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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ERIN JONES and MATTHEW SHACHNO,
individuals, and on behalf of other members of
the general public similarly situated;

Plaintiff,

vs.

MARRIOTT INTERNATIONAL, INC., as
unknown business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No. 30-2021-01183306-CU-OE-CXC

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES AND
PENALTIES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Failure to Provide Meal Periods and Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Failure to Provide Rest Periods and Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code (Failure to Timely Pay Wages);
- (6) Violation of California Labor Code §§ 226 and 1174 (Non-Compliant Wage Statements and Failure to Maintain Records);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code

- § 351 (Failure to Provide Gratuities)
(9) Violation of California Labor Code §§ 201-204, 233, 246 (Failure to Pay Sick Pay Wages)
(10) Violation of California Business & Professions Code §§ 17200, *et seq.*
(11) Violation of Private Attorneys General Act [Labor Code §§ 2698, *et seq.*]

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiffs ERIN JONES and MATTHEW SHACHNO (“Plaintiffs”), individually, and on behalf of other similarly situated employees and on behalf of the State of California and other allegedly aggrieved employees pursuant to the California Private Attorneys General Act, and allege as follows:

JURISDICTION AND VENUE

1. This class and representative action is brought in the Superior Court for the County of Orange pursuant to the California Code of Civil Procedure section 382 and California Labor Code section 2698 *et seq.* The civil penalties, monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiffs, including but not limited to claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Superior Court for the County of Orange has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Superior Court for the County of Orange has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in the Superior Court for the County of Orange because, upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of Orange.

PARTIES

5. Defendant MARRIOTT INTERNATIONAL, INC. (“Defendant”), at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California, including the County of Orange.

6. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs who sue said defendants by such fictitious names. Plaintiffs are informed and believe, and based on that information and belief allege, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiffs and the other class members and aggrieved employees as alleged in this Complaint. Plaintiffs will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

7. Defendant MARRIOTT INTERNATIONAL, INC. and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

8. Plaintiffs further allege that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs and the other class members and aggrieved employees so as to make each of said Defendants employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

9. Plaintiffs bring this action on their own behalf and on behalf of all other similarly situated employees, and thus seek class certification under California Code of Civil Procedure section 382.

10. The proposed class is defined as follows:

JW Marriott Anaheim or the Marriott Marquis San Diego hotels in California as hourly, non-exempt employees during any portion of time between February 8,

2017 to final judgment.

11. All individuals who are or who have been employed by Defendants at either the Plaintiffs also seek to represent subclasses included in Plaintiffs' class, including the following:

- a. All class members who were not paid at least minimum wage for all hours worked;
- b. All class members who were not properly or accurately paid all overtime wages owed (including, but not limited to, at their "regular rate of pay" for overtime compensation) for hours worked over 8 in a day or 40 in a workweek;
- c. All class members who worked more than 5 hours in a workday and were not provided with a timely, uninterrupted, duty-free, and otherwise lawful meal period of 30 minutes, and were not paid compensation of 1-hour of premium wages at the employee's regular rate in lieu thereof;
- d. All class members who worked more than 10 hours in a workday and were not provided with a timely, uninterrupted, duty-free and otherwise lawful second meal period of 30 minutes, and were not paid compensation of 1-hour of premium wages at the employee's regular rate in lieu thereof;
- e. All class members who worked more than 3.5 hours in a workday and were not authorized or permitted to take a 10-minute uninterrupted, duty-free and otherwise lawful rest period for every 4 hours or major fraction thereof worked per day and were not paid compensation of 1-hour of premium wages at the employee's regular rate in lieu thereof;
- f. All class members who were not reimbursed for all necessary business expenditures;
- g. All class members who were not accurately paid all gratuities owed;
- h. All class members who were not accurately paid for sick pay;
- i. All class members who did not timely receive all wages and compensation when due;

- j. All class members who did not receive all wages and compensation owed at time of separation or within 72 hours in the case of resignation;
- k. All class members who were not provided with accurate and complete itemized wage statements;
- l. All class members whose records were not properly and accurately maintained/kept (including employment, pay, and time records); and
- m. All class members who were subjected to Defendants' unfair business practices.

12. Plaintiffs reserve the right, including under California Rule of Court 3.765, to amend or modify the descriptions of the class and/or subclasses as appropriate (including to further divide the class members into additional subclasses) and/or to add additional subclasses. Any reference herein to the class members or Plaintiffs' class includes the members of each of the subclasses.

13. The class and subclasses are ascertainable and there is a well-defined community of interest in the litigation:

- a. Numerosity: The class and subclass members are so numerous that joinder of all class and subclass members is impracticable. The membership of the entire class and subclasses is unknown to Plaintiffs at this time; however, the class and each of the subclasses is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- b. Typicality: Plaintiffs' claims are typical of all other class and subclass members as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other class and subclass members with whom they have a well-defined community of interest.
- c. Adequacy: Plaintiffs will fairly and adequately protect the interests of each class and subclass member, with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein.

1 Plaintiffs have no interest that is antagonistic to the other class and
2 subclass members. Plaintiffs' attorneys, the proposed class counsel, are
3 competent, experienced, and well-versed in the rules governing class
4 action discovery, certification, and settlement. Plaintiffs have incurred,
5 and during the pendency of this action will continue to incur, costs and
6 attorneys' fees, that have been, are, and will be necessarily expended for
7 the prosecution of this action for the substantial benefit of each class and
8 subclass member.

- 9 d. Superiority: A class action is superior to other available methods for the
10 fair and efficient adjudication of this litigation because individual joinder
11 of all class and subclass members is impractical.
- 12 e. Public Policy Considerations: Certification of this lawsuit as a class action
13 will advance public policy objectives. Employers of this great state violate
14 employment and labor laws every day. Current employees are often afraid
15 to assert their rights out of fear of direct or indirect retaliation. However,
16 class actions provide the class and subclass members who are not named
17 in the complaint anonymity that allows for the vindication of their rights.

18 14. There are common questions of law and fact as to the class and subclass members
19 that predominate over questions affecting only individual members. The following common
20 questions of law or fact, among others, exist as to the members of the class/subclasses:

- 21 a. Whether Defendants unlawfully failed to correctly calculate and pay
22 overtime, regular, minimum and premium wages, gratuities and other
23 compensation due to class and subclass members;
- 24 b. Whether Defendants' failure to pay wages or other compensation, without
25 abatement or reduction, in accordance with the California Labor Code,
26 was willful;
- 27 c. Whether Defendants had a corporate policy and practice of failing to pay
28 their hourly-paid or non-exempt employees within the State of California

for all hours worked and missed (short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;

d. Whether Defendants required Plaintiffs and the other class and subclass members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiffs and the other class and subclass members;

e. Whether Defendants failed to pay overtime wages to Plaintiffs and the other class and subclass members for all overtime hours worked, or failed to pay such overtime wages at the correct “regular rate”;

f. Whether Defendants failed to pay Plaintiffs and the other class and subclass members double time for all hours worked in excess of 12 hours in a day or for work over 8 hours in a day on the seventh day of work in a workweek;

g. Whether Defendants deprived Plaintiffs and the other class and subclass members of legally compliant meal and/or rest breaks by, among other things, failing to provide them timely, uninterrupted breaks, and/or requiring them to perform any work during such breaks, and/or requiring them to remain on the hotel premises for such breaks;

h. Whether Defendants failed to pay regular and minimum wages to Plaintiffs and the other class and subclass members for all hours worked;

i. Whether Defendants failed to pay all wages due to Plaintiffs and the other class and subclass members within the required time during their employment and/or upon their discharge or resignation;

j. Whether Defendants provided accurate itemized wage statements, wage reporting, and records maintenance as required by the California Labor Code; including, *inter alia*, sections 226 and 1174;

k. Whether Defendants failed to reimburse Plaintiffs and the other class and subclass members for necessary business-related expenses and costs;

- l. Whether Defendants' conduct was willful or reckless;
- m. Whether Defendants' policies, practices or procedures were illegal;
- n. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.*;
- o. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- p. Whether Plaintiffs and the other class and subclass members are entitled to compensatory damages pursuant to the California Labor Code.

15. In addition to meeting the statutory pre-requisites to a class action, this action is properly maintained as a class action pursuant to California Code of Civil Procedure § 382, in that:

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions with the class format, prosecution of separate actions by individual members of the class and/or subclasses will create the risk of:
 - (1) Inconsistent or varying adjudications with respect to individual members of the class and/or subclasses which would establish incompatible standards of conduct for the parties opposing the class; and/or,
 - (2) Adjudication with respect to individual members of the class and/or subclasses which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the class have acted or refused to act on grounds generally applicable to the class making appropriate class-wide relief with respect to the class and/or subclasses as a whole in that Defendants failed to pay all wages due to members of the class as required by law.
 - (1) With respect to the UCL claim, the final relief on behalf of the class

1 and/or subclass sought does not relate exclusively to restitution
2 because through this claim Plaintiffs seeks declaratory relief holding
3 that the Defendants' policy and practices constitute unfair
4 competition, along with declaratory relief, injunctive relief, and
5 incidental equitable relief as may be necessary to prevent and
6 remedy the conduct declared to constitute unfair competition.

7 c. Common questions of law and fact exist as to the members of the class
8 and subclasses, with respect to the practices and violations of California
9 law as listed herein, and predominate over any question affecting only
10 individual class and/or subclass members, and a class action is superior to
11 other available methods for the fair and efficient adjudication of the
12 controversy, including consideration of:

13 (1) The interests of the members of the class and/or subclasses in
14 individually controlling the prosecution or defense of separate
15 actions in that the substantial expense of individual actions will be
16 avoided to recover the relatively small amount of economic losses
17 sustained by the individual class and/or subclass members when
18 compared to the substantial expense and burden of individual
19 prosecution of this litigation;

20 (2) Class certification will obviate the need for unduly duplicative
21 litigation that would create the risk of:

22 a. Inconsistent or varying adjudications with respect to individual
23 members of the class and/or subclasses, which would establish
24 incompatible standards of conduct for the Defendants; and/or

25 b. Adjudications with respect to individual members of the class
26 and/or subclasses would as a practical matter be dispositive of
27 the interests of the other members not parties to the adjudication
28 or substantially impair or impede their ability to protect their

interests;

(3) In the context of wage litigation because a substantial number of individual class and subclass members will avoid asserting their legal rights out of fear of retaliation by Defendants, which may adversely affect an individual's job with Defendants or with a subsequent employer, the class action is the only means to assert their claims through a representative; and

(4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

GENERAL ALLEGATIONS

16. At all relevant times set forth herein, Defendants employed Plaintiffs and other persons as hourly-paid or non-exempt employees within the State of California, including the County of Orange.

17. Defendants, jointly and severally, employed Plaintiff Jones as an hourly-paid, non-exempt employee, from approximately February 2020 to approximately July 2020, in the State of California, County of Orange.

18. Defendants, jointly and severally, employed Plaintiff Shachno as an hourly-paid, non-exempt employee, from approximately May of 2012 to December 31, 2019.

19. Defendants hired Plaintiffs and the other class and subclass members, classified them as hourly-paid or non-exempt employees, and failed to properly compensate them for all hours worked and missed meal periods and/or rest breaks.

20. Defendants had the authority to hire and terminate Plaintiffs and the other class and subclass members, to set work rules and conditions governing Plaintiffs' and the other class and subclass members' employment, and to supervise their daily employment activities.

21. Defendants exercised sufficient authority over the terms and conditions of

1 Plaintiffs' and the other class and subclass members' employment for them to be joint employers
2 of Plaintiffs and the other class and subclass members.

3 22. Defendants directly hired and paid wages, other compensation, and benefits to
4 Plaintiffs and the other class and subclass members.

5 23. Defendants continue to employ hourly-paid or non-exempt employees within the
6 State of California.

7 24. Plaintiffs and the other class and subclass members worked over eight (8) hours
8 in a day, and/or forty (40) hours in a week during their employment with Defendants.

9 25. Plaintiffs are informed and believe, and based thereon allege, that Defendants
10 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
11 employees within the State of California. This pattern and practice involved, *inter alia*, failing
12 to pay them for all regular, overtime, minimum and/or other wages earned, and for missed,
13 shortened, late, interrupted and/or otherwise non-compliant meal and rest periods in violation of
14 California law.

15 26. Defendants were required to pay Plaintiffs and putative class and subclass
16 members for all their time worked, meaning the time during which an employee is subject to the
17 control of an employer, including all the time the employee is suffered or permitted to work.
18 Defendants required Plaintiffs and class and subclass members to work without paying them for
19 all the time they are or were under Defendants' control. Among other things, Defendants
20 required Plaintiffs and other class and subclass members to work while clocked out during what
21 is supposed to be their off-duty meal breaks. Plaintiffs and class and subclass members were
22 also required to perform job duties off the clock, including before and/or after their scheduled
23 shifts and/or during their meal or rest breaks – including, but not limited to, business-related
24 calls and correspondence, assisting with customer service needs, other work during breaks due
25 to their rigorous work schedules, completing work trainings, meetings and tasks, waiting in line
26 to clock in, responding to supervisors and other employees regarding work-related inquires,
27 assisting with banquet service issues, donning and/or doffing of uniforms, spending time
28 undergoing drug testing, COVID-19 and/or temperature checks or screening prior to clocking in

1 for work, or any other testing and/or examination required as a condition of employment,
2 adhering to grooming/personal appearance standards, carrying work-related cell phones, walkie-
3 talkies, or other communication devices during their breaks, and otherwise being required to
4 remain available for work during breaks. Further, Defendants, as a matter of established
5 company policy and procedure, administer a uniform practice of rounding the actual time worked
6 and recorded by Plaintiffs and class and subclass members, always to the benefit of Defendants
7 so that during the course of their employment, Plaintiffs and class and subclass members were
8 paid less than they would have been paid had they been paid for actual recorded time rather than
9 “rounded” time. Additionally, Defendants required Plaintiffs and class and subclass members
10 to be in full compliance with Defendants’ extensive personal appearance regulations and
11 guidelines and prepared to clock in upon arrival. As such, Plaintiffs and class and subclass
12 members were required by Defendants to spend several minutes off the clock preparing
13 themselves for work in order to comply with Defendants’ extensive personal appearance rules.
14 As a result, Plaintiffs and other class and subclass members forfeit minimum wage, overtime
15 wage compensation, other wages, and off-duty meal breaks by working without their time being
16 correctly recorded and without compensation at the applicable rates.

17 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants
18 knew or should have known that Plaintiffs and the other class and subclass members were
19 entitled to receive certain wages and that they were not receiving accurate compensation for all
20 hours worked.

21 28. State and federal law provides that employees must be paid overtime and meal
22 and rest break premiums at one-and-one-half times their “regular rate of pay.” Plaintiffs and
23 class and subclass members are compensated at an hourly rate plus incentive pay that is tied to
24 specific elements of an employee’s performance.

25 29. A component of Plaintiffs’ and other class and subclass members’ compensation
26 is Defendants’ non-discretionary incentive program that paid Plaintiffs and other class and
27 subclass members incentive wages. The non-discretionary incentive program provided all
28 employees paid on an hourly basis with incentive compensation when the employees met the

1 various performance and/or other goals set by Defendants. However, when calculating the
2 regular rate of pay, including to pay overtime, meal and rest break premiums, and sick pay to
3 Plaintiffs and other class and subclass members, Defendants failed to include, for instance, the
4 incentive compensation or shift differentials as part of the employees' "regular rate of pay" for
5 purposes of calculating, *inter alia*, overtime, meal/rest break premium pay, and sick pay.
6 Management and supervisors described the incentive program to potential and new employees
7 as part of the compensation package. As a matter of law, the incentive compensation received
8 by Plaintiffs and other class and subclass members must be included in the "regular rate of pay."
9 The failure to do so has resulted in an underpayment of compensation to Plaintiffs and class and
10 subclass members by Defendants, including for overtime and sick pay and meal and rest break
11 premiums.

12 30. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 failed to provide Plaintiffs and the other class and subclass members all required, legally
14 compliant rest and meal periods during the relevant time period as required under the California
15 Industrial Welfare Commission ("IWC") Wage Orders and thus they are entitled to any and all
16 applicable penalties for such violations.

17 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants
18 failed to relieve Plaintiffs and the other class and subclass members of all duties, failed to
19 relinquish control over Plaintiffs and the other class and subclass members' activities, failed to
20 permit Plaintiffs and the other class and subclass members a reasonable opportunity to take, and
21 impeded or discouraged them from taking, thirty (30) minute uninterrupted meal breaks no later
22 than the end of their fifth hour of work for shifts lasting at least six (6) hours, and/or to take
23 second thirty (30) minute uninterrupted meal breaks no later than their tenth hour of work for
24 shifts lasting more than ten (10) hours. Defendants also engaged in the practice of rounding the
25 meal period times to avoid paying penalties to Plaintiffs and other class and subclass members.

26 32. Plaintiffs are informed and believe, and based thereon allege, that Defendants
27 knew or should have known that Plaintiffs and the other class and subclass members were
28 entitled to receive all meal periods or payment of one additional hour of pay at Plaintiffs' and

1 the other class and subclass members' regular rate of pay when a meal period was missed,
2 shortened, late, interrupted, restricted to the premises and/or otherwise not compliant with the
3 requirements of applicable California law, and they did not receive all meal periods or payment
4 of one additional hour of pay at Plaintiffs' and the other class and subclass members' regular
5 rate of pay when a meal period was not compliant with California law.

6 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants
7 failed to provide, authorize, and permit Plaintiffs and other class and subclass members to take
8 full, uninterrupted, off-duty and otherwise legally compliant rest periods for every shift lasting
9 three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty and otherwise
10 legally compliant rest periods for every shift lasting six (6) to ten (10) hours and/or three full,
11 uninterrupted, off-duty and otherwise legally compliant rest periods for every shift lasting ten (10)
12 hour to fourteen (14) hours, and failed to make a good faith effort to authorize, permit, and
13 provide such rest breaks in the middle of each work period.

14 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
15 knew or should have known that Plaintiffs and the other class and subclass members were
16 entitled to receive all rest periods or payment of one additional hour of pay at Plaintiffs' and the
17 other class and subclass members' regular rate of pay when a rest period was missed, shortened,
18 late, interrupted, on-duty, restricted to the premises and/or otherwise not compliant with the
19 requirements of applicable California law, and they did not receive all rest periods or payment
20 of one additional hour of pay at Plaintiffs' and the other class and subclass members' regular
21 rate of pay when a rest period was not compliant with California law.

22 35. Plaintiffs are informed and believe, and based thereon allege, that Defendants
23 knew or should have known that Plaintiffs and the other class and subclass members were
24 entitled to receive at least minimum wages for compensation and that they were not receiving at
25 least minimum wages for all hours worked. Defendants' failure to pay minimum wages included,
26 *inter alia*, Defendants' effective payment of zero dollars per hour for hours Plaintiffs and the other
27 class and subclass members worked off the clock performing work duties, including (but not
28 limited to) duties such as those described in Paragraph 26 above.

1 36. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that Plaintiffs and the other class and subclass members were
3 entitled to receive all wages owed to them upon discharge or resignation, including overtime and
4 minimum wages and meal and rest period premiums, and they did not, in fact, receive all such
5 wages owed to them at the time of their discharge or resignation.

6 37. During the relevant time period, pursuant to Defendants' company policies and
7 practices, Plaintiffs and the AGGRIEVED EMPLOYEES (defined below) were required to
8 regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant
9 time period, Plaintiffs and the AGGRIEVED EMPLOYEES were required to work in excess of
10 thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in
11 which they were required to work in excess of six (6) days. During the relevant time period,
12 Plaintiffs and the AGGRIEVED EMPLOYEES were required to work in excess of six (6) days
13 in a workweek without accumulating or being provided the opportunity to take at least one (1)
14 day of rest, and when Plaintiffs and the AGGRIEVED EMPLOYEES accumulated days of rest,
15 they were not actually provided the opportunity to take the equivalent of one (1) day's rest in
16 seven (7) during each calendar month.

17 38. California Labor Code sections 551 and 552 require that every person employed
18 in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer
19 of labor shall cause its employees to work more than six (6) days in a workweek, and that an
20 employer shall pay civil penalties for each AGGRIEVED EMPLOYEE per pay period for such
21 violations. Defendants have violated and continue to violate these legal requirements.

22 39. Further, the applicable IWC Wage Orders require that, for each workday an
23 employee is required to report for work and does report, but is not put to work or is furnished
24 less than half said employee's usual or scheduled day's work, the employee shall be paid for half
25 the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four
26 (4) hours, at the employee's regular rate of pay. Also, if an employee is required to report for
27 work a second time in any one workday and is furnished less than two (2) hours of work on the
28 second reporting, the employee shall be paid for two (2) hours at the employee's regular rate of

1 pay.

2 40. Here, during the relevant time period, pursuant to Defendants' company policies
3 and practices, Defendants failed to pay Plaintiffs and the AGGRIEVED EMPLOYEES half the
4 usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4)
5 hours at the employee's regular rate of pay for workdays in which Plaintiffs and the
6 AGGRIEVED EMPLOYEES reported to work and were furnished less than half the usual or
7 scheduled day's work.

8 41. Moreover, during the relevant time period, Defendants failed to pay Plaintiffs and
9 the AGGRIEVED EMPLOYEES for two (2) hours at the employee's regular rate of pay on days
10 in which Plaintiffs and the AGGRIEVED EMPLOYEES were required to report for work a
11 second time in one workday and were furnished less than two (2) hours of work upon the second
12 reporting.

13 42. During the class period, pursuant to Defendants' company policies and practices,
14 Plaintiffs and other class and subclass members were forced to forfeit gratuities left for them by
15 Defendants' customers to employees who provided no service to the customers that resulted in
16 the gratuity (including, but not limited to, managerial employees, houseman and similar positions
17 that did not directly provide food or beverage services to the customers). Defendants routinely
18 added anywhere from 18%-22% service charges to its food and beverage banquet bills. These
19 service charges were in the form of automatic charges which customers are required to pay, and
20 which reasonably appear to be gratuities for the service staff. It is typical and customary in the
21 hospitality industry that establishments impose gratuity charges in the range of 18%-22% of the
22 food and beverage bill. Thus, when customers have paid these charges, it is reasonable for them
23 to believe they were gratuities to be paid to the service staff. Indeed, because many of these
24 charges are depicted to customers as gratuities, and the custom in the food and beverage industry
25 that gratuities in the range of 18%-22% are paid for food and beverage service, customers have
26 paid these charges reasonably believing they were remitted to the service staff. However,
27 Defendants have not remitted the total proceeds of these gratuities to the non-managerial
28 employees who serve the food and beverages. Instead, Defendants have a policy and practice of

1 retaining for themselves a portion of these gratuities and/or using a portion of these gratuities to
2 pay managers or other employees who are not entitled to gratuities, as described above. As a
3 result, Plaintiffs and class and subclass members have not received the total proceeds of the
4 gratuities to which they are entitled to under California law.

5 43. Defendants are generally in the business of owning and operating hotels,
6 including the pubs and restaurants in the hotels. In addition, Defendants also provide banquet
7 services to large groups, such as wedding parties and other banquet events. During the class
8 period, Plaintiffs and other class and subclass members were in the “chain of service” and earned
9 gratuities based on their service for their customers. However, Plaintiffs and class and subclass
10 members were forced to forfeit portions of their gratuities, which said gratuities were kept by
11 Defendants and/or their agents and/or otherwise distributed to employees who were not in the
12 chain of service from which the gratuity resulted, as described above. Plaintiffs and other class
13 and subclass members contend that they were unlawfully deprived of gratuities to which they
14 were entitled under California law with respect to any and all gratuities not properly distributed
15 to service staff to whom the gratuity should have been paid.

16 44. California Labor Code § 351 establishes the requirements for an employer
17 regarding the payment of gratuities. Specifically, gratuities are the sole property of the
18 employees. California Labor Code § 351 expressly prohibits employers and their agents from
19 collecting, taking, or receiving any portion of a gratuity. California Labor Code § 350(e) defines
20 the term “gratuity” as including any money that has been paid or given or left for an employee
21 by a patron of a business over and above the actual amount due the business for services rendered
22 or for goods, food, drink or articles sold or served to such patron. Labor Code § 353 requires
23 employers to keep accurate records of all gratuities they receive, directly or indirectly.

24 45. Although tip pooling is not expressly prohibited by the Labor Code, employees
25 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
26 By distributing tips to Defendants directly and to their agents or other employees who were not
27 in the “chain of service” as described above, and Defendants have violated and continue to
28 violate the legal requirements for handling pooled tips and the holding in *O'Grady v. Merchant*

1 *Exchange Productions, Inc.*, No. A148513 (Court of Appeals of California, First District,
2 Division Two).

3 46. Plaintiffs are informed and believe, and based thereon allege, that Defendants
4 knew or should have known that Plaintiffs and the other class and subclass members were entitled
5 to receive complete and accurate wage statements in accordance with California law, but, in fact,
6 they did not receive complete and accurate wage statements from Defendants. The deficiencies
7 included, *inter alia*, the failure to include (i) the accurate total number of hours worked by
8 Plaintiffs and the other class and subclass members; (ii) the accurate and applicable rates of pay
9 in effect during each pay period and the corresponding number of hours worked at each hourly
10 rate; (iii) the accurate gross wages and net wages earned; (iv) complete and correct deductions;
11 (v) the inclusive dates of the period for which Plaintiffs and other class and subclass members
12 were paid; (vi) the name of the employee and only the last four digits of their social security
13 number or an employee identification number other than a social security number; (vii) the name
14 and address of the legal entity that is the employer; (viii) the number of piece-rate units earned
15 and any applicable piece rate where Plaintiffs or other class/subclass members are paid on a
16 piece-rate basis; and (ix) the rate of pay and total and accurate hours worked for each temporary
17 services assignment. Defendants also failed to keep complete and accurate employment and
18 payroll records for Plaintiffs and the other class and subclass members in accordance with
19 California law, including Cal. Lab. Code §§ 226(a), 1174(d), and the IWC Wage Orders.

20 47. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
21 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
22 wages are paid not more than seven (7) calendar days following the close of the payroll period.
23 Cal. Lab. Code § 210 provides:

24 [I]n addition to, and entirely independent and apart from, any other penalty provided
25 in this article, every person who fails to pay the wages of each employee as provided
26 in Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
27 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
28 each subsequent violation, or any willful or intentional violation, two hundred dollars

1 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

2 48. Defendants from time to time failed to pay Plaintiffs and other class and subclass
3 members within seven (7) days of the close of the payroll period in accordance with Cal. Lab.
4 Code § 204(d).

5 49. Defendants also underpaid sick pay wages to Plaintiffs and other class and
6 subclass members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
7 Code § 246. This included, but was not limited to, Plaintiffs and other non-exempt employees
8 earning non-discretionary remuneration, and, rather than pay sick pay at the regular rate of pay,
9 Defendants underpaid sick pay to Plaintiffs and other class and subclass members at their base
10 rates of pay (or otherwise failing to include all forms of non-discretionary compensation (e.g.,
11 incentives, bonuses, shift differentials, and the like) into the regular rate of pay).

12 50. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
13 employees be calculated by dividing the employee's total wages, not including overtime
14 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
15 of employment.

16 51. Defendants violated Cal. Lab. Code § 246 by failing to pay sick pay at the regular
17 rate of pay. Plaintiffs and class and subclass members routinely earned non-discretionary
18 incentive wages which increased their regular rate of pay. However, when sick pay was paid, it
19 was paid at the base or otherwise improper rate of pay for Plaintiffs and class and subclass
20 members, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code
21 § 246.

22 52. Additionally, as a pattern and practice, Defendants regularly failed to pay
23 Plaintiffs and other class and subclass members their correct wages owed upon separation from
24 Defendants' employment (including sick-pay wages), and accordingly owe waiting time
25 penalties pursuant to Cal. Lab. Code Section 203. Further, Plaintiffs are informed and believe
26 and based thereon allege that such failure to pay sick pay at the regular rate was willful, such
27 that Plaintiffs and class and subclass members whose employment has separated are entitled to
28 waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

53. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Defendants failed to pay all compensation due to Plaintiffs and other class and subclass members, made unlawful deductions from compensation payable to Plaintiffs and other class and subclass members, failed to disclose all aspects of the deductions from compensation payable to Plaintiffs and class and subclass members, and thereby failed to pay these employees all wages due at each applicable pay period and upon termination. Plaintiffs and class and subclass members seek recovery of all illegal deductions from wages according to proof, related penalties, interest, attorneys’ fees, and costs.

54. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class and subclass members were entitled to reimbursement for necessary business-related expenses, including (without limitation), expenses related to the purchase and maintenance of various uniform items and tools used for work, expenses related to complying with Defendants’ dress code and grooming policies, parking expenses, and personal cell phone expenses.

55. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that they had a duty to compensate and reimburse Plaintiffs and the other class and subclass members pursuant to California law, and that Defendants had the financial ability to pay such compensation and reimbursement, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiffs and the other class and subclass members that they were properly denied wages and reimbursements, all in order to increase Defendants’ profits.

56. During the relevant time period, Defendants failed to pay overtime wages to Plaintiffs and the other class and subclass members for all overtime hours worked. Plaintiffs and the other class and subclass members were required to work more than eight (8) hours per day and/or forty (40) hours per week without overtime compensation for all overtime hours worked.

57. During the relevant time period, Defendants failed to provide all requisite, legally compliant meal and rest periods to Plaintiffs and the other class and subclass members.

1 58. During the relevant time period, Defendants failed to pay Plaintiffs and the other
2 class and subclass members at least minimum wages for all hours worked.

3 59. During the relevant time period, Defendants failed to pay all sick pay wages to
4 Plaintiffs and the other class and subclass members in accordance with California law.

5 60. During the relevant time period, Defendants failed to pay all gratuities to
6 Plaintiffs and other class and subclass members in accordance with California law.

7 61. During the relevant time period, Defendants failed to pay Plaintiffs and the other
8 class and subclass members all wages owed to them during their employment and/or upon
9 discharge or resignation.

10 62. During the relevant time period, Defendants failed to provide complete or
11 accurate wage statements to Plaintiffs and the other class and subclass members.

12 63. During the relevant time period, Defendants failed to keep complete and accurate
13 employment and payroll records for Plaintiffs and the other class and subclass members in
14 accordance with California law, including Cal. Lab. Code § 1174(d).

15 64. During the relevant time period, Defendants failed to reimburse Plaintiffs and the
16 other class and subclass members for all necessary business-related expenses and costs.

17 65. As a result of the above facts, during the relevant time period, Defendants were
18 and continue to be in violation of the California Labor Code, including sections 98.1, 200, 201-
19 204, 210, 212, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 233, 245-249, 350, 351,
20 353, 510, 512, 516, 551, 552, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1,
21 1198, 2800, 2802, the applicable IWC Wage Orders related to these claims arising under the
22 California Labor Code, including Wage Order Nos. 4, 5, 7 and 9, the California Business and
23 Professions Code section 17200, *et seq.*, the California Civil Code, sections 3287, 3336 and
24 3294, the California Code of Regulations, Title 8, section 11000 *et seq.* and Title 12, section
25 11040 *et seq.*; California Code of Civil Procedure § 1021.5; the Fair Labor Standards Act
26 (“FLSA”), 29 U.S.C. § 201 *et seq.* and 211(c) *et seq.*, seeking unpaid or incorrectly paid wages
27 and compensation, unpaid meal and rest period compensation, unreimbursed expenses, penalties,
28 liquidated damages, interest, reasonable attorneys’ fees and costs, and other relief.

66. During the relevant time period, Defendants failed to properly compensate Plaintiffs and the other class and subclass members pursuant to California law in order to increase Defendants' profits. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under this article."

67. All of the conduct and violations alleged herein occurred during the class period and the PAGA PERIOD.

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against Marriott International, Inc. and DOES 1 through 100)

68. Plaintiffs incorporate by reference the allegations contained in the prior paragraphs of this Complaint, and each and every part thereof with the same force and effect as though fully set forth herein.

69. California Labor Code sections 510, 1194, 1197, 1198 and the applicable IWC Wage Order(s) provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

70. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and the other class and subclass members employed by Defendants, and working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

71. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiffs and the other class and subclass members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

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

73. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

74. During the relevant time period, Plaintiffs and the other class and subclass members were required, permitted, or suffered by Defendants to work for Defendants in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week, including performing work duties off-the-clock.

75. During the relevant time period, Defendants intentionally and willfully failed to properly pay overtime wages owed to Plaintiffs and the other class and subclass members. Plaintiffs and the other class and subclass members did not receive overtime compensation at one and one-half times their regular hourly rate of pay for all hours spent performing job duties in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work. They also did not receive overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours worked in a day.

76. In committing these violations of the California Labor Code, Defendants also inaccurately recorded overtime worked and consequently underpaid the overtime worked by Plaintiffs and other class and subclass members, including by failing to incorporate all forms of compensation into the regular rate of pay.

77. During the relevant time period, Plaintiffs and other class and subclass members have been paid less for overtime worked than they are entitled to, constituting a failure to pay all earned wages.

78. Defendants' failure to pay Plaintiffs and the other class and subclass members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510, 1194, and 1198, and is therefore unlawful.

79. Pursuant to California Labor Code section 1194, Plaintiffs and the other class and subclass members are entitled to recover unpaid overtime compensation, as well as interest, costs,

and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512)

(Against Marriott International, Inc. and DOES 1 through 100)

80. Plaintiffs incorporate by reference the allegations contained in the prior paragraphs of this Complaint, and each and every part thereof with the same force and effect as though fully set forth herein.

81. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs' and the other class and subclass members' employment by Defendants.

82. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

83. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

84. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

85. During the relevant time period, Plaintiffs and the other class members who were scheduled to work for a period of more than five (5) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five

(5) hours without an uninterrupted off-duty meal period of not less than thirty (30) minutes and/or rest period.

86. During the relevant time period, Plaintiffs and the other class and subclass members' meal periods were missed, shortened, taken late, restricted to Defendants' premises, interrupted and/or otherwise noncompliant with California law, as alleged herein.

87. As a result, Defendants failed to relieve Plaintiffs and the other class and subclass members of all duties, failed to relinquish control over Plaintiffs and the other class and subclass members' activities, failed to permit Plaintiffs and the other class and subclass members a reasonable opportunity to take, and impeded or discouraged them from taking thirty (30) minute uninterrupted meal periods no later than the end of their fifth hour of work for shifts lasting more than five (5) hours, and/or to take second thirty (30) minute uninterrupted meal periods no later than their tenth hour of work for shifts lasting more than ten (10) hours (or twelve hours).

88. During the relevant time period, Defendants intentionally and willfully required Plaintiffs and the other class and subclass members to work during meal periods and failed to compensate Plaintiffs and the other class and subclass members the full meal period premium for work performed during meal periods.

89. During the relevant time period, Defendants failed to pay Plaintiffs and the other class and subclass members their proper and full meal period premiums due pursuant to California Labor Code section 226.7.

90. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512.

91. Pursuant to applicable IWC Wage Order, California Labor Code sections 218.6, 226.7(c), and 512, and Civil Code § 3287, Plaintiffs and the other class and subclass members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided, as well as interest, penalties, expenses, and costs of suit.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against Marriott International, Inc. and DOES 1 through 100)

92. Plaintiffs incorporate by reference the allegations contained in the prior paragraphs of this Complaint, and each and every part thereof with the same force and effect as though fully set forth herein.

93. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiffs' and the other class and subclass members' employment by Defendants.

94. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

95. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

96. During the relevant time period, Defendants required Plaintiffs and other class and subclass members to work three and one-half (3½) or more hours without authorizing or permitting an off-duty, net ten (10) minute rest period per each four (4) hour period, or major fraction thereof, worked.

97. During the relevant time period, Plaintiffs and the other class and subclass members' rest periods were missed, shortened, late, interrupted, improperly restricted to Defendants' premises and/or otherwise noncompliant with California law as alleged herein. Defendants failed to authorize or permit Plaintiffs and the other class and subclass members or failed to relinquish control over Plaintiffs and the other class and subclass members' activities in order to take full, uninterrupted, off-duty, or otherwise compliant rest periods for every shift

1 lasting three and one-half (3½) to six (6) hours and/or two full, uninterrupted, off-duty, or
2 otherwise compliant rest periods for every shift lasting six (6) to ten (10) hours, and/or three full,
3 uninterrupted, off-duty, or otherwise compliant rest periods for every shift lasting ten (10) to
4 fourteen (14) hours and failed to make a good faith effort to authorize, permit, and provide such
5 rest breaks in the middle of each work period.

6 98. During the relevant time period, Defendants willfully failed to provide Plaintiffs
7 and the other class and subclass members with legally compliant rest periods and failed to pay
8 Plaintiffs and the other class and subclass members their proper and full rest period premium due
9 pursuant to California Labor Code section 226.7.

10 99. Defendants' conduct violates applicable IWC Wage Orders and California Labor
11 Code section 226.7.

12 100. Pursuant to the applicable IWC Wage Orders and California Labor Code sections
13 218.6 and 226.7(c), and Civil Code § 3287, Plaintiffs and the other class and subclass members
14 are entitled to recover from Defendants one additional hour of pay at the employees' regular
15 hourly rate of compensation for each work day that the rest period was not provided, as well as
16 interest, penalties, expenses, and costs of suit.

17 **FOURTH CAUSE OF ACTION**

18 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

19 **(Against Marriott International, Inc. and DOES 1 through 100)**

20 101. Plaintiffs incorporate by reference the allegations contained in the prior
21 paragraphs of this Complaint, and each and every part thereof with the same force and effect as
22 though fully set forth herein.

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

25 103. At all relevant times, California Labor Code sections 1194, 1197, 1197.1, and
26 1182.12 provided the minimum wage to be paid to employees, and that payment of a lesser wage
27 than the minimum so fixed is unlawful.

28 104. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer

1 than hours set by the IWC or under conditions prohibited by the IWC Wage Order(s). Pursuant
2 to Labor Code sections 1194(a) and 1194.2(a), an employee who has not been paid the legal
3 minimum wage may recover the unpaid balance, together with attorneys' fees and costs of suit,
4 as well as liquidated damages.

5 105. During the relevant time period, Defendants failed to pay minimum wage to
6 Plaintiffs and the other class and subclass members as required, pursuant to California Labor
7 Code sections 1182.12, 1194, 1197, and 1197.1. Defendants' failure to pay minimum wages
8 included, *inter alia*, Defendants' effective payment of zero dollars per hour for time Plaintiffs
9 and the other class and subclass members worked off the clock, as alleged herein.

10 106. Defendants' failure to pay Plaintiffs and the other class and subclass members the
11 minimum wage as required violates California Labor Code, including sections 204, 210, 216,
12 558, 1182.12, 1194, 1197, and 1197.1, 1198, and the applicable Wage Order(s). Pursuant to
13 those sections, Plaintiffs and the other class and subclass members are entitled to recover the
14 unpaid balance of their minimum wage compensation as well as interest, costs (including
15 statutory costs), penalties, attorney's fees, and liquidated damages in an amount equal to the
16 wages unlawfully unpaid and interest thereon.

17 107. Pursuant to California Labor Code section 1197.1, Plaintiffs and the other class
18 and subclass members are entitled to recover a penalty of \$100.00 for the initial failure to timely
19 pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
20 employee minimum wages.

21 108. Pursuant to California Labor Code section 1194.2, Plaintiffs and the other class
22 and subclass members are entitled to recover liquidated damages in an amount equal to the wages
23 unlawfully unpaid and interest thereon.

24 **FIFTH CAUSE OF ACTION**

25 **(Violation of California Labor Code – Failure to Timely Pay Wages)**

26 **(Against Marriott International, Inc. and DOES 1 through 100)**

27 109. Plaintiffs incorporate by reference the allegations contained in the prior
28 paragraphs of this Complaint, and each and every part thereof with the same force and effect as

1 though fully set forth herein.

2 110. The California Labor Code provides various time limits by when an employer
3 must pay its employees all wages due and owing to them.

4 111. For example, Labor Code § 204 requires that earned wages are due and payable
5 twice in each calendar month. Accordingly, wages required by Labor Code Sections 226.7, 510,
6 1194, 346, 351, and other sections identified herein (and in the applicable Wage Orders) became
7 due and payable to each employee twice in each month that he or she earned such wages,
8 including for overtime and minimum wages, meal/rest period premiums, gratuities, and sick pay.
9 Defendants violated Labor Code § 204 by systematically refusing to timely pay such wages when
10 due during Plaintiffs' and the class and subclass members employment.

11 112. Labor Code section 210 (a) provides that "In addition to, and entirely independent
12 and apart from, any other penalty provided in this article, every person who fails to pay the wages
13 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5,
14 and 1197.5, shall be subject to a penalt[ies]."

15 113. As a result of the unlawful acts of Defendants, Plaintiffs and other class and
16 subclass members have been deprived of wages in amounts to be determined at trial, and are
17 entitled to recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs,
18 including pursuant to Labor Code § 210, 218.5, 218.6, 510, 1194.

19 114. Further, at all relevant times herein set forth, California Labor Code sections 200,
20 201, and 202 provide that if an employer discharges an employee, the wages earned and unpaid
21 at the time of discharge are due and payable immediately, and if an employee quits his or her
22 employment, his or her wages shall become due and payable not later than seventy-two (72)
23 hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her
24 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

25 115. During the relevant time period, Defendants intentionally and willfully failed to
26 pay Plaintiffs and the other class and subclass members who were discharged, or who provided
27 at least seventy-two (72) hours' notice of their intention to quit, their wages, earned and unpaid,
28 immediately at the time of their discharge or separation (including, without limitation, overtime

1 and minimum wages, meal/rest period premiums, gratuities, and sick pay).

2 116. During the relevant time period, Defendants intentionally and willfully failed to
3 pay Plaintiffs and the other class and subclass members who are no longer employed by
4 Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving
5 Defendants' employ (including, without limitation, overtime and minimum wages, meal/rest
6 period premiums, gratuities, and sick pay).

7 117. Defendants' failure to pay Plaintiffs and the other class and subclass members
8 who are no longer employed by Defendants' their wages, earned and unpaid, either immediately
9 or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of
10 California Labor Code sections 201 and 202.

11 118. California Labor Code section 203 provides that if an employer willfully fails to
12 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
13 continue as a penalty from the due date thereof at the same rate until paid or until an action is
14 commenced; but the wages shall not continue for more than thirty (30) days.

15 119. Plaintiffs and the other class and subclass members are entitled to recover from
16 Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day
17 maximum pursuant to California Labor Code section 203.

18 **SIXTH CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 226 and 1174)**

20 **(Against Marriott International, Inc. and DOES 1 through 100)**

21 120. Plaintiffs incorporate by reference the allegations contained in the prior
22 paragraphs of this Complaint, and each and every part thereof with the same force and effect as
23 though fully set forth herein.

24 121. At all material times set forth herein, California Labor Code section 226(a)
25 provides that every employer shall furnish each of his or her employees an accurate itemized
26 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
27 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
28 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of

the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (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. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

122. Defendants have intentionally and willfully failed to provide Plaintiffs and the other class and subclass members with complete and accurate wage statements. The deficiencies include each and every one of the requirements listed in Section 226 *et al.* By way of examples only, Defendants' wage statements failed to include regular time and overtime spent by Plaintiffs and the members of the class or subclasses performing off-the-clock work, all wages earned/owed for such time, all meal and/or rest period premiums owed, the proper rate of pay for all hours worked, meal/rest period premiums and/or sick-pay wages, and the proper gross and net wages earned. Defendants had the information necessary to provide wage statements that accurately reflected the above information, yet failed to do so on a systematic basis and instead provided legally noncompliant wage statements.

123. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiffs and the other class and subclass members have suffered injury and damage to their statutorily-protected rights. Because Plaintiffs and the other putative class and subclass members' wage statements did not reflect, among other things, the accurate number of hours worked, Plaintiffs and the putative class and subclass members were unable to determine the total amount of regular and overtime hours they worked, were unable to determine the total amount of compensation they were owed, and were unable to verify they were paid the proper amounts. In order to determine how much Plaintiffs and the other putative class and subclass members should have been paid, Plaintiffs and the other putative class and subclass members would have had to

engage in discovery and mathematical computations in order to reconstruct the missing information. Thus, Plaintiffs and the other class and subclass members have been injured by Defendants' intentional and knowing violation of California Labor Code Section 226(a).

124. The applicable IWC Wage Order(s), Cal. Labor Code sections 226, 1174, 1174.5, and 29 U.S.C. § 211(c) also require Defendants to maintain and preserve, among other items, complete and accurate employment records (including showing the names and addresses of all employees employed, start and end of shifts, time records (including when the employee begins and ends each work period), payroll records, employee schedules, meal periods, split shift intervals, total daily hours worked, total hours worked in the payroll period, applicable rates of pay, and wages paid). Defendants have knowingly and intentionally failed to comply with the Wage Order(s), Labor Code section 1174 and Section 211(c) relating to Plaintiffs and the other class and subclass members, including by implementing policies and procedures and committing the violations alleged herein. Defendants' failure to comply with these laws is also an unfair business activity, including pursuant to Labor Code section 1175.

125. Plaintiffs and the other class and subclass members are entitled to recover from Defendants their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), and/or any associated penalties or liquidated damages.

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against Marriott International, Inc. and DOES 1 through 100)

126. Plaintiffs incorporate by reference the allegations contained in the prior paragraphs of this Complaint, and each and every part thereof with the same force and effect as though fully set forth herein.

127. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

128. Plaintiffs and the other class and subclass members incurred necessary business-

1 related expenses and costs that were not fully reimbursed by Defendants, including, but not
2 limited to, purchasing, cleaning and/or maintaining work uniforms on behalf of and for the benefit
3 of Defendants, amounts spent for work parking and on tools used for work, amounts incurred in
4 complying with Defendants' dress code and grooming policies, and costs related to using personal
5 cell phones for business-related purposes.

6 129. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the
7 other class and subclass members for all necessary business-related expenses and costs.

8 130. Plaintiffs and the other class and subclass members are entitled to recover from
9 Defendants their business-related expenses and costs incurred during the course and scope of
10 their employment, plus interest accrued from the date on which the employee incurred the
11 necessary expenditures at the same rate as judgments in civil actions in the State of California.

12 **EIGHTH CAUSE OF ACTION**

13 **(Violation of California Labor Code § 351)**

14 **(Against Marriott International, Inc. and DOES 1 through 100)**

15 131. Plaintiffs incorporate by reference the allegations contained in the prior
16 paragraphs of this Complaint, and each and every part thereof with the same force and effect as
17 though fully set forth herein.

18 132. Defendants' conduct, as set forth above, in failing to remit to nonmanagerial
19 banquet service employees the total proceeds of gratuities added to banquet customers' bills
20 constitutes a violation of California Labor Code Section 351. This violation is enforceable
21 pursuant to the California Unfair Competition Law, Cal. Bus. & Prof. Code 17200 *et seq.*
22 Defendants' conduct constitutes unlawful, unfair, and/or fraudulent business acts or practices,
23 in that Defendants have violated California Labor Code Section 351 in not remitting to the non-
24 managerial service employees the total gratuities that were charged to customers.

25 133. As a proximate result of the aforementioned violations, Plaintiffs and the class
26 and subclass members have been damaged in an amount according to proof at trial, including the
27 loss of gratuities to which they were entitled and seek all wages earned and due, interest,
28 penalties, expenses and costs of suit.

NINTH CAUSE OF ACTION

**(Violation of California Labor Code §§ 201-204, 233 and 246—Sick Pay Violations)
(Against Marriott International, Inc. and DOES 1 through 100)**

134. Plaintiffs incorporate by reference the allegations contained in the prior paragraphs of this Complaint, and each and every part thereof with the same force and effect as though fully set forth herein.

135. Cal Lab. Code § 233 provides that an employer must permit an employee to use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has a vested right to sick pay wages, which an employer must calculate and compensate based on one of two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and 233, employees may sue to recover underpaid sick pay wages as damages. A violation of these requirements is actionable pursuant to the California Unfair Competition Law, Cal. Bus. & Prof. Code 17200 *et seq.*

136. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiffs and the other class and subclass members at the incorrect rate of pay. Plaintiffs and the other class and subclass members regularly use accrued sick leave in the workweeks in which they also earn non-hourly remuneration. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiffs and the other class and subclass members at the base (or other improper or inaccurate) hourly pay, as opposed to the regular rate of pay, which would consider all non-hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the employee's total wages, not including overtime premium pay, by the employee's total hours

1 worked in the full pay periods of the prior 90 days of employment. As a result, Defendants
2 underpaid sick pay wages to Plaintiffs and the class and subclass members.

3 137. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
4 during each calendar month and are to be paid no later than the payday for the next regular
5 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires
6 that, upon use of accrued sick leave, vested sick pay wages are due and to be paid no later than
7 the payday for the next regular payroll period after accrued sick leave is used as paid sick time.
8 Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an employee, wages
9 earned and unpaid at the time of discharge are due and payable immediately. Cal. Lab. Code §
10 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after
11 an employee quits his or her employment, unless the employee has given 72-hour notice of his
12 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
13 quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code § 203
14 provides that if an employer willfully fails to pay wages owed in accordance with Cal. Lab. Code
15 §§ 201-202, then the wages of the employee shall continue as a penalty from the due date, and
16 at the same rate until paid, but the wages shall not continue for more than thirty (30) days.
17 Likewise, Cal. Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and
18 untimely payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees
19 may sue to recover applicable penalties. As alleged herein and as a matter of policy and practice,
20 Defendants routinely underpay sick pay wages in violation of Labor Code Sections 233 and 246.
21 Moreover, as alleged above, this underpayment also violates Sections 201-204 and 210, among
22 other Labor Code provisions, because Defendants fail to timely pay all such wages when owed
23 both during employment and at separation of same.

24 138. Plaintiffs are informed and believe that Defendants were advised by skilled
25 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to
26 Plaintiffs' allegations, especially since the California Supreme Court has explained that "[c]ourts
27 have recognized that 'wages' also include those benefits to which an employee is entitled as a
28 part of his or her compensation, including money, room, board, clothing, vacation pay, and sick

pay.” *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007). Because Defendants willfully fail to timely pay Plaintiffs and the class and subclass members all sick pay wages due, Defendants are subject to applicable penalties.

139. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiffs and the other class and subclass members to underpaid sick pay wages, including interest thereon, applicable penalties, attorney’s fees, and costs of suit.

TENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, *et seq.*)

(Against Marriott International, Inc. and DOES 1 through 100)

140. Plaintiffs incorporate by reference the allegations contained in the prior paragraphs of this Complaint, and each and every part thereof with the same force and effect as though fully set forth herein.

141. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful, fraudulent, and harmful to Plaintiffs, other class and subclass members, to the general public, and Defendants’ competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

142. Defendants’ activities as alleged herein are violations of California law, and constitute unlawful, unfair, or fraudulent business acts or practices in violation of California Business & Professions Code section 17200, *et seq.* Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

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

143. By the conduct alleged herein, Defendants have engaged and continue to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s) (including Wage Orders 4-2001, 5-2001, 7-2001 and 9-2001), the California Code of Regulations and the California Labor Code, including, but not limited to, sections 98.1, 200, 201-204, 210, 212, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 233, 245-249, 350, 351, 353, 510, 512, 516, 551, 552, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and the Fair Labor Standards Act and federal regulations promulgated thereunder, for which this Court should issue declaratory, injunctive, and other equitable relief pursuant to Cal. Bus. & Prof. Code section 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

145. By the conduct alleged herein, Defendants' practices were deceptive and fraudulent in that Defendants' policy and practice failed to provide the legally mandated meal and rest periods, the required amount of compensation for missed meal and rest periods and overtime, minimum, sick, and gratuity wages owed, failed to timely pay wages, and failed to reimburse all necessary business expenses incurred, and failed to provide Fair Labor Standards Act overtime wages due for overtime worked as a result of failing to include non-discretionary incentive compensation into their regular rates of pay for purposes of computing the proper overtime pay due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and IWC requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which

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

3 146. By the conduct alleged herein, Defendants' practices were also unlawful, unfair
4 and deceptive in that Defendants' employment practices caused Plaintiffs and the other class and
5 subclass members to be underpaid during their employment with Defendants.

6 147. By the conduct alleged herein, Defendants' practices were also unlawful, unfair
7 and deceptive in that Defendants' policies, practices and procedures failed to provide all legally
8 required meal/rest breaks to Plaintiffs and other class and subclass members as required by Cal.
9 Lab. Code §§ 226.7 and 512, and the applicable IWC Wage Orders.

10 148. Plaintiffs and the other class and subclass members have been personally injured
11 by Defendants' unlawful business acts and practices as alleged herein, including but not
12 necessarily limited to the loss of money and/or property.

13 149. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
14 Plaintiffs and the other class and subclass members are entitled to restitution of the wages
15 withheld and retained by Defendants during a period that commences February 8, 2017; an award
16 of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other
17 applicable laws; and an award of costs.

18 150. Plaintiffs and the other class and subclass members are further entitled to, and do,
19 seek a declaration that the described business practices are unlawful, unfair and deceptive, and
20 that injunctive relief should be issued restraining Defendants from engaging in any unlawful and
21 unfair business practices in the future.

22 **ELEVENTH CAUSE OF ACTION**

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

24 **(Against Marriott International, Inc. and DOES 1 through 100)**

25 151. Plaintiffs incorporate by reference the allegations contained in the prior
26 paragraphs of this Complaint, and each and every part thereof with the same force and effect as
27 though fully set forth herein.

28 152. PAGA is a mechanism by which the State of California itself can enforce state

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

153. Plaintiffs, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or who have been employed by Defendants at either the JW Marriott Anaheim or the Marriott Marquis San Diego hotels in California as hourly, non-exempt employees (the "AGGRIEVED EMPLOYEES") during any portion of the period of time from March 10, 2019 to final judgment (the "PAGA PERIOD").

154. Plaintiffs gave written notice by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific provision of this code alleged to have been violated as required by Labor Code section 2699.3. Plaintiff Shachno provided notice to the LWDA and the employer on March 19, 2020. Plaintiff Jones provided notice to the LWDA and the employer on July 7, 2021. Plaintiffs then commenced representative civil actions under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

155. The policies, acts and practices heretofore described violate the California Labor Code because Defendants (a) failed to pay all wages earned (including at the proper rate and in the proper amount), including minimum wages, overtime wages, regular wages, sick pay wages, reporting time wages, and gratuities, (b) failed to properly provide and record all legally required meal periods, or pay the required compensation in lieu thereof, (c) failed to properly provide all

legally required rest periods, or pay the required compensation in lieu thereof, (d) failed to reimburse necessary business expenses, (e) failed to pay wages when due during employment and upon separation/termination of employment, (f) failed to provide one day's rest in a seven-day workweek, (g) failed to provide accurate itemized wage statements, and (h) failed to keep/maintain complete and accurate employment or payroll records. Accordingly, Defendants violated (among other things) Labor Code Sections 98.1, 200, 201-204, 210, 212, 216, 218.5, 218.6, 221-224, 225.5, 226 (including 226(a)), 226.3, 226.7, 233, 245-249, 350-351, 353, 510, 512, 516, 551-552, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, the applicable California Code of Regulations, including Title 8, Section 11000 *et seq.* (including Sections 11010 and 11040, Subdivision 5(A)-(B)), and the applicable Wage Order(s). Defendants' violations give rise to civil penalties as a result of such conduct, and Plaintiffs hereby seek recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on Plaintiffs and the other AGGRIEVED EMPLOYEES.

156. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect Plaintiffs during the PAGA PERIOD, Plaintiffs seek penalties for those violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

DEMAND FOR JURY TRIAL

Plaintiffs, individually, and on behalf of other employees similarly situated, request a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of other employees similarly situated and the AGGRIEVED EMPLOYEES, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;

2. That Plaintiffs be appointed as the representative of the class and subclasses;
and

3. That counsel for Plaintiffs be appointed as class counsel;

As to the First Cause of Action

4. That the Court declare, adjudge and decree that Defendants violated the applicable California Labor Code sections and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiffs and the other class and subclass members;

5. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

6. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

7. For reasonable attorneys' fees, costs of suit, and interest incurred; and

8. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

9. That the Court declare, adjudge and decree that Defendants violated the applicable California Labor Code sections and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods), or compensation in lieu thereof, to Plaintiffs and the other class and subclass members;

10. That the Court make an award to Plaintiffs and the other class and subclass members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

11. For all actual, consequential, and incidental losses and damages, according to proof;

12. For premium wages pursuant to California Labor Code section 226.7(c);

13. For pre-judgment interest on any unpaid wages from the date such amounts were due;

14. For reasonable attorneys' fees, costs of suit, and interest incurred; and

15. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

16. That the Court declare, adjudge and decree that Defendants violated the applicable California Labor Code sections and applicable IWC Wage Orders by willfully failing to provide all rest periods, or compensation in lieu thereof, to Plaintiffs and the other class and subclass members;

17. That the Court make an award to Plaintiffs and the other class and subclass members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premium wages pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid wages from the date such amounts were due;

21. For reasonable attorneys' fees, costs of suit, and interest incurred; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated the applicable California Labor Code sections by willfully failing to pay minimum wages to Plaintiffs and the other class and subclass members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiffs and the other class and subclass members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees, costs of suit, and interest incurred;

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the applicable California Labor Code sections by willfully failing to pay all compensation owed during employment and at the time of separation/termination of the employment of Plaintiffs and the other class and subclass members no longer employed by Defendants;

31. For general unpaid wages and such general and special damages as may be appropriate;

32. For all actual, consequential, and incidental losses and damages, according to proof;

33. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class and subclass members who have left Defendants' employ;

34. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

35. For reasonable attorneys' fees, costs of suit, and interest incurred; and

36. For such other and further relief as the Court may deem just and proper.

As to the Sixth Cause of Action

37. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of the applicable California Labor Code sections, including sections 226(a) and 1174, and the applicable IWC Wage Orders as to Plaintiffs and the other class and subclass members, and willfully failed to provide accurate itemized wage statements thereto and failed to maintain appropriate records;

38. For actual, consequential and incidental losses and damages, according to proof;

39. For statutory penalties pursuant to California Labor Code section 226(e);

40. For injunctive relief to ensure compliance with this section, including pursuant to California Labor Code section 226(h); and

41. For such other and further relief as the Court may deem just and proper.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and the other class and subclass members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

43. For actual, consequential and incidental losses and damages, according to proof;

44. For the imposition of civil penalties and/or statutory penalties;

45. For reasonable attorneys' fees, costs of suit, and interest incurred herein; and

46. For such other and further relief as the Court may deem just and proper.

As to the Eighth Cause of Action

47. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, *et seq.* for the reasons identified herein.

48. For restitution of unpaid wages to Plaintiffs and all the other class and subclass members and all pre-judgment interest from the day such amounts were due and payable;

49. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

50. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

51. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*; and

52. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

53. That the Court declare, adjudge and decree that Defendants violated the applicable California Labor Code sections by willfully failing to pay all gratuities/tips owed;

54. For compensatory damages, according to proof at trial;

55. For actual, consequential and incidental losses and damages, according to proof;

56. For reasonable attorneys' fees, costs of suit, and interest incurred herein; and

57. Such other and further relief as the Court deems just and equitable.

As to the Tenth Cause of Action

58. That the Court declare, adjudge, and decree that Defendants violated the applicable California Labor Code sections by willfully failing to pay all sick pay wages

59. Compensatory damages, according to proof at trial, including compensatory damages due to Plaintiffs and the class and subclass members;

60. For actual, consequential and incidental losses and damages, according to proof;

61. For general unpaid wages and such general and special damages as may be appropriate;

62. For reasonable attorneys' fees, costs of suit, and interest incurred herein; and

63. Such other and further relief as the Court deems just and equitable.

As to the Eleventh Cause of Action

64. For penalties according to proof, as prescribed by the Labor Code Private Attorneys General Act of 2004 and other applicable Labor Code sections;

65. For reasonable attorneys' fees, costs of suit, and interest incurred herein; and

66. Such other and further relief as the Court deems just and equitable.

Dated: February 7, 2024

LAWYERS for JUSTICE, PC

By: /s/ Edwin Aiwazian

Edwin Aiwazian
Attorneys for Plaintiffs

Dated: February 7, 2024

**BLUMENTHAL NORDREHAUG
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