

SUMMONS

(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

DAVIDSON HOTEL COMPANY LLC, a Delaware limited liability company; DHC SD HOLDINGS LLC, a Delaware limited liability company; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

ALAA GADO KANA, on behalf of the State of California in his representative capacity as a private attorney general,

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/23/2024 12:30:35 PM

Clerk of the Superior Court
By M. Estrada, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Diego Superior Court

Hall of Justice Courthouse - 330 West Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

24CU030160C

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean-Claude Lapuyade, Esq. T: (619) 599-8292 JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 12/24/2024

(Fecha)

Clerk, by
(Secretario)

M. Estrada

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☐ by personal delivery on (date):

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
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County of San Diego

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Clerk of the Superior Court
By M. Estrada ,Deputy Clerk

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ALAA GADO KANA, on behalf of the State of
California in his representative capacity as a
private attorney general,

Plaintiff,

v.

DAVIDSON HOTEL COMPANY LLC, a
Delaware limited liability company; DHC SD
HOLDINGS LLC, a Delaware limited liability
company; and DOES 1-50, Inclusive,

Defendants.

Case No: 24CU030160C

REPRESENTATIVE ACTION
COMPLAINT FOR:

1) VIOLATIONS OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.

1 PLAINTIFF ALAA GADO KANA ("PLAINTIFF") on behalf of the people of the State of
2 California, and as an "aggrieved employee" acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only, alleges on information
4 and belief, except for his own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against DAVIDSON HOTEL COMPANY, LLC;
8 and DHC SD HOLDINGS LLC, ("DEFENDANT" and/or "DEFENDANTS") seeking only to
9 recover PAGA civil penalties on behalf of all current and former aggrieved employees that
10 worked for DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties**
11 **as permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code §
14 2699.

15 2. California has enacted the PAGA which permits PLAINTIFF to bring an
16 action on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this
17 action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANTS'
19 violations under PAGA and solely for the relief as permitted by PAGA that is, penalties and any
20 other relief the Court deems proper pursuant to PAGA. Nothing in this complaint should be
21 constructed as attempting to obtain any relief that would not be available in a PAGA- only action.

22 4. PLAINTIFF is not suing in his individual capacity; he is proceeding herein solely
23 under the PAGA, on behalf of the State of California for all aggrieved employees, including
24 himself and other aggrieved employees. Nothing in this complaint should be construed as
25 PLAINTIFF suing his individual capacity

26 5. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
27 decreased their employment-related costs by systematically violating California wage and hour
28 laws.

6. DEFENDANT’S systematic pattern of wage and hour and IWC Wage Order violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- a. Failure to provide compliant meal and rest periods;
- b. Failure to allow employees to take duty-free meal and rest periods;
- c. Failure to pay all minimum, sick pay, regular and overtime wages;
- d. Failure to correctly calculate the regular rate of pay;
- e. Failure to pay within seven (7) days of the close of payroll;
- f. Failure to pay for all hours worked;
- g. Failure to maintain true and accurate records;
- h. Failure to reimburse for required business expenses;
- i. Failure to provide accurate itemized wage statements; and
- j. Failure to timely pay wages due during, and upon termination of employment.

7. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

THE PARTIES

8. Defendant DAVIDSON HOTEL COMPANY, LLC (“Defendant Davidson”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

9. Defendant DHC SD HOLDINGS LLC (“Defendant DHC”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

10. Defendant Davidson, and Defendant DHC were the joint employers of PLAINTIFF and the AGGRIEVED EMPLOYEES as evidenced by the documents issued to PLAINTIFF and the AGGRIEVED EMPLOYEES, by the company PLAINTIFF and the AGGRIEVED EMPLOYEES performed work for respectively, and as these entities each exerted control over the hours, wages and/or working conditions of PLAINTIFF and the AGGRIEVED EMPLOYEES. Therefore, Defendant Davidson and Defendant DHC are jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

1 11. DEFENDANTS were the employers of PLAINTIFF as evidenced by the
2 documents issued to PLAINTIFF and by the company PLAINTIFF performed work for.

3 12. DEFENDANTS own and operate a hotel management company throughout the
4 state of California, including in the county of San Diego.

5 13. PLAINTIFF has been employed by DEFENDANT in California since October of
6 2008, paid in part an hourly wage, and entitled to the legally required meal and rest periods and
7 payment of minimum and overtime wages due for all time worked.

8 14. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, bring this Representative Action on behalf of the State of California with respect to himself
11 and all individuals who are or previously were employed by Defendant Davidson and/or
12 Defendant DHC in California and classified as non-exempt employees (“AGGRIEVED
13 EMPLOYEES”) during the time period of October 18, 2023, and the present (“PAGA Period”).

14 15. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor
15 Code § 2699(c) because he is employed by DEFENDANTS and personally suffered each of the
16 alleged Labor Code violations committed by DEFENDANTS.

17 16. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant
18 times were, employees of DEFENDANTS, within the meanings set forth in the California Labor
19 Code and the applicable Industrial Welfare Commission Wage Order.

20 17. Each of the fictitiously named defendants participated in the acts alleged in this
21 Complaint. The true names and capacities of the Defendants named as DOES 1 THROUGH 50,
22 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting
23 forth the true names and capacities of these fictitiously named Defendants when their true names
24 are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the
25 fictitious Defendants have participated in the acts alleged in this Complaint.

26 18. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively
27 “DEFENDANTS”), were PLAINTIFF’S employers or persons acting on behalf of PLAINTIFF’S
28 employer, within the meaning of California Labor Code § 558, who violated or caused to be

1 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
2 hours and days of work in any order of the Industrial Welfare Commission and, as such, are
3 subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all
4 relevant times.

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

10 **JURISDICTION AND VENUE**

11 20. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
13 Court has jurisdiction over AGGRIEVED EMPLOYEES' claims for civil penalties under the
14 Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

15 21. Venue is proper in this Court pursuant to California Code of Civil Procedure,
16 Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times
17 maintained offices and facilities in this County and/or conduct substantial business in this County,
18 and (ii) committed the wrongful conduct herein alleged in this County against AGGRIEVED
19 EMPLOYEES.

20 **THE CONDUCT**

21 22. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
23 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
24 failed to provide legally compliant meal and rest periods, failed to accurately compensate
25 PLAINTIFF and AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay
26 PLAINTIFF and AGGRIEVED EMPLOYEES for all time worked, failed compensate
27 PLAINTIFF and AGGRIEVED EMPLOYEES for off-the-clock work, failed to pay PLAINTIFF
28 and AGGRIEVED EMPLOYEES overtime at the correct regular rate of pay, failed to compensate

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

11 **A. Meal Period Violations**

12 23. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
13 were required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
14 meaning the time during which an employee is subject to the control of an employer, including
15 all the time the employee is suffered or permitted to work. From time to time during the PAGA
16 PERIOD, DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work
17 without paying them for all the time they were under DEFENDANTS' control. Specifically,
18 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
19 be PLAINTIFF'S off-duty meal break. Indeed, there were many days where PLAINTIFF did not
20 even receive a partial lunch. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES
21 forfeited minimum wage and overtime compensation by regularly working without their time
22 being accurately recorded and without compensation at the applicable minimum wage and
23 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
24 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS' business
25 records.

26 24. From time to time during the PAGA PERIOD, as a result of their rigorous work
27 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
28 AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minutes off duty

1 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
2 AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANTS for
3 more than five (5) hours during some shifts without receiving a meal break. Further,
4 DEFENDANTS fail to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-
5 duty meal period for some workdays in which these employees are required by DEFENDANTS
6 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
7 AGGRIEVED EMPLOYEES does not qualify for the limited and narrowly construed “on-duty”
8 meal period exception. When they were provided with meal periods, PLAINTIFF and other
9 AGGRIEVED EMPLOYEES were, from time to time, required to remain on duty and on call.
10 DEFENDANTS’ failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES Members
11 with legally required meal breaks is evidenced by DEFENDANTS’ business records. PLAINTIFF
12 and AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
13 and in accordance with DEFENDANTS’ strict corporate policy and practice.

14 **B. Rest Period Violations**

15 25. From time to time during the PAGA PERIOD, PLAINTIFF and other
16 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being
17 provided ten (10) minute rest periods as a result of their rigorous work requirements and
18 DEFENDANTS’ inadequate staffing. Further, for the same reasons, these employees were denied
19 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
20 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
21 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
22 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
23 time to time. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED
24 EMPLOYEES were, from time to time, required to remain on premises, on duty and/or on call
25 and/or on the premises. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not
26 provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and
27 DEFENDANTS’ inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were
28

1 from time to time denied their proper rest periods by DEFENDANT and DEFENDANT's
2 managers.

3 **C. Unreimbursed Business Expenses**

4 26. DEFENDANTS as a matter of corporate policy, practice, and procedure,
5 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
6 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
7 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
8 duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are
9 required to indemnify employees for all expenses incurred in the course and scope of their
10 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct consequence
12 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
13 even though unlawful, unless the employee, at the time of obeying the directions, believed them
14 to be unlawful."

15 27. In the course of their employment, DEFENDANTS required PLAINTIFF and
16 other AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell
17 phones and personal vehicles, and the purchasing their uniforms as a result of and in furtherance
18 of their job duties. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were
19 required to use their own cell phones and vehicles and purchase their uniforms in order to perform
20 work related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
21 other AGGRIEVED EMPLOYEES for the personal expenses incurred for the use of their
22 personal cell phones and vehicles, and for purchasing their uniforms. As a result, in the course of
23 their employment with DEFENDANTS, the PLAINTIFF and other AGGRIEVED EMPLOYEES
24 incurred unreimbursed business expenses that included, but were not limited to, costs related to
25 the use of their personal cell phones and vehicles, and purchasing their uniforms, all on behalf of
26 and for the benefit of DEFENDANTS.

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1 **D. Wage Statement Violations**

2 28. California Labor Code Section 226 required an employer to furnish its employees
3 an accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
4 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
5 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
6 name of the employee and only the last four digits of the employee's social security number or an
7 employee identification number other than a social security number, (8) the name and address of
8 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
9 period and the corresponding number of hours worked at each hourly rate by the employee.

10 29. From time to time during the PAGA PERIOD, when PLAINTIFF and other
11 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
12 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
13 to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage
14 statements which failed to show, among other things, all deductions, the total hours worked and
15 all applicable hourly rates in effect during the pay period, and the corresponding amount of time
16 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
17 periods.

18 30. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
19 PLAINTIFF and the AGGRIEVED EMPLOYEES Members with wage statements that comply
20 with Cal. Lab. Code § 226.

21 31. As a result, DEFENDANTS issued PLAINTIFF and AGGRIEVED
22 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
23 violations are knowing and intentional, were not isolated due to an unintentional payroll error due
24 to clerical or inadvertent mistake.

25 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

26 32. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and
27 continue to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours
28 worked.

1 33. During the PAGA PERIOD, from time-to-time DEFENDANTS required
2 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This
3 resulted in PLAINTIFF and AGGRIEVED EMPLOYEES to have to work while off-the-clock.

4 34. DEFENDANTS directed and directly benefited from the undercompensated off-
5 the-clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

6 35. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
7 assignments, and employment conditions of PLAINTIFF and AGGRIEVED EMPLOYEES.

8 36. DEFENDANTS were able to track the amount of time PLAINTIFF and
9 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document,
10 track, or pay PLAINTIFF and AGGRIEVED EMPLOYEES all wages earned and owed for all
11 the work they performed.

12 37. PLAINTIFF and AGGRIEVED EMPLOYEES were non-exempt employees,
13 subject to the requirements of the California Labor Code.

14 38. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
15 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for
16 the off-the-clock work activities. Because PLAINTIFF and AGGRIEVED EMPLOYEES
17 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
18 DEFENDANTS' policies and practices also deprived them of overtime pay.

19 39. DEFENDANTS knew or should have known that PLAINTIFF and AGGRIEVED
20 EMPLOYEES' off-the-clock work was compensable under the law.

21 40. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
22 them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent
23 working while off-the-clock, including but not limited to, time spent answering managers and
24 coworkers questions. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and
25 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
26 evidenced by DEFENDANTS' business records.

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1 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
2 **and Redeemed Sick Pay**

3 41. From time to time during the PAGA PERIOD, DEFENDANTS failed and
4 continue to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED
5 EMPLOYEES for their overtime and double time hours worked, meal and rest period premiums,
6 and redeemed sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES
7 forfeited wages due to them for working overtime without compensation at the correct overtime
8 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
9 DEFENDANTS’ uniform policy and practice not to pay PLAINTIFF and the AGGRIEVED
10 EMPLOYEES Members at the correct rate for all overtime and double time worked, meal and
11 rest period premiums, and redeemed sick pay in accordance with applicable law is evidenced by
12 DEFENDANTS’ business records.

13 42. State law provides that employees must be paid overtime at one-and-one-half times
14 their “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES were
15 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
16 employee’s performance.

17 43. The second component of PLAINTIFF’S and other AGGRIEVED EMPLOYEES’
18 compensation was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFF
19 and other AGGRIEVED EMPLOYEES’ incentive wages based on their performance for
20 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
21 basis with bonus compensation when the employees met the various performance goals set by
22 DEFENDANTS.

23 44. From-time-to-time, when calculating the regular rate of pay, in those pay periods
24 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid
25 meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary
26 bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as
27 part of the employees’ “regular rate of pay” and/or calculated all hours worked rather than just all
28 non-overtime hours worked. Management and supervisors described the incentive/bonus program

1 to potential and new employees as part of the compensation package. As a matter of law, the
2 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
3 included in the “regular rate of pay.” The failure to do so has resulted in a systematic underpayment
4 of overtime and double time compensation, meal and rest period premiums, and redeemed sick pay
5 to PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANTS. Specifically,
6 California Labor Code Section 246 mandates that paid sick time for non-employees shall be
7 calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt
8 employee uses paid sick time, whether or not the employee actually works overtime in that
9 workweek. DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive
10 compensation as part of the “regular rate of pay” for purposes of sick pay compensation was in
11 violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor Code
12 Sections 201, 202, 203 and/or 204.

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

24 **G. Sick Pay Violations**

25 46. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
26 July 1, 2015, works in California for the same employer for 30 or more days within a year from
27 the commencement of employment is entitled to paid sick days as specified in this section.”
28 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From

1 time to time, DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF
2 and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

3 47. California Labor Code Section 246(i) requires an employer to furnish its
4 employees with written wage statements setting forth the amount of paid sick leave available.
5 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF
6 and AGGRIEVED EMPLOYEES with wage statements setting forth the amount of paid sick
7 leave available.

8 **H. Violations for Untimely Payment of Wages**

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

14 49. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
15 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to
16 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become
17 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
18 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
19 wages at the time of quitting.” PLAINTIFF and the AGGRIEVED EMPLOYEES were, from time
20 to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at
21 the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202. Further, DEFENDANTS’
22 violations are willful and intentional, were not isolated due to an unintentional payroll error due
23 to clerical or inadvertent mistake.

24 50. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
25 paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose
26 employment ended during the PAGA PERIOD.

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1 **I. Unlawful Deductions**

2 51. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
3 and AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do so
4 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES Members. As a result,
5 DEFENDANTS violated Labor Code § 221.

6 **J. Unlawful Rounding Practices**

7 52. During the PAGA Period, DEFENDANTS did not have in place an immutable
8 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED
9 EMPLOYEES for the actual time these employees worked each day, including overtime hours.
10 Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted
11 in PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated for all of their time
12 worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally
13 round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and
14 AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time worked,
15 including the applicable overtime compensation for overtime worked. As a result, PLAINTIFF
16 and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time
17 worked by working without their time being accurately recorded and without compensation at the
18 applicable overtime rates.

19 53. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
20 rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time
21 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
22 policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as
23 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-
24 duty meal break.

25 **K. Timekeeping Manipulation**

26 54. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
27 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED
28 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each

1 day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result,
2 DEFENDANTS were able to and did in fact, unlawfully, and unilaterally alter the time recorded
3 in DEFENDANTS' timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in
4 order to avoid paying these employees for all hours worked, applicable overtime compensation,
5 applicable sick pay, missed meal breaks and missed rest break.

6 55. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time-to-time,
7 forfeited time worked by working without their time being accurately recorded and without
8 compensation at the applicable pay rates.

9 56. The mutability of the timekeeping system also allowed DEFENDANTS to alter
10 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
11 timekeeping system so as to create the appearance that PLAINTIFF and AGGRIEVED
12 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not
13 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANTS'
14 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
15 breaks each day or otherwise compensate them for missed meal breaks.

16 57. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due
17 them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
18 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
19 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
20 applicable law is evidenced by DEFENDANTS' business records.

21 58. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
22 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
23 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
24 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
25 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
26 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
27 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
28 DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during what was

1 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
2 without additional compensation and in accordance with DEFENDANT'S strict corporate policy
3 and practice. Moreover, DEFENDANTS also provided PLAINTIFF with paystubs that failed to
4 comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF
5 for required business expenses related to the personal expenses incurred for the use of his personal
6 cell phone, personal vehicle and purchase of work uniforms, on behalf of and in furtherance of
7 his employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF
8 the minimum, overtime and double time compensation still owed to him or any penalty wages
9 owed to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually
10 does not exceed the sum or value of \$75,000.

11 **FIRST CAUSE OF ACTION**

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

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

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

15 59. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
16 herein, the prior paragraphs of this Complaint.

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

1 61. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
2 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
3 meaning of Labor Code Section 2699(c).

4 62. Labor Code Sections 2699(a) and (k) authorize an AGGRIEVED EMPLOYEE,
5 like PLAINTIFF, on behalf of herself and other current or former employees, to bring a civil
6 action to recover civil penalties pursuant to the procedures specified in Labor Code Section
7 2699.3

8 63. PLAINTIFF complied with the procedures for bringing suit specified in Labor
9 Code Section 2699.3. By certified letter, return receipt requested, dated October 18, 2024,
10 PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”)
11 and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been
12 violated, including the facts and theories to support the alleged violations. See **Exhibit #1.**

13 64. As of the date of this complaint, more than sixty-five (65) days after serving the
14 LWDA with notice of DEFENDANT’S violations, the LWDA has not provided any notice by
15 certified mail of its intent to investigate the DEFENDANT’S alleged violations as mandated by
16 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
17 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

18 65. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
19 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of
20 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
21 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802 and
22 2804 in the following amounts:

23 a. For violation of Labor Code Sections 201, 202, 203, and 204, up to (\$200)
24 per AGGRIEVED EMPLOYEE per pay period [penalty per Labor Code
25 Section 2699(f)];

26 b. For violations of Labor Code Section 226(a), a civil penalty in the amount
27 of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for
28 any initial violation and one thousand dollars for each subsequent violation

1 [penalty per Labor Code Section 226.3];

2 c. For violations of Labor Code Sections 204, a civil penalty in the amount of
3 one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial
4 violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for
5 each subsequent violation [penalty per Labor Code Section 210];

6 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty
7 in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED
8 EMPLOYEE for the initial violation and hundred dollars (\$100) for each
9 underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty
10 per Labor Code Section 558];

11 e. For violations of Labor Code Section 1174(d), a civil penalty in the amount
12 of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per
13 Labor Code Section 1174.5].

14 f. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199,
15 a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED
16 EMPLOYEE per pay period for the initial violation and two hundred dollars
17 fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent
18 violation [penalty per Labor Code Section].

19 66. For all provisions of the Labor Code for which civil penalty is not specifically
20 provided, Labor Code § 2699(f) imposes upon Defendant a penalty of up to two hundred dollars
21 (\$200) for each AGGRIEVED EMPLOYEE per pay period. PLAINTIFF and the AGGRIEVED
22 EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with
23 their claims for civil penalties pursuant to Labor Code Section 2699(k)(1).
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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

1. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;
2. For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and
3. For such other relief as the Court deems just and proper.

DATED: December 23, 2024

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

EXHIBIT 1

October 18, 2024

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

DAVIDSON HOTEL COMPANY, LLC

c/o C T Corporation System
330 N. Brand Blvd.
Glendale, CA 91203

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 1166 8801 13

DHC SD HOLDINGS LLC

c/o C T Corporation System
330 N. Brand Blvd.
Glendale, CA 91203

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 1166 8827 73

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, 227.3, 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:

This notice is being sent in compliance with Cal. Lab. Code § 2699.3. Our offices represent Plaintiff ALAA KANA ("Plaintiff") and other aggrieved employees. Plaintiff has been employed by Defendant DAVIDSON HOTEL COMPANY, LLC and/or Defendant DHC SD Holdings LLC ("Defendant" and/or "Defendants") in California since October of 2008, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks.

Plaintiff alleges that within the past year, he personally suffered violations of the following Labor Codes Sections as a result of Defendant's failure to pay Plaintiff for all time worked, provide Plaintiff with compliant meal periods, provide Plaintiff with compliant rest periods, provide Plaintiff with accurate itemized wage statements that facially comply with the requirements provided for in Labor Code Section 226, furnish wages to Plaintiff with the frequency as set forth under Labor Code Section 204, and reimburse Plaintiff for necessary business expenses: Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804. These violations are actionable under California Labor Code section 2699.3.

The information below provides notice to the Labor and Workforce Development Agency of the

facts and theories supporting the alleged violations for the agency's reference. If the agency needs any further information, please do not hesitate to ask.

Plaintiff seeks to represent a group of aggrieved employees defined as any person currently or formerly employed by Defendant who performed work in California and against whom one or more of the alleged violations listed above were committed during the relevant claim period ("Aggrieved Employees"). Plaintiff believes this group to be comprised of all current and former non-exempt employees who performed work for Defendant in California during the period beginning one year prior to the date of this Notice and continuing through the present.

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 other Aggrieved Employees for missed meal and rest periods, failed to pay Plaintiff and other Aggrieved Employees for all time worked, failed compensate Plaintiff and other Aggrieved Employees for off-the-clock work, failed to pay Plaintiff and other Aggrieved Employees overtime at the correct regular rate of pay, failed to compensate Plaintiff and other Aggrieved Employees meal and rest premiums at the regular rate of pay, failed to pay Plaintiff and other Aggrieved Employees redeemed sick pay at the regular rate of pay, failed to reimburse Plaintiff and other Aggrieved Employees for business expenses, and failed to issue to Plaintiff and other Aggrieved Employees accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. Defendant's uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows Defendants to illegally profit and gain an unfair advantage over competitors who comply with the law.

Meal Period Violations: Pursuant to the Industrial Welfare Commission Wage Orders, Defendants were required to pay Plaintiff and the Aggrieved Employees for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the last year, Defendants required Plaintiff and other Aggrieved Employees to work without paying them for all the time they were under Defendants' control. Specifically, Defendants required Plaintiff to work while clocked out during what was supposed to be Plaintiff's off-duty meal break. Indeed, there were many days where Plaintiff did not even receive a partial lunch. As a result, Plaintiff and other Aggrieved Employees forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. Defendants' uniform policy and practice not to pay Plaintiff and other Aggrieved Employees for all time worked is evidenced by Defendants' business records.

During the last year, as a result of their rigorous work schedules and Defendants' inadequate staffing practices, Plaintiff and other Aggrieved Employees were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. Plaintiff and other Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during some shifts without receiving a meal break. Further, Defendants failed to provide Plaintiff and other Aggrieved Employees with a second off-duty meal period for some workdays in which these employees were required by Defendants to work ten (10) hours of

work. The nature of the work performed by Plaintiff and other Aggrieved Employees does not qualify for the limited and narrowly construed “on-duty” meal period exception. When they were provided with meal periods, Plaintiff and other Aggrieved Employees were, from time to time, required to remain on duty and on call. Defendant’s failure to provide Plaintiff and other Aggrieved Employees with legally required meal breaks is evidenced by Defendants’ business records. As a result of their rigorous work schedules and Defendants’ inadequate staffing, Plaintiff and other Aggrieved Employees therefore forfeited meal breaks without additional compensation and in accordance with Defendants’ strict corporate policy and practice.

Rest Period Violations: From time to time during the past year, Plaintiff and other Aggrieved Employees were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and Defendants’ inadequate staffing. Further, for the same reasons, 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 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, Plaintiff and other Aggrieved Employees were, from time to time, required to remain on premises, on duty and/or on call, and not fully relieved of all duties. Plaintiff and other Aggrieved Employees were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules and Defendants’ inadequate staffing, Plaintiff and other Aggrieved Employees were from time to time denied their proper rest periods by Defendants and Defendants’ managers.

Unreimbursed Business Expenses: Defendants as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the Plaintiff and other Aggrieved Employees for required business expenses incurred by the Plaintiff and other Aggrieved Employees in direct consequence of discharging their duties on behalf of Defendants. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that “an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Within the last year, in the course of their employment, Defendants required Plaintiff and other Aggrieved Employees to incur personal expenses for the use of their personal cell phones, vehicles, and home internet as a result of and in furtherance of their job duties. Specifically, Plaintiff and other Aggrieved Employees were required to incur personal expenses for the use of their personal cell phones, vehicles, and internet in order to perform work related tasks. However, Defendants unlawfully failed to reimburse Plaintiff and other Aggrieved Employees for the personal expenses incurred for the purchase and maintenance of their work uniforms. As a result, in the course of their employment with Defendants, the Plaintiff and other Aggrieved Employees incurred unreimbursed business expenses that included, but were not limited to, costs related to the personal expenses incurred for the purchase and maintenance of their work uniforms, all on behalf of and for the benefit of Defendants.

Wage Statement Violations: California Labor Code Section 226 requires an employer to furnish its employees and accurate itemized wage statement in writing showing (1) gross wages earned,

(2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (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. From time to time during the last year, when Plaintiff and other Aggrieved Employees missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, Defendants also failed to provide Plaintiff and other Aggrieved Employees with complete and accurate wage statements which failed to show, among other things, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period, and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Defendants also failed to provide Plaintiff and other Aggrieved Employees with complete and accurate wage statements that included all required elements listed above. Specifically, Defendant failed to issue wage statements that included the total hours worked. As a result, Defendants issued Plaintiff and other Aggrieved Employees with wage statements that violate Cal. Lab. Code § 226. Further, Defendants' violations are knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations: During the last year, from time-to-time, Defendants failed and continue to fail to accurately pay Plaintiff and other Aggrieved Employees for all hours worked. During the last year, from time-to-time Defendants required Plaintiff and other Aggrieved Employees to perform pre-shift or post-shift work, including but not limited to, opening and closing keyholder duties, undergoing Covid-19 health screenings such as temperature checks, and performing security sweeps of the property. This resulted in Plaintiff and other Aggrieved Employees having to work while off-the-clock. Defendants directly benefited from the undercompensated off-the-clock work performed by Plaintiff and other Aggrieved Employees. Defendants controlled the work schedules, duties, and protocols, applications, assignments, and employment conditions of Plaintiff and other Aggrieved Employees.

Defendants were able to track the amount of time Plaintiff and other Aggrieved Employees spent working; however, Defendants failed to document, track, or pay Plaintiff and other Aggrieved Employees all wages earned and owed for all the work they performed. Plaintiff and other Aggrieved Employees were non-exempt employees, subject to the requirements of the California Labor Code. Defendants' policies and practices deprived Plaintiff and other Aggrieved Employees of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because Plaintiff and other Aggrieved Employees typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day, Defendants' policies and practices also deprived them of overtime pay.

Defendants knew or should have known that Plaintiff's and other Aggrieved Employees' off-the-clock work was compensable under the law. As a result, Plaintiff and other Aggrieved Employees forfeited wages due to them for all hours worked at Defendants' direction, control, and benefit for the time spent working while off-the-clock, including but not limited to, undergoing pre-shift and post-shift work. Defendants' uniform policy and practice to not pay Plaintiff and other Aggrieved Employees wages for all hours worked in accordance with applicable law is evidenced by

Defendants' business records.

Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Redeemed Sick Pay: From time to time during the last year, Defendants failed and continue to fail to accurately calculate and pay Plaintiff and other Aggrieved Employees for their overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a result, Plaintiff and other Aggrieved Employees forfeited wages due to them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. Defendants' uniform policy and practice not to pay Plaintiff and other Aggrieved Employees at the correct rate for all overtime and double time worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by Defendants' business records.

State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." Plaintiff and other Aggrieved Employees were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance. The second component of Plaintiff's and other Aggrieved Employees' compensation was Defendants' non-discretionary incentive program that paid Plaintiff and other Aggrieved Employees incentive wages based on their performance for Defendants. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus compensation when the employees met the various performance goals set by Defendants. However, from time to time, when calculating the regular rate of pay in those pay periods where Plaintiff and other Aggrieved Employees worked overtime, double time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary bonuses, Defendants failed to accurately include the non-discretionary bonus compensation as part of the employee's "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by Plaintiff and other Aggrieved Employees must be included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime and double time compensation, meal and rest period premium payments, and redeemed sick pay to Plaintiff and other Aggrieved Employees by Defendants.

Specifically, California Labor Code Section 246 mandates that paid sick time for non-exempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in that workweek. Defendants' conduct, as articulated herein, by failing to include the incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

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 and knowingly failed to compensate Plaintiff and other Aggrieved Employees at the correct rate of pay for all overtime and double time worked, meal and rest period premiums, and redeemed sick pay as required by California law which allowed Defendants to illegally profit and gain an unfair advantage over competitors who complied with the law.

Unlawful Deductions: During the last year, Defendants, from time-to-time, unlawfully deducted wages from Plaintiff and Aggrieved Employees' pay without explanations and without authorization to do so or notice to Plaintiff and the Aggrieved Employees. As a result, Defendants violated Labor Code § 221.

Timekeeping Manipulation: During the last year, Defendants, from time-to-time, did not have an immutable timekeeping system to accurately record and pay Plaintiff and other Aggrieved Employees for the actual time Plaintiff and other Aggrieved Employees worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, Defendants were able to and did in fact, unlawfully, and unilaterally alter the time recorded in Defendants' timekeeping system for Plaintiff and other Aggrieved Employees in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest breaks. As a result, Plaintiff and other Aggrieved Employees, from time-to-time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

The mutability of the timekeeping system also allowed Defendants to alter employee time records by recording fictitious thirty (30) minute meal breaks in Defendants' timekeeping system so as to create the appearance that Plaintiff and other Aggrieved Employees clocked out for thirty (30) minute meal break when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of Defendants' uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks. As a result, Plaintiff and other Aggrieved Employees forfeited wages due to them for all hours worked at Defendants' direction, control and benefit for the time the timekeeping system was inoperable. Defendants' uniform policy and practice to not pay Plaintiff and the Aggrieved Employees wages for all hours worked in accordance with applicable law is evidenced by Defendants' business records.

Unlawful Rounding Practices: During the last year, Defendants did not have in place an immutable timekeeping system to accurately record and pay Plaintiff and other Aggrieved Employees for the actual time these employees worked each day, including overtime hours. Specifically, Defendants had in place an unlawful rounding policy and practice that resulted in Plaintiff and the Aggrieved Employees being undercompensated for all of their time worked. As a result, Defendants were able to and did in fact unlawfully, and unilaterally round the time recorded in Defendants' timekeeping system for Plaintiff and the Aggrieved Employees in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, Plaintiff and other Aggrieved Employees, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

Further, the mutability of Defendants' timekeeping system and unlawful rounding policy and practice resulted in Plaintiff's and the Aggrieved Employees' time being inaccurately recorded. As a result, from time to time, Defendants' unlawful rounding policy and practice caused Plaintiff and other Aggrieved Employees to perform work as ordered by Defendants for more than five (5) hours during a shift without receiving an off-duty meal break.

Untimely Payment of Wages: 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. To date, Defendants have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to her or any penalty wages owed to her under Cal. Lab. Code § 203.

Sick Pay Violations: Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.” Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to time, including within the last year, Defendants failed to have a policy or practice in place that provided Plaintiff and other Aggrieved Employees with sick days and/or paid sick leave. As of January 1, 2024, Defendants failed to adhere to the law in that they failed to provide and allow employees to use at least 40 hours or five days of paid sick leave per year. California Labor Code Section 246(i) requires an employer to furnish its employees with written wage statements setting forth the amount of paid sick leave available. From time to time, including within the last year, Defendants violated Cal. Lab. Code § 246 by failing to furnish Plaintiff and other Aggrieved Employees with wage statements setting forth the amount of paid sick leave available.

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, Defendant is on notice that Plaintiff continues his 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 in compliance with California Labor Code section 2695, *et seq.* .

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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 'JCL', followed by a long, horizontal, slightly wavy line that extends to the right.

Jean-Claude Lapuyade, Esq.

Exhibit

JCL LAW FIRM, APC

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ALAA GADO KANA, an individual, on behalf
of himself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

DAVIDSON HOTEL COMPANY, LLC; a
Delaware limited liability company; DHC SD
HOLDINGS LLC, a Delaware 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;

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- 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 CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

PLAINTIFF ALAA GADO KANA (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. Defendant DAVIDSON HOTEL COMPANY, LLC (“Defendant Davidson”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant DHC SD HOLDINGS LLC (“Defendant DHC”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant Davidson and Defendant DHC 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.”

4. DEFENDANT operates a hotel management company in California, including in the county of San Diego, where PLAINTIFF worked.

5. PLAINTIFF has been employed by DEFENDANTS in California since October 2, 2008, as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

6. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all persons who are or previously were employed by Defendant Davidson and/or

1 Defendant DHC in California and classified as non-exempt employees (the “CALIFORNIA
2 CLASS”) at any time during the period beginning four (4) years prior to the filing of this
3 Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”). The
4 amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under
5 five million dollars (\$5,000,000.00).

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

17 8. The true names and capacities, whether individual, corporate, subsidiary,
18 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
19 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
20 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
21 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
22 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
23 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
24 inclusive, are responsible in some manner for one or more of the events and happenings that
25 proximately caused the injuries and damages hereinafter alleged.

26 9. The agents, servants and/or employees of the DEFENDANTS and each of them
27 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its
28 authority as the agent, servant and/or employee of the DEFENDANTS, and personally

1 participated in the conduct alleged herein on behalf of DEFENDANTS with respect to the conduct
2 alleged herein. Consequently, the acts of each Defendant are legally attributable to the other
3 Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other
4 members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct
5 of the Defendants' agents, servants and/or employees.

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

12 11. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of
13 PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person,
14 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
15 employee a wage less than the minimum fixed by California state law, and as such, are subject to
16 civil penalties for each underpaid employee.

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

20 13. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
21 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
22 other members of the CALIFORNIA CLASS who have been economically injured by
23 DEFENDANT'S past and current unlawful conduct, and all other appropriate legal and equitable
24 relief.

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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. Meal Period Violations

17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the CLASS PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business records.

18. From time to time during the CLASS PERIOD, as a result of their rigorous work schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees are required by DEFENDANTS to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and

1 narrowly construed “on-duty” meal period exception. When they were provided with meal
2 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
3 required to remain on duty and on call. DEFENDANTS’ failure to provide PLAINTIFF and the
4 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
5 DEFENDANTS’ business records. As a result of their rigorous work schedules and
6 DEFENDANTS’ inadequate staffing, PLAINTIFF and other members of the CALIFORNIA
7 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
8 DEFENDANTS’ strict corporate policy and practice.

9 **B. Rest Period Violations**

10 19. From time to time during the CLASS PERIOD, PLAINTIFF and other
11 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
12 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
13 DEFENDANTS’ inadequate staffing. Further, for the same reasons, these employees were denied
14 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
15 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
16 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
17 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
18 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
19 CLASS Members were, from time to time, required to remain on duty and/or on call. PLAINTIFF
20 and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu*
21 thereof. As a result of their rigorous work schedules and DEFENDANTS’ inadequate staffing,
22 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
23 proper rest periods by DEFENDANTS and DEFENDANTS’ managers.

24 **C. Unreimbursed Business Expenses**

25 20. DEFENDANTS as a matter of corporate policy, practice, and procedure,
26 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
27 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
28 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging

1 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
2 are required to indemnify employees for all expenses incurred in the course and scope of their
3 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
4 her employee for all necessary expenditures or losses incurred by the employee in direct
5 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
6 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
7 believed them to be unlawful."

8 21. In the course of their employment, DEFENDANTS required PLAINTIFF and
9 other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal
10 cell phones, vehicles, and home internet as a result of and in furtherance of their job duties.
11 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required to use their
12 personal cell phones, vehicles, and home internet in order to perform work related tasks.
13 However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA
14 CLASS Members for the use of their personal cell phones, vehicles, and home internet. As a
15 result, in the course of their employment with DEFENDANT, the PLAINTIFF and other
16 CALIFORNIA CLASS Members incurred unreimbursed business expenses that included, but
17 were not limited to, costs related to the use of their personal cell phones, vehicles, and home
18 internet, all on behalf of and for the benefit of DEFENDANTS.

19 **D. Wage Statement Violations**

20 22. California Labor Code Section 226(a)(1)-(9) requires an employer to furnish its
21 employees and accurate itemized wage statement in writing showing (1) gross wages earned, (2)
22 total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4)
23 all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee
24 is paid, (7) the name of the employee and only the last four digits of the employee's social security
25 number or an employee identification number other than a social security number, (8) the name
26 and address of the legal entity that is the employer, and (9) 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.

1 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
2 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
3 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
4 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
5 accurate wage statements which failed to show, among other things, all deductions, the total hours
6 worked and all applicable hourly rates in effect during the pay period and the corresponding
7 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
8 meal and rest periods.

9 24. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
10 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
11 Cal. Lab. Code § 226(a)(1)-(9).

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

16 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

17 26. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
18 continue to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
19 for all hours worked.

20 27. During the CLASS PERIOD, from time-to-time DEFENDANTS required
21 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
22 work, including but not limited to, opening and closing keyholder duties, undergoing Covid-19
23 health screenings such as temperature checks, and performing security sweeps of the property.
24 This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS having to work
25 while off-the-clock.

26 28. DEFENDANTS directed and directly benefited from the undercompensated off-
27 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.
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1 29. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
2 assignments, and employment conditions of PLAINTIFF and the other members of the
3 CALIFORNIA CLASS.

4 30. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
5 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
6 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
7 wages earned and owed for all the work they performed.

8 31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
9 exempt employees, subject to the requirements of the California Labor Code.

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

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

18 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
19 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and
20 benefit for the time spent working while off-the-clock, including but not limited to, opening and
21 closing keyholder duties, undergoing Covid-19 health screenings such as temperature checks, and
22 performing security sweeps of the property. DEFENDANTS' uniform policy and practice to not
23 pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in
24 accordance with applicable law is evidenced by DEFENDANTS' business records.

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F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Redeemed Sick Pay

35. From time to time during the CLASS PERIOD, DEFENDANTS failed and continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS Members for their overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members forfeited wages due to them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANTS' uniform policy and practice not to pay the CALIFORNIA CLASS Members at the correct rate for all overtime and double time worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

36. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

37. The second component of PLAINTIFF'S and other CALIFORNIA CLASS Members' compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus compensation when the employees met the various performance goals set by DEFENDANTS.

38. However, from time to time, when calculating the regular rate of pay in those pay periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the employee's "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program to potential and new employees as part of the compensation package.

1 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
2 CLASS Members must be included in the “regular rate of pay.” The failure to do so has resulted
3 in a systematic underpayment of overtime and double time compensation, meal and rest period
4 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
5 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that
6 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
7 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
8 not the employee actually works overtime in that workweek. DEFENDANTS’ conduct, as
9 articulated herein, by failing to include the incentive compensation as part of the “regular rate of
10 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
11 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

12 39. In violation of the applicable sections of the California Labor Code and the
13 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a
14 matter of company policy, practice, and procedure, intentionally and knowingly failed to
15 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
16 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
17 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
18 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
19 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the
20 CLASS PERIOD should be adjusted accordingly.

21 **G. Unlawful Deductions**

22 40. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
23 and CALIFORNIA CLASS Members’ pay without explanation and without authorization to do
24 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
25 DEFENDANTS violated Labor Code § 221.

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1 **H. Timekeeping Manipulation**

2 41. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
3 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
4 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
5 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
6 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
7 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and
8 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
9 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
10 missed rest breaks.

11 42. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
12 time-to-time, forfeited time worked by working without their time being accurately recorded and
13 without compensation at the applicable pay rates.

14 43. The mutability of the timekeeping system also allowed DEFENDANTS to alter
15 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
16 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
17 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
18 were not at all times provided an off-duty meal break. This practice is a direct result of
19 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
20 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

21 44. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
22 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control and
23 benefit for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy
24 and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for
25 all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
26 records.

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1 **I. Unlawful Rounding Practices**

2 45. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
3 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
4 CALIFORNIA CLASS Members for the actual time these employees worked each day,
5 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
6 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
7 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
8 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
9 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
10 these employees for all their time worked, including the applicable overtime compensation for
11 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
12 time to time, forfeited compensation for their time worked by working without their time being
13 accurately recorded and without compensation at the applicable overtime rates.

14 46. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
15 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
16 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
17 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
18 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
19 off-duty meal break.

20 **J. Violations for Untimely Payment of Wages**

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

26 48. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the
27 wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant
28 to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall

1 become due and payable not later than 72 hours thereafter, unless the employee has given 72
2 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
3 or her wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members
4 were, from time to time, not timely provided the wages earned and unpaid at the time of their
5 discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

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

9 **K. Sick Pay Violations**

10 50. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
11 July 1, 2015, works in California for the same employer for 30 or more days within a year from
12 the commencement of employment is entitled to paid sick days as specified in this section.”
13 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From
14 time to time, DEFENDANTS failed to have a policy or practice in place that provided
15 PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick
16 leave. As of January 1, 2024, Defendants failed to adhere to the law in that they failed to provide
17 and allow employees to use at least 40 hours or five days of paid sick leave per year.

18 51. California Labor Code Section 246(i) requires an employer to furnish its
19 employees with written wage statements setting forth the amount of paid sick leave available.
20 From time to time, DEFENDANTS violated Cal. Lab. Code § 246 by failing to furnish
21 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting forth
22 the amount of paid sick leave available.

23 52. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
24 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
25 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
26 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
27 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
28 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided

1 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
2 rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during
3 what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and
4 rest breaks without additional compensation and in accordance with DEFENDANTS' strict
5 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
6 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed
7 to reimburse PLAINTIFF for required business expenses related to the personal expenses
8 incurred for the use of their personal cell phone and home internet, on behalf of and in furtherance
9 of his employment with DEFENDANTS. To date, DEFENDANTS have not fully paid
10 PLAINTIFF the minimum, overtime and double time compensation still owed to him or any
11 penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for
12 PLAINTIFF individually does not exceed the sum or value of \$75,000.

13 **CLASS ACTION ALLEGATIONS**

14 53. PLAINTIFF brings this Class Action on behalf of himself, and a California class
15 defined as all persons who are or previously were employed by Defendant Davidson and/or
16 Defendant DHC in California and classified as non-exempt employees (the "CALIFORNIA
17 CLASS") at any time during the period beginning four (4) years prior to the filing of this
18 Complaint and ending on the date as determined by the Court (the "CLASS PERIOD").

19 54. 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 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
23 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
24 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

25 55. The members of the class are so numerous that joinder of all class members is
26 impractical.

27 56. Common questions of law and fact regarding DEFENDANT'S conduct, including
28 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately

1 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
2 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
3 compliant meal and rest periods, failure to reimburse for business expenses, failure to provide
4 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum
5 wage and overtime, exist as to all members of the class and predominate over any questions
6 affecting solely any individual members of the class. Among the questions of law and fact
7 common to the class are:

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

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

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

6 58. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
7 PLAINTIFF has the same interests as the other members of the class.

8 59. PLAINTIFF will fairly and adequately represent and protect the interests of the
9 CALIFORNIA CLASS Members.

10 60. PLAINTIFF retained able class counsel with extensive experience in class action
11 litigation.

12 61. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
13 interest of the other CALIFORNIA CLASS Members.

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

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

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

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

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

11 **FIRST CAUSE OF ACTION**

12 **Unlawful Business Practices**

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

14 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

18 67. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
19 Code § 17021.

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

24 Any person who engages, has engaged, or proposes to engage in unfair competition may
25 be enjoined in any court of competent jurisdiction. The court may make such orders or
26 judgments, including the appointment of a receiver, as may be necessary to prevent the
27 use or employment by any person of any practice which constitutes unfair competition, as
28 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. (Cal. Bus. & Prof. Code § 17203).

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1 69. By the conduct alleged herein, DEFENDANTS have engaged and continue to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
4 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
5 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
6 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
7 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

23 72. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
24 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
25 other members of the CALIFORNIA CLASS to be underpaid during their employment with
26 DEFENDANTS.

27 73. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
28 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide

1 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
2 required by Cal. Lab. Code §§ 226.7 and 512.

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

8 75. PLAINTIFF further demands on behalf of himself and on behalf of each
9 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
10 not timely provided as required by law.

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

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

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

27 79. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
2 engaging in any unlawful and unfair business practices in the future.

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

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

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

13 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

17 81. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
18 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
19 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate
20 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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1 85. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
2 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
3 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
4 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
5 the CALIFORNIA CLASS.

6 86. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
8 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
9 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

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

27 91. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were under-compensated for their time worked.

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

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

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

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1 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
2 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
3 (12) hours in a workday, and/or forty (40) hours in any workweek.

4 101. In committing these violations of the California Labor Code, DEFENDANTS
5 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
6 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
7 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
8 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
9 regulations.

10 102. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
11 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
12 overtime compensation for their time worked for DEFENDANTS.

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

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

24 105. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
25 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
26 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
27 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
28 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANTS

1 failed to accurately record and pay as evidenced by DEFENDANTS' business records and
2 witnessed by employees.

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

8 107. DEFENDANTS knew or should have known that PLAINTIFF and the other
9 members of the CALIFORNIA CLASS were undercompensated for their time worked.
10 DEFENDANTS systematically elected, either through intentional malfeasance or gross
11 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
12 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
13 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
14 their overtime worked.

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

23 109. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
25 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
26 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
27 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
28 employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore

1 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
2 penalties are sought herein. DEFENDANTS' conduct as alleged herein was willful, intentional,
3 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
4 entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

12 111. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
13 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
14 required by the applicable Wage Order and Labor Code. The nature of the work performed by
15 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
16 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
17 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
18 fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS'
19 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
20 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business
21 records. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS
22 Members with a second off-duty meal period in some workdays in which these employees were
23 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
24 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
25 and in accordance with DEFENDANTS' strict corporate policy and practice.

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

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

3 113. 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)**

10 114. 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.

13 115. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
14 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
15 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
16 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
17 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
18 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
19 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
20 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
21 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
22 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
23 compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as
24 required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to
25 provide PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid
26 rest periods is evidenced by DEFENDANTS' business records.

27 116. DEFENDANTS further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS

Members 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.

117. 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.

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

118. 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.

119. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:

- a. Gross wages earned,
- b. (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,
- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. 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 of an

employee identification number other than social security number may be shown on the itemized statement,

h. the name and address of the legal entity that is the employer, and

i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

120. When DEFENDANTS did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

121. Further, from time to time, DEFENDANTS issued wage statements that included items such as vacation pay, meal break penalties, sick pay and double-counted shift differential payments into the calculation for total hours worked, in violation of Cal. Lab. Code § 226(a)(2).

122. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

123. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period

1 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
2 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
3 of the CALIFORNIA CLASS herein).

4 **SEVENTH CAUSE OF ACTION**

5 **Failure To Pay Wages When Due**

6 **(Cal. Lab. Code § 203)**

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

8 124. 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.

11 125. Cal. Lab. Code § 200 provides that:

12 As used in this article:

- 13 (d) "Wages" includes all amounts for labor performed by employees of every
14 description, whether the amount is fixed or ascertained by the standard of time,
15 task, piece, Commission basis, or other method of calculation.
16 (e) "Labor" includes labor, work, or service whether rendered or performed under
17 contract, subcontract, partnership, station plan, or other agreement if the to be
18 paid for is performed personally by the person demanding payment.

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

22 127. Cal. Lab. Code § 202 provides, in relevant part, that:

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

29 128. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS
Members' employment contract.

30 129. Cal. Lab. Code § 203 provides:

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

4 130. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
5 terminated, and DEFENDANTS have not tendered payment of wages to these employees who
6 missed meal and rest breaks, as required by law.

7 131. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
8 members of the CALIFORNIA CLASS whose employment has ended, PLAINTIFF demands up
9 to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all
10 employees who terminated employment during the CLASS PERIOD and demand an accounting
11 and payment of all wages due, plus interest and statutory costs as allowed by law.

12 **EIGHTH CAUSE OF ACTION**

13 **Failure To Reimburse Employees for Required Expenses**

14 **(Cal. Lab. Code §§ 2802)**

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

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

19 133. Cal. Lab. Code § 2802 provides, in relevant part, that:
20 An employer shall indemnify his or her employee for all necessary expenditures or
21 losses incurred by the employee in direct consequence of the discharge of his or her
22 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them
to be unlawful.

23 134. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
24 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
25 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
26 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
27 members for expenses which included, but were not limited to, the use of their personal cell
28 phones, vehicles, and home internet all on behalf of and for the benefit of DEFENDANTS.

Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cell phones, vehicles, and home internet to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from the use of their personal cell phones, vehicles, and home internet within the course and scope of their employment for DEFENDANTS. These expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

135. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by him and the CALIFORNIA CLASS members in the discharge of their job duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

1 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2 2. On behalf of the CALIFORNIA CLASS:

- 3 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
- 4 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
- 5 to Cal. Code of Civ. Proc. § 382;
- 6 b. Compensatory damages, according to proof at trial, including compensatory
- 7 damages for overtime compensation due to PLAINTIFF and the other members of
- 8 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
- 9 thereon at the statutory rate;
- 10 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
- 11 the applicable IWC Wage Order;
- 12 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
- 13 which a violation occurs and one hundred dollars (\$100) per each member of the
- 14 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
- 15 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
- 16 violation of Cal. Lab. Code § 226
- 17 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
- 18 penalty from the due date thereof at the same rate until paid or until an action
- 19 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 20 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
- 21 CLASS incurred in the course of their job duties, plus interest, and costs of suit.
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1 3. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
- 5 including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or
- 6 § 1194.

7 DATED: October 18, 2024

JCL LAW FIRM, APC

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10 By: 
Jean-Claude Lapuyade, Esq.
11 Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

DATED: October 18, 2024

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

Exhibit