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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JUNE GARCIA, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

v.

HILTON RESORTS CORPORATION, a
Delaware corporation; HILTON GRAND
VACATIONS COMPANY, LLC, a Delaware
limited liability company; HILTON GRAND
VACATIONS MANAGEMENT, LLC, a
Nevada limited liability company; and DOES 1-
50, Inclusive,

Defendants.

Case No: 37-2023-00024664-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §17200 *et*
seq;
- 2) FAILURE TO PAY MINIMUM WAGES
IN VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;

- 1 6) FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN
3 VIOLATION OF CAL. LAB. CODE § 226;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO REIMBURSE
8 EMPLOYEES FOR REQUIRED
9 EXPENSES IN VIOLATION OF
10 CALIFORNIA LABOR CODE §2802.
11 9) VIOLATION OF THE PRIVATE
12 ATTORNEYS GENERAL ACT [LABOR
13 CODE §§ 2698 ET SEQ.

14 **DEMAND FOR A JURY TRIAL**

15 Plaintiff JUNE GARCIA (“PLAINTIFF”), an individual, on behalf of herself and all other
16 similarly situated current and former employees, alleges on information and belief, except for her
17 own acts and knowledge which are based on personal knowledge, the following:

18 **THE PARTIES**

19 1. Defendant HILTON RESORTS CORPORATION (“Defendant Hilton Resorts”)
20 is a Delaware corporation that at all relevant times mentioned herein conducted and continues to
21 conduct substantial and regular business in the state of California.

22 2. Defendant HILTON GRAND VACATIONS COMPANY, LLC (“Defendant
23 Hilton Grand Vacations Company”) is a Delaware limited liability company that at all relevant
24 times mentioned herein conducted and continues to conduct substantial and regular business in
25 the state of California.

26 3. Defendant HILTON GRAND VACATIONS MANAGEMENT, LLC (“Defendant
27 Hilton Grand Vacations Management”) is a Nevada limited liability company that at all relevant
28 times mentioned herein conducted and continues to conduct substantial and regular business in
the state of California.

4. Defendant Hilton Resorts, Defendant Hilton Grand Vacations Company and
Defendant Hilton Grand Vacations Management were the joint employers of PLAINTIFF as
evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed

1 work for respectively and are therefore jointly responsible as employers for the conduct alleged
2 herein as “DEFENDANTS” and/or “DEFENDANT.”

3 5. DEFENDANTS develop, manage, market and operate vacation property
4 ownership resorts in California, including in the county of San Diego where PLAINTIFF worked.

5 6. The true names and capacities, whether individual, corporate, subsidiary,
6 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
7 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
8 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the
9 true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
10 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
11 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter
12 collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one
13 or more of the events and happenings that proximately caused the injuries and damages
14 hereinafter alleged.

15 7. The agents, servants, and/or employees of the Defendants and each of them acting
16 on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as
17 the agent, servant and/or employee of the Defendants, and personally participated in the conduct
18 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
19 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
20 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
21 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
22 Defendants’ agents, servants and/or employees.

23 8. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
24 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or
25 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
26 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
27 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
28 at all relevant times.

1 9. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
2 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
3 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
4 employee a wage less than the minimum fixed by California state law, and as such, are subject to
5 civil penalties for each underpaid employee.

6 10. PLAINTIFF was employed by DEFENDANTS in California from 2012 to June of
7 2022, paid in part by commission-based compensation, non-discretionary bonuses.

8 11. PLAINTIFF brings this Class Action on behalf of herself and a California class,
9 defined as all current and former non-exempt and exempt employees employed by Defendant
10 Hilton Resorts and/or Defendant Hilton Grand Vacations Company and/or Defendant Hilton
11 Grand Vacations Management in California ("CALIFORNIA CLASS") at any time during the
12 period beginning four (4) years prior to the filing of the original Complaint and ending on the date
13 as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
14 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
15 (\$5,000,000.00).

16 12. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
17 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
18 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
19 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
20 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
21 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
22 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
23 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
24 other members of the CALIFORNIA CLASS who have been economically injured by
25 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
26 relief.

13. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

JURISDICTION AND VENUE

16. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities in this County and/or conduct substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

17. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS overtime, sick pay, and meal rest premiums at the correct regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA

1 CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of
2 the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things,
3 all applicable hourly rates in effect during the pay periods and the corresponding amount of time
4 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
5 purposefully avoid the accurate and full payment for all time worked as required by California
6 law which allows DEFENDANTS to illegally profit and gain an unfair advantage over
7 competitors who comply with the law. To the extent equitable tolling operates to toll claims by
8 the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted
9 accordingly.

10 **A. Violations for Untimely Payment of Wages**

11 18. Pursuant to California Labor Code section 204, PLAINTIFF and the
12 CALIFORNIA CLASS members were entitled to timely payment of wages during their
13 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
14 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
15 meal period premium wages, and rest period premium wages within permissible time period.

16 19. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the
17 wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to
18 Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall become
19 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
20 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
21 wages at the time of quitting." PLAINTIFF and the CALIFORNIA CLASS Members were, from
22 time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or
23 at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202. For example,
24 DEFENDANTS terminated PLAINTIFF'S employment on June 22, 2022. However,
25 DEFENDANTS did not provide PLAINTIFF with her last paycheck until June 28, 2022, in
26 violation of Cal. Lab. Code § 201.

27 20. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
28 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose

1 employment ended during the CLASS PERIOD.

2 **B. Meal and Rest Period Violations**

3 21. Pursuant to the Industrial Welfare Commission Wage Orders and the California
4 Labor Codes, an employer shall not employ an employee for a work period of more than five (5)
5 hours per day without providing the employee with a meal period of not less than thirty (30)
6 minutes, except that if the total work period per day of the employee is no more than six (6) hours,
7 the meal period may be waived by mutual consent of both the employer and employee. An
8 employer shall not employ an employee for a work period of more than ten (10) hours per day
9 without providing the employee with a second meal period of not less than thirty (30) minutes,
10 except that if the total hours worked is no more than twelve (12) hours, the second meal period
11 may be waived by mutual consent of the employer and the employee only if the first meal period
12 was not waived. If an employer fails to provide an employee with a mandated meal period, the
13 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
14 compensation for each workday that the meal period is not provided.

15 22. From time-to-time during the CALIFORNIA CLASS PERIOD, as a result of
16 understaffing and their rigorous work schedule, PLAINTIFF and other CALIFORNIA CLASS
17 members were from time to time unable to take thirty (30) minute off duty meal breaks and were
18 not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS
19 Members were from time to time required to perform work as ordered by DEFENDANT for more
20 than five (5) hours during a shift without receiving an off-duty meal break. Further,
21 DEFENDANT from time-to-time failed to provide PLAINTIFF and CALIFORNIA CLASS
22 members with a second off-duty meal period from time to time in which these employees were
23 required by DEFENDANT to work ten (10) hours of work from time to time. Further, from time
24 to time, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to
25 maintain cordless communication devices on them during what was supposed to be their off-duty
26 meal break in order to receive and respond to work-related communications. PLAINTIFF and
27 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
28 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

1 23. Further, pursuant to the Industrial Welfare Commission Wage Orders,
2 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS members for all their
3 time worked, meaning the time during which an employee is subject to the control of an employer,
4 including all the time the employee suffered or permitted to work. DEFENDANT required
5 PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time
6 they were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF
7 to work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due
8 to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was
9 from time to time interrupted by work assignments while clocked out for what should have been
10 PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS
11 members forfeited minimum wage and overtime compensation by regularly working without their
12 time being accurately recorded and without compensation at the applicable minimum wage and
13 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
14 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
15 records.

16 24. Pursuant to the Industrial Welfare Commission Wage Orders and the California
17 Labor Codes, an employer shall authorize and permit all employees to take a rest periods, which
18 so far as practical shall be in the middle of each work period. Generally, an employer must provide
19 ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails
20 to provide an employee a rest period, the employer shall pay the employee one (1) hour of pay at
21 the employee's regular rate of pay for each workday that the rest period is not provided.

22 25. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
23 CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4)
24 hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for
25 the same reasons, these employees were denied their first rest periods of at least ten (10) minutes
26 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
27 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
28 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours

1 or more from time to time. Further, from time to time, DEFENDANT required PLAINTIFF and
2 other CALIFORNIA CLASS Members to maintain cordless communication devices on them
3 during what was supposed to be their off-duty rest break in order to receive and respond to work-
4 related communications. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
5 were from time to time required to remain on the premises, on-duty and on-call during their rest
6 periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with
7 one-hour wages in lieu thereof.

8 **C. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
9 **Sick Pay**

10 26. State law provides that employees must be paid overtime at one-and-one-half times
11 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS were compensated at
12 an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific
13 elements of an employee’s performance and/or commissions.

14 27. DEFENDANTS’ non-discretionary commission and bonus program provided the
15 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation
16 when the employees met the various performance goals set by DEFENDANT. However, when
17 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA
18 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,
19 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or
20 commission wages as part of the employees’ “regular rate of pay.”.

21 28. Management and supervisors described the bonus and commissions programs and
22 commission compensation program to potential and new employees as part of the compensation
23 package for new and used car salespersons including PLAINTIFF and the CALIFORNIA
24 CLASS. As a matter of law, the incentive and commission compensation received by
25 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
26 calculated into the “regular rate of pay” for purposes of overtime and double time compensation,
27 meal and rest period premium payments, and sick pay. DEFENDANT’s failure to do so has
28 resulted in DEFENDANT’s systematic underpayment of overtime and double time compensation,

1 meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA
2 CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time
3 for non-employees shall be calculated in the same manner as the regular rate of pay for the
4 workweek in which the employee uses paid sick time, whether or not the employee actually works
5 overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include
6 the incentive compensation as part of the "regular rate of pay" for purposes of sick pay
7 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
8 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

9 29. In violation of the applicable sections of the California Labor Code and the
10 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
11 matter of company policy, practice and procedure, intentionally and knowingly failed to
12 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
13 of pay for all overtime and double time compensation, meal and rest period premium payments,
14 and sick pay. This uniform policy and practice of DEFENDANTS is intended to purposefully
15 avoid the payment of the correct overtime and double time compensation, meal and rest period
16 premium payments, and sick pay as required by California law which allowed DEFENDANTS to
17 illegally profit and gain an unfair advantage over competitors who complied with the law. To the
18 extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members against
19 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

20 **D. Commission and Piece-Rate Violations**

21 30. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
22 the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those
23 instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission
24 and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately
25 compensated for all non-productive time at an hourly rate that is no less than the applicable
26 minimum wage. Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA
27 CLASS were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to
28 separately compensate PLAINTIFF and the CALIFORNIA CLASS for all non-productive time,

1 including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable
2 minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited minimum
3 wages and overtime wages by DEFENDANT'S failure to separately compensate their non-
4 productive time at an hourly rate that is no less than the applicable minimum wage.

5 31. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS
6 improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid
7 on a draw versus commission basis as exempt from overtime compensation.

8 **E. Off-the-Clock Minimum Wage and Overtime Violations**

9 32. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
10 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
11 worked, meaning the time during which an employee is subject to the control of an employer,
12 including all the time the employee is suffered or permitted to work. From time to time,
13 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without
14 paying them for all the time they were under DEFENDANTS' control.

15 33. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
16 minimum wage and overtime compensation by regularly working without their time being
17 accurately recorded and without compensation at the applicable minimum wage and overtime
18 rates. DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA
19 CLASS necessary wages for attending for performing work at DEFENDANTS' direction,
20 request, and benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay
21 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
22 DEFENDANTS' business records.

23 34. DEFENDANTS directed and directly benefited from the uncompensated off-the-
24 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

25 35. DEFENDANTS controlled the work schedules, duties, protocols, applications,
26 assignments, and employment conditions of PLAINTIFF and the other members of the
27 CALIFORNIA CLASS.

1 36. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
2 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
3 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
4 wages earned and owed for all the work they performed, including pre-shift, post shift and during
5 meal period off-the-clock work.

6 37. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
7 exempt employees, subject to the requirements of the California Labor Code.

8 38. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
9 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
10 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
11 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
12 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

13 39. DEFENDANTS knew or should have known that PLAINTIFF and the other
14 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

15 40. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
16 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
17 for the time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to
18 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked
19 in accordance with applicable law is evidenced by DEFENDANTS' business records.

20 **F. Unreimbursed Business Expenses**

21 41. DEFENDANTS as a matter of corporate policy, practice, and procedure,
22 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
23 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and
24 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf
25 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to
26 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
27 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
28 necessary expenditures or losses incurred by the employee in direct consequence of the discharge

1 of his or her duties, or of his or her obedience to the directions of the employer, even though
2 unlawful, unless the employee, at the time of obeying the directions, believed them to be
3 unlawful.”

4 42. In the course of their employment, DEFENDANTS required PLAINTIFF and
5 other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in
6 furtherance of their job duties as employees for DEFENDANT. But for the use of their own
7 personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete
8 their essential job duties, including but not limited to, sending and receiving work-related
9 communications from DEFENDANTS and DEFENDANTS’ clients. However, DEFENDANTS
10 unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their
11 use of their personal cell phones. As a result, in the course of their employment with
12 DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
13 unreimbursed business expenses, but were not limited to, costs related to the use of their personal
14 cellular phones, all on behalf of and for the benefit of DEFENDANTS.

15 **G. Wage Statement Violations**

16 43. California Labor Code Sections 226 and 226.2 require an employer to furnish its
17 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total
18 hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
19 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
20 paid, (7) the name of the employee and only the last four digits of the employee’s social security
21 number or an employee identification number other than a social security number, (8) the name
22 and address of the legal entity that is the employer, (9) all applicable hourly rates in effect during
23 the pay period and the corresponding number of hours worked at each hourly rate by the
24 employee; (10) the total hours of compensable rest and recovery periods, the rate of compensation,
25 and the gross wages paid for those periods during the pay period, and (11) the total hours of other
26 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
27 pay period.
28

1 44. From time-to-time during the CALIFORNIA CLASS PERIOD, DEFENDANT
2 furnished PLAINTIFF and the CALIFORNIA CLASS written wage statements that failed to
3 accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units
4 earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect
5 during the pay period and the corresponding number of hours worked at each hourly rate by the
6 employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation,
7 and the gross wages paid for those periods during the pay period, and (7) the total hours of other
8 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
9 pay period.

10 45. In addition to the violations described above, DEFENDANTS, from time to time,
11 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
12 that comply with Cal. Lab. Code § 226.

13 46. As a result, DEFENDANTS issued PLAINTIFF and the CALIFORNIA CLASS
14 with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS'
15 violations are knowing and intentional, were not isolated or due to an unintentional payroll error
16 due to clerical or inadvertent mistake.

17 **H. Unlawful Deductions**

18 47. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
19 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
20 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
21 DEFENDANTS violated Labor Code § 221.

22 48. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
23 required off-duty meal breaks to her and paid rest periods to her as required by the applicable
24 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for her missed
25 meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent her from
26 being relieved of all of her duties for the legally required off-duty meal periods. Further,
27 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday
28 in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result,

1 DEFENDANT’S failure to provide PLAINTIFFS with the legally required second off-duty meal
2 period is evidenced by DEFENDANT’s business records. From time to time, and as a result of
3 DEFENDANT not accurately recording all missed meal and rest periods, and failing to pay
4 minimum wages due for all time worked and separate compensation for rest breaks, the wage
5 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,
6 Labor Code Section 226(a). Further, DEFENDANT failed to reimburse PLAINTIFF for all
7 required business expenses including for the use of her personal cell phone. To date,
8 DEFENDANT has yet to pay PLAINTIFF all of her wages due to her and all premiums due to
9 her for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages owed
10 to her under California Labor Code Section 203. The amount in controversy for PLAINTIFF
11 individually does not exceed \$75,000.

12 **THE CALIFORNIA CLASS**

13 49. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
14 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class
15 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of all current and former non-exempt
16 and exempt employees employed by Defendant Hilton Resorts and/or Defendant Hilton Grand
17 Vacations Company and/or Defendant Hilton Grand Vacations Management in California
18 ("CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the
19 filing of the original Complaint and ending on the date as determined by the Court (the "CLASS
20 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
21 Members is under five million dollars (\$5,000,000.00).

22 50. To the extent equitable tolling operates to toll claims by the CALIFORNIA
23 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
24 accordingly.

25 51. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
26 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
27 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
28 and illegal meal and rest period policies. Defendant further failed to reimburse for business

1 expenses, failed to compensate for off-the-clock work, failed to provide accurate itemized wage
2 statements, and failed to maintain required records, and interest, statutory and civil penalties,
3 attorney's fees, costs, and expenses.

4 52. The members of the class are so numerous that joinder of all class members is
5 impractical.

6 53. Common questions of law and fact regarding DEFENDANTS' conduct, including
7 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to
8 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
9 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
10 minimum wage and overtime, exist as to all members of the class and predominate over any
11 questions affecting solely any individual members of the class. Among the questions of law and
12 fact common to the class are:

- 13 i. Whether DEFENDANTS maintained legally compliant meal period policies
14 and practices;
- 15 ii. Whether DEFENDANTS maintained legally compliant rest period policies
16 and practices;
- 17 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
18 CLASS Members accurate premium payments for missed meal and rest
19 periods;
- 20 iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
21 CLASS Members accurate overtime wages;
- 22 v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
23 CLASS Members at least minimum wage for all hours worked;
- 24 vi. Whether Defendants failed to compensate PLAINTIFF and the
25 CALIFORNIA CLASS Members for required business expenses;
- 26 vii. Whether DEFENDANTS issued legally compliant wage statements;
- 27 viii. Whether DEFENDANTS committed an act of unfair competition by
28 systematically failing to record and pay PLAINTIFF and the other members
of the CALIFORNIA CLASS for all time worked;

- ix. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- x. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

54. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

55. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same interests as the other members of the class.

56. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

57. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

58. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests of the other CALIFORNIA CLASS Members.

59. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained.

60. The questions of law and fact common to the CALIFORNIA CLASS Members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

61. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover,

1 since the damages suffered by individual members of the class may be relatively small, the
2 expense and burden of individual litigation makes it practically impossible for the members of the
3 class individually to redress the wrongs done to them. Without class certification and
4 determination of declaratory, injunctive, statutory and other legal questions within the class
5 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
6 create the risk of:

- 7 i. Inconsistent or varying adjudications with respect to individual members of the
8 CALIFORNIA CLASS which would establish incompatible standards of
9 conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- 10 ii. Adjudication with respect to individual members of the CALIFORNIA
11 CLASS which would as a practical matter be dispositive of the interests of the
12 other members not party to the adjudication or substantially impair or impeded
13 their ability to protect their interests.

14 62. Class treatment provides manageable judicial treatment calculated to bring an
15 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
16 the conduct of DEFENDANTS.

17 **FIRST CAUSE OF ACTION**

18 **Unlawful Business Practices**

19 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

20 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

21 63. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
22 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
23 Complaint.

24 64. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code
25 § 17021.

26 65. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
27
28

1 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
2 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
3 as follows:

4 Any person who engages, has engaged, or proposes to engage in
5 unfair competition may be enjoined in any court of competent
6 jurisdiction. The court may make such orders or judgments,
7 including the appointment of a receiver, as may be necessary to
8 prevent the use or employment by any person of any practice which
constitutes unfair competition, as defined in this chapter, or 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.

9 Cal. Bus. & Prof. Code § 17203.

10 66. By the conduct alleged herein, DEFENDANT has engaged and continues to engage
11 in a business practice which violates California law, including but not limited to, the applicable
12 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
13 including Sections 201, 202, 203, 204, 206.5, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198
14 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
15 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
16 constitute unfair competition, including restitution of wages wrongfully withheld.

17 67. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair
18 in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or
19 substantially injurious to employees, and were without valid justification or utility for which this
20 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
21 Business & Professions Code, including restitution of wages wrongfully withheld.

22 68. By the conduct alleged herein, DEFENDANT's practices were deceptive and
23 fraudulent in that DEFENDANT's uniform policy and practice failed to pay all minimum and
24 overtime wages due, failed to provide the legally mandated meal and rest periods, failed to pay
25 the required amount of compensation for missed meal and rest periods, and failed to reimburse
26 necessary business expenses incurred due to a systematic business practice that cannot be
27 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
28 requirements in violation of Cal. Bus. Code §§ 17200, et seq., and for which this Court should

1 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

3 69. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
4 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 70. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
8 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to
9 provide all legally required meal and rest breaks to PLAINTIFF and the other members of the
10 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

11 71. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
12 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
13 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
14 each workday in which a second off-duty meal period was not timely provided for each ten (10)
15 hours of work.

16 72. PLAINTIFF further demands on behalf of herself and each member of the
17 CALIFORNIA CLASS one (1) hour of pay for each workday in which a rest period was not given
18 and a premium was not timely provided as required by law.

19 73. By and through the unlawful and unfair business practices described herein,
20 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
21 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
22 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
23 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
24 to unfairly compete against competitors who comply with the law.

25 74. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
27 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
28 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business

practices in violation of Cal. Bus. & Prof. Code §§ 17200, et seq.

75. PLAINTIFF and the other members of the CALIFORNIA CLASS were entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages for all time worked.

76. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair business practices in the future.

77. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

Failure To Pay Minimum Wages

(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

78. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

79. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages.

1 80. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
2 policy, an employer must timely pay its employees for all hours worked.

3 81. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a less wage than
5 the minimum so fixed is unlawful.

6 82. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
7 including minimum wage compensation and interest thereon, together with the costs of suit.

8 83. As set forth above, during the CLASS PERIOD, DEFENDANT maintained a
9 uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA
10 CLASS without regard to the correct amount of time they worked. As set forth herein,
11 DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely
12 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

13 84. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
15 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
16 and the other members of the CALIFORNIA CLASS regarding minimum wage pay.

17 85. In committing these violations of the California Labor Code, DEFENDANT
18 inaccurately calculated the correct time worked and consequently underpaid the actual time
19 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
20 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
21 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
22 laws and regulations.

23 86. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
24 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
25 minimum wage compensation for their time worked for DEFENDANT.

26 87. During the CLASS PERIOD, PLAINTIFF and the other members of the
27 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
28 failure to pay all earned wages.

1 88. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
2 compensation to the PLAINTIFF and the other members of the CALIFORNIA CLASS for the
3 true time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
4 suffered and will continue to suffer an economic injury in amounts which are presently unknown
5 to them and which will be ascertained according to proof at trial.

6 89. DEFENDANT knew or should have known that PLAINTIFF and the other
7 members of the CALIFORNIA CLASS were under compensated for their time worked.
8 DEFENDANT systematically elected, either through intentional malfeasance or gross
9 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
10 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
11 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
12 for their time worked.

13 90. In performing the acts and practices herein alleged in violation of California labor
14 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
15 and provide them with the requisite compensation, DEFENDANT acted and continues to act
16 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
17 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
18 consequences to them, and with the despicable intent of depriving them of their property and legal
19 rights, and otherwise causing them injury in order to increase company profits at the expense of
20 these employees.

21 91. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
22 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
23 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
24 California Labor Code and/or other applicable statutes. To the extent minimum wage
25 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
26 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
27 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
28 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS

Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

Failure To Pay Overtime Compensation

(Cal. Lab. Code §§ 510, 1194 and 1198)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

92. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

93. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to properly compensate the members of the CALIFORNIA CLASS for all overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek during the CLASS PERIOD.

94. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

95. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amount specified by law.

96. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

97. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid

1 for all the time they worked, including overtime work.

2 98. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
3 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
4 implementing a uniform policy and practice that failed to accurately record overtime worked by
5 PLAINTIFF and the other members of the CALIFORNIA CLASS, and denied accurate
6 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime
7 worked, including, the work performed in excess of eight (8) hours in a workday and/or forty (40)
8 hours in any workweek.

9 99. In committing these violations of the California Labor Code, DEFENDANT acted
10 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
11 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
12 laws and regulations.

13 100. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
14 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full
15 compensation for all overtime worked.

16 101. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
17 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
18 and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other
19 members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement
20 that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFF
21 bring this Action on behalf of herself and the CALIFORNIA CLASS based on DEFENDANT's
22 violations of non-negotiable, non-waivable rights provided by the State of California.

23 102. During the CLASS PERIOD, PLAINTIFF and the other members of the
24 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
25 failure to pay all earned wages.

26 103. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
27 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
28 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even

1 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
2 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay
3 using the applicable overtime rate as evidenced by DEFENDANT's business records and
4 witnessed by employees.

5 104. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
6 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
7 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
8 suffered and will continue to suffer an economic injury in amounts which are presently unknown
9 to them and which will be ascertained according to proof at trial.

10 105. DEFENDANT knew or should have known that PLAINTIFF and the other
11 members of the CALIFORNIA CLASS are under compensated for their overtime worked.
12 DEFENDANT systematically elected, either through intentional malfeasance or gross
13 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
14 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
15 PLAINTIFF and the other members of the CALIFORNIA CLASS the applicable overtime rate.

16 106. In performing the acts and practices herein alleged in violation of California labor
17 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
18 and provide them with the requisite overtime compensation, DEFENDANT acted and continue
19 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
20 the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
21 consequences to them, and with the despicable intent of depriving them of their property and legal
22 rights, and otherwise causing them injury in order to increase company profits at the expense of
23 these employees.

24 107. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
25 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
26 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
27 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
28 overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who

1 have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201
2 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
3 Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
4 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
5 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
6 recover statutory costs.

7 **FOURTH CAUSE OF ACTION**

8 **Failure To Provide Required Meal Periods**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

10 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

11 108. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
12 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
13 Complaint.

14 109. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
15 required off-duty meal breaks to PLAINTIFF and the CALIFORNIA CLASS as required by the
16 applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and
17 the CALIFORNIA CLASS did not prevent these employees from being relieved of all of their
18 duties for the legally required off-duty meal periods. As a result of their rigorous work schedules,
19 PLAINTIFF and the CALIFORNIA CLASS were often not fully relieved of duty by
20 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
21 PLAINTIFF and the CALIFORNIA CLASS with legally required meal breaks prior to their fifth
22 (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF
23 and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without
24 additional compensation and in accordance with DEFENDANT's strict corporate policy and
25 practice.

26 110. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
28 who were not provided a meal period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that a
2 meal period was not provided.

3 111. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
5 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

9 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 112. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 113. During the CLASS PERIOD, PLAINTIFF and the CALIFORNIA CLASS were
14 also required to work in excess of four (4) hours without being provided ten (10) minute rest
15 periods. Further, these employees were denied their first rest periods of at least ten (10) minutes
16 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
17 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
18 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
19 or more. PLAINTIFF and the CALIFORNIA CLASS were also not provided with one-hour
20 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the
21 CALIFORNIA CLASS were periodically denied their proper rest periods by DEFENDANT and
22 DEFENDANT's managers.

23 114. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
24 IWC Wage Order by failing to compensate PLAINTIFF and the CALIFORNIA CLASS who were
25 not provided a rest period, in accordance with the applicable Wage Order, one additional hour of
26 compensation at each employee's regular rate of pay for each workday that rest period was not
27 provided.
28

115. As a proximate result of the aforementioned violations, PLAINTIFF and the CALIFORNIA CLASS have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code §§ 226)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

116. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

1. Cal. Labor Code § 226 provides that an employer must furnish employees with an “accurate itemized” statement in writing showing: (1) Gross wages earned; (2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) Net wages earned; (6) The inclusive dates of the period for which the employee is paid; (7) The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement; (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.

2. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) Gross wages earned; (2) Total hours worked by the employee, (3) The number of piece-rate units earned and any applicable piece rate

1 if the employee is paid on a piece-rate basis; (4) All deductions; (5) Net wages earned; and (6) all
2 applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate.

4 3. Further, during the CLASS PERIOD, DEFENDANTS also failed to provide
5 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
6 wage statements in compliance with Cal. Labor Code Section 226.2, which failed to accurately
7 show, among other things: (1) the total hours of compensable rest and recovery periods; and (2)
8 the total hours of other nonproductive time, the rate of compensation for the nonproductive time
9 and the gross wages paid for the nonproductive time during the applicable pay period.

10 4. PLAINTIFFS and the members of the CALIFORNIA CLASS were injured by
11 DEFENDANTS' violations in that they could not promptly and easily determine from the wage
12 statement alone, the amount of gross or net wages paid, the total hours worked, the number pf
13 piece-rate units earned and any applicable piece-rate, all applicable hourly rates in effect during
14 the pay period and the corresponding number of hours worked at each hourly rate to the employee
15 during the applicable pay period.

16 5. DEFENDANTS violations of Cal. Labor Code § 226 and 226.2 were knowing and
17 intentional in that DEFENDANTS willfully intended to issue wage statements that were out of
18 compliance with § 226 and 226.2.

19 117. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor
20 Code § 226 and 226.2, causing injury and damages to the PLAINTIFF and the other members of
21 the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended
22 calculating the correct rates for the overtime worked and the amount of employment taxes which
23 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
24 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
25 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
26 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
27 pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor
28 Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more

1 than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
2 CALIFORNIA CLASS herein).

3 **SEVENTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code §§ 203)**

6 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

7 118. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
8 incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

9 119. Cal. Lab. Code § 200 provides, in relevant part, that:

10 As used in this article:(a) "Wages" includes all amounts for labor
11 performed by employees of every description, whether the amount is
12 fixed or ascertained by the standard of time, task, piece, Commission
13 basis, or other method of calculation. (b) "Labor" includes labor, work,
14 or service whether rendered or performed under contract, subcontract,
15 partnership, station plan, or other agreement if the labor to be paid for
16 is performed personally by the person demanding payment.

17 120. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an
18 employee, the wages earned and unpaid at the time of discharge are due and payable
19 immediately."

20 121. Cal. Lab. Code § 202 provides, in relevant part, that:

21 If an employee not having a written contract for a definite period quits
22 his or her employment, his or her wages shall become due and payable
23 not later than 72 hours thereafter, unless the employee has given 72
24 hours previous notice of his or her intention to quit, in which case the
25 employee is entitled to his or her wages at the time of quitting.
26 Notwithstanding any other provision of law, an employee who quits
27 without providing a 72-hour notice shall be entitled to receive payment
28 by mail if he or she so requests and designates a mailing address. The

1 date of the mailing shall constitute the date of payment for purposes
2 of the requirement to provide payment within 72 hours of the notice
3 of quitting.

4 122. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
5 Members' employment contract.

6 123. Cal. Lab. Code § 203 provides, in relevant part, that:

7 If an employer willfully fails to pay, without abatement or reduction,
8 in accordance with Sections 201, 201.5, 202, and 205.5, any wages of
9 an employee who is discharged or who quits, the wages of the
10 employee shall continue as a penalty from the due date thereof at the
11 same rate until paid or until an action therefor is commenced; but the
12 wages shall not continue for more than 30 days.

13
14 124. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
15 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

16 125. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
17 members of the CALIFORNIA CLASS whose employment has terminated and who have unpaid
18 minimum and/or overtime wages and/or missed meal and rest breaks without being paid the
19 legally required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as
20 penalty for not timely paying all wages due at time of termination for all employees who
21 terminated employment during the CLASS PERIOD plus interest and statutory costs as allowed
22 by law.

23 **EIGHTH CAUSE OF ACTION**

24 **Failure To Reimburse Employees For Required Expenses**

25 **(Cal. Lab. Code §§ 2802)**

26 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

27 126. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
28 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this

1 Complaint.

2 127. Cal. Lab. Code § 2802 provides, in relevant part, that:

3 An employer shall indemnify his or her employee for all necessary
4 expenditures or losses incurred by the employee in direct
5 consequence of the discharge of his or her duties, or of his or her
6 obedience to the directions of the employer, even though unlawful,
7 unless the employee, at the time of obeying the directions, believed
8 them to be unlawful.

9 128. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
10 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
11 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
12 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
13 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
14 using their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.
15 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
16 DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of
17 DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse
18 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
19 their personal cellular phones for DEFENDANTS within the course and scope of their
20 employment for DEFENDANTS. These expenses were necessary to complete their principal job
21 duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
22 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
23 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
24 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
25 is required to do under the laws and regulations of California.

26 129. PLAINTIFF therefore demands reimbursement on behalf of the members of the
27 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
28

1 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
2 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

3 **NINTH CAUSE OF ACTION**

4 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

5 **(Cal. Lab. Code §§2698 et seq.)**

6 **(Alleged by PLAINTIFF against all Defendants)**

7 130. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

9 131. PAGA is a mechanism by which the State of California itself can enforce state
10 labor laws through the employee suing under the PAGA who does so as the proxy or agent of
11 the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
12 fundamentally a law enforcement action designed to protect the public and not to benefit private
13 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
14 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
15 PAGA, the California Legislature specified that "it was ... in the public interest to allow
16 aggrieved employees, acting as private attorneys general to recover civil penalties for Labor
17 Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to
18 arbitration.

19 132. PLAINTIFF, and such persons that may be added from time to time who satisfy the
20 requirements and exhaust the administrative procedures under the Private Attorney General Act,
21 bring this Representative Action on behalf of the State of California with respect to herself and all
22 individuals classified as all non-exempt employees who worked for DEFENDANTS in California
23 during the time period of June 13, 2022, until the present (the "AGGRIEVED EMPLOYEES").

24 133. On June 13, 2023, PLAINTIFF gave written notice by certified mail to the Labor
25 and Workforce Development Agency (the "Agency") and the employer of the specific provisions
26 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,
27 attached hereto and incorporated by this reference herein. The statutory waiting period for
28 Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section

1 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to Section
2 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as
3 herein defined.

4 134. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES
6 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
7 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct regular
8 rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e) failed to
9 timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
10 §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,
11 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14,
12 1198, 1198.5, 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby
13 gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of
14 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
15 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the
16 other AGGRIEVED EMPLOYEES.

17 135. For all provisions of the Labor Code for which civil penalty is not specifically
18 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100)
19 for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred
20 dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation.
21 PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable
22 attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code
23 Section 2699(g)(1).

24 136. To the extent that any of the conduct and violations alleged herein did not affect
25 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
26 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
27 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
28 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor

1 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
2 committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).).

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
5 severally, as follows:

6 1. On behalf of the CALIFORNIA CLASS:

- 7 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
8 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
9 b. An order temporarily, preliminarily and permanently enjoining and restraining
10 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
11 c. An order requiring DEFENDANT to pay all overtime wages and all sums
12 unlawfully withheld from compensation due to PLAINTIFF and the other members
13 of the CALIFORNIA CLASS; and
14 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
15 for restitution of the sums incidental to DEFENDANT's violations due to
16 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

17 2. On behalf of the CALIFORNIA CLASS:

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
19 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
20 to Cal. Code of Civ. Proc. § 382;
21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for overtime compensation and separately owed rest periods, due to
23 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
24 applicable CLASS PERIOD plus interest thereon at the statutory rate;
25 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
26 the applicable IWC Wage Order;
27 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
28 which a violation occurs and one hundred dollars (\$100) per each member of the

CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226.

e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004;

4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: September 18, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: September 18, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1

June 13, 2023

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

HILTON RESORTS CORPORATION

c/o CSC - Lawyers Incorporating Service

2710 Gateway Oaks Drive, Suite 150N

Sacramento, CA 95833

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 0625 6788 96

HILTON GRAND VACATIONS COMPANY, LLC

c/o CSC - Lawyers Incorporating Service

2710 Gateway Oaks Drive, Suite 150N

Sacramento, CA 95833

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 0625 6789 02

HILTON GRAND VACATIONS MANAGEMENT, LLC

c/o CSC - Lawyers Incorporating Service

2710 Gateway Oaks Drive, Suite 150N

Sacramento, CA 95833

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 0625 6789 19

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff JUNE GARCIA (“Plaintiff”) and other aggrieved employees in a proposed lawsuit against Defendant HILTON RESORTS CORPORATION (“Defendant Hilton Resorts”), Defendant HILTON GRAND VACATIONS COMPANY, LLC (“Defendant Hilton Grand Vacations Company”), and Defendant HILTON GRAND VACATIONS MANAGEMENT, LLC (“Defendant Hilton Grand Vacations Management”) (collectively, hereinafter, “Defendants”). Plaintiff was employed by Defendants in California from 2012 to June of 2022, paid in part by commission-based compensation, non-discretionary bonuses, and entitled to payment of all wages due for all time worked. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved

employees for earned wages. Specifically, pursuant to California Labor Code section 204, Plaintiff and the aggrieved employees were entitled to timely payment of wages during their employment. Plaintiff and the aggrieved employees, from time to time, did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within permissible time period. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to Cal. Lab. Code § 202, if an employee 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.” Plaintiff and the aggrieved employees were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202. For example, Defendants terminated Plaintiff’s employment on June 22, 2022. However, Defendants did not provide Plaintiff with her last paycheck until June 28, 2022, in violation of Cal. Lab. Code § 201. Plaintiff further contends that Defendants failed to advise Plaintiff and the other aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission basis and failed to separately compensate Plaintiff and the other aggrieved employees for the non-productive time, including for their rest periods. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 110.

As a consequence, Plaintiff contends that Defendants failed to fully compensate her and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendants’ conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant Hilton Resorts and/or Defendant Hilton Grand Vacations Company and/or Defendant Hilton Grand Vacations Management in California during the relevant claim period.

A true and correct copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a long horizontal flourish extending to the right.

Jean-Claude Lapuyade, Esq.

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JUNE GARCIA, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

v.

HILTON RESORTS CORPORATION, a
Delaware corporation; HILTON GRAND
VACATIONS COMPANY, LLC, a Delaware
limited liability company; HILTON GRAND
VACATIONS MANAGEMENT, LLC, a
Nevada limited liability company; and DOES 1-
50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN

VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CALIFORNIA LABOR CODE §2802.

DEMAND FOR A JURY TRIAL

Plaintiff JUNE GARCIA (“PLAINTIFF”), an individual, on behalf of herself and all other similarly situated current and former employees, alleges on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant HILTON RESORTS CORPORATION (“Defendant Hilton Resorts”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. Defendant HILTON GRAND VACATIONS COMPANY, LLC (“Defendant Hilton Grand Vacations Company”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

3. Defendant HILTON GRAND VACATIONS MANAGEMENT, LLC (“Defendant Hilton Grand Vacations Management”) is a Nevada limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

4. Defendant Hilton Resorts, Defendant Hilton Grand Vacations Company and Defendant Hilton Grand Vacations Management were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

5. DEFENDANTS develop, manage, market and operate vacation property ownership resorts in California, including in the county of San Diego where PLAINTIFF worked.

1 6. The true names and capacities, whether individual, corporate, subsidiary,
2 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
3 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
4 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the
5 true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
6 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
7 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter
8 collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one
9 or more of the events and happenings that proximately caused the injuries and damages
10 hereinafter alleged.

11 7. The agents, servants, and/or employees of the Defendants and each of them acting
12 on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as
13 the agent, servant and/or employee of the Defendants, and personally participated in the conduct
14 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
15 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
16 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
17 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
18 Defendants’ agents, servants and/or employees.

19 8. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
20 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or
21 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
22 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
23 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
24 at all relevant times.

25 9. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
26 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
27 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
28

1 employee a wage less than the minimum fixed by California state law, and as such, are subject to
2 civil penalties for each underpaid employee.

3 10. PLAINTIFF was employed by DEFENDANTS in California from 2012 to June of
4 2022, paid in part by commission-based compensation, non-discretionary bonuses.

5 11. PLAINTIFF brings this Class Action on behalf of herself and a California class,
6 defined as all current and former non-exempt and exempt employees employed by Defendant
7 Hilton Resorts and/or Defendant Hilton Grand Vacations Company and/or Defendant Hilton
8 Grand Vacations Management in California ("CALIFORNIA CLASS") at any time during the
9 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
10 determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate
11 claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

12 12. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
13 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
14 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
15 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
16 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
17 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
18 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
19 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
20 other members of the CALIFORNIA CLASS who have been economically injured by
21 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
22 relief.

23 13. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
24 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
25 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

26 14. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
27 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
28 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically

1 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and
2 equitable relief.

3 **JURISDICTION AND VENUE**

4 15. This has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
6 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
7 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

8 16. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
10 DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities
11 in this County and/or conduct substantial business in this County, and (ii) committed the wrongful
12 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

13 **THE CONDUCT**

14 17. In violation of the applicable sections of the California Labor Code and the
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
16 matter of company policy, practice and procedure, intentionally, knowingly and systematically
17 failed to provide legally compliant meal and rest periods, failed to accurately compensate
18 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
19 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
20 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate
21 PLAINTIFF and other members of the CALIFORNIA CLASS overtime, sick pay, and meal rest
22 premiums at the correct regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA
23 CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of
24 the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things,
25 all applicable hourly rates in effect during the pay periods and the corresponding amount of time
26 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
27 purposefully avoid the accurate and full payment for all time worked as required by California
28 law which allows DEFENDANTS to illegally profit and gain an unfair advantage over

competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

A. Violations for Untimely Payment of Wages

18. Pursuant to California Labor Code section 204, PLAINTIFF and the CALIFORNIA CLASS members were entitled to timely payment of wages during their employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within permissible time period.

19. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to Cal. Lab. Code § 202, if an employee 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.” PLAINTIFF and the CALIFORNIA CLASS Members were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202. For example, DEFENDANTS terminated PLAINTIFF’S employment on June 22, 2022. However, DEFENDANTS did not provide PLAINTIFF with her last paycheck until June 28, 2022, in violation of Cal. Lab. Code § 201.

20. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all CALIFORNIA CLASS Members whose employment ended during the CLASS PERIOD.

B. Meal and Rest Period Violations

21. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor Codes, an employer shall not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours,

1 the meal period may be waived by mutual consent of both the employer and employee. An
2 employer shall not employ an employee for a work period of more than ten (10) hours per day
3 without providing the employee with a second meal period of not less than thirty (30) minutes,
4 except that if the total hours worked is no more than twelve (12) hours, the second meal period
5 may be waived by mutual consent of the employer and the employee only if the first meal period
6 was not waived. If an employer fails to provide an employee with a mandated meal period, the
7 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
8 compensation for each workday that the meal period is not provided.

9 22. From time-to-time during the CALIFORNIA CLASS PERIOD, as a result of
10 understaffing and their rigorous work schedule, PLAINTIFF and other CALIFORNIA CLASS
11 members were from time to time unable to take thirty (30) minute off duty meal breaks and were
12 not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS
13 Members were from time to time required to perform work as ordered by DEFENDANT for more
14 than five (5) hours during a shift without receiving an off-duty meal break. Further,
15 DEFENDANT from time-to-time failed to provide PLAINTIFF and CALIFORNIA CLASS
16 members with a second off-duty meal period from time to time in which these employees were
17 required by DEFENDANT to work ten (10) hours of work from time to time. Further, from time
18 to time, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to
19 maintain cordless communication devices on them during what was supposed to be their off-duty
20 meal break in order to receive and respond to work-related communications. PLAINTIFF and
21 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
22 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

23 23. Further, pursuant to the Industrial Welfare Commission Wage Orders,
24 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS members for all their
25 time worked, meaning the time during which an employee is subject to the control of an employer,
26 including all the time the employee suffered or permitted to work. DEFENDANT required
27 PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time
28 they were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF

1 to work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due
2 to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was
3 from time to time interrupted by work assignments while clocked out for what should have been
4 PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS
5 members forfeited minimum wage and overtime compensation by regularly working without their
6 time being accurately recorded and without compensation at the applicable minimum wage and
7 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
8 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
9 records.

10 24. Pursuant to the Industrial Welfare Commission Wage Orders and the California
11 Labor Codes, an employer shall authorize and permit all employees to take a rest periods, which
12 so far as practical shall be in the middle of each work period. Generally, an employer must provide
13 ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails
14 to provide an employee a rest period, the employer shall pay the employee one (1) hour of pay at
15 the employee's regular rate of pay for each workday that the rest period is not provided.

16 25. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
17 CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4)
18 hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for
19 the same reasons, these employees were denied their first rest periods of at least ten (10) minutes
20 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
21 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
22 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
23 or more from time to time. Further, from time to time, DEFENDANT required PLAINTIFF and
24 other CALIFORNIA CLASS Members to maintain cordless communication devices on them
25 during what was supposed to be their off-duty rest break in order to receive and respond to work-
26 related communications. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
27 were from time to time required to remain on the premises, on-duty and on-call during their rest
28

1 periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with
2 one-hour wages in lieu thereof.

3 **C. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
4 **Sick Pay**

5 26. State law provides that employees must be paid overtime at one-and-one-half times
6 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS were compensated at
7 an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific
8 elements of an employee’s performance and/or commissions.

9 27. DEFENDANTS’ non-discretionary commission and bonus program provided the
10 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation
11 when the employees met the various performance goals set by DEFENDANT. However, when
12 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA
13 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,
14 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or
15 commission wages as part of the employees’ “regular rate of pay.”.

16 28. Management and supervisors described the bonus and commissions programs and
17 commission compensation program to potential and new employees as part of the compensation
18 package for new and used car salespersons including PLAINTIFF and the CALIFORNIA
19 CLASS. As a matter of law, the incentive and commission compensation received by
20 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
21 calculated into the “regular rate of pay” for purposes of overtime and double time compensation,
22 meal and rest period premium payments, and sick pay. DEFENDANT’s failure to do so has
23 resulted in DEFENDANT’s systematic underpayment of overtime and double time compensation,
24 meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA
25 CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time
26 for non-employees shall be calculated in the same manner as the regular rate of pay for the
27 workweek in which the employee uses paid sick time, whether or not the employee actually works
28 overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by failing to include

1 the incentive compensation as part of the “regular rate of pay” for purposes of sick pay
2 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
3 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

4 29. In violation of the applicable sections of the California Labor Code and the
5 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
6 matter of company policy, practice and procedure, intentionally and knowingly failed to
7 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
8 of pay for all overtime and double time compensation, meal and rest period premium payments,
9 and sick pay. This uniform policy and practice of DEFENDANTS is intended to purposefully
10 avoid the payment of the correct overtime and double time compensation, meal and rest period
11 premium payments, and sick pay as required by California law which allowed DEFENDANTS to
12 illegally profit and gain an unfair advantage over competitors who complied with the law. To the
13 extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members against
14 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

15 **D. Commission and Piece-Rate Violations**

16 30. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
17 the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those
18 instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission
19 and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately
20 compensated for all non-productive time at an hourly rate that is no less than the applicable
21 minimum wage. Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA
22 CLASS were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to
23 separately compensate PLAINTIFF and the CALIFORNIA CLASS for all non-productive time,
24 including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable
25 minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited minimum
26 wages and overtime wages by DEFENDANT’S failure to separately compensate their non-
27 productive time at an hourly rate that is no less than the applicable minimum wage.
28

1 31. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS
2 improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid
3 on a draw versus commission basis as exempt from overtime compensation.

4 **E. Off-the-Clock Minimum Wage and Overtime Violations**

5 32. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
6 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
7 worked, meaning the time during which an employee is subject to the control of an employer,
8 including all the time the employee is suffered or permitted to work. From time to time,
9 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without
10 paying them for all the time they were under DEFENDANTS' control.

11 33. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
12 minimum wage and overtime compensation by regularly working without their time being
13 accurately recorded and without compensation at the applicable minimum wage and overtime
14 rates. DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA
15 CLASS necessary wages for attending for performing work at DEFENDANTS' direction,
16 request, and benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay
17 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by
18 DEFENDANTS' business records.

19 34. DEFENDANTS directed and directly benefited from the uncompensated off-the-
20 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

21 35. DEFENDANTS controlled the work schedules, duties, protocols, applications,
22 assignments, and employment conditions of PLAINTIFF and the other members of the
23 CALIFORNIA CLASS.

24 36. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
25 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
26 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
27 wages earned and owed for all the work they performed, including pre-shift, post shift and during
28 meal period off-the-clock work.

1 37. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
2 exempt employees, subject to the requirements of the California Labor Code.

3 38. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
4 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
5 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
6 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
7 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

8 39. DEFENDANTS knew or should have known that PLAINTIFF and the other
9 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

10 40. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
11 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
12 for the time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to
13 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked
14 in accordance with applicable law is evidenced by DEFENDANTS' business records.

15 **F. Unreimbursed Business Expenses**

16 41. DEFENDANTS as a matter of corporate policy, practice, and procedure,
17 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
18 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and
19 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf
20 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to
21 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
22 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
23 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
24 of his or her duties, or of his or her obedience to the directions of the employer, even though
25 unlawful, unless the employee, at the time of obeying the directions, believed them to be
26 unlawful."

27 42. In the course of their employment, DEFENDANTS required PLAINTIFF and
28 other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in

1 furtherance of their job duties as employees for DEFENDANT. But for the use of their own
2 personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete
3 their essential job duties, including but not limited to, sending and receiving work-related
4 communications from DEFENDANTS and DEFENDANTS' clients. However, DEFENDANTS
5 unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their
6 use of their personal cell phones. As a result, in the course of their employment with
7 DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
8 unreimbursed business expenses, but were not limited to, costs related to the use of their personal
9 cellular phones, all on behalf of and for the benefit of DEFENDANTS.

10 **G. Wage Statement Violations**

11 43. California Labor Code Sections 226 and 226.2 require an employer to furnish its
12 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total
13 hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
14 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
15 paid, (7) the name of the employee and only the last four digits of the employee's social security
16 number or an employee identification number other than a social security number, (8) the name
17 and address of the legal entity that is the employer, (9) all applicable hourly rates in effect during
18 the pay period and the corresponding number of hours worked at each hourly rate by the
19 employee; (10) the total hours of compensable rest and recovery periods, the rate of compensation,
20 and the gross wages paid for those periods during the pay period, and (11) the total hours of other
21 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
22 pay period.

23 44. From time-to-time during the CALIFORNIA CLASS PERIOD, DEFENDANT
24 furnished PLAINTIFF and the CALIFORNIA CLASS written wage statements that failed to
25 accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units
26 earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect
27 during the pay period and the corresponding number of hours worked at each hourly rate by the
28 employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation,

1 and the gross wages paid for those periods during the pay period, and (7) the total hours of other
2 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
3 pay period.

4 45. In addition to the violations described above, DEFENDANTS, from time to time,
5 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
6 that comply with Cal. Lab. Code § 226.

7 46. As a result, DEFENDANTS issued PLAINTIFF and the CALIFORNIA CLASS
8 with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS'
9 violations are knowing and intentional, were not isolated or due to an unintentional payroll error
10 due to clerical or inadvertent mistake.

11 **H. Unlawful Deductions**

12 47. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
13 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
14 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
15 DEFENDANTS violated Labor Code § 221.

16 48. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
17 required off-duty meal breaks to her and paid rest periods to her as required by the applicable
18 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for her missed
19 meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent her from
20 being relieved of all of her duties for the legally required off-duty meal periods. Further,
21 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday
22 in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result,
23 DEFENDANT'S failure to provide PLAINTIFFS with the legally required second off-duty meal
24 period is evidenced by DEFENDANT's business records. From time to time, and as a result of
25 DEFENDANT not accurately recording all missed meal and rest periods, and failing to pay
26 minimum wages due for all time worked and separate compensation for rest breaks, the wage
27 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,
28 Labor Code Section 226(a). Further, DEFENDANT failed to reimburse PLAINTIFF for all

1 required business expenses including for the use of her personal cell phone. To date,
2 DEFENDANT has yet to pay PLAINTIFF all of her wages due to her and all premiums due to
3 her for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages owed
4 to her under California Labor Code Section 203. The amount in controversy for PLAINTIFF
5 individually does not exceed \$75,000.

6 **THE CALIFORNIA CLASS**

7 49. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
8 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class
9 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of all current and former non-exempt
10 and exempt employees employed by Defendant Hilton Resorts and/or Defendant Hilton Grand
11 Vacations Company and/or Defendant Hilton Grand Vacations Management in California
12 ("CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the
13 filing of this Complaint and ending on the date as determined by the Court (the "CLASS
14 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
15 Members is under five million dollars (\$5,000,000.00).

16 50. To the extent equitable tolling operates to toll claims by the CALIFORNIA
17 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
18 accordingly.

19 51. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
20 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
21 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
22 and illegal meal and rest period policies. Defendant further failed to reimburse for business
23 expenses, failed to compensate for off-the-clock work, failed to provide accurate itemized wage
24 statements, and failed to maintain required records, and interest, statutory and civil penalties,
25 attorney's fees, costs, and expenses.

26 52. The members of the class are so numerous that joinder of all class members is
27 impractical.
28

1 53. Common questions of law and fact regarding DEFENDANTS' conduct, including
2 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to
3 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
4 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
5 minimum wage and overtime, exist as to all members of the class and predominate over any
6 questions affecting solely any individual members of the class. Among the questions of law and
7 fact common to the class are:

- 8 i. Whether DEFENDANTS maintained legally compliant meal period policies
9 and practices;
- 10 ii. Whether DEFENDANTS maintained legally compliant rest period policies
11 and practices;
- 12 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
13 CLASS Members accurate premium payments for missed meal and rest
14 periods;
- 15 iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
16 CLASS Members accurate overtime wages;
- 17 v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
18 CLASS Members at least minimum wage for all hours worked;
- 19 vi. Whether Defendants failed to compensate PLAINTIFF and the
20 CALIFORNIA CLASS Members for required business expenses;
- 21 vii. Whether DEFENDANTS issued legally compliant wage statements;
- 22 viii. Whether DEFENDANTS committed an act of unfair competition by
23 systematically failing to record and pay PLAINTIFF and the other members
24 of the CALIFORNIA CLASS for all time worked;
- 25 ix. Whether DEFENDANTS committed an act of unfair competition by
26 systematically failing to record all meal and rest breaks missed by
27 PLAINTIFF and other CALIFORNIA CLASS Members, even though
28 DEFENDANTS enjoyed the benefit of this work, required employees to
perform this work and permits or suffers to permit this work;

1 x. Whether DEFENDANTS committed an act of unfair competition in
2 violation of the UCL, by failing to provide the PLAINTIFF and the other
3 members of the CALIFORNIA CLASS with the legally required meal and
4 rest periods.

5 54. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
6 a result of DEFENDANTS' conduct and actions alleged herein.

7 55. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
8 the same interests as the other members of the class.

9 56. PLAINTIFF will fairly and adequately represent and protect the interests of the
10 CALIFORNIA CLASS Members.

11 57. PLAINTIFF retained able class counsel with extensive experience in class action
12 litigation.

13 58. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
14 interests of the other CALIFORNIA CLASS Members.

15 59. There is a strong community of interest among PLAINTIFF and the members of
16 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
17 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
18 sustained.

19 60. The questions of law and fact common to the CALIFORNIA CLASS Members
20 predominate over any questions affecting only individual members, including legal and factual
21 issues relating to liability and damages.

22 61. A class action is superior to other available methods for the fair and efficient
23 adjudication of this controversy because joinder of all class members is impractical. Moreover,
24 since the damages suffered by individual members of the class may be relatively small, the
25 expense and burden of individual litigation makes it practically impossible for the members of the
26 class individually to redress the wrongs done to them. Without class certification and
27 determination of declaratory, injunctive, statutory and other legal questions within the class
28

1 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
2 create the risk of:

- 3 i. Inconsistent or varying adjudications with respect to individual members of the
4 CALIFORNIA CLASS which would establish incompatible standards of
5 conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- 6 ii. Adjudication with respect to individual members of the CALIFORNIA
7 CLASS which would as a practical matter be dispositive of the interests of the
8 other members not party to the adjudication or substantially impair or impeded
9 their ability to protect their interests.

10 62. Class treatment provides manageable judicial treatment calculated to bring an
11 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
12 the conduct of DEFENDANTS.

13 **FIRST CAUSE OF ACTION**

14 **Unlawful Business Practices**

15 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

16 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

17 63. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
19 Complaint.

20 64. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code
21 § 17021.

22 65. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
23 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
24 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
25 as follows:

26 Any person who engages, has engaged, or proposes to engage in
27 unfair competition may be enjoined in any court of competent
28 jurisdiction. The court may make such orders or judgments,
including the appointment of a receiver, as may be necessary to
prevent the use or employment by any person of any practice which
constitutes unfair competition, as defined in this chapter, or as may

1 be necessary to restore to any person in interest any money or
2 property, real or personal, which may have been acquired by means
3 of such unfair competition.

4 Cal. Bus. & Prof. Code § 17203.

5 66. By the conduct alleged herein, DEFENDANT has engaged and continues to engage
6 in a business practice which violates California law, including but not limited to, the applicable
7 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
8 including Sections 201, 202, 203, 204, 206.5, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198
9 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
10 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
11 constitute unfair competition, including restitution of wages wrongfully withheld.

12 67. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair
13 in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or
14 substantially injurious to employees, and were without valid justification or utility for which this
15 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
16 Business & Professions Code, including restitution of wages wrongfully withheld.

17 68. By the conduct alleged herein, DEFENDANT's practices were deceptive and
18 fraudulent in that DEFENDANT's uniform policy and practice failed to pay all minimum and
19 overtime wages due, failed to provide the legally mandated meal and rest periods, failed to pay
20 the required amount of compensation for missed meal and rest periods, and failed to reimburse
21 necessary business expenses incurred due to a systematic business practice that cannot be
22 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
23 requirements in violation of Cal. Bus. Code §§ 17200, et seq., and for which this Court should
24 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
25 restitution of wages wrongfully withheld.

26 69. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
27 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
28 other members of the CALIFORNIA CLASS to be underpaid during their employment with
DEFENDANT.

1 70. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
2 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to
3 provide all legally required meal and rest breaks to PLAINTIFF and the other members of the
4 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

5 71. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
6 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
7 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
8 each workday in which a second off-duty meal period was not timely provided for each ten (10)
9 hours of work.

10 72. PLAINTIFF further demands on behalf of herself and each member of the
11 CALIFORNIA CLASS one (1) hour of pay for each workday in which a rest period was not given
12 and a premium was not timely provided as required by law.

13 73. By and through the unlawful and unfair business practices described herein,
14 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
15 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
16 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
17 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
18 to unfairly compete against competitors who comply with the law.

19 74. All the acts described herein as violations of, among other things, the Industrial
20 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
21 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
22 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
23 practices in violation of Cal. Bus. & Prof. Code §§ 17200, et seq.

24 75. PLAINTIFF and the other members of the CALIFORNIA CLASS were entitled to,
25 and do, seek such relief as may be necessary to restore to them the money and property which
26 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
27 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
28 business practices, including earned but unpaid wages for all time worked.

1 76. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
2 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
3 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
4 engaging in any unlawful and unfair business practices in the future.

5 77. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
6 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
7 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
8 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
9 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
10 and economic harm unless DEFENDANT is restrained from continuing to engage in these
11 unlawful and unfair business practices.

12 **SECOND CAUSE OF ACTION**

13 **Failure To Pay Minimum Wages**

14 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)**

15 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

16 78. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
17 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
18 this Complaint.

19 79. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
20 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
21 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
22 minimum wages.

23 80. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
24 policy, an employer must timely pay its employees for all hours worked.

25 81. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
26 commission is the minimum wage to be paid to employees, and the payment of a less wage than
27 the minimum so fixed is unlawful.

28 82. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,

1 including minimum wage compensation and interest thereon, together with the costs of suit.

2 83. As set forth above, during the CLASS PERIOD, DEFENDANT maintained a
3 uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA
4 CLASS without regard to the correct amount of time they worked. As set forth herein,
5 DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely
6 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

7 84. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
8 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
9 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
10 and the other members of the CALIFORNIA CLASS regarding minimum wage pay.

11 85. In committing these violations of the California Labor Code, DEFENDANT
12 inaccurately calculated the correct time worked and consequently underpaid the actual time
13 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
14 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
15 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
16 laws and regulations.

17 86. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
19 minimum wage compensation for their time worked for DEFENDANT.

20 87. During the CLASS PERIOD, PLAINTIFF and the other members of the
21 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
22 failure to pay all earned wages.

23 88. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
24 compensation to the PLAINTIFF and the other members of the CALIFORNIA CLASS for the
25 true time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
26 suffered and will continue to suffer an economic injury in amounts which are presently unknown
27 to them and which will be ascertained according to proof at trial.

28 89. DEFENDANT knew or should have known that PLAINTIFF and the other

1 members of the CALIFORNIA CLASS were under compensated for their time worked.
2 DEFENDANT systematically elected, either through intentional malfeasance or gross
3 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
4 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
5 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
6 for their time worked.

7 90. In performing the acts and practices herein alleged in violation of California labor
8 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
9 and provide them with the requisite compensation, DEFENDANT acted and continues to act
10 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
12 consequences to them, and with the despicable intent of depriving them of their property and legal
13 rights, and otherwise causing them injury in order to increase company profits at the expense of
14 these employees.

15 91. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
16 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
17 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
18 California Labor Code and/or other applicable statutes. To the extent minimum wage
19 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
20 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
21 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
22 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
23 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
24 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
25 recover statutory costs.

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1 implementing a uniform policy and practice that failed to accurately record overtime worked by
2 PLAINTIFF and the other members of the CALIFORNIA CLASS, and denied accurate
3 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime
4 worked, including, the work performed in excess of eight (8) hours in a workday and/or forty (40)
5 hours in any workweek.

6 99. In committing these violations of the California Labor Code, DEFENDANT acted
7 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
8 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
9 laws and regulations.

10 100. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
11 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full
12 compensation for all overtime worked.

13 101. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
14 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
15 and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other
16 members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement
17 that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFF
18 bring this Action on behalf of herself and the CALIFORNIA CLASS based on DEFENDANT's
19 violations of non-negotiable, non-waivable rights provided by the State of California.

20 102. During the CLASS PERIOD, PLAINTIFF and the other members of the
21 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
22 failure to pay all earned wages.

23 103. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
24 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
25 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
26 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
27 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay
28 using the applicable overtime rate as evidenced by DEFENDANT's business records and

1 witnessed by employees.

2 104. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
3 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
4 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
5 suffered and will continue to suffer an economic injury in amounts which are presently unknown
6 to them and which will be ascertained according to proof at trial.

7 105. DEFENDANT knew or should have known that PLAINTIFF and the other
8 members of the CALIFORNIA CLASS are under compensated for their overtime worked.
9 DEFENDANT systematically elected, either through intentional malfeasance or gross
10 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
11 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
12 PLAINTIFF and the other members of the CALIFORNIA CLASS the applicable overtime rate.

13 106. In performing the acts and practices herein alleged in violation of California labor
14 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
15 and provide them with the requisite overtime compensation, DEFENDANT acted and continue
16 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
17 the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
18 consequences to them, and with the despicable intent of depriving them of their property and legal
19 rights, and otherwise causing them injury in order to increase company profits at the expense of
20 these employees.

21 107. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
22 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
23 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
24 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
25 overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who
26 have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201
27 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
28 Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS

1 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
2 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
3 recover statutory costs.

4 **FOURTH CAUSE OF ACTION**

5 **Failure To Provide Required Meal Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

7 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

8 108. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
9 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
10 Complaint.

11 109. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
12 required off-duty meal breaks to PLAINTIFF and the CALIFORNIA CLASS as required by the
13 applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and
14 the CALIFORNIA CLASS did not prevent these employees from being relieved of all of their
15 duties for the legally required off-duty meal periods. As a result of their rigorous work schedules,
16 PLAINTIFF and the CALIFORNIA CLASS were often not fully relieved of duty by
17 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
18 PLAINTIFF and the CALIFORNIA CLASS with legally required meal breaks prior to their fifth
19 (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF
20 and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without
21 additional compensation and in accordance with DEFENDANT's strict corporate policy and
22 practice.

23 110. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
24 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
25 who were not provided a meal period, in accordance with the applicable Wage Order, one
26 additional hour of compensation at each employee's regular rate of pay for each workday that a
27 meal period was not provided.
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111. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

112. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

113. During the CLASS PERIOD, PLAINTIFF and the CALIFORNIA CLASS were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and the CALIFORNIA CLASS were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the CALIFORNIA CLASS were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

114. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and the CALIFORNIA CLASS who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

115. As a proximate result of the aforementioned violations, PLAINTIFF and the CALIFORNIA CLASS have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

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1 3. Further, during the CLASS PERIOD, DEFENDANTS also failed to provide
2 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
3 wage statements in compliance with Cal. Labor Code Section 226.2, which failed to accurately
4 show, among other things: (1) the total hours of compensable rest and recovery periods; and (2)
5 the total hours of other nonproductive time, the rate of compensation for the nonproductive time
6 and the gross wages paid for the nonproductive time during the applicable pay period.

7 4. PLAINTIFFS and the members of the CALIFORNIA CLASS were injured by
8 DEFENDANTS' violations in that they could not promptly and easily determine from the wage
9 statement alone, the amount of gross or net wages paid, the total hours worked, the number pf
10 piece-rate units earned and any applicable piece-rate, all applicable hourly rates in effect during
11 the pay period and the corresponding number of hours worked at each hourly rate to the employee
12 during the applicable pay period.

13 5. DEFENDANTS violations of Cal. Labor Code § 226 and 226.2 were knowing and
14 intentional in that DEFENDANTS willfully intended to issue wage statements that were out of
15 compliance with § 226 and 226.2.

16 117. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor
17 Code § 226 and 226.2, causing injury and damages to the PLAINTIFF and the other members of
18 the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended
19 calculating the correct rates for the overtime worked and the amount of employment taxes which
20 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
21 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
22 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
23 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
24 pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor
25 Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more
26 than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
27 CALIFORNIA CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 118. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 119. Cal. Lab. Code § 200 provides, in relevant part, that:

8 As used in this article:(a) "Wages" includes all amounts for labor
9 performed by employees of every description, whether the amount is
10 fixed or ascertained by the standard of time, task, piece, Commission
11 basis, or other method of calculation. (b) "Labor" includes labor, work,
12 or service whether rendered or performed under contract, subcontract,
13 partnership, station plan, or other agreement if the labor to be paid for
14 is performed personally by the person demanding payment.

15 120. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an
16 employee, the wages earned and unpaid at the time of discharge are due and payable
17 immediately."

18 121. Cal. Lab. Code § 202 provides, in relevant part, that:

19 If an employee not having a written contract for a definite period quits
20 his or her employment, his or her wages shall become due and payable
21 not later than 72 hours thereafter, unless the employee has given 72
22 hours previous notice of his or her intention to quit, in which case the
23 employee is entitled to his or her wages at the time of quitting.
24 Notwithstanding any other provision of law, an employee who quits
25 without providing a 72-hour notice shall be entitled to receive payment
26 by mail if he or she so requests and designates a mailing address. The
27 date of the mailing shall constitute the date of payment for purposes
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1 of the requirement to provide payment within 72 hours of the notice
2 of quitting.

3 122. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
4 Members' employment contract.

5 123. Cal. Lab. Code § 203 provides, in relevant part, that:

6 If an employer willfully fails to pay, without abatement or reduction,
7 in accordance with Sections 201, 201.5, 202, and 205.5, any wages of
8 an employee who is discharged or who quits, the wages of the
9 employee shall continue as a penalty from the due date thereof at the
10 same rate until paid or until an action therefor is commenced; but the
11 wages shall not continue for more than 30 days.

12
13 124. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
14 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

15 125. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
16 members of the CALIFORNIA CLASS whose employment has terminated and who have unpaid
17 minimum and/or overtime wages and/or missed meal and rest breaks without being paid the
18 legally required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as
19 penalty for not timely paying all wages due at time of termination for all employees who
20 terminated employment during the CLASS PERIOD plus interest and statutory costs as allowed
21 by law.

22 **EIGHTH CAUSE OF ACTION**

23 **Failure To Reimburse Employees For Required Expenses**

24 **(Cal. Lab. Code §§ 2802)**

25 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

26 126. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
27 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
28 Complaint.

1 127. Cal. Lab. Code § 2802 provides, in relevant part, that:

2 An employer shall indemnify his or her employee for all necessary
3 expenditures or losses incurred by the employee in direct
4 consequence of the discharge of his or her duties, or of his or her
5 obedience to the directions of the employer, even though unlawful,
6 unless the employee, at the time of obeying the directions, believed
7 them to be unlawful.

8 128. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
9 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
10 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
11 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
12 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
13 using their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.
14 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
15 DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of
16 DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse
17 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
18 their personal cellular phones for DEFENDANTS within the course and scope of their
19 employment for DEFENDANTS. These expenses were necessary to complete their principal job
20 duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
21 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
22 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
23 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
24 is required to do under the laws and regulations of California.

25 129. PLAINTIFF therefore demands reimbursement on behalf of the members of the
26 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
27 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
28 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

- 5 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
6 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 7 b. An order temporarily, preliminarily and permanently enjoining and restraining
8 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 9 c. An order requiring DEFENDANT to pay all overtime wages and all sums
10 unlawfully withheld from compensation due to PLAINTIFF and the other members
11 of the CALIFORNIA CLASS; and
- 12 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
13 for restitution of the sums incidental to DEFENDANT's violations due to
14 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

15 2. On behalf of the CALIFORNIA CLASS:

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
17 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
18 to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation and separately owed rest periods, due to
21 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
22 applicable CLASS PERIOD plus interest thereon at the statutory rate;
- 23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
- 25 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per each member of the
27 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
28 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

violation of Cal. Lab. Code § 226.

e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: June 13, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: June 13, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF