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

15 ELIZABETH WITHMORY, on behalf of all  
16 other aggrieved employees and the State of  
17 California,

17 Plaintiff,

18 v.

19 EXCEL HOTEL GROUP, INC.; EXCEL  
20 BUENA PARK II L.P.; and DOES 1 through 10,  
21 inclusive,

22 Defendants.  
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Case No. 24CU009806C

**REPRESENTATIVE ACTION  
COMPLAINT FOR VIOLATION OF  
THE PRIVATE ATTORNEYS  
GENERAL ACT OF 2004 (CAL. LAB.  
CODE §§ 2698, ET SEQ.)**

1 Plaintiff ELIZABETH WITHMORY (“Plaintiff”), on behalf of all other aggrieved employees  
2 and the State of California, hereby brings this representative action Complaint pursuant to the Private  
3 Attorneys General Act of 2004 (“PAGA”), California Labor Code Sections 2698, *et seq.*, against  
4 defendants EXCEL HOTEL GROUP, INC.; EXCEL BUENA PARK II L.P.; and DOES 1 through 10  
5 inclusive (collectively, “Defendants”), and hereby alleges with knowledge with respect to her own  
6 acts and on information and belief as to other matters as follows:

7 **INTRODUCTION**

8 1. This representative PAGA action, pursuant to Labor Code Sections 2698, *et seq.*, is  
9 brought by Plaintiff on behalf of all other current and former employees of Defendants employed in  
10 California during the PAGA Period, including exempt, non-exempt, and/or misclassified employees  
11 (collectively, “Aggrieved Employees”). The term “PAGA Period” is defined as commencing from one  
12 year prior to the submission of Plaintiff’s notice of Labor Code violations to the Labor and Workforce  
13 Development Agency (“LWDA”) and Defendants through the date of final judgment.

14 2. During the PAGA Period, Plaintiff and Aggrieved Employees were employed by  
15 Defendants and performed work for Defendants in California.

16 3. Defendants have engaged in a systematic pattern of wage and hour violations under the  
17 California Labor Code (“Labor Code”). During the PAGA Period, Defendants maintained a consistent  
18 practice and policy of violating state wage and hour laws by, among other things, failing to timely pay  
19 all wages (including premium pay), failing to provide compliant rest periods or compensation in lieu  
20 thereof, failing to timely pay all wages due upon separation of employment, failing to provide accurate  
21 itemized wage statements, failing to maintain accurate records of hours worked and gratuities, and  
22 failing to reimburse business expenses.

23 4. This representative PAGA action is brought under, *inter alia*, the California Industrial  
24 Welfare Commission (“IWC”) Wage Orders and applicable provisions of the California Code of  
25 Regulations, California Code of Civil Procedure Section 1021.5, and Labor Code Sections 201, 202,  
26 203, 204, 210, 221, 223, 224, 226, 226.3, 226.7, 353, 558, 558.1, 1174, 1174.5, 1199, 2800, 2802, and  
27 2804.

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6. Venue in this County is proper under California Business & Professions Code Section 17203 and California Code of Civil Procedure Section 395.5 because a substantial part of Defendants' unlawful conduct, acts, and omissions alleged in this Complaint occurred in this County, Defendants conduct substantial business in this County, and/or Defendants' liability arose in this County.

7. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was, and currently is, a California resident.

9. Defendant EXCEL BUENA PARK II L.P. is a California limited partnership, with its principal place of business located at 10174 Old Grove Road, Suite 200, San Diego, California 92131. EXCEL BUENA PARK II L.P. is, and at all relevant times was, an employer subject to California state wage and hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and policies EXCEL BUENA PARK II L.P. that are complained of by way of this Complaint were implemented during the PAGA Period.

10. Plaintiff is unaware of the true names and capacities of those Defendants identified as DOES 1 through 10. Therefore, Plaintiff identifies those Defendants fictitiously. Each DOE Defendant was a parent, sister, or related corporate entity of Defendants, or an owner, employee or

1 agent of Defendants, and each related entity, and was acting with the knowledge and authorization of  
2 each of the other Defendants. Plaintiff will seek to amend this Complaint to allege the true names and  
3 capacities of each DOE Defendant when their names have been ascertained and identified. Each of the  
4 Defendants sued as DOES 1 through 10 participated in, received the benefit of, or was in some way  
5 responsible for one or more of the wrongful acts and omissions and some portion of the damages  
6 alleged herein.

7 11. At all times relevant hereto, each defendant acted in all respects pertinent to this action  
8 as the agent of the other defendants, carried out a joint scheme, business plan or policy in all respects  
9 pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.  
10 Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and  
11 the Aggrieved Employees.

12 12. Defendants, each and all of them, at all times relevant, were the joint employers, parent  
13 companies, successor companies, predecessors in interest, affiliates, agents, employees, servants, joint  
14 venturers, directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining  
15 Defendants. Defendants, unless otherwise alleged, at all times relevant, performed all acts and  
16 omissions alleged herein within the course and scope of said relationship(s), and are a proximate cause  
17 of Plaintiff's damages alleged herein.

18 13. There exists a unity of interest in ownership between Defendants and DOES 1 through  
19 10, inclusive, such that any individuality and separateness between the individual and the corporation  
20 does not exist, as Defendants, and DOES 1 through 10, inclusive, are alter egos, in that: (a) Defendants  
21 are and at all times mentioned herein were mere shells, instrumentalities and conduits through which  
22 DOES 1 through 10, inclusive, carried out their business in the business name, exercising complete  
23 control and dominance over such business; (b) that Defendants were conceived, intended and used by  
24 DOES 1 through 10, inclusive, as devices to avoid individual liability and in place of Defendants, and  
25 DOES 1 through 10, inclusive, and were without the financial solvency and responsibility required by  
26 law; and (c) that all of the assets of the Defendants have been transferred to DOES 1 through 10,  
27 inclusive, or some other individual or entity which he or she owns or controls, with the intent to hinder,  
28 delay or defraud creditors of Defendants, leaving Defendants with no assets. Further, there exists a

1 principal-agency relationship between and among Defendants.

2 14. At all relevant times, Defendants were agents of each other and acting within the course  
3 and scope of their agency.

#### 4 GENERAL ALLEGATIONS

5 15. Defendants have employed Plaintiff as a non-exempt hourly employee from  
6 approximately May 2021 through the present. Plaintiff's job duties include housekeeping duties, such  
7 as dusting, sweeping, mopping, and taking out the trash in common areas, *e.g.*, hallways, bathrooms,  
8 lobby, and gym.

9 16. At all relevant times, Defendants were advised by skilled lawyers, employees and other  
10 professionals who were knowledgeable about California wage and hour law, employment and  
11 personnel practices, and the requirements of California.

12 17. Through this action, Plaintiff alleges Defendants have consistently maintained and  
13 enforced unlawful employment practices and policies against Plaintiff and other Aggrieved Employees  
14 which violate the Labor Code and IWC Wage Orders. Specifically, Defendants own and/or operate  
15 25+ hotels throughout California. On information and belief, including, without limitation, the plain  
16 language of Defendants' Associate Handbook, Defendants maintain common employment policies  
17 and practices for all their hotels throughout California.

18 18. Defendants knew or should have known they had a duty to compensate Plaintiff and/or  
19 other Aggrieved Employees, and Defendants had the financial ability to pay such compensation but  
20 willfully, knowingly, and intentionally failed to do so to increase Defendants' profits.

21 19. **Rest Period Violations:** Plaintiff is informed, believes, and thereon alleges that during  
22 the PAGA Period, Defendants failed to permit Plaintiff and Aggrieved Employees to take all of their  
23 statutorily entitled 10-minute rest periods for every four (4) hours worked or major fraction thereof or  
24 provide compensation in lieu thereof in violation of the Labor Code and IWC Wage Orders. Plaintiff  
25 and Aggrieved Employees missed their rest breaks or had them interrupted or governed by  
26 Defendants' practices and policies. Plaintiff and Aggrieved Employees missed their rest breaks or had  
27 them interrupted or governed by Defendants' practices and policies. Specifically, Defendants' work  
28 demands were so onerous that the only way Plaintiff and Aggrieved Employees could complete their

1 daily job duties and responsibilities was to work through their rest breaks. Notwithstanding the above  
2 rest break violations, Defendants failed to compensate Plaintiff and Aggrieved Employees with an  
3 additional hour of pay at their regular rate of pay for every day in which they suffered a rest period  
4 violation. Accordingly, Defendants violated the Labor Code and the applicable IWC Wage Orders.

5       20.     **Unreimbursed Business Expenses:** Plaintiff is informed, believes, and thereon alleges  
6 that during the PAGA Period, Defendants failed to reimburse Plaintiff and Aggrieved Employees for  
7 necessary business expenses incurred in the performance of their duties in violation of the Labor Code  
8 and IWC Wage Orders. During the PAGA Period, Defendants failed to reimburse Plaintiff and  
9 Aggrieved Employees for all business expenses incurred for Defendants' benefit. For example,  
10 Defendants required Plaintiff and Aggrieved Employee to use their personal cell phones to discuss  
11 work-related matters with Defendants' representatives and for other work purposes without any  
12 reimbursement. Specifically, Defendants' supervisor would regularly call Plaintiff on her personal cell  
13 phone during working hours to check on her status, assign her to different areas of the hotel, and ask  
14 for her help for specific tasks. In addition, Plaintiff was required to purchase a broom and dust pan to  
15 complete her job duties without reimbursement. Accordingly, Defendants violated the Labor Code  
16 and applicable IWC Wage Orders.

17       21.     **Failure to Keep Accurate Records of Gratuities:** During the PAGA Period,  
18 Defendants failed to keep accurate records of all gratuities left for Plaintiff and Aggrieved Employees.

19       22.     **Waiting Time Penalties:** Defendants knew or should have known that Plaintiff and  
20 other Aggrieved Employees who separated from their employment with Defendants during the  
21 statutory period were entitled to timely payment of all wages due. In violation of the Labor Code,  
22 Plaintiff and other Aggrieved Employees did not receive payment of all wages owed upon separation  
23 within the permissible time period due to, *inter alia*, Defendants' failure to pay all rest period  
24 premiums and reimburse expenses.

25       23.     **Wage Statement Violations:** Defendants knew or should have known that Plaintiff  
26 and/or other Aggrieved Employees were entitled to receive complete and accurate wage statements.  
27 In violation of the Labor Code and IWC Wage Orders, Plaintiff and other Aggrieved Employees were  
28 not furnished with complete and accurate wage statements that show all information required by Labor

Code Section 226, including, but not limited to, the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate.

24. **Failure to Keep Accurate Records:** Defendants knew or should have known that Defendants were required to keep accurate records of the hours worked by Plaintiff and/or other Aggrieved Employees. In violation of the Labor Code, Defendants failed to maintain accurate records of hours worked by Plaintiff and other Aggrieved Employees as a result of Defendants' conduct, acts, and/or omissions described throughout this Complaint.

25. Defendants' conduct, acts, and/or omissions described throughout this Complaint were willful.

### **FIRST CAUSE OF ACTION**

#### **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

**(Cal. Lab. Code §§ 2698, *et seq.*)**

**(Against All Defendants)**

26. Plaintiff incorporate by reference all previous paragraphs of this Complaint as though fully set forth herein.

27. Under Labor Code Section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, can be recovered through a civil action brought by an aggrieved employee on behalf of other current or former employees pursuant to the procedures specified in Labor Code Section 2699.3.

28. Under Labor Code Section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code Sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate or after 65 days have passed without notice from the LWDA.

29. On July 2, 2024, Plaintiff gave written notice of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code Section 2699.3. This written notice was provided via certified mail to Defendants and to the

1 LWDA by electronically filing the notice via the Department of Industrial Relations' website. More  
2 than 65 days have passed since Plaintiff submitted the PAGA notice to the LWDA without notice from  
3 the LWDA. Accordingly, Plaintiff has exhausted the procedural requirements under Labor Code  
4 Section 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of all  
5 other Aggrieved Employees under PAGA.

6 30. For all provisions of the Labor Code except those for which a civil penalty is  
7 specifically provided, Labor Code Section 2699(f) imposes upon Defendants a penalty of one hundred  
8 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred  
9 dollars (\$200) for each aggrieved employee per pay period for each subsequent pay period in which  
10 Defendants violated these provisions of the Labor Code.

11 31. Pursuant to Labor Code Sections 2699.3 and 2699.5, Plaintiff may seek civil penalties  
12 for any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201,  
13 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5,  
14 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs  
15 (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230,  
16 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of  
17 Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2,  
18 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851,  
19 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153,  
20 subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision  
21 (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296,  
22 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695,  
23 subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5,  
24 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771,  
25 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2,  
26 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,  
27 6399.7, 6400, 6401, 6401.7, 6402, and 6403.

28 32. Labor Code Section 558(a) provides "[a]ny employer or other person acting on behalf



1 of an employer who violates, or causes to be violated, a section of this chapter or any provision  
2 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject  
3 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid  
4 employee for each pay period for which the employee was underpaid . . . (2) For each subsequent  
5 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the  
6 employee was underpaid.”

7 33. Labor Code Section 1197.1 provides “[a]ny employer or other person acting either  
8 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to  
9 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order  
10 of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial violation that is  
11 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period  
12 for which the employee is underpaid . . . (2) For each subsequent violation for the same specific  
13 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which  
14 the employee is underpaid regardless of whether the initial violation is intentionally committed.”

15 34. Labor Code Section 226.3 provides: “[a]ny employer who violates subdivision (a) of  
16 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per  
17 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each  
18 violation in a subsequent citation, for which the employer fails to provide the employee a wage  
19 deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil  
20 penalties provided for in this section are in addition to any other penalty provided by law.”

21 35. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to  
22 maintain accurate and complete payroll records showing the hours worked daily by and the wages paid  
23 to employees.

24 36. Defendants’ conduct with respect to Plaintiff and other Aggrieved Employees violates  
25 numerous Labor Code sections including, but not limited to, the following:

26 (a) Violation of Labor Code Sections 201-204, 210, 221, 223, 224, 510, 558, 1194,  
27 1197, 1197.1, and 1198 for failure to timely pay all earned wages (including premium pay) owed to  
28 Plaintiff and other Aggrieved Employees during employment and upon separation of employment;

1 (b) Violation of Labor Code Section 226.7 for failure to permit rest breaks to  
2 Plaintiff and other Aggrieved Employees and failure to pay premium wages for missed rest periods;

3 (c) Violation of Labor Code Sections 226 and 226.3 for failure to provide accurate  
4 itemized wage statements to Plaintiff and other Aggrieved Employees;

5 (d) Violation of Labor Code Section 353 for failing to keep accurate records of all  
6 gratuities left for Plaintiff and other Aggrieved Employees;

7 (e) Violation of Labor Code Sections 221, 223, and 224 for secretly paying Plaintiff  
8 and other Aggrieved Employees less than the statutory or contractual rate;

9 (f) Violation of Labor Code Sections 1174 and 1174.5 for failure to maintain  
10 accurate records regarding the employment of Plaintiff and other Aggrieved Employees;

11 (g) Violation of Labor Code Sections 2800, 2802, and 2804 for failure to reimburse  
12 business expenses to Plaintiff and other Aggrieved Employees;

13 (h) Violation of Labor Code Section 1199 for each of the foregoing Labor Code  
14 violations.

15 37. As set forth above, Defendants have violated numerous provisions of the Labor Code  
16 regulating hours and days of work as well as the IWC Wage Orders.

17 38. Pursuant to Labor Code Sections 2699(a), 2699.3, and 2699.5, Plaintiff is entitled to  
18 recover civil penalties, in addition to other remedies, for violations of the Labor Code Sections cited  
19 above.

20 39. Pursuant to Labor Code Sections 2699(g) and 2802(c) and California Code of Civil  
21 Procedure Section 1021.5, Plaintiff is entitled to attorneys' fees and costs incurred in this action.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff, on behalf of all other Aggrieved Employees, prays for judgment  
24 and the following specific relief against Defendants, jointly and severally, as follows:

25 1. For injunctive relief against Defendants on behalf of all other Aggrieved Employees  
26 pursuant to, *inter alia*, Labor Code Sections 2698, *et seq.*;

27 2. For civil penalties against Defendants on behalf of all other Aggrieved Employees  
28 pursuant to, *inter alia*, Labor Code Sections 2698, *et seq.*;

1           3.       For reasonable attorneys' fees and costs of suit to the extent permitted by law, including  
2 pursuant to Labor Code Sections 2699(g), and California Code of Civil Procedure Section 1021.5; and

3           4.       For such other relief the Court deems just and proper.

4  
5 Dated: September 6, 2024

**MANAHAN O'DELL LLP**

6  
7 By: *Shaheen Anthony Etemadi*

8 Shaheen Anthony Etemadi

9 Attorneys for Plaintiff  
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