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Attorneys for Plaintiffs WALTER DAVID RODRIGUEZ, CYNTHIA CHAPMAN, and aggrieved employees

FILED
Superior Court of California
County of Los Angeles
03/30/2022
Sherri R. Carter, Executive Officer / Clerk of Court
By: D. Tamayo Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

WALTER DAVID RODRIGUEZ and CYNTHIA CHAPMAN, individually and on behalf of all similarly situated and aggrieved employees of Defendants in the State of California,

Plaintiffs,

v.

ATRIUM HOSPITALITY LP, and DOES 1 THROUGH 50, inclusive,

Defendants.

Case No.: 22STCV01713

Unlimited Civil
Amount Demanded exceeds $25,000.00

FIRST AMENDED COMPLAINT
CLASS ACTION
[Cal. Code Civ. Proc. § 382]

1. Failure to Provide Meal Periods;
2. Failure to Provide Rest Periods;
3. Failure to Pay Minimum and Regular Wages;
4. Failure to Pay All Overtime Wages;
5. Failure to Pay Reporting Time Pay;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Reimburse for Necessary Business Expenses;
8. Failure to Timely Pay All Wages Due Upon Separation of Employment; and
9. Violation of Business & Professions Code §17200, *et seq*.

REPRESENTATIVE ACTION FOR PAGA PENALTIES
[Labor Code §§ 2698, *et seq*.]

10. Violation of the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq*.

– JURY TRIAL DEMANDED –

Complaint filed: January 14, 2022

WALTER DAVID RODRIGUEZ and CYNTHIA CHAPMAN, individually and on behalf of all other similarly situated and/or aggrieved employees of ATRIUM HOSPITALITY LP, and DOES 1 through 50, inclusive, alleges as follows:

I. INTRODUCTION

1. Plaintiffs WALTER DAVID RODRIGUEZ ("Plaintiff Rodriguez") and CYNTHIA CHAPMAN ("Plaintiff Chapman") (collectively, "Plaintiffs") bring this individual, putative class action, and representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* ("PAGA") against Defendants ATRIUM HOSPITALITY LP, and DOES 1 through 50, inclusive (collectively, "Defendants"), for engaging in a pattern of wage and hour violations under the California Labor Code ("Labor Code") and the applicable Industrial Welfare Commission ("IWC") Wage Order.

2. Plaintiffs bring this putative class action on behalf of all current and former employees who were employed by Defendants in the State of California and who worked in any non-exempt position during the applicable relevant time period (hereinafter "similarly situated employees").

3. Plaintiffs also seek civil penalties pursuant to the PAGA on their own behalf and on behalf of all current and former non-exempt employees who performed work for Defendants in the State of California during the relevant time period and who suffered at least one of the wage and hour violations alleged herein (herein after "aggrieved employees").

4. Plaintiffs are informed and believe, and on that basis allege, that Defendants decreased their employment-related costs by systematically violating California wage and hour laws and engaging in unlawful and unfair business practices.

5. Defendants' systematic pattern of Labor Code and IWC Wage Order violations toward Plaintiffs and other similarly situated employees in California include, but are not limited to:

a. Failure to provide a first off-duty meal period of at least 30-minutes before the commencement of the sixth hour of work and a second off-duty meal period of at least 30-minutes before the commencement of the eleventh hour of work;

b. Failure to authorize and permit off-duty paid rest periods;

c. Failure to pay all minimum and regular wages for all hours worked;

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d. Failure to pay all overtime wages;

e. Failure to pay all reporting time wages;

f. Failure to maintain accurate records;

g. Failure to provide accurate itemized wage statements;

h. Failure to reimburse for necessary business expenses; and

i. Failure to timely pay all wages due during and upon separation of employment.

6. Plaintiffs bring this lawsuit against Defendants seeking damages, restitution, declaratory judgment, injunctive relief, statutory penalties, and monetary relief on behalf of herself and all other similarly situated and/or aggrieved employees of Defendants in California. Plaintiffs seek to recover, *inter alia*, unpaid wages, unreimbursed expenses, interest, attorney's fees, damages, liquidated damages, civil and statutory penalties, and costs pursuant to Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.7, 248.5, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2804, and 2699(f), the California Business and Professions Code § 17200, *et seq.*, and the provisions of the applicable IWC Wage Order.

7. Plaintiffs reserve the right to name additional representatives.

II. PARTIES

A. Plaintiff Rodriguez

8. Plaintiff Rodriguez is a current employee of Defendants, who, at all relevant times, was employed and worked for Defendants in a non-exempt position in Los Angeles County. Plaintiff Rodriguez is employed as a Banquet Associate at Defendants' Hilton Hotel in Long Beach, California.

9. Plaintiff Rodriguez is a resident of the State of California and currently resides in Los Angeles County.

10. Plaintiff Rodriguez is an "aggrieved employee" within the meaning of Labor Code § 2699(c) because he is employed by Defendants and has suffered one or more of the violations committed by Defendants, as described herein.

11. At all relevant times, Plaintiff Rodriguez and, on information and belief, other similarly situated and/or aggrieved employees of Defendants in California were subject to the same policies, practices, and procedures governing their employment and their payment of wages and hours worked.

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B. Plaintiff Chapman

12. Plaintiff Chapman is a former employee of Defendants, who, at all relevant times, was employed and worked for Defendants in a non-exempt position in Sacramento County. Plaintiff Chapman was employed as a Housekeeping Assistant from approximately October 16, 2021 to November 19, 2021 at Defendants' Holiday Inn in Sacramento, California.

13. Plaintiff Chapman is a resident of the State of California and currently resides in Sacramento County.

14. Plaintiff Chapman is an "aggrieved employee" within the meaning Labor Code § 2699(c) because she was employed by Defendants and suffered one or more of the violations committed by Defendants, as described herein.

15. At all relevant times, Plaintiff Chapman and, on information and belief, other similarly situated and/or aggrieved employees of Defendants in California were subject to the same policies, practices, and procedures governing their employment and their payment of wages and hours worked.

C. Defendants

16. Defendant ATRIUM HOSPITALITY, LP is a Georgia limited partnership that operates in hotel management throughout 29 states, including in Los Angeles County, California.

17. Defendants' wrongful conduct, as alleged herein, occurred in the County of Los Angeles and in the State of California.

18. Plaintiffs are informed and believe, and thereon allege, that each Defendant, whether named or fictitious, are and, at all relevant times, were authorized to do business and did business in the State of California and were Plaintiffs' and other similarly situated and/or aggrieved employees' "employer" as defined in and subject to the Labor Code and the applicable IWC Wage Order.

19. Each of the fictitiously named Defendants participated in the acts alleged in this Complaint. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently unknown to Plaintiffs. Plaintiffs will amend this Complaint, setting forth the true names and capacities of the fictitious Defendants, if and when their true names and capacities are ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of the fictitious Defendants participated in the acts alleged in this Complaint.

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20. Plaintiffs and all other similarly situated and/or aggrieved employees are, and at all relevant times were, non-exempt employees of each Defendant, including DOES 1 through 50, within the meanings set forth in the Labor Code and applicable IWC Wage Order.

21. Plaintiffs are informed and believe that at all relevant times, each Defendant, whether named or fictitious, was the agent, employee or other person acting on behalf of every other Defendant, and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of each other Defendant.

22. Plaintiffs are informed and believe that at all relevant times, each Defendant, whether named or fictitious, exercised control over Plaintiffs' and other similarly situated and/or aggrieved employees' wages, hours and/or working conditions.

23. Plaintiffs are further informed and believe that at all relevant times, each Defendant, whether named or fictitious, acted as the agent for the other Defendants, carried out a joint scheme, business plan or policy, and the acts of each Defendant are legally attributable to the other Defendants.

24. Each Defendant, whether named or fictitious, was the alter ego of each of the other Defendants at all relevant times herein.

25. A unity of interest and ownership between each Defendant, whether named or fictitious, exists such that all Defendants acted as a single employer of Plaintiffs and all other similarly situated employees.

26. Defendants, including DOES 1 THROUGH 50, were Plaintiffs' employers or persons acting on behalf of Plaintiffs' employers, within the meaning of California Labor Code § 558.1 and, as such, are liable as the employer for violations of Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802, at all relevant times for causing those Labor Code Violations.

III. JURISDICTION AND VENUE

27. This Court has subject-matter jurisdiction to hear this case because Plaintiffs are informed and believe that the monetary damages and restitution sought herein for Defendants' conduct exceeds the minimum jurisdictional limits of the Superior Court.

28. Venue is proper in Los Angeles County pursuant to Code of Civil Procedure §§ 395(a) and 395.5 because Defendants maintain locations and transact substantial business in Los Angeles County.

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Defendants employed Plaintiff Rodriguez and other similarly situated and/or aggrieved employees in Los Angeles County, and the unlawful acts alleged herein that arose in Los Angeles County have a direct effect on Plaintiff Rodriguez and other similarly situated and/or aggrieved employees within Los Angeles County.

29. Per Judicial Council Emergency Rule 9, the Statute of Limitations on all Causes of Action in this Complaint were tolled from April 6, 2020 to October 1, 2020.

IV. GENERAL ALLEGATIONS

30. Plaintiff WALTER RODRIGUEZ is a current employee of Defendants who worked in a non-exempt position at all times during his employment from approximately December 1, 2015 to the present and ongoing. He was laid off due to the COVID-19 pandemic on October 31, 2020, and he was rehired by Defendants on September 7, 2021.

31. Plaintiff Rodriguez is currently paid an hourly rate of $16.47 per hour.

32. Plaintiff CYNTHIA CHAPMAN is a former employee of Defendants who worked in a non-exempt position at all times during her employment from approximately October 16, 2021 to November 19, 2021.

33. Plaintiff Chapman was paid an hourly rate of $15.50 per hour.

34. Defendants denied Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees, certain rights afforded to them under the California Labor Code and the IWC Wage Order. Specifically, Defendants failed to provide Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees with legally compliant meal and rest periods, failed to provide meal and rest period premiums, failed to pay all minimum, regular, and overtime wages owed, failed to maintain accurate records, failed to reimburse for all necessary business expenses, and failed to issue accurate itemized wage statements.

35. Further, Defendants failed to pay reporting time pay and failed to timely pay all wages as set forth by law to Plaintiff Chapman and other similarly situated and/or aggrieved employees.

36. To this date, Defendants have not paid Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees all wages owed, including all minimum, regular and overtime wages, and meal and rest period premium wages.

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37. Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees of Defendants did not sign a valid on-duty meal period agreement at any point during their employment with Defendants, nor did they properly waive any of their meal periods.

38. Defendants had a pattern and practice of not providing Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees with legally compliant meal periods, even though Plaintiffs and other similarly situated and/or aggrieved employees worked more than six (6) hours during their workday.

39. Thus, as a result of Defendants' illegal policies, Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees were denied the opportunity to take legally compliant thirty-minute meal periods, in violation of the Labor Code § 512 and applicable IWC Wage Order. Defendants regularly required Plaintiffs and, on information and belief, other similarly situated employees to work through their meal periods, receive less than thirty (30) minute meal periods, take interrupted meal periods, and/or did not allow them to take meal periods before the end of their fifth hour of work.

40. Defendants, at all times, had the pattern and practice of interrupting other similarly situated and/or aggrieved employees' meal periods by requiring them to complete work duties. As a result, Plaintiffs and other similarly situated and/or aggrieved employees often had to end their meal breaks early to go back to work.

41. The nature of Plaintiffs' and, on information and belief, other similarly situated and/or aggrieved employees' duties did not prevent them from being relieved of all job duties for a compliant 30-minute off duty meal period.

42. Defendants had a pattern and practice of failing to authorize and permit Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees to take legally compliant rest periods of at least ten minutes for every four-hour work period, or major fraction thereof, because Defendants required them to remain on duty at all times during their ten-minute rest periods. Specifically, Plaintiffs were not able to take rest breaks because there were not enough employees to cover them during their breaks, or they were assigned too much work in too short a timeframe to be able to take rest breaks. Thus, as a result of Defendants' illegal policies, and discouragement from taking rest breaks, Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees were not authorized

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or permitted to take legally compliant rest periods, in violation of the applicable IWC Wage Order.

43. Although Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees did not receive legally compliant meal or rest periods, Defendants did not compensate Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees an additional hour of pay at their regular rate of pay (including all nondiscretionary compensation) for the times that Plaintiffs and other similarly situated and/or aggrieved employees were not authorized or permitted to take a compliant and timely meal or rest period, in violation of Labor Code § 226.7.

44. Defendants failed to properly pay Plaintiffs and other similarly situated and/or aggrieved employees at least minimum, regular and/or overtime wages owed for all time suffered or permitted to work. For example, Defendants would edit Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees' timecards to decrease the hours worked. Because Defendants deleted hours worked by similarly situated and/or aggrieved employees, Defendants did not provide proper remuneration.

45. Additionally, Defendants required similarly situated and/or aggrieved employees, including Plaintiffs, to remain on duty at all times during their shift, including during their meal periods. Despite the fact that this was compensable work hours because Plaintiffs and other similarly situated and/or aggrieved employees were subject to the control of their employer during this working time, and Defendants were required to compensate Plaintiffs and other similarly situated and/or aggrieved employees accordingly, Defendants did not count all of this time as hours worked and did not provide proper remuneration.

46. Plaintiff Chapman and other similarly situated and/or aggrieved employees were also frequently instructed by Defendants not to come in for their scheduled shift as they were arriving to work, and received no compensation for that particular day. Plaintiff Chapman and other similarly situated and/or aggrieved employees were thus precluded from engaging in any preplanned activity during the days they were scheduled to work for Defendants. They then actually reported to work only to be sent home early. Thus, Plaintiff Chapman and other similarly situated and/or aggrieved employees were uniformly underpaid because Defendants failed to pay them reporting time wages in an amount of at least half of the scheduled day's work at their regular rate of pay, as mandated by California law.

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47. To this date, Defendants have not paid Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees all wages owed, including all minimum, regular and overtime wages, reporting time pay, and meal and rest period premium wages.

48. Defendants failed to pay Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees all wages due during their employment because Defendants did not pay Plaintiffs and other similarly situated and/or aggrieved employees all minimum, regular, and overtime wages owed, reporting time pay, as well as all meal and rest period premium wages owed at the correct regular rate of pay, within the time required by Labor Code § 204.

49. As a direct consequence of Defendants' illegal policies, Defendants did not keep accurate records of the actual hours that Plaintiffs and, on information and belief, other aggrieved employees were under the control of Defendants, including, but not limited to, time suffered and permitted to work, as well as all wages earned. For instance, Defendants had an illegal policy and practice of editing aggrieved employees' time cards to decrease their hours worked, resulting in accurate employment records.

50. Defendants similarly failed to provide Plaintiffs and, upon information and belief, other similarly situated and/or aggrieved employees with accurate itemized wage statements. For example, during the applicable statutory period, the wage statements provided to Plaintiffs and other similarly situated and/or aggrieved employees fail to list the meal and rest period premiums at the accurate rate of regular pay (including nondiscretionary businesses) for not taking compliant meal and/or rest breaks, and the correct amount of gross and net wages earned, as required under Labor Code § 226. In addition, the incorrect employer was listed on the wage statements up through 2021.

51. On information and belief, the wage statement omissions and inaccuracies were not a result of an isolated and unintentional payroll error due to an inadvertent mistake, but rather a result of knowing and intentional omissions by Defendants. In addition, and as a result of these omissions and inaccuracies, Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees were not promptly and easily able to determine the correct hours worked and/or determine the accurate wages due and owing without reference to other documents and information.

52. Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees incurred expenses in direct consequence of the discharge of their duties of employment with

Defendants, but Defendants failed to adequately reimburse them for such expenses. For example, Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees were required to use their personal cell phones to access an application called Workday to determine whether they have been assigned to work that day. Despite Defendants' knowledge that Plaintiffs and other similarly situated and/or aggrieved employees were using their personal cell phones for work-related purposes, Defendants failed to provide appropriate reimbursement for these expenses, in violation of Labor Code § 2802

53. Similarly, Defendants maintained a pattern and practice of failing to pay Plaintiff Chapman and other former similarly situated and/or aggrieved employees all wages due and owing at the time of their separation of employment within the time specified by Labor Code §§ 201 and 202 because Defendants failed to pay Plaintiff Chapman and, on information and belief, other similarly situated employees and/or aggrieved employees all minimum, regular, and/or overtime wages for all hours worked, reporting time pay, and meal and/or rest period premium wages due at the time of termination of their employment. Plaintiff Chapman further alleges that, to date, she and other former similarly situated and/or aggrieved employees have not been paid the requisite waiting time penalties.

54. Based on the foregoing violations of the Labor Code and the applicable IWC Wage Order, Defendants engaged in unfair business practices in California and willingly and knowingly engaged in an employment pattern and practice that violated Business & Professions Code § 17200 *et seq*. Plaintiffs and, on information and belief, other similarly situated employees suffered damages due to Defendants' unfair, unlawful and/or fraudulent actions.

V. PAGA REPRESENTATIVE ACTION DESIGNATION

55. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

56. This action is properly suited for a PAGA representative action because:

a. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the California Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the Labor Code, may, as an alternative, be recovered through a civil action brought by

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an aggrieved employee on behalf of himself or herself and all other current or former employees pursuant to the procedures specified in § 2699.3;

b. This action involves allegations of violations of provisions of the Labor Code that provide or do not provide for a civil penalty to be assessed and collected by the LWDA or any departments, divisions, commissions, boards, agencies or employees;

c. Plaintiffs are "aggrieved employees" because they are or were employed by the alleged violators and each had one or more of the alleged violations committed against them;

d. On January 21, 2022, Plaintiffs satisfied the procedural requirements of Labor Code § 2699.3 by serving the LWDA electronically and Defendants ATRIUM HOSPITALITY, LP via Certified Mail with their notice for wage and hour violations and penalties, including the facts and theories to support each violation. A true and correct copy of Plaintiffs' notice is attached as **Exhibit A**.

e. More than 65 days have passed since Plaintiffs served their notice via Certified Mail to the LWDA and their employer. Therefore, Plaintiffs satisfied all of the administrative requirements to pursue civil penalties against Defendants pursuant to Labor Code §§ 2698–99.5;

f. Plaintiffs filed this action pursuant to Labor Code §§ 2699(a) and (f), on behalf of themselves and all other aggrieved employees of Defendants to recover civil penalties that are required to be shared with the LWDA.

g. Plaintiffs seek to recover all applicable civil penalties under PAGA on behalf of themselves and all other aggrieved employees of Defendants, but only those civil penalties that are required to be shared with the LWDA.

VI. CLASS ACTION DESIGNATION

57. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

58. Plaintiffs brings Causes of Action One through Nine as a Class Action pursuant to California Code of Civil Procedure § 382 on behalf of themselves and all current and former employees of Defendants in California and who worked as a non-exempt employee and who were affected by Defendants' Labor Code, Business and Professions Code, and IWC Wage Order violations, as alleged herein.

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59. Plaintiffs seek to represent the following Classes, which are defined as:

<u>The Non-Exempt Class</u>:

"All current and former non-exempt employees who worked for Defendants in the State of California at any time from four years prior to the filing of the Complaint through the present."

<u>The Waiting Time Penalties Subclass:</u>

"All members of the Non-Exempt Class, whose employment with Defendants ended at any time from three years prior to the filing of the Complaint, through the present."

60. Plaintiff Chapman also seeks to represent the following Subclass, which is defined as:

<u>The Reporting Time Subclass:</u>

"All members of the Non-Exempt Class, who were required to report for work and did report, but were not put to work and were not furnished for half of their scheduled day's work at any time from four years prior to the filing of the Complaint through the present."

61. **Reservation of Rights**: Pursuant to California Rule of Court 3.765(b), Plaintiffs reserve the right to amend or modify the class definitions with greater specificity, by further division into subclasses, and/or limitation to particular issues.

62. Causes of Action One through Nine are appropriately suited for a class action pursuant to § 382 of the Code of Civil Procedure because the following requirements are met:

A. <u>Numerosity</u>

63. The members of the Class and Subclasses are sufficiently numerous to render the joinder of all their members impracticable. While Plaintiffs have not yet determined the precise number of members of the Class and Subclass, Plaintiffs are informed and believe that the Class and Subclasses likely consist of over 100 individuals. Although the exact number is currently unknown to Plaintiffs, this information is easily ascertainable from Defendants' time and payroll records and other personnel records.

B. <u>Commonality and Predominance</u>

64. Common questions of law and fact exist as to all class members and predominate over any

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questions affecting only individual members of the Class or Subclasses. The common questions of law and fact that predominate include, but are not limited to:

a. Whether Defendants failed to permit Non-Exempt Class members to take a duty-free, thirty-minute meal period before the commencement of the sixth hour of work;

b. Whether Defendants failed to permit Non-Exempt Class members to take off-duty rest periods of at least 10 minutes for every four hours worked, or major fraction thereof;

c. Whether Defendants failed to pay one additional hour of pay at the employees' regular rate of compensation to Non-Exempt Class members when they were not provided with compliant and timely meal and rest periods;

d. Whether Defendants failed to pay Non-Exempt Class members at least minimum wages and/or all regular wages owed for all hours or fractions of an hour worked and under the control of Defendants;

e. Whether Defendants failed to pay Reporting Time Subclass members all Reporting Time wages;

f. Whether Defendants failed to properly and accurately record and maintain records of all hours worked and wages earned by Non-Exempt Class members;

g. Whether Defendants failed to provide Non-Exempt Class members with accurate itemized wage statements showing, among other things, the number of hours worked and the correct amount of gross and net wages earned;

h. Whether Defendants failed to reimburse Non-Exempt Class Members for all necessary business expenses incurred in direct consequence of the discharge of their work duties; and

i. Whether Defendants failed to pay Waiting Time Penalties Subclass members all of their wages owed within the required time frames upon separation of employment.

C. Typicality

65. Plaintiffs' claims are typical of the claims of all class members because Plaintiffs' and all class members' claims arise from the same event, practice and/or course of conduct of Defendants.

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Plaintiffs and all class members sustained injuries and damages as a result of Defendants' illegal policies, practices and/or common course of conduct in violation of California wage and hour laws and/or illegal, unfair, or fraudulent business practices.

66. Furthermore, Plaintiffs' claims under the Labor Code and the applicable IWC Wage Order are typical of the Class and Subclass because Defendants' failure to comply with the provisions of California's wage and hour laws entitles Plaintiffs and each class member to similar pay, benefits, and other relief. Accordingly, the legal theories underlying each cause of action are the same and the remedies sought by Plaintiffs and all class members are the same.

D. <u>Adequacy of Representation</u>

67. Plaintiffs have no fundamental conflict of interest with the Class or Subclass they seek to represent. Plaintiffs will adequately protect the interests of all class members because it is in Plaintiffs' best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to them and putative class members.

68. Plaintiffs retained attorneys who are experienced employment law litigators with significant wage and hour and class action experience.

E. <u>Superiority of Class Action</u>

69. Plaintiffs believe a class action is a superior method of litigation for the fair and efficient adjudication of this controversy. Individual joinder of all class members is not practicable. Class action treatment will allow similarly situated employees to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

70. Plaintiffs know of no difficulty that might be encountered in the management of this suit, which would preclude maintenance as a class action.

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VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7, 512, and 1198 and the "Meal Periods" section of the Applicable IWC Wage Order)

(Alleged By Plaintiffs Individually and On Behalf of the Non-Exempt Class Against All Defendants)

71. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

72. Labor Code § 512(a) provides, in part, that employers, including Defendants, "may not employ an employee for a work period of more than five hours per day without providing an employee with a meal period of not less than 30 minutes" and "may not employ an employee 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."

73. Labor Code § 226.7 requires that employers, including Defendants, provide their employees with meal periods as mandated by the applicable Wage Order of the Industrial Welfare Commission, and prohibits employers from requiring any employee "to work during any meal … period mandated by an applicable order of the Industrial Welfare Commission." Labor Code § 226.7(c) states, "[i]f an employer fails to provide an employee a meal … period in accordance with a state law… the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal … period is not provided."

74. Labor Code § 1198 states that the "maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

75. The "Meal Periods" section of the applicable IWC Wage Order states, "[n]o 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 the employee." It further states,

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"[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without providing the 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 employer and employee only if the first meal period was not waived."

76. The "Meal Periods" section of the applicable IWC Wage Order also states, "[u]nless 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' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

77. The "Meal Periods" section of the applicable IWC Wage Order also states, "[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided."

78. On information and belief, Plaintiffs and the Non-Exempt Class were subject to the same policies, practices, and procedures governing the provision and scheduling of meal periods.

79. On information and belief, Defendants have a pattern and practice of not providing Plaintiffs and the Non-Exempt Class with legally compliant 30-minute off-duty meal periods during their shifts, even though they worked more than six (6) hours during their workday.

80. Plaintiffs and, on information and belief, the Non-Exempt Class were unable to take compliant meal periods as a result of Defendants' policies alleged herein. For example, Plaintiffs' meal breaks were almost always interrupted by managers asking them to perform work duties.

81. Thus, as a result of Defendants' policies, Plaintiffs' and Non-Exempt Class members' meal periods were regularly on-duty, late and after the end of the fifth hour, interrupted, or not taken.

82. Plaintiffs and, on information and belief, the Non-Exempt Class members did not sign a valid on-duty meal period agreement at any point during their employment with Defendant.

83. Therefore, as a result of Defendants' conduct, including the conduct alleged herein, Defendants violated Labor Code §§ 226.7, 512, and 1198, as well as the applicable IWC Wage Order

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when Defendants failed to provide Plaintiffs and the Non-Exempt Class members a 30-minute, duty-free meal period before the commencement of their sixth hour of work.

84. Consequently, pursuant to Labor Code § 226.7(b) and the "Meal Periods" section of the Wage Order, Defendants was required to pay Plaintiffs and the Non-Exempt Class one additional hour of pay at their regular rate of compensation for each day that Defendants did not provide Plaintiffs and the Non-Exempt Class with a 30-minute, duty-free meal period before the commencement of their sixth hour of work.

85. Despite this obligation, Defendants did not pay Plaintiffs and, on information and belief, the Non-Exempt Class one additional hour of pay at each employee's regular rate of compensation for each day that Defendants did not provide Plaintiffs and the Non-Exempt Class with a 30-minute, duty-free meal period before the commencement of their sixth hour of work.

86. Instead, on information and belief, Defendants have a common policy and practice of failing to compensate Plaintiffs and the Non-Exempt Class with an hour of pay at their regular rate of pay for the times that Defendants did not provide Plaintiffs and the Non-Exempt Class with a 30-minute, duty-free meal period before the commencement of their sixth hour of work or a second 30-minute, duty-free meal period before the commencement of their eleventh hour of work, as required by Labor Code § 226.7(b) and the IWC Wage Order.

87. Thus, on information and belief, Defendants intentionally refused to perform their obligations to provide meal periods and further failed to compensate Plaintiffs and the Non-Exempt Class with all owed meal premium wages as set forth by Labor Code § 226.7(b) and the IWC Wage Order.

88. Plaintiffs and the Non-Exempt Class suffered and continue to suffer losses related to Defendants' failure to pay an additional hour of pay for each day a legally compliant meal period was not provided and the associated use and enjoyment of compensation due and owing to them as a direct result of Defendants' Labor Code and IWC Wage Order violations.

89. Plaintiff seeks all available remedies for Defendants' violations, including, but not limited to, all wages due, monies, and interest to the extent permitted by law.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

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SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Violation of Labor Code §§ 226.7 and 1198 and

the "Rest Periods" section of the Applicable IWC Wage Order)

(Alleged By Plaintiffs Individually and On Behalf of the Non-Exempt Class Against All Defendants)

90. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

91. Labor Code § 226.7 requires employers, including Defendants, to provide to their employees, including Plaintiff, paid rest periods as mandated by the IWC Wage Orders.

92. Labor Code § 1198 states that the "maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

93. The "Rest Periods" section of the applicable IWC Wage Order states, "[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." Furthermore, "[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

94. On information and belief, Plaintiffs and the Non-Exempt Class were subject to the same policies, practices, and procedures governing the provision and scheduling of rest periods.

95. Plaintiffs and, on information and belief, the Non-Exempt Class were not authorized and permitted to take compliant rest periods because they were regularly required to remain on-duty at all times and not permitted to take rest breaks.

96. Labor Code § 226.7(c) states, "[i]f an employer fails to provide an employee a … rest … period in accordance with a state law… the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the …. rest … period is not

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provided."

97. Even though Plaintiffs and, on information and belief, Non-Exempt Class members were not authorized and permitted to take off-duty rest periods, Defendants did not pay Plaintiffs and the Non-Exempt Class appropriate rest period premium wages for each day in which Defendants did not authorize and permit Plaintiffs and the Non-Exempt Class to take compliant rest periods, in violation of Labor Code § 226.7 and the applicable IWC Wage Order.

98. On information and belief, Defendants have a common policy, pattern, and practice of failing to compensate Plaintiff and the Non-Exempt Class with an hour of pay at their regular rate of pay for the times that Plaintiff and the Non-Exempt Class were not authorized to take rest periods of at least 10 minutes for each four-hour work period, or major fraction thereof.

99. Plaintiffs and the Non-Exempt Class suffered and continue to suffer losses related to Defendants' failure to pay an additional hour of pay for each day a rest period was not provided and the associated use and enjoyment of compensation due and owing to them as a direct result of Defendants' Labor Code and IWC Wage Order violations.

100. Plaintiffs seek all available remedies for Defendants' violations including, but not limited to, any and all wages due, monies, and interest, to the extent permitted by law.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

THIRD CAUSE OF ACTION

FAILURE TO PAY MINIMUM AND REGULAR WAGES

(Violation of Labor Code §§ 1194, 1197, and 1198 and the "Minimum Wages" section of the Applicable IWC Wage Order)

(Alleged By Plaintiffs Individually and On Behalf of the Non-Exempt Class Against all Defendants)

101. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

102. Labor Code § 1197 provides, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum wage so fixed is unlawful."

103. The "Minimum Wages" section of the applicable IWC Wage Order provides that an

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employer may not pay employees less than the applicable minimum for all hours worked.

104. The applicable IWC Wage Order defines the term "hours worked" as "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."

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

106. Defendants failed to pay Plaintiffs and, on information and belief, Non-Exempt Class members at least minimum wages for all the time spent working and under the control of Defendants. For example, Plaintiffs and, on information and belief, Non-Exempt Class members regularly remained on-duty during their 30-minute meal periods and were not compensated minimum wages for this time.

107. Labor Code § 1194 provides, in part, that any employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including interest thereon, reasonable attorney's fees, and costs of suit.

108. Labor Code § 1194.2 allows an employee to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code § 1194.

109. Plaintiffs and the Non-Exempt Class suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants' unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

110. Plaintiffs seek all available remedies for Defendants' violations including, but not limited to, any and all wages due, monies, interest, liquidated damages, attorney's fees, and costs to the extent permitted by law.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

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FOURTH CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(Violation of Labor Code §§ 510, 1194, and 1198, and the "Hours and Days of Work" section of the Applicable IWC Wage Order)

(Alleged By Plaintiffs Individually and On Behalf of the Non-Exempt Class Against All Defendants)

111. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

112. Labor Code § 510 provides, "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." The "Hours and Days of Work" section of the applicable IWC Wage Order mandate the same requirements.

113. Labor Code § 1194 provides that any employee receiving less than the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

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

115. The applicable IWC Wage Order defines the term "hours worked" as "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."

116. Plaintiffs and, on information and belief, the Non-Exempt Class worked over eight hours per day and 40 hours per week while employed by Defendants. Plaintiffs and, on information and belief,

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the Non-Exempt Class did not receive all overtime compensation owed for all overtime hours worked over eight hours per day and/or 40 hours per week during their employment with Defendants.

117. Defendants failed to pay Plaintiffs and, on information and belief, Non-Exempt Class members overtime wages for all hours they worked over eight in a day or forty in a week. For example, Plaintiffs and, on information and belief, Non-Exempt Class members were not compensated for their meal periods due to the fact that they were often required to remain on duty at all times during their shift to perform work duties, even though they clocked out for a thirty (30) minute meal period.

118. Further, Plaintiffs and, on information and belief, Non-Exempt Class members were to be paid four hours as a “sign-on” bonus which should have resulted in them working over eight hours per day and 40 hours per week. However, Plaintiffs and, on information and belief, the Non-Exempt Class did not receive all overtime compensation owed for all overtime hours worked.

119. Plaintiffs and the Non-Exempt Class suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants’ unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

120. Plaintiffs seek all available remedies for Defendants’ violations including, but not limited to any and all wages due, monies, interest, attorney’s fees, and costs to the extent permitted by law.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

FIFTH CAUSE OF ACTION

FAILURE TO PAY REPORTING TIME PAY

(Violation of Labor Code §§ 558, 1199, and the “Reporting Time Pay” section of the applicable IWC Wage Order)

(Alleged By Plaintiff Chapman Individually and On Behalf of the Reporting Time Subclass Against All Defendants)

121. Plaintiff Chapman re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

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122. The "Reporting Time Pay" section of the applicable IWC Wage Order States:

> "[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."

123. Labor Code § 558 states that "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated…any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty…"

124. Labor Code § 1199 makes it unlawful for any employer "or other person acting either individually or as an officer, agent, or employee of another person" to require or cause "any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission," pay or cause "to be paid to any employee a wage less than the minimum fixed by an order of the commission" or violate or refuse or neglect "to comply with any provision of this chapter or any order or ruling of the commission."

125. Defendants had, and continue to have, a policy, practice, procedure and/or guideline of instructing Plaintiff Chapman and, on information and belief, the Reporting Time Subclass not to report for their scheduled shift shortly before the start of the shift and often while they were getting ready for work or driving to work. Despite this, Plaintiff Chapman and, on information and belief, the Reporting Time Subclass were not paid any reporting time wages in violation of California law.

126. As a direct and proximate result of Defendants' actions set forth herein, Plaintiff Chapman and, on information and belief, the Reporting Time Subclass have been damaged in that they have not been paid all required reporting time pay.

127. Plaintiff Chapman and the Reporting Time Subclass suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants' unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

128. Plaintiff Chapman, on behalf of herself and the Reporting Time Subclass, seeks all available remedies for Defendants' violations including, but not limited to, any and all wages due, monies,

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interest, and reasonable attorney’s fees and costs to the extent permitted by law.

WHEREFORE, Plaintiff prays for relief as herein requested.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code §§ 226, 246, and 1198 and the “Records” section of the Applicable IWC Wage Order)

(Alleged By Plaintiffs Individually and On Behalf of the Non-Exempt Class Against All Defendants)

129. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

130. Labor Code § 226(a) requires that employers, including Defendants, furnish their employees with each wage payment an accurate and itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

131. Labor Code § 226(e), in part, permits employees suffering injury to collect the greater of all actual damages or the amount specified in Labor Code § 226 per violation.

132. Labor Code § 226(e)(2)(B) states, in pertinent part, “an employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).”

133. Labor Code § 226(h) states, “An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.”

134. Defendants knowingly and intentionally failed to provide Plaintiffs and Non-Exempt Class members an accurate itemized wage statement with each wage payment as required by Labor Code §

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226(a). Defendants knowingly and intentionally failed to provide Plaintiffs and members of the Non-Exempt Class with each wage payment an accurate wage statement showing, among other things, the total regular and overtime hours worked during the pay period, the corresponding gross and net wages earned, all applicable hourly rates and the corresponding number of hours worked at each hourly rate. Specifically, the wage statements provided to Plaintiffs and other similarly situated employees fail to list the one hour additional rate of regular pay for not taking compliant meal and/or rest breaks, and the correct amount of gross and net wages earned, as required under Labor Code section 226.

135. Defendants' failure to provide accurate wage statements deprived Plaintiffs and members of the Non-Exempt Class of the ability to promptly and easily understand and question the calculation and rate of pay and hours used to calculate the wages paid by Defendants. Plaintiffs and members of the Non-Exempt Class, therefore, had no way to dispute any error in the payment or calculation of their wages, all of which resulted in an unjustified economic enrichment to Defendants, and Plaintiffs and members of the Non-Exempt Class suffered actual damages as a result.

136. Defendants' failure to provide accurate itemized wage statements constitutes an injury as defined under Labor Code § 226(e)(2)(B). Therefore, Plaintiffs and members of the Non-Exempt Class have suffered an injury for purposes of Labor Code § 226 and are entitled to recover the greater of all actual damages or the amount specified in § 226 per violation.

137. Plaintiffs and Non-Exempt Class members suffered and continue to suffer injuries, losses and actual damages as a direct result of Defendants' Labor Code violations, including lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations, in an amount to be shown according to proof at trial.

138. Plaintiffs seek to recover all available remedies including, but not limited to damages, penalties, attorney's fees, costs, and injunctive relief to the fullest extent permitted by law.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

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SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

(Violations of Labor Code § 2802)

(Alleged By Plaintiffs Individually and On Behalf of the Non-Exempt Class Against All Defendants)

139. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

140. Labor Code § 2802(a) provides in pertinent part, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

141. Labor Code § 2802(b) states, "[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss." The exact amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

142. Furthermore, Labor Code § 2802(c) states, "[f]or the purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

143. Plaintiffs and, on information and belief, members of the Non-Exempt Class incurred business expenses in direct consequence of their job duties through the use of their personal cell phones. On information and belief, Plaintiffs and the Non-Exempt Class were required to use an application on their personal cell phones to see when they are scheduled to work. Despite Defendants' knowledge that Plaintiffs and members of the Non-Exempt Class were using their personal cell phones for work-related purposes, Defendants failed to provide appropriate reimbursement for these expenses, in violation of Labor Code § 2802.

144. As a direct result of Defendants' violations alleged herein, Plaintiffs and members of the Non-Exempt Class suffered and continue to suffer, substantial losses related to Defendants' failure to indemnify them for the expenses and losses, including the use and enjoyment of such monies, lost interest on such monies and expenses, and attorney's fees and costs in seeking to compel Defendants to fully

perform its obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

145. Plaintiffs, on behalf of themselves and the Non-Exempt Class, seek to recover in a civil action to the fullest extent permissible all available remedies including, but not limited to, the unpaid balance of the indemnification from Defendants' violations, interest thereon permitted by Labor Code § 2802(b), reasonable attorney's fees and costs of suit, declaratory relief, and any other permitted remedies including those permitted pursuant to Labor Code § 2802 and Code of Civil Procedure § 1021.5. The exact amount of reimbursements, interest, costs and attorney's fees will be in an amount to be proved at time of trial.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

EIGHTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT

(Violations of Labor Code §§ 201, 202, 203**)**

(Alleged By Plaintiffs Individually and On Behalf of the Non-Exempt Class Against All Defendants)

146. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

147. Labor Code § 201 requires Defendants to immediately pay any wages, without abatement or reduction, to any employee who is discharged. Labor Code § 202 requires Defendants to pay any and all wages due and owing to an employee not having a written contract for a definite period, who quits his or her employment, within 72 hours of the employee quitting his or her employment, unless the employee has given 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.

148. For violation of Labor Code §§ 201 and 202, Labor Code § 203 causes the unpaid wages of an employee to continue as a penalty from the due date thereof, at the same rate until paid or until an action is commenced, but the wages shall not continue for more than 30 days.

149. As a result of Defendants' conduct during the applicable statutory period, Defendants willfully failed to pay Plaintiffs and, on information and belief, the Waiting Time Penalties Subclass all wages due and owing to them, including minimum wages, overtime wages, and regular wages for all the

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time they were suffered or permitted to work or were engaged in work under Defendants' control, reporting time pay, as well as all meal period premiums and rest period premiums owed within the time required by Labor Code §§ 201 and 202, as applicable.

150. To date, Plaintiffs have not yet received all wages due and payable, including but not limited to, minimum wages, overtime wages, regular wages, reporting time pay, and meal and rest period premium wages owing to them. On information and belief, members of the Waiting Time Penalties Subclass have not yet received all minimum wages, overtime wages, regular wages, reporting time pay, and meal and rest premium wages due and owing to them.

151. As a direct result of Defendants' violations alleged herein, Plaintiffs and the Waiting Time Penalties Subclass members suffered and continue to suffer losses related to the use and enjoyment of wages due and owing to them, all to their respective damage in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

152. Plaintiffs seek all available remedies for Defendants' violations to the fullest extent permissible.

WHEREFORE, Plaintiffs prays for relief as hereinafter requested.

NINTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ*.

(Alleged By Plaintiffs Individually and on Behalf of the Non-Exempt Class Against All Defendants)

153. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

154. California Business & Professions Code § 17200, *et seq*., prohibits acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice..."

155. Defendants' Labor Code and IWC Wage Order violations alleged herein constitute "unlawful, unfair or fraudulent business act or practices," which are prohibited by Business and Professions Code §§ 17200-17208 and include, but are not limited to: (i) failure to provide proper meal periods and pay Plaintiffs and the Non-Exempt Class premium wages for failure to provide compliant meal periods; (ii) failure to provide proper rest periods and pay Plaintiffs and the Non-Exempt Class premium wages for failure to provide compliant rest periods; (iii) failure to pay Plaintiffs and the Non-

Exempt Class all regular, minimum, and overtime wages for all hours suffered or permitted to work and under the control of Defendants; (iv) failure to pay reporting time to the Reporting Time Class members, (v) failure to maintain accurate records of the hours that Plaintiffs and the Non-Exempt Class worked while employed by Defendants; (vi) failure to provide Plaintiffs and the Non-Exempt Class with accurate itemized wage statements; and (vii) failure to timely pay Plaintiff Chapman and members of the Waiting Time Penalties Subclass all wages owed upon separation of their employment with Defendants.

156. Defendants intentionally avoided paying Plaintiffs and the Non-Exempt Class all wages and/or monies, and other financial obligations attached thereto, to create for Defendants an artificially lower cost of doing business, and thus, undercut its competitors.

157. Defendants lowered their costs of doing business by paying Plaintiffs and the Non-Exempt Class an amount less than what is required by the California Labor Code and the applicable Wage Order of the Industrial Welfare Commission, thereby unfairly forcing Plaintiffs and Non-Exempt Class members to perform work without fair compensation and benefits.

158. Defendants held themselves out to Plaintiffs and the Non-Exempt Class as being knowledgeable about, and adhering to, the employment laws of California at all times relevant herein. Plaintiffs and the Non-Exempt Class relied on and believed in Defendants' representation concerning Defendants' adherence to the California laws, all to their detriment.

159. Defendants' scheme to lower its payroll and operation costs and thus profit, by withholding money owed to the class and withholding wages, compensation and benefits, which are all the property of Plaintiffs and the Non-Exempt Class, in violation of the California Labor Code and the IWC Wage Orders, as alleged herein, constitutes an "unlawful, unfair or fraudulent business act or practice," under California Business and Professions Code § 17200, *et seq*. As a result of Defendants' unfair competition, Plaintiffs and the Non-Exempt Class suffered injury in fact by losing money and/or property.

160. Business and Professions Code § 17204, states, in relevant part, "[a]ctions for relief pursuant to this chapter shall be prosecuted…by…a person who has suffered injury in fact and has lost money or property as a result of the unfair competition."

161. Defendants acquired money and property owed to Plaintiffs and the Non-Exempt Class by means of an unlawful practice that constitutes unfair competition as defined by Business and Professions

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Code § 17200, *et seq*.

162. Plaintiffs and the Non-Exempt Class are persons in interest under Business and Professions Code § 17203 to whom money and property should be restored. Business and Professions Code § 17203 states, in relevant part, that "any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204."

163. Plaintiffs are people who suffered injury in fact and lost money, wages, compensation, and benefits, as a result of Defendants' unfair competition. Thus, pursuant to Business and Professions Code §§ 17203 and 17204, Plaintiffs may pursue representative claims and relief on behalf of themselves and the putative classes.

164. Pursuant to Business and Professions Code § 17203, "[t]he court may make such orders or judgments, as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition."

165. Defendants reaped unfair benefits and illegal profits at the expense of Plaintiffs and the Non-Exempt Class by committing the unlawful acts alleged herein. Thus, Defendants must make restitution and/or be subject to other equitable relief pursuant to Business & Professions Code § 17203, and restore all unpaid wages to Plaintiffs and the Non-Exempt Class.

166. Plaintiffs and the Non-Exempt Class suffered and continue to suffer loss of wages and monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

167. Plaintiffs seek all available remedies on behalf of themselves and on behalf of the Non-Exempt Class, including, but not limited to, restitution of all wages and all monies owed, all in an amount to be shown according to proof at trial. All such remedies are cumulative of relief available under other laws, pursuant to Business & Professions Code § 17205.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

TENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT OF 2004 CLAIMS FOR CIVIL PENALTIES

(Violation of Labor Code §§ 2698 *et seq*.)

(Alleged by Plaintiffs on Behalf of All Aggrieved Employees Against All Defendants)

168. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs

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above, as though fully set forth herein.

169. Pursuant to Labor Code § 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, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

170. This cause of action involves alleged violations of Labor Code §§ 201, 202, 203, 204, 210, 223, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199, and 2802 which, pursuant to Labor Code § 2699.5, provides for a civil penalty to be assessed and collected by the LWDA or recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

171. Defendants employed Plaintiffs and Plaintiffs each had one or more of the alleged violations committed against them. Therefore, Plaintiffs are "aggrieved employees" under PAGA because the alleged violators employed them and they each had one or more of the alleged violations committed against them. As such, Plaintiffs are properly suited to represent the interests of other aggrieved employees in a PAGA representative action.

172. Plaintiffs exhausted their obligation to provide administrative notice and now seek the recovery of all available civil penalties under Labor Code § 2699(a), but only those civil penalties that are required to be shared with the LWDA. Plaintiffs expressly disclaim the recovery of any individual/victim specific relief or underpaid wages.

173. For all provisions of the Labor Code for which a civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendants, and each of them, a penalty of one hundred dollars ($100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation.

174. Defendants violated Labor Code §§ 226.7, 512, and 1198 by failing to provide Plaintiffs and aggrieved employees lawfully compliant meal periods and by failing to pay them meal period premium wages for each day a lawful meal period was not provided. Under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of $100 for each aggrieved employee per pay period for the initial

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violation of Labor Code §§ 226.7 and 1198, and $200 for each aggrieved employee per pay period for each subsequent violation.

175. Defendants violated Labor Code §§ 226.7 and 1198 by failing to provide Plaintiffs and aggrieved employees lawfully compliant rest periods and by failing to pay them rest period premium wages for each day a lawful rest period was not provided. Under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of $100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 226.7 and 1198, and $200 for each aggrieved employee per pay period for each subsequent violation.

176. Defendants violated Labor Code §§ 223, 1194, 1197, 1197.1, and 1198 by not paying Plaintiffs and other aggrieved employees at least minimum and regular wages for all the time they were suffered or permitted to work, engaged in work and/or under Defendants' control, as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of $100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 223, 1194, 1197, 1197.1, and 1198, and $200 for each aggrieved employee per pay period for each subsequent violation.

177. Labor Code § 1197.1 imposes upon Defendants for each initial violation of Labor Code § 1197 by paying or causing an employee to be paid less than the minimum wage, a civil penalty of $100.00 for each underpaid employee for each pay period for which the employee is underpaid. Furthermore, Labor Code § 1197.1 imposes upon Defendants for each subsequent violation a civil penalty of $250.00 for each underpaid employee for each pay period for which the employee was underpaid.

178. Defendants violated Labor Code §§ 223, 510, 1194, and 1198 by not paying Plaintiffs and other aggrieved employees all overtime wages earned for all the time they were suffered or permitted to work, engaged in work and/or under Defendants' control, as alleged herein. At all relevant times, Plaintiffs and, on information and belief, other aggrieved employees were not paid all overtime wages when they worked in excess of eight hours a workday or forty hours in a workweek. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of $100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 223, 510, 1194, and 1198, and $200 for each aggrieved employee per pay period for each subsequent violation.

179. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided

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by law, Labor Code § 558 imposes a civil penalty of $50 per pay period for each underpaid employee for the initial violation and $100 per pay period for each underpaid employee for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC.

180. Under Labor Code § 225.5, Defendants, in addition to, and entirely independent and apart from, any other penalty, are subject to a civil penalty for unlawfully withholding wages due Plaintiffs and other aggrieved employees in violation of Labor Code § 223 as follows: (1) For an initial violation, one hundred dollars ($100.00) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200.00) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. This amount shall be recovered on behalf of the Labor Commissioner.

181. Defendants violated Labor Code §§ 1194, 1198, and 1199 when they failed to pay Plaintiff Chapman and other aggrieved employees the required amount of reporting time pay for the days they reported to work but were not put to work, as required by law and as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of $100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 1194, 1198, and 1199, and $200 for each aggrieved employee per pay period for each subsequent violation.

182. Defendants violated Labor Code § 204 by not paying Plaintiffs and aggrieved employees all minimum, regular, and/or overtime wages, reporting time pay, and meal and rest period premium wages owed by the time set forth by law during their employment, as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of $100 for each aggrieved employee per pay period for the initial violation of Labor Code § 204, and $200 for each aggrieved employee per pay period for each subsequent violation.

183. Under Labor Code § 210(a), Defendants, in addition to, and entirely independent and apart from any other penalty, are subject to a civil penalty for failing to pay the wages of each aggrieved employee as provided in Labor Code § 204, as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each aggrieved employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each aggrieved employee, plus

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25 percent of the amount unlawfully withheld. This amount shall be recovered on behalf of the Labor Commissioner.

184. Defendants violated Labor Code §§ 226(a), 248.5, and 1198 by knowingly and intentionally failing to furnish Plaintiffs and other aggrieved employees of Defendants with wage statements accurately itemizing all information required by Labor Code § 226(a), as alleged herein, because the wage statements did not include the correct amount of total hours worked, actual gross and net wages earned, the correct applicable hourly rate per hour worked or the corresponding number of hours worked at each hourly rate, and the correct name of the legal entity that is the employer. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of $100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 226(a) and 1198, and $200 for each aggrieved employee per pay period for each subsequent violation.

185. Alternatively, Labor Code § 226.3 provides for a civil penalty in the amount of $250 per violation in an initial citation and $1,000 for each violation in a subsequent citation, for which the employer, such as Defendants, fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision Labor Code § 226(a). This penalty is in addition to any other penalty provided by law.

186. Defendants violated Labor Code § 1174(d) by failing to maintain accurate records detailing the actual time worked by Plaintiffs and aggrieved employees, including time spent working during meal periods, and by editing aggrieved employees' timecards to decrease the hours worked, among other things. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of $100 for each aggrieved employee per pay period for the initial violation of Labor Code § 1174, and $200 for each aggrieved employee per pay period for each subsequent violation.

187. Labor Code § 1174.5 provides for a civil penalty of $500 for any person employing labor, such as Defendants, who willfully fails to maintain accurate and complete records required by subdivision (d) of § 1174. This civil penalty is in addition to the civil penalty of $100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

188. Defendants violated Labor Code § 2802 by failing to reimburse Plaintiffs and other aggrieved employees for use of their personal cell phones in the discharge of their job duties. Thus, under

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Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of $100 for each aggrieved employee per pay period for the initial violation of Labor Code § 2802, and $200 for each aggrieved employee per pay period for each subsequent violation.

189. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiffs, in their representative capacity on behalf of themselves and all other aggrieved employees, is entitled to, and therefore seeks, attorneys' fees and costs.

190. Plaintiffs seek to recover civil penalties on behalf of themselves and other aggrieved employees for Defendants' violations of the Labor Code, including but not limited to Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 223, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199, and 2802 pursuant to Labor Code § 2698, *et seq*. The exact amount of the applicable penalties is in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

a. For general damages;

b. For special damages;

c. For an award of liquidated damages to the extent permissible by Labor Code § 1194.2;

d. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5, and Labor Code §§ 218.5, 218.6, 226(e), 248.5, 1194, and 2802;

e. For civil and statutory penalties to the extent permitted by law, including those pursuant to the Labor Code, the Private Attorneys General Act, and the Orders of the Industrial Welfare Commission;

f. For civil penalties for each initial and subsequent violation for each underpaid employee for each pay period for which the employee was underpaid pursuant to

Labor Code §§ 558 and 1197.1;

g. For waiting time penalties under Labor Code § 203;

h. For reimbursement of all work-related expenses pursuant to Labor Code § 2802;

i. For restitution as provided by Business and Professions Code § 17200, *et seq.*;

j. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code § 17200, *et seq.*;

k. For an award of damages in the amount of unpaid compensation and monies including, but not limited to actual damages, unpaid wages, minimum wages, regular wages, overtime wages, waiting time penalties and other penalties according to proof, including interest thereon, to the extent permissible by law;

l. For an award of an additional hour of pay at the regular rate of compensation for each noncompliant meal and rest period, pursuant to Labor Code § 226.7 and the applicable Order of the Industrial Welfare Commission;

m. For an award of the greater of actual damages or the liquidated damage amounts provided by Labor Code § 226(e) for Defendants' failure to provide accurate itemized wage statements, pursuant to Labor Code § 226(a);

n. For injunctive relief as provided by the Labor Code including but not limited to Labor Code §§ 226(h) and 248.5, and Business and Professions Code § 17200, *et seq.*

o. For indemnification of all losses incurred as a result of employment with Defendants, with interest;

p. For pre- and post-judgment interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;

q. For an order imposing a constructive trust upon Defendants to compel it to transfer wages that have been wrongfully obtained and held by Defendants to unpaid employees;

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r. For an accounting to determine all money wrongfully obtained and held by Defendants;

s. For a declaratory judgment that Defendants violated Labor Code §§ 201, 202, 203, 204, 210, 223, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 1199, and 2802, as well as the "Hours and Days of Work," "Minimum Wages," "Reporting Time Pay," "Records," "Meal Periods," and "Rest Periods" sections of the Wage Order of the Industrial Welfare Commission; and

t. An award of such other and further relief as this Court deems proper and just.

JURY TRIAL DEMAND

Plaintiffs hereby demand a trial by jury on all Causes of Action to the extent authorized by law.

Dated: March 30, 2022

GRAHAM**HOLLIS** APC

By: ______________________________

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EXHIBIT A

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January 21, 2022

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Atrium Hospitality, LP
c/o CSC-Lawyers Incorporating Service,
Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: ***Walter Rodriguez and Cynthia Chapman's Wage and Hour Claims Against Atrium Hospitality, LP***

Dear Labor and Workforce Development Agency and Atrium Hospitality:

Please be advised that Walter Rodriguez and Cynthia Chapman ("Claimants") have retained our law firm to represent them for various claims against their current and former employer Atrium Hospitality, LP ("the Company.")

This letter shall serve as Claimants' written notice to the California Labor and Workforce Development Agency ("LWDA") and to the Company of alleged violations of the California Labor Code which Claimants allege the Company committed against them and all other aggrieved employees in California. Claimants provide this notice in accordance with Section 2699.3 of the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Claimants desire to file a civil action to enforce their rights under the Labor Code and seek compensation accordingly.

Pursuant to California Labor Code Section 2699(a), and by way of this letter, Claimants also intend to represent all other current and former non-exempt employees who performed work for the Company in California during the relevant

Graham S.P. Hollis
Vilmarie Cordero
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David Lin
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*Provisionally Licensed Lawyer

time period and who have suffered at least one of the wage and hour violations described herein during their employment (collectively the "aggrieved employees").

FACTUAL BACKGROUND

The following factual background is based upon the limited investigation Claimants have been able to conduct to date. Claimants reserve the right to amend this notice letter should additional information come to light at a later date.

Atrium Hospitality, LP is a limited partnership that operates in hotel management throughout twenty-nine states, including California. The Company manages the Holiday Inn in Sacramento, where Claimant Chapman worked, and it also manages the Hilton Hotel in Long Beach where Claimant Rodriguez works.

Claimant Rodriguez has worked for Company in the Banquets Department since December 1, 2015. He was laid off due to the COVID-19 pandemic on October 31, 2020 and was rehired on September 7, 2021. Claimant Rodriguez is an hourly employee paid at a rate of $16.47 per hour. He typically works at least 40 hours per week. He typically works Monday through Friday from 5:00 a.m. to 1:30 p.m. As a Banquet Associate, Claimant Rodriguez is responsible for setting up rooms and equipment, as well as responding to guest requests and inquiries.

Claimant Chapman worked for the Company as a Housekeeping Assistant from approximately October 16, 2021 to November 19, 2021. She was an hourly employee paid at a rate of $15.50 per hour. She typically worked approximately 40 hours per week. As a Housekeeping Assistant, Chapman was responsible for cleaning rooms in a Holiday Inn.

The Company denied Claimants and other aggrieved employees specific rights afforded under the California Labor Code and applicable IWC Wage Order. The rights denied include, but are not limited to, the following: the Company failed to pay minimum, regular, and overtime wages rightfully owed; failed to provide, authorize, and permit legally compliant meal and rest periods; failed to pay meal and rest period premiums; failed to reimburse necessary business expenses; failed to issue accurate itemized wage statements; failed to pay reporting time pay, and failed to timely pay all wages due upon separation of employment.

The Company frequently did not provide Claimants and other aggrieved employees the opportunity to take compliant thirty-minute, off-duty meal periods before the start of the sixth hour of work. Rather, the Company had the pattern and practice of requiring Claimants and other aggrieved employees to work through meal periods, or occasionally to take late, interrupted, short, or on-duty meal periods.

Likewise, Claimants typically worked shifts of 8 hours or more and the Company did not permit Claimants and other aggrieved employees to take ten-minute, uninterrupted rest periods every four hours of work, or major fraction thereof, at any time during their shifts. Claimants never had the opportunity to take compliant rest periods because there were not enough employees to cover them during their breaks, or they were assigned too much work in too short a timeframe to be able to take rest breaks. The Company's practices therefore made it impossible for Claimants and other aggrieved employees to complete their work while also taking compliant meal and rest breaks.

In addition to these illegal practices regarding meal periods and rest periods, the Company did not compensate Claimants and, on information and belief, other aggrieved employees, an additional hour of pay at the employee's regular rate of pay for all work periods during which a meal period or rest period was not provided, as required by California law. Thus, the Company owes Claimants and all other aggrieved employees meal period and rest period premium wages for each workday they were not provided a compliant meal period and rest period.

Claimants and other aggrieved employees were not paid all minimum, regular and overtime wages rightfully owed, because the Company failed to pay them for time spent working during their meal periods. Additionally, the Company would edit Claimants' and other aggrieved employees' timecards to decrease the number of hours worked. Claimant and other aggrieved employees' time was therefore not accurately captured at all times, and they were not paid all minimum, regular, and overtime wages rightfully owed for all hours worked.

The Company also failed to reimburse Claimants and other aggrieved employees for all necessary expenses that were incurred in the discharge of their job duties. For example, Claimants frequently used their personal cell phones to access an application called Workday to see whether they were assigned to work that day. Claimants and, on information and belief, other aggrieved employees were never reimbursed for use of their personal cell phones.

The Company also often instructed Claimants and other aggrieved employees not to clock in for their scheduled shift as they were arriving for work. However, they were not paid for at least half of the scheduled day's work at their regular rate of pay. Thus, the Company failed to pay Claimants and other aggrieved employees reporting time pay in violation of California law.

As a direct result of the Company's illegal policies and procedures outlined above, the Company failed to maintain accurate records reflecting all of Claimants' and other aggrieved employees' time worked and wages paid, in violation of California law. In addition, the wage statements issued to Claimants by the Company did not include the correct amount of gross and net wages earned, the correct amount of total hours worked, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate of pay as required under California Labor Code Section 226. For example, the wage statements provided to Claimants did not list the meal and rest period premiums at the accurate rate of regular pay (including nondiscretionary bonuses) for not taking compliant meal and/or rest breaks. In addition, the incorrect employer was listed on Claimants' wage statement through 2021.

Furthermore, the Company failed to timely pay Claimants and, on information and belief, other aggrieved employees all wages due and payable during and upon separation of employment, including minimum, regular, and overtime wages for all hours worked, reporting time pay, and meal and/or rest period premium wages, as required pursuant to Labor Code §§ 201, 202 and 204, due to the aforementioned Labor Code violations. Claimants further contends that she and other former aggrieved employees have not been paid any waiting time penalties as provided under Labor Code § 203.

Due to the foregoing California Labor Code violations, the Company denied Claimants and other aggrieved employees certain rights afforded to them under the California Labor Code and IWC Wage Orders. Claimants make these claims against the Company on behalf of themselves and all other aggrieved current and former employees of the Company in California.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Cal. Lab. Code Sections 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the "Minimum Wages" and "Hours and Days of Work" sections of the Applicable IWC Wage Order)

California Labor Code Section 1197 states: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Further, California Labor Code Section 1197.1(a) provides: "Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 .…" Section 1198 states: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the other or under conditions of labor prohibited by the order is unlawful."

California Labor Code Section 510 states: "Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." The "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Order mandate the same requirements.

California Labor Code Section 1194(a) states: "[A]ny employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under California Labor Code Section 1194.2.

California Labor Code Section 223 states: "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract." California Labor Code Section 225.5 provides that, "every person who unlawfully withholds wages due any employee in violation of Section…223 shall be subject to a civil penalty" of $100 for each initial violation, and $200 plus 25 percent of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company failed to pay Claimants and other aggrieved employees all minimum, regular, and overtime wages rightfully earned, as required by these laws. The Company failed to accurately record hours worked, required Claimants and, on information and belief, other aggrieved employees to perform work off the clock, and failed to pay meal period and rest period premiums. The Company therefore failed to properly compensate Claimants and other aggrieved employees for all hours worked. Claimants will pursue all available remedies for the Company's violations on behalf of themselves and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO PROVIDE, AUTHORIZE, AND PERMIT COMPLIANT MEAL PERIODS AND REST PERIODS OR PAY MEAL AND REST PERIOD PREMIUMS

(Cal. Lab. Code Sections 226.7, 512, 558, 1198, and the "Meal Periods" and "Rest Periods" sections of the Applicable IWC Wage Order)

California Labor Code Section 226.7(b) states: "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.…" California Labor Code Section 226.7(c) states: "If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law…the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

California Labor Code Section 512(a) states: "An employer shall not employ 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 .…" Section 512(a) goes on to state: "An employer shall not employ an employee 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 ...."

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The "Meal Periods" section of the applicable IWC Wage Order states, "[n]o 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 the employee." Furthermore, "[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided."

The "Meal Periods" section of the applicable IWC Wage Order also states: "[u]nless 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' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

The "Rest Periods" section of the applicable IWC Wage Order states, "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours, or major fraction thereof." Furthermore, "[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

California Labor Code Section 1198 states: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the other or under conditions of labor prohibited by the order is unlawful."

As set forth above, the Company failed to provide, authorize, or permit Claimants and other aggrieved employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work, and did not provide, authorize, or permit Claimants and other aggrieved employees to take legally compliant rest periods, as required by California law. Claimants and other aggrieved employees were entitled to receive one-hour of premium wages for each day a compliant meal period or rest period was not authorized or permitted. The Company has the pattern and practice of paying neither meal period premium wages even though meal periods were consistently late, missed, or on-duty, nor for paying rest period premium wages even though rest periods were not taken. Claimants will pursue all available remedies for the Company's violations on behalf of themselves and other aggrieved current and former employees to the extent allowed by law.

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FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Cal. Lab. Code Sections 2802 and 2804)

California Labor Code Section 2802(a) provides, in pertinent part: "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 .…"

California Labor Code Section 2802(b) states: "All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss." Accordingly, Claimant will request that she receive interest on the applicable amount.

Furthermore, California Labor Code Section 2802(c) states: "For purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Consequently, Claimant will also request reimbursement of the attorney's fees incurred in pursuing this matter.

California Labor Code Section 2804 provides: "Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

As set forth above, Claimants frequently used their personal cell phones to see when they were scheduled to work. Claimants were never reimbursed for the use of their personal cell phones. Claimants will pursue all available remedies for the Company's violations on behalf of themselves and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Cal. Lab. Code Sections 1174, 1174.5, 1198, and the "Records" section of the applicable IWC Wage Order)

California Labor Code Section 1174 states: "Every person employing labor in this state shall:…(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to…employees employed at the respective plants or establishments."

The "Records" section of the applicable IWC Wage Order states that "[e]very employer shall keep accurate information with respect to each employee" including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period.

California Labor Code Section 1174.5 imposes a civil penalty of $500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of $100 per pay period, per aggrieved employee that would be imposed pursuant to Cal. Lab. Code Section 2699 for a violation of Cal. Lab. Code Section 1174(d).

As set forth above, the Company violated these requirements by failing to accurately capture time worked by Claimants and other aggrieved employees, by editing Claimants' timecards to decrease the hours worked, by forcing Claimants and other aggrieved employees to perform work off the clock during meal periods, and by failing to pay meal period and rest period premium wages when compliant meal periods and rest periods were not provided. Claimants will pursue all available remedies for the Company's violations on behalf of themselves and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Cal. Lab. Code Sections 226, 226.3, 248.5, 1198, and the "Records" section of the Applicable IWC Wage Order)

California Labor Code Section 226(a) states, in pertinent part, that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: "(1) gross wages earned, (2) total hours worked by the employee…, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,…(8) the name and address of the legal entity that is the employer… and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee .…"

California Labor Code Section 226(e) imposes a penalty of the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of $4,000, and entitles an employee to an award of costs and reasonable attorney's fees. California Lab. Code Section 226.3 imposes an additional civil penalty on the employer of $250 per employee per violation of Cal. Lab. Code Section 226(a) in an initial citation and $1,000 per employee for each violation in a subsequent citation.

California Labor Code Section 248.5(e) provides that "any person or entity enforcing this article on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorney's fees and costs."

The "Records" section of the applicable IWC Wage Order states that "[e]very employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid .…" It further states, in pertinent part: "Every employer shall keep accurate information with respect to each employee including the following:…(4) Total wages paid each payroll period,…(5) Total hours worked in the payroll period and applicable rates of pay."

As set forth above, the Company failed to provide Claimants and other aggrieved employees with accurate itemized wage statements that comply with the requirements of the California Labor Code because the wage statements issued did not accurately reflect the total regular and overtime hours worked, the correct amount of gross and net wages earned, and a correct number of hours worked at a particular hourly rate as required under Cal. Lab. Code Section 226. Each one of Claimants' wage statements fails to list the meal and rest period premiums at the accurate rate of regular pay (including nondiscretionary bonuses) for not taking complaint meal and/or rest breaks, and the correct amount of gross and net wages earned, as required by Labor Code Section 226. In addition, the name of the legal entity that is the employer was incorrectly listed on Claimants' wage statements through 2021. Claimants will pursue all available remedies for the Company's violations on behalf of themselves and other aggrieved employees to the extent allowed by law.

<u>FAILURE TO PAY REPORTING TIME PAY</u>

(Labor Code § § 1194, 1198, 1199, and the "Reporting Time Pay" section of the IWC Wage Order No. 5-2001)

The "Reporting Time Pay" section of IWC Wage Order No. 5-2001 states,

> "[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."

Labor Code § 1199 makes it unlawful for any employer "or other person acting either individually or as an officer, agent, or employee of another person" to require or cause "any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission," pay or cause "to be paid to any employee a wage less than the minimum fixed by an order of the commission" or violate or refuse or neglect "to comply with any provision of this chapter or any order or ruling of the commission."

As set forth above, the Company failed to pay Claimants and, on information and belief, other aggrieved employees the required amount of reporting time pay for the time they reported to work but were not put to work, as required by California law. Claimants will pursue all available remedies for the Company's violations on behalf of herself and other aggrieved employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES DUE

(Labor Code §§201-204, 210 and the "Minimum Wages" section of the IWC Wage Order No.5-2001)

Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202 provides,

> "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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."

Labor Code § 203(a) further provides,

> "[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days."

Labor Code § 204(a) states in pertinent part,

> "[a]ll wages…earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Furthermore, Labor Code § 204(b)(1) states, "all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period."

The "Minimum Wages" section of IWC Wage Order No. 5-2001 also states that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

Labor Code § 210 mandates that, "… every person who fails to pay the wages of an employee as provided in Sections 201.3…shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company violated these Labor Code sections by not timely paying to Claimants and, on information and belief, other aggrieved employees all minimum, regular, and/or overtime wages for all time worked and/or meal and rest period premium wages within the required time during and upon separation of their employment. As a result of the Company's failure to comply with the aforementioned Labor Code provisions, the Company owes waiting time penalties to Claimants and other former aggrieved employees. Claimants will pursue all available remedies for the Company's violations on behalf of herself and other current or former aggrieved employees to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code §§ 210, 226.3, 226(f), 558, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in sections 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of $100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation $200 for each failure to pay each employee, plus 25 % of the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation.

For violations of Labor Code § 226(c), Labor Code § 226(f) permits the current or former employee, or the Labor Commissioner, to recover a $750 penalty from the employer.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: "[f]or any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid."

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of $500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

> (1) For any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of $100 per pay period, per employee for the initial violation and $200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, 2802, and relevant IWC Wage Orders.

As set forth above, the Company violated the Labor Code and IWC Wage Order 5-2001 by failing to timely pay Claimant and other aggrieved employees all regular, minimum, and/or overtime wages, reporting time pay, reimbursements for necessary business expenditures, and/or meal and rest period premium wages, as required under the Labor Code and the applicable sections of IWC Wage Order 5-2001. As a result, the Company is liable for civil penalties under the Labor Code and Claimant will pursue all available remedies, including but not limited to those stated herein, for the Company's violations on behalf of herself and other aggrieved employees to the extent allowed by law.

<u>ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES</u>

(Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, 2802, and 2698, *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5, 2802, and 2698, *et seq.*, among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

GRAHAMHOLLIS APC

Under Labor Code § 2699(g)(1) aggrieved employees, such as Claimants, are entitled to an award of reasonable attorneys' fees and costs. Claimants have already incurred actual damages, costs and attorney's fees and will continue to incur such costs as a result of the Company's unlawful actions. Claimants will pursue all available remedies, including but not limited to those provided by the PAGA, on behalf of themselves and other aggrieved employees to the extent permitted by law for the violations of law described herein and those later discovered.

CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimants become aware of additional compensation owed to him or other losses incurred by them or by any other aggrieved employee of the Company, Claimants reserve the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in their complaint.

Very truly yours,

Hali Anderson

From:	noreply@salesforce.com on behalf of LWDA DO NOT REPLY
To:	Amy Bevan
Subject:	Thank you for submission of your PAGA Case.
Date:	Friday, January 21, 2022 9:57:20 AM

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1/21/2022

LWDA Case No. LWDA-CM-863928-22
Law Firm : GrahamHollis APC
Plaintiff Name : Walter Rodriguez, Cynthia Chapman
Employer: Atrium Hospitality, LP
Filing Fee : $75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: https://url.emailprotection.link/?bqgmZi3aSReqADLq7DzUPhGa7CfBQv9rfRp5zQkUWY5Ze8OCCzEx1BGX8M89cbNBByTqtUl0QBmioLL_pL_hTIXg7gV-kWELv-vHAAjgopQsir7MngvtWSFpfXmUjgO8a

Grahamhollis APC
3555 5TH AVE STE 200
SAN DIEGO CA 92103-5057

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January 26, 2022

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Shipment Details

Weight:	4.0oz

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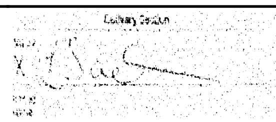
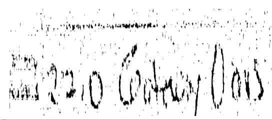
Signature of Recipient:	
Address of Recipient:	

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Atrium Hospitality, LP
CSC Lawyers Incorporating Service AFSOP
2710 GATEWAY OAKS DR STE 150N
SACRAMENTO CA 95833-3502

Reference	35040-00001 Rodriguez Atrium Hospitality AEB
USPS #	9414811898765849791809
USPS Mail Class	Certified with Return Receipt (Signature)
USPS Status	Your item was delivered at 11:24 am on January 24, 2022 in SACRAMENTO, CA 95813.
USPS History	Out for Delivery, 01/24/2022, 10:45 am, SACRAMENTO, CA 95833 Arrived at Post Office, 01/24/2022, 10:34 am, SACRAMENTO, CA 95813 Departed USPS Regional Destination Facility, 01/23/2022, 6:21 pm, SACRAMENTO CA DISTRIBUTION CENTER Arrived at USPS Regional Destination Facility, 01/23/2022, 12:17 am, SACRAMENTO CA DISTRIBUTION CENTER In Transit to Next Facility, 01/22/2022 Arrived at USPS Regional Origin Facility, 01/21/2022, 9:47 pm, SAN DIEGO CA DISTRIBUTION CENTER Accepted at USPS Origin Facility, January 21, 2022, 8:32 pm, SAN DIEGO, CA 92103 Shipping Label Created, USPS Awaiting Item, January 21, 2022, 5:53 pm, SAN DIEGO, CA 92103

Date Verified: 01/26/2022 01:09:16 (UTC)

<table>
<tr><td colspan="2">TITLE OF CASE (ABBREVIATED):
Walter David Rodriguez, et al. v. Atrium Hospitality LP</td><td rowspan="2"></td></tr>
<tr><td colspan="2">ATTORNEY(S) NAME AND ADDRESS:
GRAHAMHOLLIS APC
Graham S.P. Hollis, Esq. (SBN 120577)
Vilmarie Cordero, Esq. (SBN 268860)
Hali Anderson, Esq. (SBN 261816)
David X. Lin (SBN 312350)
Allison Schubert (SBN 339991)
3555 Fifth Avenue, Suite 200
San Diego, California 92103

TELEPHONE
619.692.0800
FACSIMILE
619.692.0822</td></tr>
<tr><td>ATTORNEYS FOR:
Plaintiffs Walter David Rodriguez and Cynthia Chapman</td><td>HEARING: DATE-TIME-DEPT.</td><td>CASE NUMBER
22STCV01713</td></tr>
</table>

PROOF OF SERVICE

I, Amy Bevan, declare: that I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to the action. I am employed in the County of San Diego, California, within which county the subject service occurred. My business address is 3555 Fifth Avenue, Suite 200 San Diego, California 92103. On March 30, 2022, I served the following document(s):

- **FIRST AMENDED COMPLAINT**

Upon:

Mark DeLoach | Assistant General Counsel
12735 Morris Road Ext, Suite 400
Alpharetta GA 30004
678.829.8869 (o) | 404.518.0875 (c)
mdeloach@atriumhospitality.com
www.atriumhospitality.com

Attorneys for Defendant Atrium Hospitality LP

☒ ***ELECTRONIC TRANSMISSION)*** **XX** By e-mailing the document(s) to the persons at the e-mail address(es) listed above based on an agreement of the parties to accept service of the documents listed above by e-mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission. ___Or by service of such document(s) through the One Legal filing system. Upon completion of said transmission of said document(s), a certified receipt is issued to filing party acknowledging receipt by One Legal's system

☒ ***(BY MAIL)*** I caused a true copy of each document, placed in a sealed envelope with postage fully paid, to be placed in the United States mail at San Diego, California. I am "readily familiar" with this firm's business practice for collection and processing of mail, that in the ordinary course of business said document(s) would be deposited with the U.S. Postal Service on that same day. I understand that the service shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained on this affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 30, 2022.

Amy Bevan

Amy Bevan