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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MENDOCINO**

VICTOR MARTINEZ, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

v.

STANFORD INN BY THE SEA ECO
RESORT, a fictitious business entity;
JEFFREY STANFORD, an individual;
JOAN STANFORD, an individual; and
DOES 1 through 10, inclusive,

Defendants.

Case No. 24CV00539

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

- (1) Failure to Pay Minimum Wage for All Hours Worked (Labor Code §§ 1182.12, 1194, 1194.2, 1197 and 1197.1)**
- (2) Failure to Pay Overtime Compensation (Lab. Code §§ 1194 and 1198)**
- (3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and IWC Wage Orders)**
- (4) Failure to Provide Rest Periods (Lab. Code §§ 226.7, 512, and IWC Wage Orders)**
- (5) Waiting Time Penalties (Lab. Code §§ 201-203)**
- (6) Failure to Provide Accurate Wage Statements (Lab. Code § 226)**
- (7) Failure to Reimburse Business Expenses (Lab. Code § 2802)**
- (8) Failure to Provide Wages When Due (Lab. Code §§ 201, 202, and 203);**
- (9) Failure to Pay Sick Pay Wages (Lab. Code §§ 201-203, 233, 246)**
- (10) Failure to Pay Timely Earned Wages During Employment (Lab. Code §§ 204,**

210)

(11) Failure to Pay Vacation Wages (Cal. Lab. Code § 227.3 and IWC Wage Orders)

(12) Failure to Provide Seating (Cal. Lab. Code § 1198 and IWC Wage Orders)

(13) Wage Theft Protection Act of 2011 (Cal. Lab. Code § 2810.5)

(14) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.)

(15) Private Attorneys General Act (Labor Code §§ 2698, et seq.)

JURY TRIAL DEMANDED

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1 Plaintiff Victor Martinez, individually, and on behalf of other members of the general
2 public similarly situated, by and through his undersigned counsel, brings this action against
3 Defendant Stanford Inn by The Sea Eco Resort, and Does 1 through 10, inclusive, and alleges as
4 follows:

5 **INTRODUCTION & PRELIMINARY STATEMENT**

6 1. Plaintiff brings this action against Defendant Stanford Inn By The Sea Eco Resort,
7 and Does 1 through 10 (collectively referred to as “Defendants”) for California Labor Code
8 violations and unfair business practices stemming from Defendants’ failure to pay minimum
9 wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize
10 and permit rest periods, failure to maintain accurate records of hours worked and meal periods,
11 failure to timely pay all wages to terminated employees, and failure to furnish accurate wage
12 statements.

13 2. Plaintiff brings the First through Fourteenth Causes of Action individually and as a
14 class action on behalf of himself and certain current and former employees of Defendants
15 (hereinafter collectively referred to as the “Class” or “Class Members” and defined more fully
16 below). The Class consists of Plaintiff and all other persons who have been employed by any
17 Defendants in California as an hourly-paid, non-exempt employee during the statute of limitations
18 period applicable to the claims pleaded here.

19 3. Plaintiff brings the Fifteenth Cause of Action as a representative action under the
20 Private Attorneys General Act (“PAGA”) to recover civil penalties that are owed to Plaintiff, the
21 State of California, and past and present employees of Defendants employed at any time within the
22 applicable statutory period (hereinafter referred to as the “Aggrieved Employees”).

23 4. Defendants own/owned and operate/operated an industry, business, and
24 establishment within the State of California, including Mendocino County. As such and based
25 upon all the facts and circumstances incident to Defendants’ business in California, Defendants are
26 subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission
27 (“IWC”), and the California Business & Professions Code.

1 5. Despite these requirements, throughout the statutory period Defendants maintained
2 a systematic, company-wide policy and practice of:

- 3 (a) Failing to pay employees for all hours worked, including all minimum wages, and
4 overtime wages in compliance with the California Labor Code and IWC Wage
5 Orders;
- 6 (b) Failing to provide employees with timely and duty-free meal periods in compliance
7 with the California Labor Code and IWC Wage Orders, failing to maintain accurate
8 records of all meal periods taken or missed, and failing to pay an additional hour's
9 pay for each workday a meal period violation occurred;
- 10 (c) Failing to authorize and permit employees to take timely and duty-free rest periods
11 in compliance with the California Labor Code and IWC Wage Orders, and failing to
12 pay an additional hour's pay for each workday a rest period violation occurred;
- 13 (d) Willfully failing to pay employees all minimum wages, meal period premium
14 wages, and rest period premium wages due within the time period specified by
15 California law when employment terminates;
- 16 (e) Failing to maintain accurate records of the hours that employees worked; and
- 17 (f) Failing to provide employees with accurate, itemized wage statements containing
18 all the information required by the California Labor Code and IWC Wage Orders;
- 19 (g) Failing to reimburse Plaintiff and the Class for necessary expenses incurred in the
20 discharge of their job duties;
- 21 (h) Failing to pay for hours worked, including overtime;
- 22 (i) Failing to pay sick pay wages
- 23 (j) Failing to comply with notice requirements of Labor Code section 2810.5 (i.e., the
24 Wage Theft Protection Act of 2011);
- 25 (k) Failing to pay paid time off and vacation time owed upon separation of employment
26 as wages at their final rate of pay;
- 27 (l) Rounding the actual time worked and recorded by employees to benefit Defendants,
28 so that during the course of employment employees are paid less than they would

1 have been paid had they been paid for actual recorded time rather than “rounded”
2 time; and

3 (m) Violating California Business & Professions Code §§ 17200 et. seq. as a result of
4 their illegal conduct as described above.

5 6. On information and belief, Defendants, and each of them were on actual and
6 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
7 unlawful policies. Defendants’ violations, as alleged above, during all relevant times herein were
8 willful and deliberate.

9 7. At all relevant times, Defendants were and are legally responsible for all of the
10 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
11 foregoing paragraphs as the employer of Plaintiff and the Class. Further, Defendants are
12 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
13 “respondeat superior”.

14 **THE PARTIES**

15 **A. Plaintiff**

16 8. Plaintiff Victor Martinez (“Plaintiff”) is an individual residing in the County of
17 Mendocino, California and worked as a non-exempt host and cook from November 2013 to
18 December 1, 2023.

19 9. Plaintiff reserves the right to seek leave to amend this complaint to add new
20 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
21 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

22 **B. Defendants**

23 10. Plaintiff is informed and believe, and based upon that information and belief
24 alleges, that Defendant Stanford Inn by The Sea Eco Resort (“Stanford Inn”) is:

25 (a) a California entity with its principal place of business in the County of Mendocino,
26 California.

27 (b) A business entity conducting business in numerous counties throughout the State of
28 California, including in Mendocino County;

1 (c) The current or former employer of Plaintiff and of the putative Class. Defendants
2 suffered and permitted Plaintiff and the Class to work, and/or controlled their
3 wages, hours, or working conditions; and

4 (d) At all times mentioned herein, Defendants, and each of them, are and were doing
5 business as Stanford Inn by The Sea Eco Resort.

6 11. Defendant Jeffrey Stanford ("Mr. Stanford") is an individual residing in
7 Mendocino, California.

8 12. Defendant Joan Stanford ("Ms. Stanford") is an individual residing in Mendocino,
9 California.

10 13. Plaintiff is informed and believes, and on that basis alleges, that Mr. Stanford and
11 Ms. Stanford wholly dominate, control, manage, and operate Stanford Inn, that Stanford Inn
12 carries none of the formalities required of a limited liability company, that Stanford Inn is so
13 inadequately capitalized that, when compared with the business to be done, its capitalization is
14 illusory, and that it is a mere instrumentality and conduit to further the interests of Mr. Stanford
15 and Ms. Stanford to the detriment of Plaintiff. As a result, there exists, and at all times mentioned
16 in this complaint existed, a unity of interest and ownership among Mr. Stanford and Ms. Stanford
17 and Stanford Inn such that the defendants have no genuine or separate existence. Plaintiff is further
18 informed and believes, and on that basis alleges, that at all mentioned in this complaint, Mr.
19 Stanford and Ms. Stanford completely controlled, dominated, managed, and operated Stanford Inn
20 and intermingled its assets with the assets of Stanford Inn to suit its convenience, such that the
21 individuality or separateness of the two defendants did not exist and it would be unfair to Plaintiff
22 if the acts set forth in this complaint were treated as the those of Stanford Inn alone.

23 14. Plaintiff is unaware of the true names and capacities of the defendants sued as Does
24 1 through 10, inclusive, and therefore sues these defendants by fictitious names. Plaintiff will
25 amend this complaint to allege their true names and capacities when the same have been
26 ascertained. Plaintiff is informed and believes that each of the fictitiously named defendants is
27 responsible in some manner for the occurrences herein alleged and that Plaintiff's damages were
28 proximately caused by said defendants' conduct.

1 15. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
2 each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or
3 injured a significant number of the Plaintiff and the Class in the State of California.
4 Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant,
5 directly or indirectly, or through agents or other persons, employed Plaintiff and the other
6 employees described in the class definitions below, and exercised control over their wages, hours,
7 and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant
8 times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling
9 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
10 interest of some or all of the other Defendants, and was engaged with some or all of the other
11 Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
12 other Defendants so as to be liable for their conduct with respect to the matters alleged below.
13 Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and
14 within the scope of the relationships alleged above, that each Defendant knew or should have
15 known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the
16 conduct of all other Defendants.

17 **VENUE AND JURISDICTION**

18 16. The wrongful conduct alleged against the Defendants occurred in the County of
19 Mendocino, California. At all times relevant hereto, the conduct at issue was part of a continuous
20 and ongoing pattern of behavior.

21 17. This Court is the proper forum to adjudicate this action because the wrongful acts
22 that are the subject of this action occurred here, the Defendant now resides in its jurisdictional
23 area, and injury to person occurred in its jurisdictional area.

24 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

25 18. During the statutory period, Defendants classified Plaintiff as non-exempt from
26 California's overtime requirements, and paid Plaintiff an hourly wage.

27 19. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
28 worked (including minimum wages), failed to provide Plaintiff with uninterrupted meal periods,

1 failed to authorize and permit Plaintiff to take uninterrupted rest periods, failed to timely pay all
2 final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish
3 accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for
4 Defendants was typical and illustrative.

5 20. Throughout the statutory period, Defendants maintained a policy and practice of not
6 paying Plaintiff and the Class for all hours worked. Defendants failed to incorporate all
7 remuneration when calculating the correct rate of pay and meal and rest break premium rate of
8 pay, leading to underpayment to Plaintiff and the Class.

9 21. In maintaining a practice of not paying all wages owed, Defendants failed to
10 maintain accurate records of the hours Plaintiff and the Class worked.

11 22. Throughout the statutory period, Defendants wrongfully failed to provide Plaintiff
12 and the Class with legally compliant meal periods. Defendants sometimes, but not always, required
13 Plaintiff and the Class to work in excess of five consecutive hours a day without providing timely
14 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or
15 without compensating Plaintiff and the Class for meal periods that were not provided by the end of
16 the fifth hour of work or tenth hour of work. Defendants also did not adequately inform Plaintiff
17 and the Class of their right to take a meal period by the end of the fifth hour of work, or, for shifts
18 greater than 10 hours, by the end of the tenth hour of work. Accordingly, Defendants' policy and
19 practice was to not provide meal periods to Plaintiff and the Class in compliance with California
20 law.

21 23. Throughout the statutory period, Defendants have wrongfully failed to authorize
22 and permit Plaintiff and the Class to take timely and duty-free rest periods. Defendants always
23 required Plaintiff and the Class to work in excess of four consecutive hours a day without
24 Defendants authorizing and permitting them to take a 10-minute, continuous and uninterrupted,
25 rest period for every four hours of work (or major fraction of four hours), or without compensating
26 Plaintiff and the Class for rest periods that were not authorized or permitted. Defendants also did
27 not adequately inform Plaintiff and the Class of their right to take a rest period. Moreover,
28 Defendants did not have adequate policies or practices permitting or authorizing rest periods for

1 Plaintiff and the Class, nor did Defendants have adequate policies or practices regarding the timing
2 of rest periods. Defendants also did not have adequate policies or practices to verify whether
3 Plaintiff and the Class were taking their required rest periods.

4 24. Further, Defendants did not maintain accurate records of employee work periods,
5 and therefore Defendants cannot demonstrate that Plaintiff and the Class took rest periods during
6 the middle of each work period. Accordingly, Defendants' policy and practice was to not authorize
7 and permit Plaintiff and the Class to take rest periods in compliance with California law.

8 25. Throughout the statutory period, Defendants willfully failed and refused to timely
9 pay Plaintiff and the Class during and at the conclusion of their employment all wages for all
10 minimum wages, meal period premium wages, and rest period premium wages.

11 26. Throughout the statutory period, Defendants engaged in the practice of rounding the
12 actual time worked and recorded by Plaintiff and the Class to benefit Defendants, so that during
13 the course of employment employees are paid less than they would have been paid had they been
14 paid for actual recorded time rather than "rounded" time.

15 27. Throughout the statutory period, Defendants failed to reimburse and indemnify
16 Plaintiff and the Class with for required business expenses incurred by Plaintiff and the Class in
17 direct consequence of discharging their duties on behalf of Defendants. Under California Labor
18 Code section 2802, employers are required to indemnify employees for all expense incurred in the
19 course and scope of their employment. Labor Code section 2802 expressly states that "an employer
20 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
21 employee in direct consequence of the discharge of his or her duties, or of his or her obedience to
22 the directions of the employer, even though unlawful, unless the employee, at the time of obeying
23 the directions, believed them to be unlawful."

24 28. Defendants underpaid sick pay wages to Plaintiff and the Class by failing to pay
25 such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246. Specifically,
26 Plaintiff and other non-exempt employees earn non-discretionary remuneration. Rather than pay
27 sick pay at the regular rate of pay, Defendants underpaid sick pay to Plaintiff and the Class at their
28 base rates of pay.

1 29. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
2 employees be calculated by dividing the employee's total wages, not including overtime premium
3 pay, by the employee's total hours worked in the full pay periods of the prior 90 days of
4 employment.

5 30. Defendants violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
6 regular rate of pay. Plaintiff and the Class routinely earned non-discretionary incentive wages
7 which increased their regular rate of pay. However, when sick pay was paid, it was paid at the base
8 rate of pay for Plaintiff and the Class, as opposed to the correct, higher regular rate of pay, as
9 required under Cal. Lab. Code Section 246.

10 31. Throughout the statutory period, Defendants failed to furnish Plaintiff and the Class
11 with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net
12 wages earned (including correct hours worked, correct wages earned for hours worked, correct
13 wages for meal periods that were not provided in accordance with California law, and correct
14 wages for rest periods that were not authorized and permitted to take in accordance with California
15 law). As a result of these violations of California Labor Code § 226(a), the Plaintiff and the Class
16 suffered injury because, among other things:

- 17 (a) the violations led them to believe that they were not entitled to be paid minimum
18 wages, overtime wages, meal period premium wages, and rest period premium
19 wages to which they were entitled, even though they were entitled;
- 20 (b) the violations led them to believe that they had been paid the minimum, meal period
21 premium, and rest period premium wages, even though they had not been;
- 22 (c) the violations led them to believe they were not entitled to be paid minimum, meal
23 period premium, and rest period premium wages at the correct California rate even
24 though they were;
- 25 (d) the violations led them to believe they had been paid minimum, overtime, meal
26 period premium, and rest period premium wages at the correct California rate even
27 though they had not been;
- 28

- 1 (e) the violations hindered them from determining the amounts of minimum, meal
2 period premium, and rest period premium owed to them;
- 3 (f) in connection with their employment before and during this action, and in
4 connection with prosecuting this action, the violations caused them to have to
5 perform mathematical computations to determine the amounts of wages owed to
6 them, computations they would not have to make if the wage statements contained
7 the required accurate information;
- 8 (g) by understating the wages truly due them, the violations caused them to lose
9 entitlement and/or accrual of the full amount of Social Security, disability,
10 unemployment, and other governmental benefits;
- 11 (h) the wage statements inaccurately understated the wages, hours, and wage rates to
12 which Plaintiff and the Class were entitled, and Plaintiff and the Class were paid
13 less than the wages and wage rates to which they were entitled.

14 Thus, Plaintiff and the Class are owed the amounts provided for in Labor Code § 226(e), including
15 actual damages.

16 **CLASS ACTION ALLEGATIONS**

17 32. Plaintiff brings certain claims individually, as well as on behalf of each and all other
18 persons similarly situated, and thus, seek class certification under California Code of Civil
19 Procedure § 382.

20 33. All claims alleged herein arise under California law for which Plaintiff seek relief
21 authorized by California law.

22 34. The proposed Class consists of and is defined as:

23 All persons who worked for any Defendant in California as a non-exempt employee at any
24 time during the period beginning four years before the filing of the initial complaint in this
25 action and ending when notice to the Class is sent.

26 35. At all material times, Plaintiff was a member of the Class.

27 36. Plaintiff undertakes this concerted activity to improve the wages and working
28 conditions of all Class Members.

1 37. There is a well-defined community of interest in the litigation and the Class is
2 readily ascertainable:

- 3 (a) Numerosity: The members of the Class (and each subclass, if any) are so that
4 joinder of all members would be unfeasible and impractical. The membership of the
5 entire Class is unknown to Plaintiff at this time, however, the Class is estimated to
6 be greater than 100 individuals and the identity of such membership is readily
7 ascertainable by inspection of Defendants' records.
- 8 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
9 interests of each Class Member with whom there is a shared, well-defined
10 community of interest, and Plaintiff's claims (or defenses, if any) are typical of all
11 Class Members' claims as demonstrated herein.
- 12 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the
13 interests of each Class Member with whom there is a shared, well-defined
14 community of interest and typicality of claims, as demonstrated herein. Plaintiff has
15 no conflicts with or interests antagonistic to any Class Member. Plaintiff's
16 attorneys, the proposed class counsel, are versed in the rules governing class action
17 discovery, certification, and settlement. Plaintiff has incurred, and throughout the
18 duration of this action, will continue to incur costs and attorneys' fees that have
19 been, are, and will be necessarily expended for the prosecution of this action for the
20 substantial benefit of each class member.
- 21 (d) Superiority: A Class Action is superior to other available methods for the fair and
22 efficient adjudication of the controversy, including consideration of:
- 23 1. The interests of the members of the Class in individually controlling the
24 prosecution or defense of separate actions;
- 25 2. The extent and nature of any litigation concerning the controversy already
26 commenced by or against members of the Class;
- 27 3. The desirability or undesirability of concentrating the litigation of the claims
28 in the particular forum; and

1 4. The difficulties likely to be encountered in the management of a class
2 action.

3 (e) Public Policy Considerations: The public policy of the State of California is to
4 resolve the California Labor Code claims of many employees through a class
5 action. Indeed, current employees are often afraid to assert their rights out of fear of
6 direct or indirect retaliation. Former employees are also fearful of bringing actions
7 because they believe their former employers might damage their future endeavors
8 through negative references and/or other means. Class actions provide the class
9 members who are not named in the complaint with a type of anonymity that allows
10 for the vindication of their rights at the same time as their privacy is protected.

11 38. There are common questions of law and fact as to the Class (and each subclass, if
12 any) that predominate over questions affecting only individual members, including without
13 limitation, whether, as alleged herein, Defendants have:

- 14 (a) Failed to pay Class Members for all hours worked, including minimum wages, and
15 overtime wages;
16 (b) Failed to provide meal periods and pay meal period premium wages to Class
17 Members;
18 (c) Failed to authorize and permit rest periods and pay rest period premium wages to
19 Class Members;
20 (d) Failed to promptly pay all wages due to Class Members upon their discharge or
21 resignation;
22 (e) Failed to maintain accurate records of all hours Class Members worked, and all
23 meal periods Class Members took or missed;
24 (f) Failed to reimburse Plaintiff and the Class for necessary expenses incurred in the
25 discharge of their job duties;
26 (g) Failed to pay for hours worked, including overtime;
27 (h) Failed to pay sick pay wages
28

- (i) Failed to comply with notice requirements of Labor Code section 2810.5 (i.e., the Wage Theft Protection Act of 2011);
- (j) Failed to pay paid time off and vacation time owed upon separation of employment as wages at their final rate of pay;
- (k) Improperly rounded the actual time worked and recorded by employees to benefit Defendants, so that during the course of employment employees are paid less than they would have been paid had they been paid for actual recorded time rather than “rounded” time; and
- (l) Violated California Business & Professions Code §§ 17200 et. seq. as a result of their illegal conduct as described above.

39. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

- (a) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- (c) The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;
- (d) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;
- (f) Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:

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1. Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or
2. Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,

(g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

40. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff would contemplate the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

first CAUSE OF ACTION

Failure to Pay Minimum Wage for All Hours Worked (Labor Code §§ 1182.12, 1194, 1194.2, 1197 and 1197.1);
(Against All Defendants)

41. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth fully herein.

42. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

1 43. At all relevant times herein mentioned, Defendants knowingly failed to pay to
2 Plaintiff and the Class compensation for all hours they worked. By their failure to pay
3 compensation for each hour worked as alleged above, Defendants willfully violated the provisions
4 of Section 1194 of the California Labor Code, and any additional applicable Wage Orders, which
5 require such compensation to non-exempt employees.

6 44. Accordingly, Plaintiff and the Class are entitled to recover minimum wages for all
7 non-overtime hours worked for Defendants.

8 45. By and through the conduct described above, Plaintiff and the Class have been
9 deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

10 46. By virtue of the Defendants' unlawful failure to pay additional compensation to
11 Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class
12 suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff
13 and the Class, but which exceed the jurisdictional minimum of this Court, and which will be
14 ascertained according to proof at trial.

15 47. By failing to keep adequate time records required by Labor Code § 1174(d),
16 Defendants have made it difficult to calculate the full extent of minimum wage compensation due
17 Plaintiff and the Class.

18 48. Pursuant to Labor Code section 1194.2, Plaintiff and the Class are entitled to
19 recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

20 49. Labor Code section 204 requires employers to provide employees with all wages
21 due and payable twice a month. Throughout the statute of limitations period applicable to this
22 cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required by
23 law, including minimum wages. However, during all such times, Defendants systematically failed
24 and refused to pay Plaintiff and the Class all such wages due and failed to pay those wages twice a
25 month.

26 50. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum
27 wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§
28 218.5, 218.6, and 1194(a).

1 **second CAUSE OF ACTION**

2 **Failure to Provide Overtime Compensation (Lab. Code §§ 510, 1194, 1198)**

3 (Against All Defendants)

4 51. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth
5 fully herein.

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

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

14 54. At all times relevant hereto, Plaintiff and the Class have worked more than eight
15 hours in a workday, as employees of Defendants.

16 55. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class
17 overtime compensation for the hours they have worked in excess of the maximum hours
18 permissible by law as required by California Labor Code § 510 and 1198. Plaintiff and the Class
19 are regularly required to work overtime hours.

20 56. By virtue of Defendants' unlawful failure to pay additional premium rate
21 compensation to the Plaintiff and the Class for their overtime hours worked, Plaintiff and the Class
22 have suffered, and will continue to suffer, damages in amounts which are presently unknown to
23 them but which exceed the jurisdictional minimum of this Court and which will be ascertained
24 according to proof at trial.

25 57. By failing to keep adequate time records required by Labor Code § 1174(d),
26 Defendants have made it difficult to calculate the full extent of overtime compensation due to
27 Plaintiff and the Class.
28

58. Plaintiff and the Class also request recovery of overtime compensation according to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other statutes.

59. California Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. The Wage Orders also provide that every employer shall pay to each employee, on the established payday for the period involved, overtime wages for all overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class with all compensation due, in violation of California Labor Code § 204.

THIRD CAUSE OF ACTION

Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and IWC Wage Orders)

(Against All Defendants)

60. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth fully herein.

61. At all relevant times, Defendants were aware of and were under a duty to comply with Labor Code sections 226.7 and 512 and applicable sections of IWC Wage Orders.

62. Labor Code section 512 prohibits an employer from employing an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, or for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.

63. Section 11 of Wage Order No. 4 provides, and at all times relevant hereto provided, in relevant part that:

No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty"

1 meal period shall be permitted only when the nature of the work prevents an
2 employee from being relieved of all duty and when by written agreement between
3 the parties an on-the-job paid meal period is agreed to. The written agreement shall
4 state that the employee may, in writing, revoke the agreement at any time. If an
5 employer fails to provide an employee a meal period in accordance with the
6 applicable provisions of this Order, the employer shall pay the employee one (1)
7 hour of pay at the employee's regular rate of compensation for each work day that
8 the meal period is not provided.

9 64. Labor Code section 226.7 prohibits any employer from requiring any employee to
10 work during any meal or rest period mandated by an applicable IWC wage order, and provides that
11 an employer that fails to provide an employee with a required rest break or meal period shall pay
12 that employee one additional hour of pay at the employee's regular rate of compensation for each
13 work day that the employer does not provide a compliant meal or rest period.

14 65. Defendants knowingly failed to provide Plaintiff and the Class with meal periods as
15 required by law. Defendants also failed to provide Plaintiff and the Class with any payment of
16 meal premiums. Plaintiff and the Class are entitled to be paid one hour of premium wages rate for
17 each workday he or she was not provided with all required meal break(s), plus interest thereon.

18 66. Plaintiff and the Class have therefore been damaged and are entitled to payment of
19 the meal period premiums as provided by law.

20 **FOURTH CAUSE OF ACTION**

21 **Failure to Provide Rest Periods (Lab. Code §§ 226.7, 512, and IWC Wage Orders)**

22 (Against All Defendants)

23 67. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth
24 fully herein.

25 68. Section 12 of Wage Order No. 4 provides, and at all times relevant hereto provided,
26 in relevant part that:

27 Every employer shall authorize and permit all employees to take rest periods, which
28 insofar as practicable shall be in the middle of each work period. The authorized

1 rest period time shall be based on the total hours worked daily at the rate of ten (10)
2 minutes net rest time per four (4) hours or major fraction thereof. However, a rest
3 period need not be authorized for employees whose total daily work time is less
4 than three and one-half (3 ½) hours. Authorized rest period time shall be counted,
5 as hours worked, for which there shall be no deduction from wages. If an employer
6 fails to provide an employee a rest period in accordance with the applicable
7 provisions of this Order, the employer shall pay the employee one (1) hour of pay
8 at the employee's regular rate of compensation for each work day that the rest
9 period is not provided.

10 69. Labor Code section 226.7 prohibits any employer from requiring any employee to
11 work during any meal or rest period mandated by an applicable IWC wage order, and provides that
12 an employer that fails to provide an employee with a required rest break or meal period shall pay
13 that employee one additional hour of pay at the employee's regular rate of compensation for each
14 work day that the employer does not provide a compliant meal or rest period.

15 70. Defendants knowingly failed to provide Plaintiff and the Class with rest periods as
16 required by law, and knowingly failed to authorize and permit Plaintiff to take rest periods as
17 required by law. Defendants also failed to provide Plaintiff and the Class with any payment of rest
18 premiums. Plaintiff and the Class are entitled to be paid one hour of premium wages rate for each
19 workday he or she was not provided with all required rest break(s), plus interest thereon.

20 71. Plaintiff and the Class have therefore been damaged and are entitled to payment of
21 the meal and rest period premiums as provided by law.

22 **FIFTH CAUSE OF ACTION**

23 **Waiting Time Penalties (Lab. Code §§ 201-203)**

24 (Against All Defendants)

25 72. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth
26 fully herein.

27 73. Labor Code sections 201 and 202 require an employer to pay its employees all
28 wages due immediately upon discharge or within 72 hours of resignation. This requirement

1 applies to unpaid overtime wages. Labor Code section 203 provides that if an employer willfully
2 fails to pay such wages, the employer must continue to pay the subject employee's wages until the
3 back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

4 74. Defendants willfully failed to pay Plaintiff and the Class their earned and unpaid
5 wages for 30 days from the time such wages should have been paid under the Labor Code.

6 75. As a result of Defendants' willful failure to pay owed wages upon separation from
7 employment, Plaintiff and the Class have been harmed and Defendants are liable for statutory
8 waiting time penalties pursuant to Labor Code section 203.

9 **SIXTH CAUSE OF ACTION**

10 **Failure to Provide Accurate Wage Statements (Lab. Code § 226)**

11 (Against All Defendants)

12 76. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth
13 fully herein.

14 77. Labor Code section 226, subdivision (a) requires employers to provide employees,
15 semi-monthly or at the time of each payment of wages, with a statement that accurately reflects
16 certain itemized information including total number of hours worked.

17 78. Defendants knowingly and intentionally failed to furnish Plaintiff and the Class
18 with timely and accurate wage statements that accurately reflected the total number of hours
19 worked and wages earned, as required by Labor Code section 226.

20 79. As a result of Defendants' failure to provide accurate itemized wage statements,
21 Plaintiff and the Class suffered actual damages and harm by being unable to determine the amount
22 of overtime worked each pay period in a timely manner, which prevented them from asserting their
23 rights under California law.

24 80. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and
25 time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as a
26 result of having to bring this action to attempt to obtain correct wage information following
27 Defendants' refusal to comply with many of the mandates of the Labor Code and related laws and
28 regulations.

81. Plaintiff and the Class are entitled to recover from Defendants their actual damages caused by Defendants' failure to comply with Labor Code § 226(a).

82. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of attorney's fees and costs to ensure compliance with this section, pursuant to Labor Code § 226(h).

SEVENTH CAUSE OF ACTION

Failure to Reimburse Business Expenses (Lab. Code § 2802)

(Against All Defendants)

83. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth fully herein.

84. California Labor Code section 2802 provides, in relevant part, that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

85. At all relevant times, Defendants violated Cal. Lab. Code section 2802, by failing to indemnify and reimburse Plaintiff and the Class for required expenses incurred in the discharge of their job duties for Defendants' benefit. Defendants failed to reimburse Plaintiff and the Class for expenses which included, but were not limited to, uniforms and costs related to using their personal cellular phones on behalf of and for the benefit of Defendants. Specifically, Plaintiff and the Class were required by Defendants to use their personal cellular phones in order to perform work related job tasks. Defendants' policy and practice was to not reimburse Plaintiff and the Class for expenses resulting from using their personal cellular phones and pay for uniform costs within the course and scope of their employment for Defendants.

86. These expenses were necessary to complete their principal job duties. Defendants is estopped by Defendants' conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by Plaintiff and the Class, Defendants failed to indemnify and reimburse Plaintiff and the Class for these expenses as an employer is required to do under the laws and regulations of California.

1 87. Plaintiff and the Class therefore demand reimbursement for expenditures or losses
2 incurred by themselves in the discharge of their job duties for Defendants, or their obedience to the
3 directions of Defendants, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

4 **EIGHTH CAUSE OF ACTION**

5 **Failure to Pay Wages When Due (Cal. Lab. Code §§ 201, 202, 203, 204, 210)**

6 88. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth
7 fully herein.

8 89. Cal. Lab. Code § 201 provides, in relevant part, that “[i]f an employer discharges an
9 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

10 90. The employment of Plaintiff and the Class has terminated and Defendants have not
11 tendered payment of all wages owed as required by law. Additionally, at all times during the term
12 of Plaintiff’s employment with Defendants, Plaintiff and the Class earned and accrued vested
13 vacation and holiday time on the date of their termination pursuant to Defendants’ uniform
14 vacation policies and applicable California law. The amount of vacation pay Plaintiff and the Class
15 earned and accumulated is evidenced by Defendants’ business records. Additionally, Defendants
16 also underpaid accrued vested vacation wages to Plaintiff and the Class by failing to pay such
17 wages at the regular rate of pay and more specifically the final rate of pay that included all non-
18 discretionary incentive compensation. Rather than pay vacation wages at the regular rate of pay,
19 Defendants underpaid vacation wages to Plaintiff and the Class at their base rates of pay, instead of
20 including all of Plaintiff and the Class non-discretionary incentive compensation into the vacation
21 wage payment calculations. Defendants failed to specify in Defendants’ written vacation policy the
22 rate at which Plaintiff and the Class would be paid vacation upon leaving employment with
23 Defendants. As a result of Defendants’ unlawful practice, policy and procedure to deny paying
24 Plaintiff and the Class all of their vested vacation and holiday time, Defendants failed to pay
25 Plaintiff and the Class all vested vacation time as wages due upon employment termination, in
26 violation of the California Labor Code, Sections 201, 202, 203, 204, 210, and 227.3. Similarly,
27 Defendants underpaid waiting time penalties to Plaintiff and the Class Members at their base rates
28 of pay, instead of including all of Plaintiff and the Class non-discretionary compensation into the

1 waiting time penalty calculations. This failure by Defendants is believed to be the result of
2 Defendants' unlawful, unfair and deceptive refusal to provide compensation for earned, accrued
3 and vested vacation and holiday time, as well as the corresponding waiting time penalties that were
4 paid. Defendants perpetrated this unlawful, unfair and deceptive practice to the detriment of
5 Plaintiff and the Class. Defendants' uniform practice and policy of failing to pay Plaintiff and the
6 Class for all vested vacation and holiday time accumulated at employment termination violated
7 and continues to violate Section 227.3 of the California Labor Code.

8 91. Therefore, as provided by Cal Lab. Code § 203, on behalf of Plaintiff and the Class
9 whose employment has terminated and who have not been fully paid their wages due to them,
10 Plaintiff demand thirty days of pay as penalty for not paying all wages due at time of termination
11 for all employees who terminated employment during the relevant time period and demand an
12 accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

13 **NINTH CAUSE OF ACTION**

14 **Failure to Pay Sick Pay Wages (Cal. Lab. Code §§ 201-203, 233, 246)**

15 92. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth
16 fully herein.

17 93. Cal Lab. Code § 233 provides that an employer must permit an employee to use
18 accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate of
19 entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for use of
20 accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is used
21 as paid sick time, an employee has a vested right to sick pay wages, which an employer must
22 calculate and compensate based on one of two calculations: (i) "Paid sick time for nonexempt
23 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
24 which the employee uses paid sick time, whether or not the employee actually works overtime in
25 that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated by dividing
26 the employee's total wages, not including overtime premium pay, by the employee's total hours
27 worked in the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218
28 and 233, employees may sue to recover underpaid sick pay wages as damages.

94. Defendants pay sick pay wages to Plaintiff and the Class at the incorrect rate of pay. Plaintiff and the Class regularly use accrued sick leave in the workweeks in which they also earn non-hourly remuneration. As a matter of policy and practice, Defendants pays sick pay wages to Plaintiff and the Class at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. As a result, Defendants underpaid sick pay wages to Plaintiff and the Class.

TENTH CAUSE OF ACTION

Failure to Pay Wages Earned During Employment (Cal. Lab. Code §§ 204, 210)

(Against all Defendants)

95. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth fully herein.

96. Pursuant to Labor Code sections 204, 210, Plaintiff alleges that he and other aggrieved employees were not timely paid all wages owed to them within the applicable time frames outlined in Labor Code 204. Plaintiff alleges that he, along with the class, were not timely paid during the course of their employment. Based on these violations, Plaintiff intends to seek civil penalties pursuant to PAGA, Labor Code sections 2698. Plaintiff alleges that he and other aggrieved employees were not paid wages including overtime and meal and rest premiums in the time periods proscribed by these statutes.

ELEVENTH CAUSE OF ACTION

Failure to Pay Vacation Pay (Cal. Lab. Code § 227.3)

(Against All Defendants)

97. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth fully herein.

98. Plaintiff is informed and believes, and based thereon alleges that Defendant had and has a policy or practice of failing to pay its employees their paid time off and vacation time owed upon separation of employment as wages at their final rate of pay in violation of Labor Code

1 section 227.3 and applicable Wage Orders. Defendants would be liable for civil penalties for
2 violation of Labor Code section 227.3 under Labor Code section 558, 1198 and 2699, or injunctive
3 relief under sections 2699(e)(1) and 2699(k).

4 **TWELFTH CAUSE OF ACTION**

5 **Failure to Provide Adequate Seating (Lab. Code § 1198)**

6 (Against All Defendants)

7 99. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth
8 fully herein.

9 100. The Wage Order requires “suitable seats” for working employees “when the nature
10 of the work reasonably permits the use of seats.” In *Kilby v. CVS Pharmacy, Inc.* (2016) 368 P.3d
11 554, 559, the California Supreme Court began with an interpretation of the phrase “nature of the
12 work.” (*Id.* at 563.) The Supreme Court explained that the inquiry must take into account all of the
13 employee’s tasks performed at a particular location. Plaintiff alleges that Defendants could have
14 provided seating to its employees in order to perform their jobs at the Inn. As such, here when the
15 nature of the work necessitates standing, “an adequate number of suitable seats shall be placed in
16 reasonable proximity to the work area, and employees shall be permitted to use such seats when it
17 does not interfere with the performance of their duties.”

18 101. California courts have allowed private suits under the Labor Code Private Attorneys
19 General Act of 2004 (PAGA) to indirectly enforce provisions of the wage orders by enforcing
20 statutes requiring compliance with those provisions. The courts have explicitly authorized such
21 suits to enforce the “suitable seating” requirement. *Home Depot U.S.A. Inc. v. Superior Court*
22 (2010) 191 Cal.App.4th 210, 222 [violation of Labor Code § 1198 may be brought to enforce wage
23 order provision that employees be provided suitable seating]).

24 102. Therefore, Plaintiff seeks penalties on behalf of himself and aggrieved employees
25 for these penalties.

26 //

27 //

28 //

1 **THIRTEENTH CAUSE OF ACTION**

2 **Wage Theft Protection Act of 2011 (Lab. Code § 2810.5)**

3 (Against All Defendants)

4 103. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth
5 fully herein.

6 104. Plaintiff is further informed and believes, and based thereon alleges that Defendant
7 failed and refused, and continues to fail and refuse, to comply with the notice requirements of
8 Labor Code section 2810.5 (i.e., the Wage Theft Protection Act of 2011) by, among other things,
9 failing to provide Plaintiff and other Aggrieved Employees with the rates of pay and overtime rates
10 of pay applicable to their employment, allowances claimed as part of the minimum wage, the
11 regular payday designated by Defendant, the name of the employer, including any “doing business
12 as” names used, the name, address and telephone number of the workers’ compensation insurance
13 carrier, information regarding paid sick leave, and other pertinent information required to be
14 disclosed by Defendants under Labor Code section 2810.5.

15 105. Plaintiff is informed and believes that failure to provide such information, including
16 rates of pay that are in effect, has permitted Defendant to pay employees at rates of pay that were
17 not agreed upon and violate minimum wage and overtime wage laws in California. Plaintiff is
18 additionally informed and believes that the notice requirement of Labor Code section 2810.5
19 involves a mandatory payroll or workplace injury reporting.

20 106. Plaintiff is informed and believes that Plaintiff violated Labor Code sections 1198
21 and 2810.5. Defendants would further be liable for civil penalties pursuant to Labor Code section
22 2699(f)(2)(B)(ii).

23 **FOURTEENTH CAUSE OF ACTION**

24 **Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, *et seq.*)**

25 (Against All Defendants)

26 107. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth
27 fully herein.
28

1 108. Business and Professions Code section 17200, *et seq.* (“UCL”) prohibits any
2 “unlawful, unfair, or fraudulent business act or practice.” Defendants have engaged in unlawful
3 activity as follows:

- 4 (a) Violations of Labor Code sections 510, 1194, 1198 for failure to pay
5 minimum wages, including overtime wages;
- 6 (b) Violations of Labor Code sections 226.7 and 512 for failure to provide meal
7 periods and rest breaks;
- 8 (c) Violations of Labor Code section 226 for failure to provide accurate wage
9 statements;
- 10 (d) Violation of Labor Code section 2802 for failure to indemnify necessary
11 business expenses;
- 12 (e) Violations of Labor Code sections 201-203, 204, 210 for failure to pay
13 accrued wages during and upon separation of employment;
- 14 (f) Violations of Labor Code §227 for failure to pay all vacation wages;
- 15 (g) Violations of Labor Code §§245-246 for failure to pay all sick time wages;
- 16 (h) Violations of Labor Code §§ 1198 and 2810.5 for wage theft violations.

17 109. By and through their unfair, unlawful and/or fraudulent business practices described
18 herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and all
19 persons similarly situated, and have deprived Plaintiff, and all persons similarly situated, of
20 valuable rights and benefits guaranteed by law, all to their detriment.

21 110. Plaintiff and the Class Members suffered monetary injury as a direct result of
22 Defendants’ wrongful conduct.

23 111. Plaintiff, individually, and on behalf of members of the putative Class, is entitled to,
24 and does, seek such relief as may be necessary to disgorge money and/or property which the
25 Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by
26 means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and
27 the Class are not obligated to establish individual knowledge of the wrongful practices of
28 Defendants in order to recover restitution.

1 112. Plaintiff, individually, and on behalf of members of the putative class, is further
2 entitled to and does seek a declaration that the above described business practices are unfair,
3 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,
4 from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices
5 in the future.

6 113. Plaintiff, individually, and on behalf of members of the putative class, has no plain,
7 speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered as
8 a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a result
9 of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
10 and on behalf of members of the putative Class, has suffered and will continue to suffer irreparable
11 harm unless the Defendants, and each of them, are restrained from continuing to engage in said
12 unfair, unlawful and/or fraudulent business practices.

13 114. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth
14 herein above, they will continue to avoid paying the appropriate taxes, insurance and other
15 withholdings.

16 115. Pursuant to California Business & Professions Code §§ 17200, et seq., Plaintiff and
17 putative Class Members are entitled to restitution of the wages withheld and retained by
18 Defendants during a period that commences four years prior to the filing of this complaint; a
19 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Class
20 Members; an award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other
21 applicable laws; and an award of costs.

22 **FIFTEENTH CAUSE OF ACTION**

23 **Private Attorneys General Act (Labor Code §§ 2698, et seq.)**

24 (Against All Defendants)

25 116. Plaintiff incorporates all preceding paragraphs of this Complaint as though set forth
26 fully herein.

27 117. At all times herein mentioned, Defendants were subject to the Labor Code of the
28 State of California and the applicable Industrial Welfare Commission Orders.

1 118. Labor Code § 2699(a) specifically provides for a private right of action to recover
2 penalties for violations of the Labor Code: “Notwithstanding any other provision of law, any
3 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
4 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
5 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
6 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
7 former employees pursuant to the procedures specified in Section 2699.3.”

8 119. Plaintiff has exhausted their administrative remedies pursuant to California Labor
9 Code § 2699.3. On April 18, 2024, Plaintiff gave written notice by online filing to the Labor and
10 Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific
11 provisions of the Labor Code that Defendants have violated against Plaintiff and current and
12 former aggrieved employees, including the facts and theories to support the violations. (Attached
13 as **Exhibit A**). Plaintiff’s PAGA case number is LWDA-CM-1023195-24. On February 13, 2025
14 Plaintiff filed an Amended Notice to the LWDA alleging further specific provisions of the Labor
15 Code that Defendants have violated against Plaintiff and current and former aggrieved employees,
16 including the facts and theories to support the violations. (Attached as **Exhibit B**).

17 120. At the time of this filing, the Labor and Workforce Development Agency has not
18 indicated that it intends to investigate Defendants’ Labor Code violations discussed in the notice.
19 If it does so, Plaintiff will amend his complaint. Otherwise, Plaintiff may commence a civil action
20 to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor
21 Code described in this Complaint. These penalties include, but are not limited to, penalties under
22 California Labor Code §§ 200-203, 204, 210, 226.3, 227, 245, 246, 558, 1197.1, 1198, 2802, and
23 2699(f)(2). The policies, acts and practices heretofore described were and are an unlawful business
24 act or practice because Defendants (a) failed to provide Plaintiff and the aggrieved employees
25 accurate itemized wage statements, (b) failed to properly record and provide legally required meal
26 and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and sick and
27 vacation pay wages, (e) failed to reimburse employees for required expenses, (f) failed to provide
28 wages when due, and (g) failed to provide suitable seating, and (h) failed to failure to provide the

1 wage theft notice in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
2 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197,
3 1197.1, 1198, 2100 et seq., 2802, 2810.5, California Code of Regulations, Title 8, Section 11040,
4 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to
5 Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a
6 result of such conduct. Plaintiff hereby seek recovery of civil penalties as prescribed by the Labor
7 Code Private Attorney General Act of 2004 as the representatives of the State of California for the
8 illegal conduct perpetrated on Plaintiff and the aggrieved employees.

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

15 122. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
16 keep total hours worked in the payroll period and applicable rates of pay.

17 123. During the time period of employment for Plaintiff and the Aggrieved Employees,
18 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
19 maintain accurate records showing meal periods, and accurate records showing when employees
20 begin and end each work period. Defendants' failure to provide and maintain records required by
21 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
22 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
23 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
24 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
25 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
26 Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment
27 of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel
28 Defendants to fully perform its obligation under state law, all to their respective damage in

1 amounts according to proof at trial. Because of Defendants' knowing failure to comply with the
2 Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also
3 suffered an injury in that they were prevented from knowing, understanding, and disputing the
4 wage payments paid to them.

5 124. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
6 of civil penalties on behalf of themselves, the State of California, and similarly Aggrieved
7 Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to
8 be shown according to proof at trial. These penalties are in addition to all other remedies permitted
9 by law.

10 125. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
11 pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any
12 action shall be entitled to an award of reasonable attorney's fees and costs."

13 **PRAYER FOR RELIEF**

14 Plaintiff, individually, and on behalf of all others similarly situated only with respect to the
15 class claims, prays for relief and judgment against Defendants, jointly and severally, as follows:

16 **Class Certification**

- 17 1. That this action be certified as a class action under Code of Civil Procedure § 382;
- 18 2. That Plaintiff be appointed as the representatives of the Class; and
- 19 3. That counsel for Plaintiff be appointed as Class Counsel.

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

- 21 4. That the Court declare, adjudge and decree that Defendants violated Labor Code §§
22 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all
23 minimum wages due;
- 24 5. For general unpaid wages as may be appropriate;
- 25 6. For pre-judgment interest on any unpaid compensation commencing from the date
26 such amounts were due;
- 27 7. For liquidated damages;

1 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to Labor
2 Code § 1194(a); and,

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

4 As to the Second Cause of Action

5 10. That the Court declare, adjudge and decree that Defendants violated California Labor
6 Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
7 overtime wages due;

8 11. For general unpaid wages at overtime wage rates as may be appropriate;

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

11 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
12 California Labor Code § 1194(a); and,

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

14 As to the Third Cause of Action

15 15. That the Court declare, adjudge and decree that Defendants violated Labor Code §§
16 226.7 and 512, and the IWC Wage Orders;

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

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

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

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

23 As to the Fourth Cause of Action

24 20. That the Court declare, adjudge and decree that Defendants violated Labor Code §§
25 226.7 and 512, and the IWC Wage Orders;

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

27 22. For pre-judgment interest on any unpaid compensation commencing from the date
28 such amounts were due;

1 23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and
2 for costs of suit incurred herein; and

3 24. For such other and further relief as the Court may deem equitable and appropriate.

4 As to the Fifth Cause of Action

5 25. That the Court declare, adjudge and decree that Defendants violated Labor Code §§
6 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
7 termination of the employment;

8 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
9 employees who have left Defendants' employ;

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

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

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

13 As to the Sixth Cause of Action

14 30. That the Court declare, adjudge and decree that Defendants violated the record
15 keeping provisions of Labor Code § 226(a) and applicable IWC Wage Orders, and
16 willfully failed to provide accurate itemized wage statements thereto;

17 31. For penalties and actual damages pursuant to California Labor Code § 226(e);

18 32. For injunctive relief to ensure compliance with this section, pursuant to Labor Code §
19 226(h);

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

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

22 As to the Seventh Cause of Action

23 35. That the Court declare, adjudge and decree that Defendants violated the record
24 keeping provisions of Labor Code § 2802 and applicable IWC Wage Orders, and
25 willfully failed to provide accurate itemized wage statements thereto;

26 36. For penalties and actual damages pursuant to California Labor Code § 2802;

27 37. For injunctive relief to ensure compliance with this section, pursuant to Labor Code §
28 2802;

- 1 38. For reasonable attorneys' fees and for costs of suit incurred herein; and
2 39. For such other and further relief as the Court may deem equitable and appropriate.

3 As to the Eighth Cause of Action

- 4 40. That the Court declare, adjudge and decree that Defendants violated the record
5 keeping provisions of Labor Code §§ 201, 202, and 203 and applicable IWC Wage
6 Orders, and willfully failed to provide accurate itemized wage statements thereto;
7 41. For penalties and actual damages pursuant to California Labor Code §§ 201, 202, and
8 203;
9 42. For injunctive relief to ensure compliance with this section, pursuant to Labor Code §§
10 201, 202, and 203;
11 43. For reasonable attorneys' fees and for costs of suit incurred herein; and
12 44. For such other and further relief as the Court may deem equitable and appropriate.

13 As to the Ninth Cause of Action

- 14 45. That the Court declare, adjudge and decree that Defendants violated the record
15 keeping provisions of Labor Code §§ 201-203, 233, 246 and applicable IWC Wage
16 Orders, and willfully failed to provide accurate itemized wage statements thereto;
17 46. For penalties and actual damages pursuant to California Labor Code §§ 201-203, 233,
18 246;
19 47. For injunctive relief to ensure compliance with this section, pursuant to Labor Code §§
20 201-203, 233, 246;
21 48. For reasonable attorneys' fees and for costs of suit incurred herein; and
22 49. For such other and further relief as the Court may deem equitable and appropriate.

23 As to the Tenth Cause of Action

- 24 50. That the Court declare, adjudge and decree that Defendants violated the record
25 keeping provisions of Labor Code §§ 204, 210 and applicable IWC Wage Orders, and
26 willfully failed to provide accurate itemized wage statements thereto;
27 51. For penalties and actual damages pursuant to California Labor Code §§ 204, 210;
28

1 52. For injunctive relief to ensure compliance with this section, pursuant to Labor Code §§
2 204, 210;

3 53. For reasonable attorneys' fees and for costs of suit incurred herein; and

4 54. For such other and further relief as the Court may deem equitable and appropriate.

5 As to the Eleventh Cause of Action

6 55. That the Court declare, adjudge and decree that Defendants violated the record
7 keeping provisions of Labor Code § 227.3 and applicable IWC Wage Orders, and
8 willfully failed to provide accurate itemized wage statements thereto;

9 56. For penalties and actual damages pursuant to California Labor Code § 227.3;

10 57. For injunctive relief to ensure compliance with this section, pursuant to Labor Code §
11 227.3;

12 58. For reasonable attorneys' fees and for costs of suit incurred herein; and

13 59. For such other and further relief as the Court may deem equitable and appropriate.

14 As to the Twelfth Cause of Action

15 60. That the Court declare, adjudge and decree that Defendants violated the record
16 keeping provisions of Labor Code § 1198 and applicable IWC Wage Orders, and
17 willfully failed to provide accurate itemized wage statements thereto;

18 61. For penalties and actual damages pursuant to California Labor Code § 1198;

19 62. For injunctive relief to ensure compliance with this section, pursuant to Labor Code §
20 1198;

21 63. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

23 As to the Thirteenth Cause of Action

24 65. That the Court declare, adjudge and decree that Defendants violated the record
25 keeping provisions of Labor Code § 2810.5 and applicable IWC Wage Orders, and
26 willfully failed to provide accurate itemized wage statements thereto;

27 66. For penalties and actual damages pursuant to California Labor Code § 2810.5;

1 67. For injunctive relief to ensure compliance with this section, pursuant to Labor Code §
2 2810.5;

3 68. For reasonable attorneys' fees and for costs of suit incurred herein; and

4 69. For such other and further relief as the Court may deem equitable and appropriate.

5 As to the Fourteenth Cause of Action

6 70. That the Court declare, adjudge and decree that Defendants violated Business &
7 Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked
8 (including minimum wages), failing to provide meal periods, failing to maintain
9 accurate records of meal periods, failing to authorize and permit rest periods, and
10 failing to maintain accurate records of all hours worked and meal periods, and failing
11 to furnish accurate wage statements;

12 71. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment
13 interest from the day such amounts were due and payable;

14 72. For the appointment of a receiver to receive, manage and distribute any and all funds
15 disgorged from Defendants and determined to have been wrongfully acquired by
16 Defendants as a result of violations of California Business & Professions Code §§
17 17200 *et seq.*;

18 73. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Code of
19 Civil Procedure § 1021.5;

20 74. For injunctive relief to ensure compliance with this section, pursuant to Business &
21 Professions Code §§ 17200, *et seq.*; and,

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

23 As to the Fifteenth Cause of Action

24 76. That the Court declare, adjudge and decree that Defendants violated the Labor Code
25 by failing to pay minimum wages, failing to provide meal periods, failing to authorize
26 and permit rest periods, failing to maintain accurate records of hours worked and meal
27 periods, failing to timely pay all wages to terminated employees, and failing to furnish
28 accurate wage statements;

1 77. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all other
2 applicable Labor Code provisions;

3 78. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Labor Code
4 § 2699;

5 79. For such other and further relief as the Court may deem equitable and appropriate

6 As to all Causes of Action

7 80. For any additional relief that the Court deems just and proper.
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9 Dated: February 13, 2025

MILLS SADAT DOWLAT LLP

10
11 By: 
12 _____

13 Camron Dowlatshahi

14 Attorneys for Plaintiff
15 and the Putative Class
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EXHIBIT A

April 18, 2024

**VIA ELECTRONIC SUBMISSION;
VIA CERTIFIED MAIL AND EMAIL TO OPPOSING PARTY**

California Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Standford Inn By The Sea Eco Resort
P.O. Box 487
Mendocino, CA 95460

Re: Notice of Claim Under Private Attorneys General Act ("PAGA")

To Whom It May Concern:

My firm represents Victor Martinez ("Plaintiff") and all other aggrieved employees who intend to file an action against Standford Inn By The Sea Eco Resort ("Defendant" or "Standford Inn") in connection with Defendant's violations of the California Labor Code. This letter shall serve as notice, and a request, pursuant to Labor Code section 2699.3, *et seq.* ("PAGA"), that the Labor and Workforce Development Agency ("LWDA") investigate the violations by Defendant described herein against Plaintiff and other current and/or former employees. If LWDA does not intend to investigate the violations described herein, we respectfully request that the agency specifically notify our office of the same at your earliest possible opportunity.

Statement of Specific Provisions of the Labor Code Violated

Plaintiffs intend to prosecute a civil action against Defendant for violations of Labor Code sections 226, subdivision (a), 226.7, 512, and 558.

Facts and Theories in Support of Violations

Defendant is a resort and is registered to do business in the State of California. Defendant employed Plaintiff from on or about November 2013 to December 1, 2023. Plaintiff worked as host and cook.

Defendant willfully ignored California meal and rest break laws and instituted a policy where Plaintiff was not allowed rest breaks and frequently missed meal breaks, or had meal breaks interrupted. Plaintiff was issued inaccurate wage statements, which failed to list premium pay. Plaintiff is informed and believes, and on that basis alleges, that Defendant failed to notify other employees of their premium pay for each payroll period. Further, Plaintiff is informed and

believes, and on that basis alleges, that Defendant failed to notify other employees of their accrued sick time for each payroll period.

Failure to Provide Accurate Wage Statements

Pursuant to Labor Code section 226 (“Section 226”), subdivision (a), an employer is required to provide itemized wage statements. Plaintiff was issued inaccurate wage statements, which failed to list premium pay and all hours worked. Plaintiff is informed and believes, and on that basis alleges, that Defendant failed to notify other employees of their premium pay for each payroll period.

Penalties for Unpaid Wages

Pursuant to Labor Code section 558, subdivision (a), and employer who violates “any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty.” (Lab. Code § 558, subd. (a).)

An employer’s initial violation is subject to a “fifty dollar penalty (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” *Ibid.* Thereafter, each subsequent violation is subject to a penalty of “one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” *Ibid.*

Here, Defendant’s personnel were consistently asked to clock-out before their daily tasks were completed. Yet, Defendant required Plaintiff and his coworkers to stay to complete tasks after they had clocked out. Defendant purposely asked its personnel to work off-the-clock to avoid paying earned overtime and/or other straight time wages. Defendant is therefore liable for civil penalties under section 558, subdivision (a).

Unlawful Failure to Provide Uninterrupted Off-Duty Meal and Rest Periods

Plaintiff and similarly situated employees regularly worked in excess of five hours per day without being provided at least one half-hour meal period in which they were relieved of all duties. (Lab. Code §§ 226.7, 512; *see also* Industrial Welfare Commission Order No. 4-2001.) Plaintiff and similarly situated employees also regularly worked in excess of four hours without being provided at least a ten-minute rest period in which they were relieved of all their duties. (Lab. Code §§ 226.7, 512; *see also* Industrial Welfare Commission Order No. 4-2001.)

Throughout Plaintiff’s employment, he was not able to take uninterrupted off-duty meal and rest periods in accordance with Labor Code. Defendant did not maintain a policy that ensured Plaintiff received requisite meal and rest periods until the final months of Plaintiff’s employment. Furthermore, Defendant caused Plaintiff to miss meal and rest periods and failed to pay him the premium compensation mandated by Labor Code section 226.7, subdivisions (b)-

(c). As a result of these Labor Code violations, Defendant is liable for civil penalties. (Lab. Code § 2698, *et seq.*)

Conclusion

As described above, Defendant has violated numerous wage and hour provisions of the Labor Code. As a result, Defendant is liable to Plaintiff and other current and former employees for civil penalties, attorney's fees, and costs, pursuant to Labor Code sections 226, subdivision (a), 226.7, 512, and 558.

This letter shall serve as Plaintiff's notice pursuant to Labor Code section 2699.3 and we ask that LWDA conduct an investigation concerning the violations described herein. Alternatively, if LWDA does not intend to investigate these violations, we ask that it issue a notification letter to our office confirming the same so that we may proceed with our civil action asserting the PAGA claims described herein.

Please feel free to contact me if you have any questions or if you would like to discuss this matter further. Nothing in this letter is intended to be, or should be construed as, an admission against the interests of Plaintiff or other current or former employees of Defendant and shall not be construed as a waiver of their rights, remedies, claims, or defenses, all of which are expressly reserved.

Sincerely,



Camron Dowlatshahi

cc: Cheryl Schreck <cschreck@fisherphillips.com>

EXHIBIT B



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40th Floor
Los Angeles, CA 90071
www.msdlawllp.com

Camron Dowlatshahi
O: +1 213 628 3856
D: +1 213 279 2612
E: camron@msdlawllp.com

January 7, 2025

**VIA ELECTRONIC SUBMISSION;
VIA CERTIFIED MAIL AND EMAIL TO OPPOSING PARTY**

California Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Stanford Inn By The Sea Eco Resort
P.O. Box 487
Mendocino, CA 95460

Re: Amended Notice of Claim Under Private Attorneys General Act (“PAGA”)

To Whom It May Concern:

This letter is an amended notice to Case No. LWDA-CM-1023195-24.

My firm represents Victor Martinez (“Plaintiff”) and all other aggrieved employees who intend to file an action against Stanford Inn By The Sea Eco Resort (“Defendant” or “Stanford Inn”) in connection with Defendant’s violations of the California Labor Code. This letter shall serve as notice, and a request, pursuant to Labor Code section 2699.3, *et seq.* (“PAGA”), that the Labor and Workforce Development Agency (“LWDA”) investigate the violations by Defendant described herein against Plaintiff and other current and/or former employees. If LWDA does not intend to investigate the violations described herein, we respectfully request that the agency specifically notify our office of the same at your earliest possible opportunity.

Statement of Specific Provisions of the Labor Code Violated

Plaintiffs intend to prosecute a civil action against Defendant for violations of Labor Code sections 201-203, 204, 226, subdivision (a), 226.3, 226.7, 246, 510, 512, 558, 1182, 1194, 1197, 1198, and 2802.

Facts and Theories in Support of Violations

Defendant is a resort and is registered to do business in the State of California. Defendant employed Plaintiff from on or about November 2013 to December 1, 2023. Plaintiff worked as host and cook.

Defendant willfully ignored California meal and rest break laws and instituted a policy where Plaintiff was not allowed rest breaks and frequently missed meal breaks, or had meal breaks interrupted. Plaintiff was issued inaccurate wage statements, which failed to list premium pay.

Plaintiff is informed and believes, and on that basis alleges, that Defendant failed to notify other employees of their premium pay for each payroll period. Further, Plaintiff is informed and believes, and on that basis alleges, that Defendant failed to notify other employees of their accrued sick time for each payroll period.

Failure to Pay For Hours Worked, Including Overtime

Pursuant to Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) wage order, employers are required to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of one-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC wage order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee including nondiscretionary bonuses and commissions.

During the relevant time period, upon information and belief, Defendant failed to pay overtime wages to Plaintiff and other aggrieved employees for all overtime hour worked in violation of Labor Code sections 510 and 1198. Plaintiff and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code sections 1194, 1197.1 and/or 2699(a), (f)(-)(g). Throughout the statutory period, Defendant maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Plaintiff and the Aggrieved Employees received bonuses, incentive compensation, and other remuneration. However, Defendant failed to incorporate all remuneration when determining the correct overtime rate of pay, meal break premium rate of pay, and sick day rate of pay, leading to underpayment of compensation.

Also throughout the statutory period, Plaintiff and the Aggrieved Employees regularly worked off-the-clock, without compensation. Additionally, Defendant assigned heavy workloads and understaffed its shifts, resulting in Plaintiff and the Aggrieved Employees being forced to respond to work-related questions and perform work duties while off the clock. As a result, Plaintiff and the Aggrieved employees performed these work tasks off-the-clock and were not compensated for this time worked. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1194, 1197.1, and 2699(0)(2) for failing to pay for all hours worked, including overtime. Plaintiff also specifically alleges that Defendants engaged in improper rounding and employees were not paid accurately.

Wage Theft

Plaintiff is further informed and believes, and based thereon alleges that Defendant failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing



to provide Plaintiff and other Aggrieved Employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Defendant, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5. Plaintiff is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Defendant to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Plaintiff is additionally informed and believes that the notice requirement of Labor Code section 2810.5 involves a mandatory payroll or workplace injury reporting. Plaintiff is informed and believes that Plaintiff violated Labor Code sections 1198 and 2810.5. Defendant would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Vacation Pay

Plaintiff is informed and believes, and based thereon alleges that Defendant had and has a policy or practice of failing to pay its employees their paid time off and vacation time owed upon separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3 and applicable Wage Orders. Defendant would be liable for civil penalties for violation of Labor Code section 227.3 under Labor Code section 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k).

Sick Pay

Plaintiff is further informed and believes, and based thereon alleges, that Defendant has or had a policy or practice of failing to provide aggrieved employees with all rights afforded to them under the Healthy Workplace Healthy Families Act of 2014, codified at Labor Code section 245, *et seq.*, including, without limitation, the amount of paid sick leave required to be provided pursuant to California and local laws. Plaintiff is further informed and believes that the sick pay was not provided at the proper regular of pay as required under California law due to failure to properly calculate the regular rate. Plaintiff is further informed and believes that Defendant also did not permit its use upon request by aggrieved employees as contemplated under California and local laws, including, without limitation, under Labor Code section 233, that permits its use to attend to an illness of a child, parent, spouse, or domestic partner without retaliation. As such, Plaintiff and aggrieved employees contend that Defendant is liable for civil penalties for violation of the paid sick leave regulations under Labor Code sections 245, 246, 1198 and 2699.

Failure to Pay Timely Earned Wages During Employment in Violation of Labor Code §§ 204 and 210

Pursuant to Labor Code sections 204 and 210, Plaintiff alleges that he and other aggrieved employees were not timely paid all wages owed to them within the applicable time frames outlined in Labor Code 204. Plaintiff alleges that he was not regularly paid all wages owed to him in a timely manner. Based on these violations, Plaintiff intends to seek civil penalties pursuant to



PAGA, Labor Code sections 204, 210 and 2698. Plaintiff alleges that he and other aggrieved employees were not paid wages including overtime and meal and rest premiums in the time periods proscribed by these statutes.

Failure to Provide Accurate Wage Statements

Pursuant to Labor Code section 226 (“Section 226”), subdivision (a), an employer is required to provide itemized wage statements. Plaintiff was issued inaccurate wage statements, which failed to list premium pay and all hours worked. Plaintiff is informed and believes, and on that basis alleges, that Defendant failed to notify other employees of their premium pay for each payroll period. Plaintiff specifically alleges that wage statements did not display meal and rest premium payments, applicable rates, or applicable pay period, causing Plaintiff and other aggrieved employees’ confusion in attempting to decipher whether they were being paid the correct amount of wages. Plaintiff alleges that as a derivative of claims above, Defendants failed to provide accurate wage statements to Plaintiff other current and former aggrieved California-based hourly non-exempt employees who were subject to Defendants’ control for uncompensated time and who did not receive all their earned wages (including minimum wages, overtime wages, meal period premium wages, and/or rest period premium wages), as such failures rendered Plaintiff and other current and former aggrieved California-based hourly non-exempt employees’ pay calculations inaccurate and resulted in their wage statements being inaccurate with respect to gross wages earned, total hours worked, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code sections 226(a)(1, 2, 5 & 9). Based on these violations, Plaintiff will seek civil penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, under Labor Code section 226.3 and/or Labor Code section 2699(f)(2) against Defendants if authorized to file a representative action on behalf of the State of California.

Penalties for Unpaid Wages

Pursuant to Labor Code section 558, subdivision (a), and employer who violates “any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty.” (Lab. Code § 558, subd. (a).)

An employer’s initial violation is subject to a “fifty dollar penalty (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” *Ibid.* Thereafter, each subsequent violation is subject to a penalty of “one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” *Ibid.*

Here, Defendant’s personnel were consistently asked to clock-out before their daily tasks were completed. Yet, Defendant required Plaintiff and his coworkers to stay to complete tasks after they had clocked out. Defendant purposely asked its personnel to work off-the-clock to avoid paying earned overtime and/or other straight time wages. Defendant is therefore liable for civil penalties under section 558, subdivision (a).

Failure to Timely Pay Final Wages Upon Termination

Defendant failed to pay Plaintiff and the aggrieved employees their final wages pursuant to Labor Code sections 201-203. Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Upon information and belief, Defendant has a practice or policy of failing to pay all accrued wages to departing employees and do not adhere to the time requirements set forth in Labor Code sections 201 and 202.

Unlawful Failure to Provide Uninterrupted Off-Duty Meal and Rest Periods

Plaintiff and similarly situated employees regularly worked in excess of five hours per day without being provided at least one half-hour meal period in which they were relieved of all duties. (Lab. Code §§ 226.7, 512; *see also* Industrial Welfare Commission Order No. 4-2001.) Plaintiff and similarly situated employees also regularly worked in excess of four hours without being provided at least a ten-minute rest period in which they were relieved of all their duties. (Lab. Code §§ 226.7, 512; *see also* Industrial Welfare Commission Order No. 4-2001.)

Throughout Plaintiff's employment, he was not able to take uninterrupted off-duty meal and rest periods in accordance with Labor Code. Defendant did not maintain a policy that ensured Plaintiff received requisite meal and rest periods until the final months of Plaintiff's employment. Furthermore, Defendant caused Plaintiff to miss meal and rest periods and failed to pay him the premium compensation mandated by Labor Code section 226.7, subdivisions (b)-(c). As a result of these Labor Code violations, Defendant is liable for civil penalties. (Lab. Code § 2698, *et seq.*)

Failure To Provide Adequate Seating

The Wage Order requires "suitable seats" for working employees "when the nature of the work reasonably permits the use of seats." In *Kilby v. CVS Pharmacy, Inc.* 368 P.3d 554, 559 (Cal. 2016), the California Supreme Court began with an interpretation of the phrase "nature of the work." *Id.* at 563. The Supreme Court explained that the inquiry must take into account all of the employee's tasks performed at a particular location. Plaintiff alleges that Defendants could have provided seating to its employees in order to perform their jobs at the Inn. As such, here when the nature of the work necessitates standing, "an adequate number of suitable seats shall be placed in reasonable proximity to the work area, and employees shall be permitted to use such seats when it does not interfere with the performance of their duties." California courts have allowed private suits under the Labor Code Private Attorneys General Act of 2004 (PAGA) to indirectly enforce provisions of the wage orders by enforcing statutes requiring compliance with those provisions. The courts have explicitly authorized such suits to enforce the "suitable seating" requirement. *Home Depot U.S.A. Inc. v. Superior Court* (2010) 191 Cal.App.4th 210, 222 [violation of Labor Code § 1198 may be brought to enforce wage order provision that employees



be provided suitable seating]). Therefore, Plaintiff seeks penalties on behalf of himself and aggrieved employees for these penalties.

Failure to Reimburse Business Expenses

Pursuant to Labor Code section 2802, employers are required to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their costs of doing business and operating expenses on to their employees. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144.) During the relevant time period, Defendant failed to reimburse Plaintiff and aggrieved employees for business related expenses, including but not limited to cell phone use and uniforms. As such, Plaintiff and Defendant's employees have incurred reasonable and necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code §2802.

Conclusion

As described above, Defendant has violated numerous wage and hour provisions of the Labor Code. As a result, Defendant is liable to Plaintiff and other current and former employees for civil penalties, attorney's fees, and costs, pursuant to Labor Code sections 226, subdivision (a), 226.3, 226.7, 512, 558, and 1194.

This letter shall serve as Plaintiff's amended notice pursuant to Labor Code section 2699.3 and we ask that LWDA conduct an investigation concerning the violations described herein. Alternatively, if LWDA does not intend to investigate these violations, we ask that it issue a notification letter to our office confirming the same so that we may proceed with our civil action asserting the PAGA claims described herein.

Please feel free to contact me if you have any questions or if you would like to discuss this matter further. Nothing in this letter is intended to be, or should be construed as, an admission against the interests of Plaintiff or other current or former employees of Defendant and shall not be construed as a waiver of their rights, remedies, claims, or defenses, all of which are expressly reserved.

Sincerely,

A handwritten signature in black ink, appearing to read "Camron Dowlatshahi", written in a cursive style.

Camron Dowlatshahi

cc: Cheryl Schreck <cschreck@fisherphillips.com>

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