CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIOD OR
COMPENSATION IN LIEU THEREOF

(Labor Code §§ 226.7, 512)

(By Plaintiff and Meal Period Subclass against Defendant)

31. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
32. By its failure to provide thirty minute (30) uninterrupted meal period as well as second meal period, if applicable, to Plaintiff and members of Meal Period Subclass, Defendant willfully violated the provisions of Labor Code §§ 226.7, 512 and applicable IWC Wage Orders.
33. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

VII.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS OR
COMPENSATION IN LIEU THEREOF

(Labor Code § 226.7)

(By Plaintiff and Rest Period Subclass against Defendant)

34. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
35. By its failure to provide ten-minute (10) rest periods for every four (4) hours of work or major fraction thereof per day to Plaintiff and Rest Period Subclass, Defendant willfully violated Labor Code § 226.7 and applicable Wage Orders.
36. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

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VIII.

THIRD CAUSE OF ACTION

FAILURE TO PAY WAGES

(Labor Code §§ 204, 210, 510, 1194, 1194.2)

(By Plaintiff and the Unpaid Wage Subclass against Defendant)

37. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.

38. At all relevant times, Plaintiff and the other members of the Unpaid Wage Class were employees of Defendant covered by Labor Code §§ 204, 210, 510, 1194, 1194.2 and applicable Wage Orders, and they were entitled to receive minimum and overtime wages for all hours worked and liquidated damages equal to unlawfully unpaid minimum wages with interest.

39. Defendant has violated California law and the specified provisions of the Labor Code and applicable Wage Orders by its failure to pay all wages due in accordance, including minimum wages, wrongfully classified off-the-clock wages, overtime pay and double time pay as based on an employee's regular rate of compensation. Notably, any wages that were paid were not effectively paid within seven (7) days of the close of any applicable payroll period. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

IX.

FOURTH CAUSE OF ACTION

FAILURE TO PAY WAGES DUE AT TERMINATION

(Labor Code §§ 201, 202, 203)

(By Plaintiff and Waiting Time Subclass against Defendant)

40. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.

1 41. By its failure to timely pay Plaintiff and Waiting Time Subclass, Defendant
2 willfully violated the provisions of Labor Code §§ 201, 202, 203 and applicable
3 Wage Orders. Sec. 203 of Labor Code provides that if an employer willfully fails
4 to timely pay such wages, the employer must, as penalty, continue to pay the
5 employee's wages until the back wages are paid in full or an action is
6 commenced.

7 42. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
8 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
9 below, and fully incorporated here as applicable.

10 X.

11 **FIFTH CAUSE OF ACTION**
12 **FAILURE TO PAY VACATION WAGES DUE AT TERMINATION**
13 **(Labor Code §227.3)**
14 **(By Plaintiff and Vacation Pay Subclass against Defendant)**

15 43. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint
16 as if fully alleged herein.

17 44. By its failure to timely pay Plaintiff and Vacation Pay Subclass, Defendant
18 willfully violated the provisions of Labor Code §227.3. Section 227.3 of Labor
19 Code provides that whenever a contract of employment or employer policy
20 provides for paid vacation, and an employee is terminated without having
21 taken off his or her vested vacation time, all vested vacation shall be paid to
22 him as wages at his or her final rate in accordance with such contract of
23 employment or employer policy respecting eligibility of time served; provided,
24 however, that an employment contract or employer policy shall not provide for
25 forfeiture of vested vacation time upon termination.

26 45. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
27 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
28 below, and fully incorporated here as applicable.

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XI.

SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS
(Labor Code §226)
(By Plaintiff and Wage Statement Subclass against Defendant)

46. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
47. By its failure to provide accurate itemized wage statements, semimonthly or at the time of each payment of wages, Defendant willfully violated the provisions of Labor Code §226 and applicable Wage Orders.
48. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

XII.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE ALL BUSINESS EXPENSES
(Labor Code §§2800, 2802)
(By Plaintiff and Expense Reimbursement Subclass against Defendants)

49. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
50. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care."
51. Labor Code § 2802 provides, in pertinent part, "[a]n 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..."
52. Further, Labor Code § 2802 additionally provides, in pertinent part: "(c)...the term 'necessary expenditures or losses' shall include all reasonable costs,

1 including but not limited to, attorney's fees incurred by the employee enforcing
2 the rights granted by this section."

- 3 53. During the relevant time period, Defendants were required to reimburse
4 Plaintiff and class members for all expenditures or losses caused by the
5 employer's want of ordinary care and/or incurred in direct consequence of the
6 discharge of their duties, but failed to indemnify and reimburse Plaintiff and
7 class members in violation of Labor Codes §§ 2800 and 2802.
- 8 54. As a direct and proximate result, Plaintiff and class members have suffered, and
9 continue to suffer, substantial losses, related to the use and enjoyment of such
10 monies to be reimbursed, lost interest on such monies, and expenses and
11 attorney's fees in seeking to compel Defendants to fully perform their
12 obligations under California law, all of their damage in amounts according to
13 proof at the time of trial.

14 **XIII.**

15 **EIGHTH CAUSE OF ACTION**
16 **VIOLATION OF UNFAIR BUSINESS PRACTICES ACT**
17 **(Bus. & Prof. Code §§ 17200, *et seq.*)**
18 **(By Plaintiff, Plaintiff Class and All Subclasses against Defendant)**

- 19 55. Plaintiff incorporates paragraphs 1 through 54 of this First Amended Complaint
20 as if fully alleged herein.
- 21 56. The alleged unlawful conduct of Defendant constitutes unfair competition
22 pursuant to Business and Professions Code §§ 17200 *et seq.*, and this cause of
23 action is brought as a cumulative remedy under Bus. & Prof. Code § 17205 for
24 the time period starting four (4) years before the filing of the Complaint.
- 25 57. As a result, Plaintiff and other members of Plaintiff Class and Subclasses have
26 suffered injury in fact and lost money or property. Plaintiff and said members
27 have been deprived of their rights as set forth in this First Amended Complaint,
28 including, but not limited to, payment of minimum and/or actual wages for all
hours worked.

1 58. Pursuant to Business and Professions Code § 17203, Plaintiff and other
2 members of Plaintiff Class and Subclasses are entitled to restitution of all wages
3 owed to them under the Labor Code, and interest thereon, in which they had a
4 property interest, which Defendant failed to pay to them but withheld and
5 retained for itself. Restitution of the money owed to Plaintiff, Plaintiff Class and
6 Subclasses is necessary to prevent Defendant from becoming unjustly enriched
7 by its failure to comply with the Labor Code provisions.

8 59. Plaintiff and members of Plaintiff Class and Subclasses are entitled to recover
9 reasonable attorney's fees in connection with their unfair competition claims
10 pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine
11 and/or the common fund doctrine.

12 60. Plaintiff requests the court to issue a preliminary and permanent injunction
13 prohibiting defendants from committing the Labor Code and applicable Wage
14 Order violations set forth in this First Amended Complaint, and Plaintiff and
15 the members of Plaintiff Class and Subclasses have suffered further damages as
16 articulated in the Prayer for Relief, set forth below, also incorporated here fully
17 as applicable.

18 **IX.**

19 **NINTH CAUSE OF ACTION**

20 **VIOLATION OF CALIFORNIA'S PRIVATE ATTORNEY GENERAL ACT**

21 **(LABOR CODE § 2699 *et seq.*)**

22 **(By Plaintiff and Aggrieved Employees Against Defendant)**

23 61. Plaintiff incorporates paragraphs 1 through 60 of this First Amended Complaint
24 as if fully alleged herein.

25 62. Under the Private Attorney General Act, Labor Code §§ 2698-99 ("PAGA"),
26 private parties may recover civil penalties for violations of the California Labor
27 Code. PAGA penalties are in addition to any other relief available under the
28 Labor Code.

63. As set forth above, Defendant violated the California Labor Code by consistently failing to employ Plaintiff and other similarly situated employees in compliance with California law.

64. Plaintiff provided written notice by certified mail to Defendant on March 5, 2024, and electronic notice to the State Labor & Workforce Development Agency ("LWDA"), of the legal claims and theories of this case. To date, and after 65 days from the date of mailing of notice, the LWDA has not notified Plaintiff that the LWDA intends to exercise jurisdiction over the claim for civil penalties under the PAGA. Accordingly, Plaintiff exhausted administrative remedies as required by Labor Code § 2699.3. Plaintiff's PAGA claim was assigned case number LWDA-CM-1014915-24 by the LWDA. Appended hereto is a copy of the notice communicated by Plaintiff.

65. Under the PAGA, Plaintiff and all other aggrieved employees are entitled to recover the maximum civil penalties permitted by law from Defendant for the violations of Labor Code alleged in this First Amended Complaint and the notice communicated by Plaintiff.

66. Plaintiff and all other aggrieved employees are also entitled to recover their attorneys' fees and costs under Labor Code § 2699.

X.

PRAYER FOR RELIEF

WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for relief and judgment against Defendant as follows:

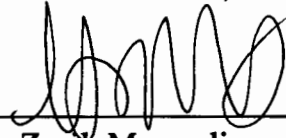
A. An order certifying that Plaintiff may pursue his claims as a class action under Section 382 of the Code of Civil Procedure; and it is further requested that Plaintiff Class and each Plaintiff Subclass be certified;

B. An order appointing Plaintiff as Class representative;

- 1 C. An order appointing Plaintiff's counsel as Class counsel;
- 2 D. Disgorgement of Defendant's wrongfully obtained profits and restitution
- 3 of unpaid wages under Business and Professions Code §§ 17203, 17204;
- 4 E. Damages for unpaid additional compensation for failing to provide
- 5 timely or uninterrupted or lawful meal periods and rest periods;
- 6 F. Damages for unpaid minimum and overtime wages under Labor Code
- 7 §§ 1194 and 510;
- 8 G. Liquidated damages under Labor Code § 1194.2;
- 9 H. Statutory penalties under Labor Code § 226(e);
- 10 I. Damages for unpaid penalty wages under Labor Code § 203;
- 11 J. Reimbursement of business expenses under Labor Code § 2802;
- 12 K. Damages for unpaid vacation wages at the time of discharge under
- 13 Labor Code § 227.3;
- 14 L. Reasonable attorney's fees and costs pursuant to statute, including, but
- 15 not limited to Labor Code § 218.5 and Code of Civ. Proc. § 1021.5;
- 16 M. Enjoinment of Defendant from further acts of unfair competition and
- 17 continuous violations of the Labor Code and applicable Wage Orders;
- 18 N. Civil penalties under Labor Code Section 2699 (75% payable to the
- 19 LWDA and 25% payable to aggrieved employees); and
- 20 O. For such other relief that the Court may deem just and proper, including
- 21 prejudgment interest and costs.
- 22

23 DATED: May 20, 2024

MOORADIAN LAW, APC

24 By: 

Zorik Mooradian,

Haik Hacopian,

Attorneys for Plaintiff and the putative class

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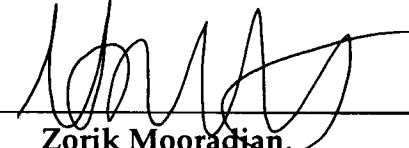
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DEMAND FOR A JURY TRIAL

Plaintiff JOSE M. OLMOS hereby demands a jury trial in the above case.

DATED: May 20, 2024

MOORADIAN LAW, APC

By: _____

Zorik Mooradian,

Haik Hacopian,

Attorneys for Plaintiff and the putative class

MOORADIAN LAW, APC
24007 Ventura Blvd., Suite 210
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ZORIK MOORADIAN

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March 5, 2024

VIA USPS CERTIFIED MAIL

Evolution Hospitality, LLC

1211 Puerta Del Sol, #170
San Clemente, CA 92673

Evolution Hospitality, LLC

C/O CT Corporation System
California Registered Corporate Agent 1505
330 North Brand Blvd.
Glendale, CA 91203

VIA ONLINE SUBMISSION

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Re: PAGA Notice Letter re California Wage & Hour Violations

To Whom It May Concern:

This office represents **Mr. Jose M. Rico Olmos** (also referred to as Mr. Olmos) with respect to the claims he is seeking to bring under the Private Attorneys General Act (PAGA) for employment practices committed in violation of California law. This letter, which constitutes the notice required by Labor Code § 2699.3, is based on currently possessed information and belief. The information set forth in this Notice is subject to modification in accordance with the data.

Identity of “Employees”:

Mr. Olmos intends to pursue PAGA claims on his own behalf and on behalf of other current and former employees of the entities/individuals referenced below who performed non-exempt work for said entities/individuals and were either: 1) classified as a non-exempt employee or 2) should have been classified as a non-exempt employee. Said employees are limited to employees performing work for said entities/individuals at any time during the following time period: One (1) year prior to the date of this PAGA Notice letter and continuing until the unlawful employment practices are stopped and/or a judgment is entered.

Said employees are collectively referred to as “Employees.” The names of Employees (other than Mr. Olmos) are contained within the personnel records of **Evolution Hospitality, LLC** (“Employer”)

Identity and Capacity of Employers/Joint Employers:

Mr. Olmos intends to pursue a PAGA action against his Employer (Evolution Hospitality, LLC) and its parent companies, subsidiaries, successors, owners, officers, directors, and managing agents (collectively referred to as “Employer” as well). Mr. Olmos will seek to hold all owners, directors, officers and managing agents of his Employer personally liable for said violations to the extent permitted under Labor Code § 558 and/or Labor Code § 558.1.

All business entities referenced herein were the alter-egos of each and every other entity and individual referenced herein and there exists, and at all times herein mentioned has existed, a unity of interest and ownership between said entities and individuals such that any separateness between them ceased to exist in that said individuals and other entities have completely controlled, dominated, managed, and operated the business entities and have intermingled the assets of each to suit convenience. Further, each of the business entities are, and at all times mentioned herein were, mere shells, instrumentalities, and conduits through which the other above-referenced entities/individuals carried out their business while exercising complete control and dominance of the business such that individuality or separateness did not truly exist. Therefore, in the PAGA action, Mr. Olmos will seek to hold each said individual and/or entity jointly and severally liable for any and/or all violations committed by the other above-referenced individuals and/or entities.

It should further be noted that the Employer and its parent companies, subsidiaries, successors, owners, officers, directors, and/or managing agents have been engaged in a joint enterprise. Moreover, said persons/individuals are joint employers of Employees for the following reasons: 1) Said entities/individuals directly and/or indirectly exercised control over the wages, hours or working conditions of Employees; 2) Said entities/individuals had knowledge (either personally or through officers, directors and/or managing agents) of the work Employees were doing for them while supposedly being employed by another entity/individual and failed to prevent the work from occurring; and 3) Said entities retained or assumed a general right of control over hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of Employees.

Violations/Supporting Facts and Theories:

At all times herein, the Employer has been involved in the hospitality business (hotels, suites, food and boarding services, resorts, etc.), including, but not limited to, the ownership, management, and operation of Cambria Hotel & Suites Anaheim Resort Area, located at 101 East Katella Ave., Anaheim, in the State of California, and have employed/jointly employed Employees (including Mr. Olmos) to perform work and services in furtherance of their business and joint enterprise interests.

From on or about 12/9/2019 through on or about 03/10/2023, Mr. Olmos was hired by the Employer to work as a non-exempt, hourly wage employee in the State of California. He performed various job duties at the Cambria Hotels & Suites in Anaheim (101 East Katella Ave., Anaheim, CA). He was primarily a Water Park Attendant. His job duties included, but were not limited to, overseeing the water park, installation, situating and moving of umbrellas, distribution

and collection of towels, supervision of children at the water park, folding and organizing the towels and accessories, and many like duties as called upon at the hotel and the resort. Mr. Olmos was compelled to quit his job on or about 03/08/2023 and was paid partial wages thereafter. Going back for at least four years and continuing at the present time, the Employer has engaged in the following employment practices known to date to be in violation of California employment laws.

Misclassification Violations:

Misclassifying Non-Exempt Employees as Exempt Employees: (Labor Code § 515, 8 CCR 11040, IWO No. 1 (Rule 1), and/or Other Applicable IWO): The Employer violated and continues to violate Labor Code § 515, 8 CCR 11040, IWO No. 1 (or other applicable law, wage order and/or regulation) by misclassifying current and former non-exempt employees as exempt employees and, thereby, has unlawfully denied said individuals the employment benefits owed to Employees under California law, including the following benefits: overtime pay, rest breaks, meal breaks, minimum wage rates, sick leave benefits and other benefits owed to non-exempt employees under California law.

Said misclassifications are evidenced by a number of factors, including but not limited to: Employees who primarily performed non-exempt work were classified as performing in executive and/or administrative capacities when said employees did not, in fact, qualify for such classification. For example: 1) Said employees did not customarily and/or regularly exercise discretion and independent judgment in the performance of their duties; instead, they followed the instructions and procedures given to them by others; 2) Said employees were not paid a monthly salary that was equivalent to no less than two times the state minimum wage for full-time employment (i.e., 40 hours per week).

Overtime Violations:

The Employer has violated and continues to violate Labor Code §§ 500, 510, 1198, and Industrial Welfare Commission Wage Orders, including IWO 2 and 3 (or other applicable law, wage order and/or regulation) by failing to pay Employees overtime compensation as required under California law as follows:

- Employees working more than 8 hours in a workday have not been paid time and one-half. Instead, they either were not paid for the time they worked over 8 hours, or they were only paid regular wages rather than overtime wages.
- Employees working more than 40 hours in a workweek have not been paid time and one-half. Instead, they either were not paid for the time they worked over 40 hours in a week, or they were only paid regular wages rather than overtime wages.

The Employer's failure to pay Employees overtime wages in accordance with the Labor Code has been, in part, accomplished by wrongfully failing to include all of the times that Employees worked in calculating Employees' wages during each pay-period that Employees were

employed. In part, this was accomplished via illegal rounding of work times which consistently worked to the advantage of the Employer.

Minimum Wage Violations:

The Employer has violated and continues to violate Labor Code §§ 1182.12, 1194, 1198, and Industrial Welfare Commission Wage Orders, including IWO 2 and 3 (or other applicable law, wage order, regulation and/or local law/ordinance regulating the minimum wage owed to employees who work in the County of Los Angeles and its incorporated cities) by failing to pay Employees at least the minimum wage required under the law.

Specifically, because not all of the time worked by Employees has been/is being reported on the Employees' time records and/or paychecks, Employees have not been paid at least the minimum wage for all the time they actually worked for the Employer. For example, Employees have not been paid at least the minimum wage owed due to rounding of starting and stopping times which have consistently worked to the unfair advantage of the Employer. Employees have also not been paid for rest breaks.

Meal Period Violations:

If not on a daily basis, then on multiple times during each pay period, The Employer has engaged, and continues to engage, in the business-wide practice of not providing Employees with legally compliant meal periods as mandated under California law as follows:

- a) In violation of Labor Code § 512 and the above-referenced IWOs, The Employer has failed, and continues to fail, to provide Employees working 5.1 to 10 hours in their workday with at least one 30-minute unrestricted and uninterrupted meal period within the first 5 hours of their workday. Instead, Employees are provided their meal periods more than 5 hours after beginning their workday. Employees who were misclassified as exempt employees, were not provided meal periods or their meal periods were on-duty, were late and/or were interrupted. Additionally, in violation of Labor Code § 226.7, The Employer failed to pay said Employees one hour of pay (aka premium pay) for each day a legally compliant meal break was not provided.
- b) In violation of Labor Code § 512 and the above-referenced IWOs, The Employer has failed, and continues to fail, to provide Employees working 10.1 to 14 hours in their workday with a second 30-minute, unrestricted and uninterrupted meal period within the first ten hours of their workday. Instead, Employees are either not provided with a meal period or, when they are provided a meal period, the meal period is not timely, it is interrupted, and/or the Employees are required to remain on duty. Additionally, in violation of Labor Code § 226.7, The Employer failed to pay said Employees one hour of pay (aka premium pay) for each day the required second meal period was not provided.

Based on the information known to date, it is believed that every Employee was denied at least one legally compliant meal period every pay period that they worked for the Employer. The total number of pay periods that each Employee was denied one or more meal periods can be

determined via the time records of the Employees during the statutory time period. Mr. Olmos was denied a legally compliant meal period multiple times every pay period. Indeed, he was denied a legally compliant meal period almost every workday. On the occasions when lunch breaks were given, the Employees were required to have their meal in trucks so that they could be monitored by the Employer.

Rest Break Violations:

If not on a daily basis, then on multiple times during each pay period, The Employer has engaged, and continues to engage, in the business-wide practice of not authorizing and/or permitting Employees to take the paid rest breaks they are entitled to under California law as follows:

- a) In violation of Labor Code § 512 and the above-referenced IWOs, The Employer has failed, and continues to fail, to authorize and/or permit Employees working 3.5 to 6 hours in a workday to take at least one paid unrestricted and uninterrupted 10-minute net rest break in the middle of their daily work periods even though it was practical for Employees to take such rest breaks. Instead, rest breaks were not paid and/or were not provided in the middle of the work period. Additionally, in violation of Labor Code § 226.7, The Employer failed to pay said Employees one hour of pay (aka premium wages) for each day that required rest breaks were not authorized and/or permitted.
- b) In violation of Labor Code § 512 and the above-referenced IWO, The Employer has failed, and continues to fail, to authorize and/or permit Employees working 6.1 to 10 hours in a workday to take at least two paid unrestricted and uninterrupted 10-minute rest breaks in the middle of each of their daily work periods even though it was practical for Employees to take such rest breaks. Instead, Employees were either not given such rest breaks; or, when they were given rest breaks, the breaks were not in the middle of the work period, the breaks were interrupted and/or Employees were required to remain on-duty during their rest breaks. Additionally, in violation of Labor Code § 226.7, The Employer failed to pay said Employees one hour of pay (aka premium pay) for each day the required rest breaks were not authorized and/or permitted.

Based on the information known to date, it is believed that every Employee was denied one legally compliant rest break every pay period that they worked for the Employer. The total number of pay period violations that each Employees suffered from one or more rest break violations can be determined via the time records of the Employees during the statutory time period. Mr. Olmos was denied a legally compliant rest break multiple times every pay period. Indeed, he was denied a legally compliant rest break almost every workday.

Seating Accommodation Violations:

The Employer has adopted and continues to adopt a custom and practice of failing to provide its current and former Employees (including Mr. Olmos) with: 1) Suitable seating when the nature of the Employees' work reasonably permits use of seats and 2) Suitable seating in reasonable proximity to Employee's work areas for use by Employees when a) they are not engaged in

active duty, b) their work requires standing and c) such seats would not interfere with the performance of their duties. No such seating was provided.

Timely Wage Payment Violations:

The Employer has violated and continues to violate Labor Code §§ 204-204b and the applicable wage order by failing to pay Employees the wages they were due within the timeframes set forth in Labor Code §§ 204-204b. Such failures occurred in at least the following ways:

- a) The Employer unfairly “rounds” the punch-in/out times of its Employees such that Employees are not paid for all the time they actually work. Moreover, the rounding has worked as an unfair monetary advantage to The Employer and to the detriment of the Employees.
- b) The Employer has not paid Employees overtime pay because the Employer has not included all the time Employees have actually worked in the Employees’ time records which are used to calculate Employees’ regular and overtime wages.
- c) Employees who are owed additional wages due to the Employer’s failure to comply with minimum wages laws have not been paid said wages.
- d) Employees have not been paid for their vested/accrued vacation benefits.
- e) Employees have not been paid for their accrued sick leave benefits.
- f) Employees have not been paid the premium pay wages owed by the Employer for missed, untimely, restricted, interrupted and/or short rest breaks.
- g) Employees have not been paid the premium pay wages owed by the Employer for missed, untimely, restricted, interrupted and/or short meal periods.
- h) Employees have not been paid minimum, regular and/or overtime wages for time worked but not included in the calculations of Employees’ wages included in the Employees’ paychecks and/or wage statements.
- i) Employees have not been paid minimum, regular and/or overtime wages owed for on-duty meal periods.
- j) Employees have not been paid minimum, regular and/or overtime wages owed due to rounding of clock-in times which have consistently worked to the unfair advantage of the Employer.
- k) Employees who have worked more than 8 hours to 12 hours in a workday have not been paid time and one-half.
- l) Employees who have worked more than 40 hours in a workweek have not been paid time and one-half.

Because Employees were not compensated for the above-referenced wages, Employees were not paid such wages within the timeframes set forth in Labor Code §§ 204-204b and Employees have not been paid the penalties set forth in § 210.

Wage Statement Violations:

The Employer has adopted, and continues to adopt, a custom and practice of providing wage statements to Employees that fail to comply with Labor Code § 226 in the following ways:

- The Employer's wage statements do not accurately record the total hours worked or the gross/net wages earned by Employees for:
 - Premium pay wages for missed, untimely, restricted, interrupted and/or short rest breaks as referenced above.
 - Premium pay wages for missed, untimely, restricted, interrupted and/or short meal periods as referenced above.
 - Regular and/or overtime wages for time worked but not reported on the Employer's time records.
 - Regular and/or overtime wages for on-duty meal periods.
 - Regular and/or overtime wages for rounding to the benefit of the Employer.
 - Vacation time pay.
 - Sick leave time pay.
 - Earned overtime wages.
 - Owed wages due to the Employer's failure to comply with minimum wages laws.
- The Employer's wage statements have not always accurately recorded all the deductions deducted from Employees' wages.
- The Employer's wage statements do not set forth the accurate name and/or address of the legal entity of the entity that employed Employees.
- The Employer's wage statements do not accurately set forth all the hourly rates in effect to the pay period and/or the accurate corresponding number of hours worked at each hourly rate by Employees.

Waiting Time Violations at Time of Separation:

The Employer has violated and continues to violate Labor Code §§ 201-202 by failing to pay Employees who have become separated from the Employer the complete and correct amount of all wages owed to such Employees at the time of their separation within the timeframes mandated by Labor Code §§ 201-202 in the following ways:

- For Employees who have been terminated, The Employer has failed, and continues to fail, to pay said employees all wages due and payable immediately at the time of their termination.
- For Employees who have given at least 72-hours-notice of resigning or otherwise separating from the Employer, the Employer has failed (and continues to fail) to pay said Employees all wages due and payable on their last day of work.
- For Employees who have resigned or otherwise separated from the Employer and have not given at least 72 hours' notice, the Employer has failed (and continues to fail) to pay said Employees all wages due and payable within 72-hours.
- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid the premium pay wages owed at the time of separation for missed, untimely, restricted, interrupted and/or short rest breaks.

- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid the premium pay wages owed at the time of separation for missed, untimely, restricted, interrupted and/or short meal periods.
- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid regular and/or overtime wages owed at the time of separation for time worked but not reported on the Employer's time sheets and/or wage statements.
- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid regular and/or overtime wages owed at the time of separation for on-duty meal periods.
- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid regular and/or overtime wages owed at the time of separation for time unpaid due to rounding practices that unfairly worked to the benefit of the Employer.
- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid the overtime wages owed at the time of separation.
- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid wages owed due to the Employer failure to pay at least the minimum wage mandated by law.
- Employees who have become separated from the Employer (whether by termination, resignation or otherwise) have not been paid the wages they are owed for unpaid rest breaks.

Since none of the separated employees have been paid the entirety of the wages they were owed at the time of their separation, each such Employee is entitled to continuing wages for the 30-day maximum set forth in Labor Code § 203 (see below). The number of pay period violations of Labor Code §§ 201-202 can be determined from information contained in the Employer's employment records including records which show when Employees became separated from employment with the Employer, when said Employees were paid their final wages from The Employer and what wages were paid as well as records regarding the total number of Employees who have become separated from employment during the statutory period (the number will continue to grow until the illegal practice is stopped).

Vacation Pay Violations:

The Employer has violated and continues to violate Labor Code § 227.3 by failing to pay employees vested vacation time at their time of separation from employment with Employer.

Payment/Use of Sick Time Violations:

The Employer has violated and continues to violate Labor Code § 245.5 (definition of employee) and § 246 (mandated amounts of accrual of sick time) by failing to allow its past and present employees to accrue sick time in the amount required by law. As well, the Employer has

violated and continues to violate Labor Code § 246.5 by failing to permit its past and present employees from using their accrued sick time for the purposes set forth under California law.

Heat Recovery Periods Violations:

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide recovery periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each workday that a meal or rest or recovery period is not provided. California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code of Reg., Title 8, § 3395(d)(1). Employer violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because it failed to provide Mr. Olmos and other aggrieved employees with recovery periods.

Failure to Produce Records of Employee Violations:

Employer was requested to produce certain employment records in accordance with California law, including Labor Code Sections 226, 432 and 1198.5, and Employer failed to comply or otherwise respond. As such Employer is in violation of the applicable California law, including, but not limited to, the said sections.

Release of Claims for Wages Due Violations:

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee." The Employer required Mr. Olmos and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks. That practice is in violation of California Labor Code section 206.5. As such, Mr. Olmos and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f)-(g).

Reporting Time Violations:

No employer may employ an employee prohibited by the applicable IWC wage orders. California Labor Code section 1198 further requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11160(5)(A) provides that “[e]ach 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.” The Employer violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11160(5), because it failed to pay Mr. Olmos and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule. Mr. Olmos and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Unreimbursed Business Expense Violations:

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or his job. Mr. Olmos and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g) as they remain unreimbursed for the incurred business expenses.

Regular Rate of Pay

Employer has failed and continues to fail to take into consideration the “regular rate of pay,” encompassing all nondiscretionary payments, not just hourly wages, in its computation of premium pay for non-compliant meal, rest or recovery period under Labor Code Section 226.7(c) and *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal5th 858. Additionally, Employer failed and continues to fail to take into consideration the regular rate of pay in its computation of overtime pay pursuant to Labor Code Section 510(a). Mr. Olmos and aggrieved employees received non-discretionary bonuses at all times relevant here and were denied the appropriate adjustments to their wages based on the requisite regular rate analysis.

Failure to Maintain Accurate Payroll Records

Employer has failed and continues to fail record keeping practices in compliance with Labor Code Sections 1174 (c) and (d), which in pertinent part provide: “(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors. (d) Keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by, and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

Employer's record keeping practices were lawfully deficient for computation of wages, premium and overtime wages, regular rate of pay adjustments, PTO benefits, and reporting requirements for the wage statements. Employers' wage statements do not accurately set forth all the hourly rates in effect to the pay period and/or the accurate corresponding number of hours worked at each hourly rate by Employees. The aggrieved employees were affected by said violations and none were provided the opportunity to examine their respective records at all times relevant here.

Conclusion:

If the State of California intends to investigate the matters set forth herein, please inform our offices as soon as possible as prompt administrative action will permit the identified unlawful practices to be rectified in prompt fashion. If the State of California does not send notification of its intent to investigate the alleged violations set forth herein, then pursuant to Labor Code § 2698 *et. seq.* (PAGA), Mr. Olmos reserves the right to file a PAGA cause of action seeking all available damages, penalties, and remedies as well as attorneys' fees, interest, and costs against the Employer, as permitted under the PAGA. Should the State of California require any additional information, please do not hesitate to contact the undersigned.

MOORADIAN LAW, APC



ZORIK MOORADIAN

Attorneys for Jose M. Rico Olmos



Haik Hacopian <haik.hacopian@gmail.com>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "haik.hacopian@gmail.com" <haik.hacopian@gmail.com>

Tue, Mar 5, 2024 at 4:36 PM

3/5/2024

LWDA Case No. LWDA-CM-1014915-24
Law Firm : Mooradian Law, APC
Plaintiff Name : Jose M. Rico Olmos
Employer: Evolution 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