

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Attorneys for Plaintiff,
AYLA SMITH

Electronically
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by Superior Court of California, County of San Mateo
ON 11/12/2024
By /s/ Hessen Ladcani
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO**

AYLA SMITH, an individual, on her
own behalf and on behalf of all others
similarly situated,

Plaintiffs,

vs.

BRIDGEPOINTE HOTEL GROUP LLC
DBA HILTON GARDEN INN SAN
MATEO, a California limited liability
company; and DOES 1 through 100,
inclusive,

Defendants.

24-CIV-07112

CASE NO.:

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM OVERTIME WAGES DUE (Cal. Labor Code §§ 510, 1198; IWC Wage Order No. 5);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 5);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 5)**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 5);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; IWC Wage Order No. 5);**
- 6. FAILURE TO PAY WAGES ON TERMINATION AND/OR RESIGNATION (Cal. Labor Code §§201-203);**
- 7. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code §2802);**
- 8. FOR PAYMENT OF WAGES IN A NON-LABOR CODE COMPLIANT INSTRUMENT (Cal. Labor Code § 212);**
- 9. UNLAWFUL DEDUCTION OF WAGES (Cal. Labor Code §221);**

1 3. Plaintiff, like her co-workers whom Defendant also employed during the
2 applicable limitations period, spend their workdays at Defendant's hotel in San Mateo, under
3 illegal and highly regimented circumstances. That regimen results from Defendant's insistence
4 to strictly monitor and curtail labor costs, which Defendant accomplishes by not paying for all
5 labor costs, failing to pay overtime, failing to pay minimum wages, refusing to provide meal
6 periods, refusing to provide rest breaks, not paying the required extra hour for missed meal and
7 rest breaks, failing to issue accurate wage statements, failing to pay wages on termination,
8 failing to reimburse business expenses, failing to pay reporting time pay, payment of wages in a
9 non-labor code compliant instrument, unlawful deduction of wages, failing to pay vested
10 vacation pay, failing to allow inspection of employment records, and by using other unlawful
11 stratagems to ensure that labor costs remain artificially low.

12 4. Plaintiff brings this class action to recover, among other things, wages and
13 penalties from unpaid wages earned and due, including but not limited to, premium overtime
14 wages, minimum wages, late and missed rest break wages, wages due to discharged or quitting
15 employees, penalties for failure to provide accurate itemized wage statements, penalties for
16 failure to pay wages on termination, reimbursement of business expenses, damages for
17 payment of wages in a non-labor code compliant instrument, penalties for unlawful deduction
18 of wages, wages for vested vacation pay, damages for failure to allow inspection of
19 employment records and interest, attorneys' fees, costs, and expenses.

20 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
21 himself and all members of the class, to compensate these workers for the unpaid wages and to
22 protect current and future workers of Defendant from being subjected to similar wage theft and
23 otherwise unlawful working conditions.

24 6. Plaintiff also brings an action seeking relief for Defendant's violations of
25 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
26 disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair
27 business practices, as well as injunctive relief.

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JURISIDICITION AND VENUE

7. This Court has jurisdiction over this Complaint under Code of Civil Procedure §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business & Professions Code* §§ 17200 *et seq.* Plaintiff Ayla Smith brings this Complaint on her own behalf and on behalf of all persons in the Class as defined in paragraph 16 below.

8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of San Mateo and because Defendant owned and operated its hotel in the County of San Mateo.

THE PARTIES

PLAINTIFF

9. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Hayward, California;
- (b) Employed as an hourly employee for Defendant in San Mateo;
- (c) Did not receive overtime compensation required by *Labor Code* §§510 and 1194 and IWC Wage Order No. 5;
- (d) Did not receive minimum wages due in violation of *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and IWC Wage Order No. 5;
- (e) Did not receive the meal periods required by *Labor Code* §266.7 and IWC Wage Order No. 5;
- (f) Did not receive the rest periods required by *Labor Code* §266.7 and IWC Wage Order No. 5;
- (g) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (h) Was not paid wages on termination and/or resignation in violation of *Labor Code* §§201-203;
- (i) Was not reimbursed for business expenses as required by *Labor Code* §2802;

- 1 (j) Was not paid reporting time pay as required by Wage Order No. 16;
2 (k) Had her wages unlawfully deducted by Defendant in violation of *Labor*
3 *Code* §221;
4 (l) Was provided her wages in a non-Labor Code Compliant manner in
5 violation of *Labor Code* § 212;
6 (m) Was not paid vested vacation wages when due in violation of Cal. *Labor*
7 *Code* §227.3; and
8 (n) Was not provided her personnel records. Each of these was a violation of
9 the *Labor Code*.

10 **DEFENDANT**

11 10. Plaintiff is informed and believes, and based on that information and belief,
12 alleges, Defendant HGISM is, and at all times mentioned herein was:

- 13 (a) A California limited liability company, with a principal place of business
14 at 2000 Bridgepointe Circle, San Mateo, California 94404. Defendant
15 has been authorized to do business and has been doing business in the
16 County of San Mateo;
17 (b) The former employer of Plaintiff and the current and former employer of
18 the putative Class members;
19 (c) Paid Plaintiff and all Class Members on an hourly basis;
20 (d) Failed to pay Plaintiff and all putative Class members premium overtime
21 wages;
22 (e) Failed to pay Plaintiff and all putative Class members minimum wages;
23 (f) Failed to provide Plaintiff and all putative Class members with meal and
24 rest periods, failed to provide Plaintiff and all putative Class members
25 with accurate itemized wage statements;
26 (g) Failed to pay Plaintiff and all putative Class members wages on
27 termination;
28 (h) Failed to reimburse business expenses;

- (i) Failed to pay reporting time pay;
- (j) Unlawfully deducted wages;
- (k) Paid Plaintiff and all putative Class Members wages in a non-Labor Code compliant instrument;
- (l) Failed to pay vested vacation wages; and
- (m) Did not provide Plaintiff's personnel records. Each of these was a violation of the *Labor Code*.

11. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of Civil Procedure* § 474. Plaintiff will seek leave to amend her Complaint to allege the true names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

12. Plaintiff is informed and believes, and based on that information and belief alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which reside in or are authorized to do, or are otherwise doing, business in the State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and conduct business in the County of San Mateo. Each of the Defendants DOES 1 through 100 was the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter ego and/or representative of one or more of the other Defendants named herein, and acting with permission, authorization, and/or ratification and consent of the other Defendants.

13. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 100, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

14. Plaintiff is informed and believes, and based on that information and belief alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the other Defendants and that each Defendant was acting within the course and scope of his,

1 hers or its authority as the agent, servant and/or employee of each of the other Defendants.
2 Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the
3 Class, for the damages sustained as a proximate result of their conduct.

4 15. Plaintiff is informed and believes, and based on that information and belief
5 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
6 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
7 themselves and entered into a combination and systemized campaign of activity to *inter alia*
8 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
9 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
10 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their
11 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
12 belief, and to all appearances, Defendants, and each of them, represented a unified body so that
13 the actions of one Defendant was accomplished in concert with, and with the knowledge,
14 ratification, authorization and approval of each of the other Defendants.

15 16. Pursuant to the California Labor Code, Plaintiff intends to file a notice with
16 Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants
17 under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to
18 amend this Complaint once she completes and complies with the provisions under the law.

19 **CLASS ALLEGATIONS**

20 **A. The Definition of the Class**

21 17. The Class ("the Class") is defined as follows:

22 (a) "All current and former employees who were hourly paid employees of
23 Defendant and worked for Defendant in California at any time during the period
24 commencing on the date that is four (4) years prior to the filing of this
25 Complaint and continuing through the present date (the "Class Period")."

26 (b) "All persons who were hourly paid employees of Defendant and worked for
27 Defendant in California and left the employ of Defendant at any time during the
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1 period commencing on the date that is within one (1) year prior to the filing of
2 this Complaint and continuing through the present date (the “Class Period”).

3 18. Plaintiff reserves her right under Rule 3.765 of the California Rules of Court to
4 amend or modify the Class description with greater specificity or further division into
5 subclasses or limitation to particular issues.

6 **B. Maintenance of the Action**

7 19. Plaintiff brings this action individually and on behalf of herself and as
8 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
9 and 17204 and *Code of Civil Procedure* § 382.

10 **C. The Class Requisites**

11 20. At all material times, Plaintiff was a member of the Class.

12 21. The Class action meets the statutory prerequisites for maintaining a class action
13 under Code of Civil Procedure § 382 in that:

- 14 (a) The persons who comprise the Class are so numerous that the joinder of all
15 those persons is impracticable and the disposition of their claims as a Class
16 will benefit the parties and the Court;
- 17 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
18 that are raised in this Complaint are common to the Class and will apply
19 uniformly to every Class member;
- 20 (c) The claims of the representative Plaintiff are typical of the claims of each
21 Class member. Plaintiff, like all Class members, has sustained damages
22 arising from Defendant’s violations of the laws of the State of California.
23 Plaintiff, and the Class members, were and are similarly or identically
24 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
25 pattern of misconduct engaged in by the Defendant;
- 26 (d) The representative Plaintiff has, and will continue to, fairly and adequately
27 represent and protect the interests of the Class and has retained counsel
28 who are competent and experienced in class action litigation. There are no

1 material conflicts between the claims of the representative Plaintiff and the
2 Class members that would make class certification inappropriate. Counsel
3 for the Class will vigorously assert the claims of all Class members.

4 22. The persons who comprise the Class are so numerous that joining all of them is
5 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
6 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
7 will fairly and adequately protect the interests of the Class she seeks to represent. Plaintiff does
8 not have any interests that are antagonistic to the Class she seeks to represent. Counsel for
9 Plaintiff are experienced, qualified and generally able to conduct complex class action
10 litigation.

11 23. The Court should permit the action to be maintained as a class action under
12 *Code of Civil Procedure* § 382 because:

- 13 (a) The questions of law and fact common to the Class predominate over any
14 question affecting only individual members;
- 15 (b) A class action is superior to any other available method for fairly and
16 efficiently adjudicating the claims of the Class;
- 17 (c) The Class members are so numerous that it is impractical to bring all of
18 them before the Court;
- 19 (d) Plaintiff and other Class members will not be able to obtain effective and
20 economic legal redress unless the action is maintained as a class action;
- 21 (e) There is a community of interest in obtaining appropriate legal and
22 equitable relief for the statutory violations, and in obtaining adequate
23 compensation for the damages and injuries for which Defendant is
24 responsible in an amount sufficient to adequately compensate the Class
25 members;
- 26 (f) Without Class certification, the prosecution of separate actions by
27 individual Class members would create a risk of:
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1 i. Inconsistent or varying adjudications for individual Class members
2 that would establish incompatible standards of conduct for
3 Defendant; and/or,

4 ii. Adjudication for individual Class members that would, as a
5 practical matter, dispose of other non-party members' interests, or
6 that would substantially impair or impede the non-parties' ability
7 to protect their interests, by, for example, potentially exhausting
8 the funds available from Defendant, and

9 (g) Defendant has acted or refused to act on grounds generally applicable to
10 the Classes, making final injunctive relief appropriate for the Class, as a
11 whole.

12 24. Plaintiff contemplates eventually issuing notice to the proposed Class Members
13 that would set forth the subject and nature of the action. The Defendant's own business records
14 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
15 any further notices may be required, Plaintiff would contemplate using additional media and/or
16 mailing.

17 GENERAL ALLEGATIONS

18 25. At all times material hereto, Defendant has been and is, a hospitality business.

19 26. Plaintiff and members of the Class were employed as Front Desk Agents,
20 Bartenders and Servers by Defendant in California at various times during the Class Period.

21 THE CONDUCT

22 27. Plaintiff seeks relief from Defendant's uniform policies and practices of denying
23 Plaintiff and members of the Class wages and compensation owed under California law.

24 28. Starting on or about November 15, 2022 and continuing to June 10, 2024,
25 Defendant employed Plaintiff on an hourly basis as a Front Desk Agent, Bartender and Server
26 at HGISM in California.

27 29. While employed by Defendant as a Front Desk Agent, Bartender and Server,
28 Plaintiff was paid approximately \$22.00 per hour.

1 30. The employment by Defendant of the Class Members, and each them, is
2 governed by Industrial Welfare Commission Wage Order 5, which covers those persons
3 employed in the public housekeeping industry.

4 **OFF-THE-CLOCK WORK**

5 31. Employers must compensate non-exempt employees for “off-the-clock” work
6 (before punching in or after punching out on a time clock) if the employers knew or should
7 have known that the employees were working those hours. *Morillion v. Royal Packing Co.*
8 (2000) 22 Cal. 4th 575, 585.

9 32. Defendant required Plaintiff and the Class to regularly perform compensable
10 tasks post-shift off-the-clock for which they did not receive any compensation. Specifically, at
11 all times relevant, Plaintiff and Class members were required by management to go back to
12 work after clocking out to close bar cabinets for between 5-10 minutes. Further, Plaintiff and
13 Class members were required to use their personal cell phones off-the clock for work-related
14 activities. Defendants were aware of Plaintiff and Class members’ off the clock work.

15 33. As a result, and because they improperly treated such post-shift time as non-
16 compensable, Defendant failed to compensate Plaintiff and the Class for such time.

17 **FAILURE TO PAY OVERTIME/MINIMUM WAGES**

18 34. Under California law, non-exempt employees as defined by Wage Order 5, are
19 entitled to premium wages for overtime worked. Under California law, an hourly paid
20 employee is entitled to overtime pay when they exceed eight hours of work in a single day,
21 exceed 40 hours of work in a week or work seven days in a row.

22 35. Under California law, non-exempt employees as defined by IWC Wage Order
23 No. 5 are entitled to minimum wages. Labor Code Section 1197 states the California
24 requirement that employees must be paid at least the minimum wage fixed by the Commission
25 or by any applicable state or local law, and any payment of less than the minimum wage is
26 unlawful. Similarly, Labor Code Section 1194 entitles “any employee receiving less than the
27 legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full
28 amount of this minimum wage.” The applicable IWC Wage Order(s), including IWC Wage

1 Order No. 5-2001, obligates employers to pay each employee minimum wages for all hours
2 worked.

3 36. These minimum wage standards apply to each hour employees worked or were
4 subject to control by the employer for which they were not paid. Therefore, an employer's
5 failure to pay for any particular hour of time worked by an employee or subject to the
6 employer's control is unlawful, even if averaging an employee's total pay over all hours
7 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
8 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

9 37. Plaintiff and Class members were not afforded compliant meal/rest breaks. As a
10 result, during this period, it was the practice and policy of Defendant to not pay employees at
11 appropriate overtime and minimum wage rates. Monies for unpaid overtime and minimum
12 wages remain due and owing.

13 38. Defendant required Plaintiff and the Class to regularly perform compensable
14 tasks post-shift off-the-clock for which they did not receive any compensation. Specifically,
15 Plaintiff and Class members engaged in off the clock activities such as closing bar cabinets
16 after clocking out. Class members are entitled to overtime pay for any time spent working off
17 the clock.

18 39. Further, Plaintiff and Class members were required to use their personal cell
19 phones both on and off the clock for work-related activities. Plaintiff and Class members were
20 required to use their personal cell phones for texting/calling managers and reaching guests for
21 15-20 minutes per day off the clock.

22 40. Plaintiff and the Class were not paid overtime and minimum wages due to off
23 the clock work.

24 41. At all times during the relevant time period, Plaintiff and the Class routinely
25 worked schedules such that they were due pay at overtime and minimum wage rates. During
26 this period, it was the practice and policy of Defendant to not pay employees' overtime and
27 minimum wages. Monies for unpaid overtime and minimum wages remain due and owing.

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1 **EXCLUSION OF EXTRA BENEFITS FROM REGULAR RATE OF PAY**

2 42. California law uses the terms “compensation” and “pay” interchangeably and
3 requires that all applicable remuneration, including but not limited to, commissions, and/or
4 non-discretionary bonuses, and/or gift cards and/or extra benefits, etc., be included when
5 calculating an employee's regular rate of pay.

6 43. Defendant failed to properly pay and calculate wages due to excluding extra
7 benefits from regular rate of pay calculations. Such extra benefits are required under California
8 law to be included in an employee’s regular rate of pay for wage calculation. Defendant failed
9 to do so, thereby failing to pay employees their full wages as required under the Labor Code.

10 44. Plaintiff and members of the Class received extra benefits that must be included
11 when calculating their regular rates of pay for purposes of wages. However, Defendant failed to
12 correctly calculate Plaintiff and members of the Class’s regular rate of pay to include all
13 applicable remuneration, including, but not limited to, extra benefits. Defendant provided extra
14 benefits such as discounted rooms, free drinks and 50% off any food Plaintiff and Class
15 members purchased. The extra benefits were not blended into Plaintiff and Class member’s
16 regular rate of pay.

17 45. Plaintiff’s paystub dated April 5, 2024, shows that Plaintiff was paid “Sick Pay”
18 at the rate of exactly the base rate, so the extra benefits were not incorporated into the sick pay
19 rate.

20 **MEAL BREAKS NOT COMPLIANT**

21 46. Under California law, non-exempt employees as defined by Wage Order 5, are
22 entitled to premium wages for overtime worked, a 30-minute lunch period for each 5 hours
23 worked, a 10-minute paid rest break for every four hours worked, or major fraction thereof.
24 Non-exempt employees are entitled to one hour pay at their regular pay rate for each day the
25 requisite rest and/or meal periods are not provided.

26 47. Plaintiff and Class Members were not allowed to leave the premises during their
27 meal breaks. Further, Plaintiff and Class members were routinely required to work during their
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1 meal breaks despite clocking out for 30 minutes for their meal breaks. At times, Plaintiff and
2 Class members were not afforded their meal breaks.

3 48. Defendant's policies and procedures were applied to all non-exempt employees
4 in California and resulted in non-exempt employees working time which was not compensated
5 by any wages in violation of Labor Code sections 510, 1194 and IWC Wage Order No. 5. As a
6 result, Defendant owes wages at the legal overtime rate for unpaid overtime and/or minimum
7 wage rate to each of their California non-exempt employees whose daily hours were reduced
8 even though their meals periods were interrupted and/or were never afforded.

9 **REST BREAKS NOT COMPLIANT**

10 49. Plaintiff and Class members were not afforded compliant rest breaks. Plaintiff
11 and Class members were only afforded one rest break of less than 10 minutes to use the
12 restroom. Plaintiff and Class members were restricted from leaving the premises during their
13 rest breaks. When Plaintiff worked as a Bartender, she was never afforded any rest breaks.

14 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

15 50. As a result of Defendant's failure to pay employees at required overtime rates,
16 minimum wages, premium pay for missed meal/rest breaks and reporting time pay, the wage
17 statements issued to the employees did not comply with Labor Code §226 and California
18 Industrial Welfare Commission ("IWC") Wage Order No. 5 in that they did not accurately
19 reflect all wages earned and due and owing. Further, the company address on Plaintiff and
20 Class members' paystubs does not match the company address on the Secretary of State
21 website. The company address on the paystubs is 2000 Bridgepointe Circle, San Mateo, CA
22 94404, but the company address on the California Secretary of State website is 991 W.
23 Hedding Street, Suite 103, San Jose, CA 95126.

24 **LACK OF EXPENSE REIMBURSEMENT**

25 51. Defendant failed to reimburse Plaintiff and members of the Class for business-
26 related expenses, such as cell phone and tool purchases necessary for work. Thus, Defendant
27 failed to reimburse Plaintiff and Class members for these necessary business expenses.

1 **FAILURE TO PAY REPORTING TIME PAY**

2 52. Defendant failed to pay Plaintiff and Class members reporting time pay. Plaintiff
3 and Class members were required to call in to ascertain if they were on the schedule for the
4 same day or the next day. Plaintiff and Class members were not paid any reporting time pay.

5 **UNLAWFUL DEDUCTION OF WAGES**

6 53. Plaintiff's paystubs dated 1/12/2024, 2/9/2024, 4/5/2024, and 4/19/2024 show
7 unlawful deductions of "Meals". Plaintiff and Class members' wages were unlawfully
8 deducted.

9 **PAYMENT OF WAGES IN A NON-LABOR CODE COMPLIANT INSTRUMENT**

10 54. Plaintiff and Class members received gift cards in the amounts of between \$10-
11 \$50. However, Plaintiff's paystubs do not list any gift cards paid to Plaintiff.

12 **FAILURE TO PAY VESTED VACATION ON SEPARATION OF EMPLOYMENT**

13 55. Defendant acted intentionally and with deliberate disregard to the rights of
14 Plaintiff and members of the Class by failing to provide vested vacation wages.

15 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

16 56. Defendant failed to allow Plaintiff and Class members to timely inspect their
17 records and payroll files.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME**

20 **(Labor Code §§510, 558, 1194.3 and Wage Order 5 By Plaintiffs Against Defendant and**
21 **Does 1-100)**

22 57. Plaintiff and the Class reallege and incorporate by reference all of the allegations
23 set forth in this Complaint.

24 58. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab.
25 Code §§510, 1194, and 1198, and IWC Wage Order No. 5, Defendant was required to
26 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
27 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
28 hours on the seventh (7th) consecutive day of any work week.

1 59. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
2 who had not been paid overtime compensation could recover the unpaid balance of the full
3 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
4 fees and costs of suit.

5 60. Pursuant to IWC Wage Order No. 5-2001, § 3, "Employment beyond eight (8)
6 hours in any workday is permissible provided the employee is compensated for such overtime
7 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
8 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
9 workday...

10 61. California Labor Code section 558 provides in pertinent part:

11 (a) Any employer or other person acting on behalf of an employer who
12 violates, or causes to be violated, a section of this chapter or any
13 provision regulating hours and days of work in any order of the
14 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

15 (1) For any initial violation, fifty dollars (\$50) for each underpaid
16 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

17 (2) For each subsequent violation, one hundred dollars (\$100) for each
18 underpaid employee for each pay period for which the employee was
19 underpaid in addition to an amount sufficient to recover underpaid
wages.

20 (3) Wages recovered pursuant to this section shall be paid to the affected
21 employee...

22 (c) The civil penalties provided for in this section are in addition to any
23 other civil or criminal penalty provided by law.

24 62. Throughout Plaintiff's employment, Plaintiff worked overtime hours and was
25 not paid overtime pay due to Defendant's failure to pay for off the clock work.

26 63. Defendants required Plaintiff and the Class to regularly perform compensable
27 tasks post-shift off-the-clock for which they did not receive any compensation. Specifically,
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1 Plaintiff and Class members engaged in off the clock activities such as closing bar cabinets
2 after clocking out.

3 64. The amount of time spent by Class members closing bar cabinets was not *de*
4 *minimis*.

5 65. Throughout Plaintiff's employment, Defendant failed and refused to pay and
6 properly calculate overtime compensation to Plaintiff and Class Members as required by law.

7 66. The foregoing overtime compensation is owed and unpaid. As a direct and
8 proximate result of Defendant's failure and refusal to pay overtime, Plaintiff and Class
9 Members suffered damages in an amount to be proven at trial.

10 67. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
11 counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover Plaintiff's
12 attorneys' fees, costs and interest.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM WAGES**

15 **(IWC Wage Order No. 5; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs**
16 **Against Defendant and Does 1 through 100)**

17 68. Plaintiff and the Class reallege and incorporate by reference all of the allegations
18 set forth in this Complaint.

19 69. Labor Code §§ 1194(a) states: "Notwithstanding any agreement to work for a
20 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
21 compensation applicable to the employee is entitled to recover in a civil action the unpaid
22 balance of the full amount of this minimum wage or overtime compensation, including interest
23 thereon, reasonable attorney's fees, and costs of suit."

24 70. *Labor Code* § 1197 states the California requirement that employees must be
25 paid at least the minimum wage fixed by the Commission, and any payment of less than the
26 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles "any employee receiving
27 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
28 the full amount of this minimum wage." IWC Wage Order 5-2001 also obligates employers to

1 pay each employee minimum wages for all hours worked. These minimum wage standards
2 apply to each hour employees worked for which they were not paid. Therefore, an employer's
3 failure to pay for any particular hour of time worked by an employee is unlawful, even if
4 averaging an employee's total pay over all hours worked, paid or not, results in an average
5 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
6 (2005).

7 71. Pursuant to Wage Order 5, Defendant is required to pay the members of the
8 Class for all hours worked, meaning the time during which an employee is subject to the
9 control of an employer, including all the time the employee is suffered or permitted to work,
10 whether or not required to do so.

11 72. Furthermore, pursuant to *Labor Code* § 1198, "[t]he maximum hours of work
12 and the standard conditions of labor fixed by the commission shall be the maximum hours of
13 work and the standard conditions of labor for employees. The employment of any employee for
14 longer hours than those fixed by the order or under conditions of labor prohibited by the order
15 is unlawful."

16 73. Defendant failed to satisfy minimum wage requirements because they
17 improperly failed to afford complaint meal/rest breaks and required Plaintiff and Class
18 members to engage in activities off the clock in violation of *Labor Code* §§ 1197, 1198 and
19 Wage Order 5. Further, Defendant did not provide compliant meal/rest breaks to Plaintiff and
20 the Class.

21 74. Defendant's pattern, practice and uniform administration of corporate policy
22 regarding illegal employee compensation as described herein is unlawful and creates an
23 entitlement, pursuant to *Labor Code* § 218, to recovery by Plaintiff and the members of the
24 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
25 the appropriate rate.

26 75. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
27 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
28 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid

1 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
2 the time associated with the overtime for which they received no compensation. *See Sillah v.*
3 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
4 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
5 showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*,
6 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

7 76. Plaintiff and the other Class members suffered and continue to suffer losses
8 related to the use and enjoyment of compensation due and owing to them as a direct result of
9 Defendant's unlawful acts and Labor Code violations in an amount to be shown according to
10 proof at trial and within the jurisdictional limitations of this Court.

11 77. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
12 Class are entitled to recover the unpaid balances of the minimum wages Defendant owes them,
13 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
14 proof.

15 **THIRD CAUSE OF ACTION**

16 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

17 **(IWC Wage Order No. 5; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendant and**
18 **Does 1 through 100)**

19 78. Plaintiff and the Class reallege and incorporate by reference all of the allegations
20 set forth in this Complaint.

21 79. California Labor Code §226.7(a) prohibits an employer from requiring an
22 employee to work during any meal period mandated by an applicable Industrial Wage Order.
23 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
24 employee to work during a meal or rest break or recovery period mandated pursuant to an
25 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
26 Commission..."

27 80. California Labor Code §1198 makes unlawful the employment of an employee
28 under conditions the IWC prohibits.

1 81. IWC Order No. 5-2001(11)(A) provides, in relevant part: "No employer shall
2 employ any person for a work period of more than five (5) hours without a meal period of not
3 less than 30-minutes, except that when a work period of not more than six (6) hours will
4 complete the day's work the meal period may be waived by mutual consent of the employer and
5 the employee."

6 82. IWC Order No. 5-2001 (11)(c) further provides, in relevant part: "Unless the
7 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
8 considered an 'on duty' meal period and counted as time worked."

9 83. Section 512(a) of the California Labor Code provides, in relevant part, that:

10 An employer may not employ an employee for a work period of more than five
11 hours per day without providing the employee with a meal period of not less
12 than 30-minutes, except that if the total work period per day of the employee is
13 no more than six hours, the meal period may be waived by mutual consent of
14 both the employer and employee. An employer may not employ an employee
15 for a work period of more than 10 hours per day without providing the
16 employee with a second meal period of not less than 30-minutes, except that if
the total hours worked is no more than 12 hours, the second meal period may
be waived by mutual consent of the employer and the employee only if the first
meal period was not waived.

17 84. The Labor Code and Wage Order provisions cited above require California
18 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
19 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
20 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
21 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
22 the fifth hour of their shifts.

23 85. As alleged herein, Defendant failed to relieve employees of duties for timely
24 meal breaks throughout the Class Period. Plaintiff and Class Members were not allowed to
25 leave the premises during their meal breaks in violation of *Augustus v. ABM Security Services,*
26 *Inc.*, 2 Cal. 5th 257, 270-273 (2016) (holding that on-duty rest breaks violate California law).

1 86. Further, Plaintiff and Class members were routinely required to work during
2 their meal breaks despite clocking out for 30 minutes for their meal breaks. At times, Plaintiff
3 and Class members were not afforded their meal breaks.

4 87. Under California law, employers must also record their employees' meal
5 periods: "Every employer shall keep accurate information with respect to each employee,
6 including the following: ... Meal periods ... shall also be recorded. Meal periods during which
7 operations cease ... need not be recorded." IWC Order No. 5, § (7)(A)(3). Where the employer
8 has failed to keep records required by statute, the consequences of such failure should fall on
9 the employer, not the employee. In such a situation, imprecise evidence by the employee can
10 provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727
11 (1988). Inasmuch as Defendant had an obligation under the record-keeping requirements of the
12 Wage Order to track meal periods unless "all work ceases", Defendant knew or should have
13 known its employees were regularly missing meal periods during the Class Period.

14 88. Defendant has a policy or practice of failing to ensure that Plaintiff and
15 members of the class take the meal periods required by California Labor Code §226.7 and IWC
16 Wage Order No. 5-2001 §11.

17 89. By their actions in not affording Plaintiff and Class members meal periods
18 and/or not affording them timely meal periods, Defendant violated Cal. Lab. Code §226.7(b)
19 and section 11 of Wage Order No. 5 in the amount of one additional hour of pay at the
20 employee's regular rate of compensation for each work period during each day in which
21 Defendant failed to provide employees with statutory timely off-duty meal periods.

22 90. Defendant also has a policy or practice of failing to pay each of their employees
23 who was not provided with a meal period as required an additional one hour of compensation at
24 each employee's regular rate of pay.

25 91. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to
26 bring a private right of action to recover wages due based on the deprivation of timely meal
27 periods under Cal. Labor Code § 226.7(b).

28

1 92. As a direct and proximate result of Defendant's unlawful conduct as alleged
2 herein, Plaintiff and members of the Class have sustained economic damages, including but not
3 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled
4 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
5 relief due to Defendant's violations of the California Labor Code and IWC Wage Order No. 5.

6 **FOURTH CAUSE OF ACTION**

7 **FOR FAILURE TO PROVIDE REST PERIODS**

8 **(Labor Code § 226.7 and IWC Wage Order No. 5 By Plaintiffs Against Defendant and**
9 **Does 1 through 100)**

10 93. Plaintiff and the Class reallege and incorporate by reference all of the allegations
11 set forth in this Complaint.

12 94. Labor Code § 226.7 and IWC Wage Order No. 5 provide that employers shall
13 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
14 per four hours of work, or major fraction thereof.

15 95. Labor Code § 226.7 and IWC Wage Order No. 5 provide that if an employer
16 fails to provide an employee with rest periods in accordance with those provisions, the
17 employer shall pay the employee one hour of pay at the employee's regular rate of
18 compensation for each workday that the rest periods were not so provided.

19 96. Defendant has intentionally and improperly denied compliant rest periods to
20 Plaintiff and the Class in violation of Labor Code § 226.7 and IWC Wage Order No. 5. Plaintiff
21 and Class members were not afforded compliant rest breaks. Plaintiff and Class members were
22 only afforded one rest break of less than 10 minutes to use the restroom. Plaintiff and Class
23 members were restricted from leaving the premises during their rest breaks. When Plaintiff
24 worked as a Bartender, she was never afforded any rest breaks.

25 97. At all times relevant hereto, Plaintiff and members of the Class have worked 5
26 or more hours daily.

1 98. At all times relevant hereto, Defendant failed to provide rest periods as required
2 by Labor Code § 226.7 and IWC Wage Order No. 5. Plaintiff and Class were not afforded
3 complaint rest breaks.

4 99. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff
5 and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in
6 amounts which are presently unknown to Plaintiff and the Class, but which exceed the
7 jurisdictional limits of the Court and which will be ascertained according to proof at trial.

8 **FIFTH CAUSE OF ACTION**

9 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**

10 **ITEMIZED STATEMENTS**

11 **(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)**

12 100. Plaintiff and the Class reallege and incorporate by reference all of the allegations
13 set forth in this Complaint.

14 101. Pursuant to IWC Wage Order No. 5, Defendant was the employer of Plaintiff
15 and the Class.

16 102. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 5-
17 2001 section 7, Defendant is required to maintain and provide accurate records relating to
18 employee compensation including all formulas and production records used to calculate wages
19 due.

20 103. Defendant is further required to provide, *inter alia*, semimonthly or at the time
21 of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2)
22 all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which
23 the employee is being paid; (5) the name of the employee; and (6) the name and address of the
24 legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

25 104. As a matter of policy and practice, the company address on Plaintiff and Class
26 members' paystubs does not match the company address on the Secretary of State website. The
27 company address on the paystubs is 2000 Bridgepointe Circle, San Mateo, CA 94404, but the
28

1 company address on the California Secretary of State website is 991 W. Hedding Street, Suite
2 103, San Jose, CA 95126.

3 105. Section 226(e) provides that an employee is entitled to recover \$50 for the
4 initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay
5 period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay
6 periods in which the employer knowingly and intentionally failed to provide accurate itemized
7 statements to the employee causing the employee to suffer injury.

8 106. Notwithstanding these provisions. Defendant has engaged in a uniform practice
9 of refusing to maintain and provide the accurate records and wage statements required by
10 California law.

11 107. Throughout the Class Period, Defendant intentionally and knowingly provided
12 Plaintiff and other members of the Class with weekly itemized wage statements containing
13 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
14 that the payments owed to Plaintiff and the members of the Class for overtime compensation,
15 minimum wages, untimely or missed meal and rest periods, reimbursement for business
16 expenses, wages on termination of employment, reporting time pay and vacation pay, were not
17 included in gross wages earned by Plaintiff and members of the Class.

18 108. As a result, Plaintiff and members of the Class have been injured by having been
19 deprived of the true facts pertaining to their compensation and employment.

20 109. Plaintiff and members of the Class were damaged by these failures because,
21 among other things, the failures led them to believe that they were not entitled to overtime
22 compensation, minimum wages, pay for meal and rest periods not provided, wages on
23 termination of employment, reimbursement for business expenses, reporting time pay and
24 vacation pay, even though they were so entitled and these failures hindered them from
25 determining the amounts of wages owed to them.

26 110. Plaintiff and members of the Class are entitled to the amounts provided in Labor
27 Code §226(e), plus attorneys' fees and costs.

28

1 111. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
2 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are
3 provided by law for Defendant's improper conduct.

4 **SIXTH CAUSE OF ACTION**

5 **FOR FAILURE TO PAY WAGES UPON TERMINATION**

6 **(Labor Code §§201-203 By Plaintiffs against Defendant and Does 1 through 100)**

7 112. Plaintiff and the Class reallege and incorporate by reference all of the allegations
8 set forth in this Complaint.

9 113. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
10 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
11 from employment, unpaid wages are due and payable within 72 hours of resignation.

12 114. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
13 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
14 paid, not to exceed thirty days.

15 115. Plaintiff and the Class were discharged and/or resigned from Defendant's
16 employ and Defendant willfully failed to pay Plaintiff and the Class wages due them.

17 116. Plaintiff did not receive her last pay on June 10, 2024, the day she resigned.
18 Plaintiff received her last pay 2 weeks later on a regularly scheduled pay date via direct deposit.

19 117. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's
20 wages for each day he or she was not timely paid, not to exceed 30 days' wages.

21 **SEVENTH CAUSE OF ACTION**

22 **REIMBURSEMENT OF BUSINESS EXPENSES**

23 **(Cal. Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)**

24 118. Plaintiff and the Class reallege and incorporate by reference all of the allegations
25 set forth in this Complaint.

26 119. Labor Code §2802 requires employers to indemnify employees for all necessary
27 expenditures incurred by employees in the discharge of their duties.

120. Defendant required Plaintiff and Class members to drive using their personal vehicles. However, Defendant failed to reimburse Plaintiff and members of the Class for their gas and mileage expenses incurred on Defendant's behalf.

121. At all times relevant herein, Defendant was aware that Plaintiff and Class members were using their personal cell phones and making purchases for work-related purposes, but failed to indemnify Plaintiff and Class members for all their business-related expenses, in accordance with Labor Code §2802. Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendant maintained a practice of not reimbursing Plaintiff and Class Members for their work-related expenses that they incurred in using their personal cell phones and for purchases, including wear and tear, for work-related purposes.

122. As a result of Defendant's conduct, Plaintiff and Class Members suffered damages in an amount, subject to proof, to the extent they were not reimbursed for all of their business-related expenses incurred in the discharge of their duties.

123. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

PAYMENT OF WAGES IN A NON-LABOR CODE COMPLIANT INSTRUMENT

(Labor Code § 212, Wage Order No. 5 By Plaintiffs against Defendant and Does 1 through 100)

124. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

125. California Labor Code § 212 requires California employers to comply with a series of provisions when issuing wages to employees. In short, the provisions of section 212(a)(1) forbid an employer from issuing payment of wages in an instrument that is not (1) negotiable, (2) payable in cash, (3) on demand, (4) without discount, (5) at an established place of business in the State, (6) the name and address of which appears on the instrument, and (7) which place of business has been prepared, by the deposit of funds, the establishment

1 of credit, or by some arrangement or understanding, to pay the money called for by the
2 instrument. *See People v. Turner*, 154 Cal. App. 2d 883, 885-86 (1957).

3 126. An employer that violates Labor Code section 212 is liable to the employee for,
4 among other matters, civil penalties and attorney fees. *See, e.g.*, Lab. Code, §§ 225.5.

5 127. Defendant violated Labor Code sections 212 by issuing payment to Plaintiff
6 and Class Members for some of their wages in a non-Labor Code compliant instrument as
7 Defendant would issue gift cards to Plaintiff and Class Members to be included as a form of
8 compensation for good reports and favorable comments online. These gift cards were not
9 payable in cash on demand in violation of Labor Code §212. Further, Plaintiff's paystubs do
10 not list any gift cards paid to Plaintiff.

11 128. As a result of the unlawful acts of Defendant, Plaintiff and Class Members have
12 been deprived of wages to be determined at trial, and are entitled to the recovery of such
13 amounts, plus interest and penalties thereon, attorneys' fees, and costs.

14 **NINTH CAUSE OF ACTION**

15 **UNLAWFUL DEDUCTION OF WAGES**

16 **(Labor Code § 221 By Plaintiffs against Defendant and Does 1 through 100)**

17 129. Plaintiff and the Class reallege and incorporate by reference all of the allegations
18 set forth in this Complaint.

19 130. California Labor Code § 221 states that "[i]t shall be unlawful for any employer
20 to collect or receive from an employee any part of wages theretofore paid by said employer to
21 said employee."

22 131. Labor Code § 221 reflects "'California's strong public policy favoring the
23 protection of employees' wages.'" *Sciborski v. Pacific Bell Directory* (2012) 205 Cal. App.
24 4th 1152, 1166.

25 132. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221
26 cannot "be contravened or set aside by a private agreement." Therefore, the rights under Labor
27 Code § 221 are nonnegotiable and cannot be waived by the parties. *See Sciborski*, 205 Cal.
28 App. 4th at 1166. Also, under Labor Code §§ 219 and 221, an employer may not "require its

employees to consent to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal. App. 4th 1109, 1124.

133. As previously alleged herein, Defendant engaged in the unlawful deduction of wages when it deducted “Meals” from Plaintiff’s and Class members wages. Plaintiff’s paystubs dated 1/12/2024, 2/9/2024, 4/5/2024, and 4/19/2024 show unlawful deductions of “Meals”. Plaintiff and Class members did not authorize these deductions.

134. Defendant’s unlawful taking back of wages earned in violation of Labor Code Section 221 subjects them to civil penalties pursuant to Labor Code Section 225.5, in addition to the unlawfully withheld wages due, in the amount of \$100 for any initial violation for each pay period for which Plaintiff and members of the Class were underpaid, and, for each subsequent violation, \$200 for each pay period for which Plaintiff and the Class were underpaid.

135. As a result of Defendant’s violations of Labor Code § 221, Plaintiff and the members of the Class seek to recover the total amount of wages unlawfully deducted, as well as penalties, interest, attorneys' fees, and costs as permitted under California law.

TENTH CAUSE OF ACTION

FAILURE TO PAY REPORTING TIME PAY

(IWC Wage Order No. 5 By Plaintiffs against Defendant and Does 1 through 100)

136. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

137. Wage Order 5-2001 provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage."

138. Defendant has a policy and practice of requiring Plaintiff and Class members to call in to ascertain if they are on the schedule for that same day or the next day.

1 139. This policy and practice have resulted in Defendant's failure to pay reporting
2 time pay to Plaintiff and the Class.

3 140. As a direct and proximate result of Defendant's actions as set forth herein,
4 Plaintiff and the Class have been damaged in that Plaintiff and the Class have not been paid all
5 required reporting time pay.

6 **ELEVENTH CAUSE OF ACTION**

7 **FAILURE TO PAY VESTED VACATION PAY**

8 **(Cal. Labor Code § 227.3; IWC Wage Order No. 5 By Plaintiffs against Defendant and**
9 **Does 1 through 100)**

10 141. Plaintiff and the Class reallege and incorporate by reference all of the allegations
11 set forth in this Complaint.

12 142. California law, including Labor Code § 227.3 dictates that when an employer
13 has a paid time off policy, the pay constitutes additional wages for services performed and it
14 must pay out all accrued but unused paid time off upon termination. Once a proportionate right
15 to paid vacation vests as labor is rendered, an employer may not adopt policies that require
16 forfeiture of vested paid time off without compensation. (*Suastez v. Plastic Dress-Up Co.*
17 (1982) 31 Cal.3d 774, 784 ["The right to a paid vacation, when offered in an employer's policy
18 or contract of employment, constitute deferred wages for services rendered"]; *Rhea v. General*
19 *Atomics* (2014) 227 Cal. App. 4th 1560, 1571 ["California law prohibits an employer from
20 requiring the forfeiture of vacation time"].)

21 143. As a matter of policy, Defendant did not provide vested vacation pay on
22 termination of employment.

23 144. Defendant's paid time off policy, which applies to all of its employees in
24 California, violates California law because it fails to pay out all of the employees' vested and
25 unused vacation pay on termination.

26 145. Plaintiff and Class members did not receive the proper protections and benefits
27 of the laws governing payment of vacation pay upon separation of employment.

28

146. Pursuant to Labor Code § 227.3, an employer that has implemented paid time off, or compensated time off policy must, upon an employee's separation from employment, pay to the employee all vested, but unused paid time off at her final rate of pay.

147. Here, Plaintiff did not use all her vacation pay prior to her termination.

148. As a result, Defendant failed to pay Plaintiff and Class members all vested, but unused vacation pay upon separation from employment, thereby receiving an economic benefit.

149. Plaintiff is informed and believes and based thereon alleges Defendant's willful failure to pay all vacation wages due and owing to Plaintiff and Class members upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and Class members are also entitled to compensation pursuant to Labor Code sections 201-203.

150. Plaintiff and members of the Class have been damaged by Defendant's vacation policy because they have been forced to forfeit earned vacation wages.

151. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff and members of the Class have sustained damages, including loss of earnings in an amount to be established at trial, in addition to prejudgment interest, costs, and attorneys' fees pursuant to applicable law.

TWELFTH CAUSE OF ACTION

FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS

(Labor Code §1198.5 By Plaintiffs Against Defendant and Does 1 through 100)

152. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

153. California Labor Code Section 1198.5 provides:

- (a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.
- (b) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her

1 representative, at reasonable intervals and at reasonable times, but not later
2 than 30 calendar days from the date the employer receives a written request,
3 unless the current or former employee, or his or her representative, and the
4 employer agree in writing to a date beyond 30 calendar days to inspect the
5 records, and the agreed-upon date does not exceed 35 calendar days from
6 the employer's receipt of the written request to inspect the records. Upon a
7 written request from a current or former employee, or his or her
8 representative, the employer shall also provide a copy of the personnel
9 records,..... later than 30 calendar days from the date the employer receives
10 the request...

11 (k) If an employer fails to permit a current or former employee, or his or her
12 representative, to inspect or copy personnel records within the times specified I
13 this section... the current or former employee may recover a penalty of seven
14 hundred fifty dollars (\$750) from the employer.

15 (l) A current or former employee may also bring an action for injunctive relief
16 to obtain compliance with this section, and may recover costs and reasonable
17 attorney's fees in such an action.

18 154. Additionally, pursuant to Wage Order 5, at section 7 re: Records, employers are
19 required to keep accurate payroll records on each employee, and such records must be made
20 readily available for inspection by the employee upon reasonable request. The employer must
21 also maintain accurate production records.

22 155. On or about November 8, 2024, Plaintiff's counsel issued a written request to
23 Defendant for copies of her personnel records.

24 156. Under California Labor Code Sections 226, 432 and 1198.5, such records were
25 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
26 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
27 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of her
28 records.

157. As a direct result and consequence of Defendant's failure and refusal to permit
Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an order or
decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a
result of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
penalty of \$750 based upon Defendant's violation of §1198.

1 **THIRTEENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendant and Does 1**
4 **through 100)**

5 158. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this Complaint.

7 159. Pursuant to IWC Wage Order No. 5, Defendant was the employer of Plaintiff
8 and the Class. Defendant is also a "person" as that term is defined in Business & Professions
9 Code §17021.

10 160. The Business & Professions Code defines unfair competition as any unlawful,
11 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
12 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
13 Plaintiff and the Class overtime compensation; (2) pay minimum wages; (3) pay Plaintiff and
14 the Class meal periods not provided, (4) pay Plaintiff and the Class rest periods not provided,
15 (5) furnish Plaintiff and the Class with accurate itemized wage statements, as mandated by the
16 applicable Labor Code and Industrial Welfare Commission requirements, (6) pay all wages
17 owed on termination of employment, (7) reimburse business expenses, (8) pay wages in a
18 Labor Code compliant instrument; (9) make proper deductions from wages; (10) reporting time
19 pay, (11) provide vested vacation pay, (12) provide personnel records, all in violation of
20 Business & Professions Code §§ 17200 *et seq.*

21 161. By and through the unfair and unlawful business practices described herein,
22 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
23 and has deprived them of valuable rights and benefits guaranteed by law all to the detriment of
24 Plaintiff and the Class.

25 162. All the acts described herein are violations of, among other things, the Labor
26 Code and Industrial Commission Wage Order No. 5, are unlawful and in violation of public
27 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
28

1 constitute unfair and unlawful business practices in violation of Business & Professions Code
2 §§ 17200 *et seq.*

3 163. Plaintiff and the Class are entitled to, and do, seek such relief as may be
4 necessary to restore to them the money and property which Defendant has acquired, or of
5 which Plaintiff and the Class have been deprived by means of the above-described unfair and
6 unlawful business practices.

7 164. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
8 above-described business practices are unfair and unlawful and that injunctive relief should be
9 issued restraining Defendant from engaging in any of the above described unfair and unlawful
10 business practices in the future.

11 165. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
12 redress the injuries which they have suffered as a consequence of the unfair and unlawful
13 business practices of Defendant. As a result of the unfair and unlawful business practices
14 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable
15 harm unless Defendant is restrained from continuing to engage in these unfair and unlawful
16 business practices. In addition, Defendant should be required to disgorge the unpaid moneys to
17 Plaintiff and the Class.

18 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor
19 and against Defendant as follows:

20 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff
21 and Class Members, according to proof;

22 2. For compensatory damages in the amount minimum wages due to Plaintiff and
23 Class Members, according to proof;

24 3. For payment of unpaid wages in accordance with California labor and
25 employment law;

26 4. For one (1) hour of pay at the regular rate of compensation for Plaintiff and
27 Class Members for each workday that a meal and/or rest period was not provided;

28

1 5. For compensatory damages in the amount of Plaintiff and Class Members' cell
2 phone and purchase expenses for business purposes, costs and attorneys' fees pursuant to Cal.
3 Code Civ. Proc. §2802(c);

4 6. For vacation pay;

5 7. For reporting time pay;

6 8. For an award of all amounts unlawfully deducted from Plaintiff and members of
7 the Class's wages;

8 9. For payment to Plaintiff and Class Members of waiting time penalties pursuant
9 to *Cal. Lab. Code* §203, in an amount equal to her respective daily rates of pay at the time of
10 termination or layoff, multiplied by the total amount of days elapsed between the date of the
11 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
12 maximum of 30 days' pay, according to proof;

13 10. For specific relief enforcing waiting time penalties of 30 days of per diem wages
14 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

15 11. For an award of consequential damages in Plaintiff and Class Members' favor
16 and against Defendant, in an amount to be proven at trial;

17 12. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

18 13. For prejudgment interest accrued on all due and unpaid overtime and minimum
19 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
20 1194(a), according to proof;

21 14. For statutory penalties pursuant to *Cal. Lab. Code* §§ 225.5, 558, 226.7, 1198.5,
22 according to proof;

23 15. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order 5-
24 2001(14);

25 16. For reasonable costs, including attorneys' fees, in an amount according to proof
26 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802, and/or *Cal. Code of*
27 *Civ. Proc.* §1021.5;

1 17. For an award of restitution of wages to Plaintiff and Class members in an
2 amount equal to the amount of wages owed and unpaid, according to proof;

3 18. For injunctive relief requiring Defendant to comply with Labor Code
4 1198.5(b)(1);

5 19. For injunctive relief ordering the continuing unfair business acts and practices to
6 cease, as the Court deems just and proper;

7 20. For other injunctive relief ordering Defendant to notify Plaintiff and Class
8 members that they have not been paid the proper amounts in accordance with California law;

9 21. For punitive and exemplary damages in a sum to be determined at trial; and

10 22. For such other and further relief as the Court deems just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff Ayla Smith hereby respectfully requests a trial by jury for all claims and issues
13 raised in her Complaint that may be entitled to a jury trial.

14
15 LIPELES LAW GROUP, APC

16 Date: November 12, 2024

17
18 By:  _____

19 Kevin A. Lipeles
20 Attorneys for Plaintiff
21 Ayla Smith
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