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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
10/09/2020 at 12:58:18 PM
Clerk of the Superior Court
By Erika Engel, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**
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11 LORELEI ADKISON, as an individual and on
behalf of all others similarly situated,

12
13 Plaintiff,

14 vs.

15 OAK VALLEY HOTEL LLC, a California
limited liability company; and DOES 1
16 through 50, inclusive,

17 Defendants.
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Case No. 37-2020-00036249-CU-OE-CTL

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

1. Failure to Pay Regular/Minimum Wages
2. Failure to Pay Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Waiting Time Penalties
8. Violations of the Unfair Competition Law
9. Civil Penalties for Failure to Pay Regular/Minimum Wages
10. Civil Penalties for Failure to Pay Overtime Wages
11. Civil Penalties for Meal Period Violations
12. Civil Penalties for Rest Period Violations
13. Civil Penalties for Untimely Payment of Wages
14. Civil Penalties for Wage Statement Violations
15. Civil Penalties for Failure to Timely Pay Wages Upon Separation
16. Civil Penalties for Recordkeeping Violations
17. Civil Penalties for Failure to Lawfully Distribute Gratuities

1 Plaintiff LORELEI ADKISON (“Plaintiff”), as an individual and on behalf of a class of all
2 other similarly situated current and former employees, and the State of California as an “aggrieved
3 employee” acting as a private attorney general under the Labor Code Private Attorneys General Act
4 of 2004 (“PAGA,” California Labor Code § 2698, *et seq.*), brings this class and representative
5 action against Defendants OAK VALLEY HOTEL LLC; and DOES 1 through 50 (hereinafter
6 collectively referred to as “Defendants”), alleging as follows:

7 **INTRODUCTION**

8 1. This is a class and representative action brought under the California Labor Code
9 and Unfair Competition Law.

10 2. This complaint challenges systemic unlawful employment policies and practices that
11 resulted in violations of the Labor Code against individuals who worked for Defendants.

12 3. Defendants underpaid overtime compensation to Plaintiff and the Class based on
13 their undercalculation of the regular rate of pay under the California Labor Code. Specifically,
14 Defendants maintained a common payroll practice of not including all forms of remuneration
15 required to be included in the base hourly rate for purposes of calculating and paying overtime to
16 Plaintiff and the Class. As a result, Plaintiff and the Class were underpaid for each hour of
17 overtime worked.

18 4. This practice was, at least in part, the result of unlawful tip pooling policies and
19 practices that violation the California Labor Code.

20 5. Additionally, Defendants did not lawfully pay all meal or rest period premiums
21 owed to Plaintiff and the Class as a matter of common policy and practice and required them work
22 off-the-clock during unpaid meal periods.

23 6. As a result of the foregoing practices, Defendants failed to timely pay all wages
24 owed to Plaintiff each pay period or upon separation of employment and have issued inaccurate and
25 incomplete wage statements.

26 7. These violations are compounded by the fact that Defendants have failed to maintain
27 accurate payroll records and have failed to allow Plaintiff and, on information and belief, other
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1 Class Members the opportunity to inspect or obtain employment records upon request, in violation
2 of the California Labor Code.

3 **JURISDICTION & VENUE**

4 8. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
5 California Constitution.

6 9. Venue as to each defendant is proper in this judicial district under Code of Civil
7 Procedure sections 395 and 395.5 because Defendants conduct substantial business in this county,
8 employed Plaintiff in this county, and committed some of the alleged violations in this county.

9 **PARTIES**

10 10. Plaintiff LORELEI ADKISON worked for Defendants in San Diego County until
11 March 2020 as an hourly, non-exempt employee.

12 11. The State of California, via the Labor and Workforce Development Agency
13 ("LWDA"), is the real party in interest in this action with respect to the PAGA claims.

14 12. Plaintiff is informed, believes and alleges that Defendant OAK VALLEY HOTEL
15 LLC is a California corporation that does business throughout California, including San Diego,
16 California.

17 13. The true names and capacities, whether individual, corporate, or otherwise, of the
18 parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such
19 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes and
20 alleges that each of the fictitious defendants is responsible in some manner for the acts and omissions
21 alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and
22 capacities when they become known.

23 14. Plaintiff is informed, believes and alleges that all defendants in this action are
24 employers and/or joint employers and part of an integrated employer enterprise, as each defendant
25 exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved
26 employees, suffers and permits them to work, and engages the workforce creating a common law
27 employment relationship. Additionally, all defendants have common ownership, common
28 management, interrelationship of operations, and centralized control over labor relations and are

1 therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
2 omissions alleged herein.

3 15. Plaintiff is informed, believes and alleges that each defendant acted in all respects
4 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
5 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants,
6 such that the acts and omissions of each defendant are legally attributable to all others.

7 16. Plaintiff is informed, believes and alleges that the above-mentioned defendants
8 violated and caused to be violated Labor Code and IWC Wage Order provisions regulating
9 minimum wages and days of work and Labor Code sections 203, 226, 226.7, 1193.6, 1194 and/or
10 2802 and may be held liable as the employer for such violations, as provided in Labor Code
11 sections 558.1 and 1197.1.

12 **GENERAL ALLEGATIONS**

13 17. Defendants employed Plaintiff during the statutory limitations period.

14 18. During this time, Plaintiff further alleges that Defendants failed to pay overtime
15 hours at the lawful overtime rate (due to regular rate of pay violations) in violation of Labor Code
16 sections 204, 510, 558, 1194 and 1198. Plaintiff and other Class Members earned additional forms
17 of remuneration in addition to their base hourly earnings. These amounts included "Allocated
18 Tips," "Reported Cash Tips," "Annual Salary-Rest," "Service Charges," and "Holiday Rate,"
19 among other forms of pay. Defendants routinely misclassified the tips, gratuities and charges that
20 Claimant and other employees received on their wage statements. For example, Defendants failed to
21 lawfully and consistently separate and distinguish between tips, gratuities and service charges
22 earned and paid, thus although some of these amounts may be voluntary tips properly excluded
23 from the regular rate of pay, Plaintiff alleges that the Service Charges and other amounts based on
24 automatic and objective metrics, such as an automatic percentage, were improperly excluded from
25 the overtime rat, causing underpayment to Plaintiff and the Class.

26 19. Plaintiff alleges that the Service Charges and other amounts charged by Defendants
27 as mandatory charges to customers and then paid to Plaintiff and the Class (i.e., automatic 22
28 percent service charge) as additional compensation for large parties, banquets, catering and similar

1 circumstances were unlawfully excluded from the base rate earnings of Plaintiff and the Class, thus
2 rendering the overtime hours underpaid.

3 20. Claimant's wage statement with the pay date of 3/6/2020 provides one example of a
4 regular rate of pay violation. Claimant was paid overtime at a rate of \$19.50, which was one and
5 one-half times her straight time hourly rate of \$13.00. However, she also earned Service Charges in
6 the amount of \$1,339.62. This amount was not factored into the regular rate of pay for Claimant or
7 other aggrieved employees as a matter of common practice, as the overtime rate is a straight time
8 1.5x multiple of the hourly rate, facially demonstrating Defendants' failure to pay all overtime at
9 the proper hourly rate (i.e., the regular rate of pay multiple).

10 21. This practice violates California law and was applied consistently by Defendants
11 with respect to the payroll administration and payment practices applicable to Plaintiff and other
12 Class Members. Based on Defendants' records alone, this issue can be readily certified by the court
13 for efficient adjudication on a class-wide basis. The above examples serve as illustrations. Plaintiff
14 believes Defendants' policy and practice of failing to properly include and calculate all forms of
15 remuneration in the regular rate when paying overtime is a common practice that applies to all
16 current and former employees of Defendants during the relevant statutory periods. As a result,
17 Defendants failed to timely pay the full amount of overtime wages owed to Plaintiff and other
18 employees each pay period or upon separation at the lawful regular rate of pay.

19 22. Plaintiff further alleges that Defendants maintained an unlawful tip pooling policy
20 and practice in violation of Labor Code sections 350 and 351. Specifically, Defendants maintained
21 an unlawful tip pooling practice whereby Defendants kept a portion of the tips earned and failed to
22 distribute the full amount of the tip pool exclusively to employees eligible under California law to
23 participate in such tip pool. Plaintiff alleges that managers and Defendants shared in the tip pool
24 and that employees not working the particular event also shared in the tip pool, despite not
25 providing service.

26 23. Because Defendants failed to provide Plaintiff records of such earnings upon
27 request, Plaintiff is informed and believes and therefore alleges that Defendants failed to maintain
28 the required earnings records in violation of Labor Code sections 352 and 353.

1 24. Moreover, Defendants failed to provide Plaintiff and other Class Members timely,
2 off-duty 30-minute meal periods within the first five hours of work and second off-duty meal
3 periods for employees who worked shifts of 10 hours or more, in violation of Labor Code sections
4 226.7, 512, and section 11 of the applicable IWC Wage Orders. Plaintiff's actual meal periods
5 were often late, short, interrupted, or missed due to Defendants' policies and practices which did
6 not provide enough coverage for employees to take meal periods and which effectively required
7 employees to skip, work through, or cut short meal periods on certain occasions.

8 25. Defendants were routinely understaffed, thus precluding Plaintiff and other members
9 of the Class from taking breaks and causing the meal periods to be interrupted and cut short as a
10 result of the customer demands. During her employment Plaintiff (other employees) maintained
11 radios where management would instruct employees to interrupt their meal period, yet employees
12 would not consistently receive a meal period premium on such occasions. Employees were required
13 to respond to radio calls in order to maintain customer satisfaction, despite the statutorily-required
14 meal period requirement. The radio interruptions also occurred during rest periods.

15 26. Defendants' policies, practices and management directives, on some occasions,
16 required Plaintiff and Class Members to clock out for meal periods, regardless of whether meal
17 periods were actually taken. Defendants knew Plaintiff and other Class Members performed work
18 during meal periods but did not pay all required meal period premiums at the lawful regular rate of
19 compensation. When Defendants did not provide fully-compliant meal periods, Defendants failed
20 to pay Plaintiff and other Class Members a meal period premium in violation of Labor Code section
21 226.7.

22 27. On those occasions where Plaintiff and Class Members worked while clocked out
23 during meal periods, Defendants failed to pay Plaintiff and other Class Members for all hours
24 worked at the lawful minimum, regular and overtime rates in accordance with Labor Code sections
25 201 through 204b, 210, 510, 558, 1182.12, 1194, 1194.2, and 1197, 1197.1, 1197.5, and 1198, and
26 the IWC Wage Orders, including but not limited to Wage Order No. 5 and 7, and local minimum
27 wage ordinances, including but not limited to San Diego Municipal Code § 39.0107 and all other
28 local ordinances. Plaintiff and Class Members were effectively required to work off-the-clock

1 during non-compliant meal periods, as a result of Defendants' employment policies and practices.
2 These hours worked went uncompensated. As a result, Defendants failed to timely pay all
3 minimum, regular and overtime wages owed to Claimant and other aggrieved employees on time
4 each pay day.

5 28. Due to many of the same problems, Defendants failed to authorize or permit ten-
6 minute rest periods for every four hours of work or major fraction thereof as required by Labor Code
7 section 226.7 and section 12 of the applicable IWC Wage Order. Similar to Defendants' meal
8 period violations, Plaintiff and the Class were routinely required to work through rest periods as a
9 result of guest and management demands and Defendants' policies, practices and directives which
10 prioritized work demands over compliant rest periods.

11 29. On those occasions Defendants did not provide a fully-compliant rest period,
12 Defendants failed to pay Plaintiff and other Class Members a rest period premium in violation of
13 Labor Code section 226.7.

14 30. Defendants never paid a rest period premium to Plaintiff during her employment.
15 Plaintiff alleges that Defendants failed to maintain any meaningful policy to actually provide the
16 opportunity to take a rest period to her or any other aggrieved employees during the statutory period
17 and did not provide rest period premiums for working through or having interrupted rest periods.

18 31. As a result of the foregoing Labor Code violations, Defendants violated Labor Code
19 sections 204 and 204b, the IWC Wage Orders and Labor Code sections 201 through 203.
20 Defendants failed to pay all wages owed each regularly-scheduled payday or final wages owed
21 upon separation of employment. For Class Members who separated from employment during the
22 relevant period, including Plaintiff, Plaintiff alleges that Defendants has not paid waiting time
23 penalties.

24 32. As a result of the routine underpayment and undercalculation of wages and wage
25 rates payable to Plaintiff and other Class Members described above, Defendants' wage statements
26 are incomplete and inaccurate and do not correctly show the correct hourly rate in effect (with the
27 number of correct hours worked at each rate), gross or net wages earned, or total hours worked in
28 violation of Labor Code sections 226 and the IWC Wage Orders.

1 33. As discussed above, Defendants also mischaracterized tips, gratuities and service
2 charges by consistently and lawfully distinguish between “Allocated Tips,” “Reported Case Tips,”
3 and “Service Charges” and other forms of remuneration on the wage statements for Plaintiff and
4 other Class Members. This was the result of Defendants failure to properly track, record, and
5 maintain the required records for such forms of remuneration, in addition to Defendants’ unlawful
6 tip and gratuity policies.

7 34. Plaintiff and other aggrieved employees were injured as a result of these wage
8 statements because they failed to provide the information necessary for Plaintiff Class Members to
9 discern what amounts they were paid and whether the payments were correct.

10 35. Coupled with Defendants’ failure to maintain and provide adequate records of tips,
11 gratuities and service charges earned by each employee, Plaintiff and other Class Members were
12 effectively deprived of the ability to discern their wages earned and paid from the wage statements
13 alone. As a result, Defendants provided wage statements that contain an inaccurate hourly rate for
14 overtime (i.e., not based on the regular rate), mischaracterizes wages (i.e., gratuities, service
15 charges, tips) such that they are included in the incorrect line item (affecting the regular rate). Due
16 to the underpayments, the gross and net wages earned each pay period are inaccurate.

17 36. The wage statements provided to Plaintiff and other Class Members do not
18 accurately itemize all applicable hourly rates in effect during the pay period and the corresponding
19 number of hours worked at each hourly rate. As a result, Plaintiff and other Class Members cannot
20 promptly and easily determine from the wage statement alone the wages paid or earned without
21 reference to other documents or information. These wage statement violations are significant
22 because they sowed confusion among Plaintiff and other Class Members with respect to what
23 amounts were owed and paid, at what regular and overtime rates, and how those amounts were
24 calculated. Additionally, the wage statements do not list all meal and rest period premiums owed or
25 paid. These violations affect all Class Members

26 37. Because of the violations set forth in this notice, including Defendants’ failure to
27 accurately maintain records and record and pay for all hours worked at the appropriate rates,
28 Defendants violated Labor Code section 1174 and the IWC Wage Orders, including section 7 of

1 Wage Order No. 5, by failing to maintain accurate payroll records showing daily hours worked and
2 the wages paid to each employee. As a result, Defendants are liable for a civil penalty of \$500 per
3 employee to Claimant and each aggrieved employee under Labor Code section 1174.5.

4 38. Defendants denied Plaintiff the opportunity to inspect or obtain employment records
5 pursuant to Labor Code sections 226, 432, 1198.5 and the IWC Wage Orders, including IWC Wage
6 Order No. 5, section 7. Despite requests to obtain her time records, wage statements, and tip
7 records, Defendants failed to provide those or make them available for inspection within the
8 statutorily-proscribed timely periods. Plaintiff is informed and believes and therefore alleges that
9 this was a uniform policy and practice of Defendants that warrants class-wide adjudication.

10 39. Plaintiff is informed, believes and alleges that Defendants have engaged in willful
11 violations of the Labor Code and IWC Wage Orders by creating and maintain policies, practices
12 and customs that knowingly deny Plaintiff and Class Members their legal rights and benefits.

13 **CLASS ACTION ALLEGATIONS**

14 40. ***Class Definition.*** The named individual Plaintiff seeks class certification under
15 California Code of Civil Procedure section 382. Plaintiff proposes the following class:

16 a. All individuals employed by Defendants in the State of California as hourly-paid or
17 non-exempt employees at any time four years prior to the filing of this action until
18 final judgment. (“Class” or “Class Members”).

19 41. Further, Plaintiff proposes the following subclasses:

20 a. All members of the Class who, within the applicable limitations period, either
21 voluntarily or involuntarily separated from their employment and who did not
22 receive all final wages upon termination. (“Waiting Time Subclass”).

23 42. Plaintiff reserves the right to move the Court to amend or modify the class
24 definitions and to establish additional classes and subclasses as appropriate.

25 43. ***Numerosity.*** The members of the Class are so numerous that joinder of all
26 individuals is impracticable. The identity of the Class Members is readily ascertainable by review
27 of Defendants’ employment and payroll records. Plaintiff is informed, believes and alleges there
28 are more than 100 Class Members.

1 44. **Adequacy of Representation.** Plaintiff is an adequate class representative, who will
2 take all necessary steps to adequately and fairly represent and protect the interest of the Class.
3 Plaintiff is represented by attorneys who have substantial experience prosecuting and resolving
4 wage-and-hour class actions in the past and currently have numerous wage-and-hour class actions
5 pending in California state and federal courts.

6 45. **Manageability.** This class action is manageable because all of the liability and
7 damages to Class Members can be ascertained by forensic review of corporate and employer
8 timekeeping and payroll records along with other evidence that Defendants maintained and is
9 required by law to maintain.

10 46. **Superiority.** A class action is superior to other means for adjudication of the claims
11 of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow
12 for the common issues to be resolved in a single forum, simultaneously and without duplication of
13 effort and expense.

14 47. **Commonality.** Common questions of law and fact and a community of interest
15 exists amongst Plaintiff and the Class. These common issues arise from the employment
16 relationship with Defendants and predominate over any individual issues:

17 48. **Typicality.** Plaintiff's claims are typical of the claims of the other Class Members.
18 Plaintiff and Class Members were subject to the same policies and practices of Defendants, which
19 resulted in losses to Plaintiff and Class Members.

20 49. Proof of common unlawful business practices, which Plaintiff experienced and is
21 representative of, will establish the right of the Class to recover on the causes of action alleged
22 herein.

23 **PAGA ALLEGATIONS**

24 50. "Notwithstanding any other provision of law, any provision of this code that
25 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
26 Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a
27 violation of this code, may, as an alternative, be recovered through a civil action brought by an
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1 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
2 to the procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

3 51. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and on
4 behalf of the State of California and all other current and former non-exempt employees of
5 Defendants who work or worked within the State of California within the one-year period prior to
6 the date on which Plaintiff first provided written notice to the Labor and Workforce Development
7 Agency and Defendants under Labor Code § 2699.3 and continuing through the present (the
8 “aggrieved employees” and the “PAGA Period”).

9 52. A true and correct copy of the notice is attached hereto as **Exhibit A** with the facts,
10 allegations and claims incorporated by reference as if fully set forth herein.

11 53. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants
12 and suffered one or more of the Labor Code violations committed by Defendants and alleged in this
13 Complaint.

14 54. On August 3, 2020, Plaintiff gave written notice by online filing with the LWDA
15 and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have
16 been violated, including the facts and theories to support the alleged violations. Plaintiff paid the
17 requisite filing fee to the LWDA.

18 55. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
19 Defendants did not give written notice by certified mail to Plaintiff providing a description of any
20 actions taken to cure the alleged violations.

21 56. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
22 violations, without any notice of cure from them or notice from the LWDA of its intent to
23 investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff
24 exhausted all prerequisites and commences this civil action under Labor Code § 2699.

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FIRST CAUSE OF ACTION

FAILURE TO PAY REGULAR/MINIMUM WAGES

Labor Code §§ 1194 and 1194.2

(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)

57. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

58. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Class Members at least the lawful minimum wage for all hours worked in violation of Labor Code sections 1182.12, 1197 and 1198 and the IWC Wage Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable orders).

59. Specifically, Defendants required Plaintiff and the Class work through unpaid meal periods, which resulted in uncompensated off-the-clock hours worked.

60. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the full amount of the unpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

Labor Code §§ 510 and 1194

61. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

62. Defendants failed in their affirmative obligation to pay Plaintiff and Class Members no less than one and one-half times their respective “regular rate of pay” for all hours worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of work in any one workweek, and no less than twice their respective “regular rate of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek in violation of Labor Code sections 510 and 1198 and the IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

1 63. Specifically, Defendants miscalculated the overtime rates applicable to Plaintiff and
2 other Class Members by not including all required forms of remuneration in the hourly base rate,
3 resulting in underpayments as a matter of common payroll administration.

4 64. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of
5 overtime wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover
6 to the full amount of the unpaid overtime wages, in addition to interest, attorneys' fees, and costs to
7 the extent permitted by law, including under Labor Code section 1194.

8 **THIRD CAUSE OF ACTION**

9 **MEAL PERIOD VIOLATIONS**

10 **Labor Code §§ 226.7 and 512**

11 65. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

12 66. Defendants willfully failed in their affirmative obligation to consistently provide
13 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes
14 beginning before the fifth hour of hour for each work period of more than five hours per day and a
15 second on-duty meal period of not less than 30 minutes beginning before the tenth hour of hour of
16 work in violation of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the "Meal
17 Periods" sections of the applicable orders).

18 67. Further, Defendants willfully failed in their affirmative obligation to consistently pay
19 Plaintiff and Class Members one additional hour of pay at the respective regular rate of
20 compensation for each workday that a fully compliant meal period was not provided, in violation of
21 Labor Code sections 226.7 and the IWC Wage Orders.

22 68. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of meal
23 periods and meal period premiums in amounts to be determined at trial. Plaintiff and the Class are
24 entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys' fees,
25 and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

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FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Labor Code §§ 226.7 and 516

69. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

70. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiff and Class Members to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code sections 226.7 and 516 and the IWC Wage Orders (the “Rest Periods” sections of the applicable orders).

71. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and Class Members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7 and the IWC Wage Orders.

72. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of rest periods and rest period premiums in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

FIFTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Labor Code §§ 204, 204b and 210

73. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

74. Defendants willfully failed in their affirmative obligation to timely pay all wages and premiums earned by Plaintiff and Class Members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for any weekly employees, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

1 75. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of timely
2 wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the full
3 amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial
4 violation for each failure to pay each employee and \$200 for all subsequent violations and for all
5 willful or intentional violations for each failure to pay each employee, plus 25 percent of the
6 amount unlawfully withheld under provided in Labor Code section 210, in addition to interest,
7 attorneys' fees, and costs to the extent permitted by law.

8 **SIXTH CAUSE OF ACTION**

9 **WAGE STATEMENT VIOLATIONS**

10 **Labor Code § 226**

11 76. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

12 77. Defendants knowingly and intentionally failed in their affirmative obligation provide
13 accurate itemized wage statements to Plaintiff and Class Members in violation of Labor Code
14 section 226(a).

15 78. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate
16 itemized wage statements and Plaintiff and the Class are entitled to recover the statutory penalty of
17 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee
18 for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
19 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
20 Code section 226(e).

21 **SEVENTH CAUSE OF ACTION**

22 **WAITING TIME PENALTIES**

23 **Violation of Labor Code §§ 201 through 203**

24 79. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

25 80. Defendants willfully failed in their affirmative obligation to pay all wages earned
26 and unpaid to Plaintiff and members of the Waiting Time Subclass immediately upon termination
27 of employment or within 72 hours thereafter for employees who did not provide at least 72 hours
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1 prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter
2 in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

3 81. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of timely
4 wages upon separation of employment in amounts to be determined at trial. Plaintiff and the Class
5 are entitled to recover to the wages of Plaintiff and members of the Waiting Time Subclass as a
6 waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs
7 to the extent permitted by law.

8 **EIGHTH CAUSE OF ACTION**

9 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

10 **Business and Professions Code §§ 17200, *et seq.***

11 82. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

12 83. Defendants willfully failed in their affirmative obligation to timely pay each payday
13 or at other required intervals all minimum, regular, and overtime wages, and meal and rest period
14 premium wages to Plaintiff and Class Members. These failures constitute unlawful, deceptive, and
15 unfair business acts and practices in violation of Business and Professions Code section 17200, *et*
16 *seq.*

17 84. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct, as alleged
18 throughout this Complaint, Plaintiff, as an individual and on behalf of the Class seeks restitution of
19 all monies and property withheld, acquired, or converted by Defendants in violation of the Labor
20 Code and IWC Wage Orders under Business and Professions Code section 17202, 17203, 17204
21 and 17208.

22 85. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of
23 monies and property in amounts to be determined at trial. Plaintiff and the Class are entitled to
24 injunctive relief against Defendants, restitution, and other equitable relief to return all funds over
25 which Plaintiff and the Class have an ownership interest and to prevent future damage under
26 Business and Professions Code section 17200, *et seq.* in addition to interest, attorneys' fees, and
27 costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.
28

NINTH CAUSE OF ACTION

**CIVIL PENALTIES FOR FAILURE TO PAY
ALL REGULAR/MINIMUM WAGES (PAGA)**

Labor Code §§ 2698, *et seq.*

86. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

87. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3 .”

88. Labor Code section 2699(f) provides: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

89. Labor Code section 558(a) provides: “Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

90. Labor Code section 1197.1(a) provides: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an

1 order of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed
2 pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one
3 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
4 underpaid ... and any applicable penalties imposed pursuant to Section 203. (2) For each
5 subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each
6 underpaid employee for each pay period for which the employee is underpaid regardless of whether
7 the initial violation is intentionally committed.”

8 91. Plaintiff does not seek for any cause of action in this Complaint under PAGA any
9 amounts that are not recoverable pursuant to Labor Code section 2699 *et seq.* (i.e., underpaid
10 wages).

11 92. Defendants willfully failed in their affirmative obligation to pay Plaintiff and
12 aggrieved employees at least the lawful minimum wage for all hours worked in violation of Labor
13 Code sections 1182.12, 1197 and 1198 and the IWC Wage Orders (the “Hours and Days of Work”
14 and “Minimum Wages” sections of the applicable orders).

15 93. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
16 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
17 by Labor Code sections 558, 1197.1, and 2699(a) and (f)(2), in addition to interest, attorneys’ fees,
18 and costs to the extent permitted by law, including under Labor Code section 2699(g).

19 **TENTH CAUSE OF ACTION**

20 **CIVIL PENALTIES FOR FAILURE TO PAY**

21 **OVERTIME WAGES (PAGA)**

22 **Labor Code §§ 2698, *et seq.***

23 94. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

24 95. Defendants failed in their affirmative obligation to pay Plaintiff and aggrieved
25 employees no less than one and one-half times their respective “regular rate of pay” for all hours
26 worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on
27 the seventh day of work in any one workweek, and no less than twice their respective “regular rate
28 of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh

1 day of a workweek in violation of Labor Code sections 510 and 1198 and the IWC Wage Orders
2 and the IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

3 96. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
4 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
5 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
6 to the extent permitted by law, including under Labor Code section 2699(g).

7 **ELEVENTH CAUSE OF ACTION**

8 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS (PAGA)**

9 **Labor Code §§ 2698, et seq.**

10 97. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

11 98. Defendants willfully failed in their affirmative obligation to consistently provide
12 Plaintiff and aggrieved employees compliant, duty-free meal periods of not less than 30 minutes
13 beginning before the fifth hour of hour for each work period of more than five hours per day and a
14 second on-duty meal period of not less than 30 minutes beginning before the tenth hour of hour of
15 work in violation of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the “Meal
16 Periods” sections of the applicable orders)..

17 99. Further, Defendants willfully failed in their affirmative obligation to consistently pay
18 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
19 compensation for each workday that a fully compliant meal period was not provided, in violation of
20 Labor Code sections 226.7 and the IWC Wage Orders.

21 100. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
22 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
23 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
24 to the extent permitted by law, including under Labor Code section 2699(g).

25 **TWELFTH CAUSE OF ACTION**

26 **CIVIL PENALTIES FOR REST PERIOD VIOLATIONS (PAGA)**

27 **Labor Code §§ 2698, et seq.**

28 101. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

1 102. Defendants willfully failed in their affirmative obligation to consistently authorize
2 and permit Plaintiff and aggrieved employees to receive compliant, duty-free rest periods of not less
3 than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor
4 Code sections 226.7 and 516 and the IWC Wage Orders (the “Rest Periods” sections of the
5 applicable orders).

6 103. Further, Defendants willfully failed in their affirmative obligation to consistently pay
7 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
8 compensation for each workday that a fully compliant rest period was not provided, in violation of
9 Labor Code sections 226.7 and the IWC Wage Orders.

10 104. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
11 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
12 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
13 to the extent permitted by law, including under Labor Code section 2699(g).

14 **THIRTEENTH CAUSE OF ACTION**

15 **CIVIL PENALTIES FOR UNTIMELY PAYMENT OF WAGES (PAGA)**

16 **Labor Code §§ 2698, *et seq.***

17 105. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

18 106. Defendants willfully failed in their affirmative obligation to timely pay all wages and
19 premiums earned by Plaintiff and aggrieved employees twice during each calendar month on days
20 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
21 basis) and on the regularly-scheduled weekly payday for any weekly employees, in violation of
22 Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of
23 the applicable orders).

24 107. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
25 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
26 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
27 to the extent permitted by law, including under Labor Code section 2699(g).

28

FOURTEENTH CAUSE OF ACTION

CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS (PAGA)

Labor Code §§ 2698, *et seq.*

108. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

109. Labor Code section 226.3 provides: “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

110. Defendants failed in their affirmative obligation provide accurate itemized wage statements to Plaintiff and aggrieved employees in violation of Labor Code section 226(a).

111. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

FIFTEENTH CAUSE OF ACTION

CIVIL PENALTIES FOR FAILURE TO TIMELY PAY ALL WAGES UPON SEPARATION OF EMPLOYMENT (PAGA)

Labor Code §§ 2698, *et seq.*

112. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

113. Defendants willfully failed in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

114. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required

1 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
2 to the extent permitted by law, including under Labor Code section 2699(g).

3 **SIXTEENTH CAUSE OF ACTION**

4 **CIVIL PENALTIES FOR RECORDKEEPING VIOLATIONS (PAGA)**

5 **Labor Code §§ 2698, et seq.**

6 115. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

7 116. Labor Code section 1174 provides: "Every person employing labor in this state
8 shall: ...(d) Keep, at a central location in the state or at the plants or establishments at which
9 employees are employed, payroll records showing the hours worked daily by and the wages paid to,
10 and the number of piece-rate units earned by and any applicable piece rate paid to, employees
11 employed at the respective plants or establishments. These records shall be kept in accordance with
12 rules established for this purpose by the commission, but in any case shall be kept on file for not
13 less than three years."

14 117. Labor Code section 1174.5 provides: "Any person employing labor who willfully
15 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete
16 records required by subdivision (d) of Section 1174 ..., shall be subject to a civil penalty of five
17 hundred dollars (\$500)."

18 118. Defendants willfully failed in their affirmative obligation to maintain accurate
19 records showing the hours worked daily and wages paid to the aggrieved employees, in violation of
20 Labor Code section 1174.

21 119. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
22 aggrieved employees and the State of California for civil penalties as required by Labor Code
23 section 1174.5, in addition to interest, attorneys' fees, and costs to the extent permitted by law,
24 including under Labor Code section 2699(g).

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SEVENTEENTH CAUSE OF ACTION

**CIVIL PENALTEIS FOR FAILURE TO LAWFULLY DISTRIBUTE
GRATUITIES (PAGA)**

Labor Code §§ 2698, *et seq.*

120. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

121. Labor Code section 351 provides: “No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.”

122. Labor Code section 353 provides: “Every employer shall keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Such records shall be open to inspection at all reasonable hours by the department.”

123. Defendants willfully failed in their affirmative obligation to comply with California’s “tip pooling” compensation laws with respect to Plaintiff and aggrieved employees by collecting, taking and receiving gratuities left for Plaintiff and aggrieved employees, failing to maintain records of those gratuities, and unlawfully sharing those gratuities and amounts with forbidden individuals, such as managers, supervisors, and those outside the line of service, in violation of Labor Code sections 351 and 353.

124. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code

1 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
2 by law, including under Labor Code section 2699(g).

3 **PRAYER FOR RELIEF**

4 Plaintiff, as an individual and on behalf of the Class and as a representative under the
5 PAGA, prays for judgment as follows:

- 6 a. For certification of this action as a class action;
- 7 b. For appointment of Plaintiff as the representative of the Class;
- 8 c. For appointment of counsel for Plaintiff as Class Counsel;
- 9 d. For injunctive relief;
- 10 e. For compensatory damages in amount according to proof;
- 11 f. For all interest accrued;
- 12 g. For disgorgement of all amounts wrongfully obtained;
- 13 h. For this action to be maintained as a representative action under the PAGA and for
14 Plaintiff and counsel to be provided with all enforcement capability as if the action
15 were brought by the State of California or the California Division of Labor
16 Enforcement;
- 17 i. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 18 j. For recovery of all statutory penalties and liquidated damages;
- 19 k. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
20 permitted by law, including under California Labor Code sections 218.5, 226, 1194,
21 2802, 2699(g) and Code of Civil Procedure section 1021.5;
- 22 l. For such other relief the Court deems just and proper.

23
24 Dated: October 9, 2020

FERRARO EMPLOYMENT LAW, INC.

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27 NICHOLAS J. FERRARO, ESQ.
28 LAUREN N. VEGA, ESQ.
Attorneys for Plaintiff Lorelei Adkison