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SUPERIOR COURT
OF CALIFORNIA
COUNTY OF SONOMA

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SONOMA
17 UNLIMITED JURISDICTION

18 GABRIEL MARTIN and JACOB
19 HORVAT on behalf of themselves and
20 others similarly situated,

21 Plaintiffs,

22 vs.

23 BOHEMIAN CLUB,

24 Defendant.

Case No. SCV258731

CLASS ACTION COMPLAINT FOR:

- (1) **UNPAID WAGES**
(LABOR CODE §§ 221, 1194 ET SEQ.);
- (2) **UNPAID OVERTIME**
(CAL. WAGE ORDER NO. 4-2001; LABOR CODE §§ 510, 1194);
- (3) **WAITING TIME PENALTIES**
(CAL. LABOR CODE §§ 201, 202, 203, 256);
- (4) **RECORD-KEEPING VIOLATIONS**
(CAL. LABOR CODE §§ 226, 226.3);
- (5) **UNTIMELY WAGE PENALTIES**
(CAL. LABOR CODE §§ 204, 210);
- (6) **MEAL AND REST BREAK VIOLATIONS**
(CAL. WAGE ORDER NO. 4-2001; LABOR CODE §§ 226.7, 512);
- (7) **UNLAWFUL BUSINESS PRACTICES**
(CAL. BUS. & PROF. CODE § 17200 ET SEQ.);
- AND
- (8) **CIVIL PENALTIES AND PRIVATE ATTORNEY GENERAL ACT (PAGA)**

AMOUNT DEMANDED EXCEEDS \$10,000

DEMAND FOR JURY TRIAL

1 Plaintiffs Gabriel Martin and Jacob Horvat (collectively, "Plaintiffs") allege, on behalf of
2 themselves and a class of those similarly situated, as follows:

3 **I. INTRODUCTION**

4 1. Defendant Bohemian Club is a registered California corporation which owns and
5 operates a 2,700-acre retreat center in Monte Rio, California known as the Bohemian Grove
6 (hereinafter, "the Grove"). The Bohemian Club serves a membership of approximately 2,500
7 men. It holds annual events called Spring Jinks and Encampment at the Grove. Spring Jinks
8 occurs the last weekend of May, beginning on Friday and ending on Sunday. Encampment is a
9 two to three-week event in July that kicks off the weekend following the Fourth of July. The
10 Bohemian Club also holds its one-day Fall and Spring Picnics at the Grove.

11 2. During the Bohemian Club's retreats, club members and guests attend 120 theme
12 camps at the Grove. Members sleep overnight in their camps, host social events and parties for
13 other members and their guests, and eat meals.

14 3. The Bohemian Club employs valets as seasonal workers at Spring Jinks,
15 Encampment, and the Spring and Fall Picnics. Valets serve the needs of event participants,
16 primarily through manual labor in the Camps during these events. Valet job duties include clean-
17 up, set-up, personal service work, including moving wine cases, chairs, tables, beer kegs,
18 firewood, and luggage; building fires; cooking meals; stocking refrigerators; delivering
19 newspapers; making coffee; serving cocktails; washing dishes; scrubbing floors; doing laundry;
20 making beds; and cleaning showers and campgrounds.

21 4. Plaintiffs GABRIEL MARTIN and JACOB HORVAT ("Plaintiffs") are former
22 valets.

23 **SUMMARY OF CLAIMS**

24 5. Plaintiffs performed work at the Camps as valets while classified as independent
25 contractors when they should have been classified as non-exempt employees. The valets satisfied
26 all applicable legal tests for employment status. Accordingly, Defendant was obligated, but
27 willfully refused, to pay the valets for all overtime hours worked and failed to afford them
28 required meal and rest breaks. Defendant has also failed to keep legally required time records.

1 6. Defendant's practices violate the state laws pled herein. Plaintiffs, on behalf of the
2 class, allege claims for (1) unpaid wages; (2) unpaid overtime; (3) waiting time penalties;
3 (4) record-keeping violations under Labor Code sections 226 and 226.3; (5) untimely wage
4 penalties under Labor Code sections 204 and 210; (6) meal and rest break violations; (7) unlawful
5 business practices; and (8) civil penalties under the Private Attorney Generals Act ("PAGA").
6 Plaintiffs also seek liquidated and/or other damages and penalties as permitted by applicable law,
7 and attorney's fees and costs.

8 **II. JURISDICTION AND VENUE**

9 7. This Court has jurisdiction under Article 6, section 10 of the California
10 Constitution, and Section 410.10 of the California Code of Civil Procedure because Defendant
11 conducts business and holds its offices in the State of California.

12 8. This Court has venue under Section 395.5 of the California Code of Civil
13 Procedure because Defendant's Camps are located in this county, Defendant employed Plaintiffs
14 and putative Class members in this county, and the legal obligations and liabilities arose in this
15 county.

16 **III. THE PARTIES**

17 9. Plaintiff Gabriel Martin is a resident of Oakland, California and worked at the
18 Camps as a valet every summer from in or around May 2008 until in or around May 2013.

19 10. Plaintiff Jacob Horvat is a resident of San Francisco, California and worked at the
20 Camps as a valet in July 2011 and July 2014.

21 11. Defendant Bohemian Club is a registered California corporation with an office at
22 624 Taylor St., San Francisco, CA 94102.

23 **FACTUAL BACKGROUND**

24 **I. Valets' Work**

25 **A. Generally**

26 12. Plaintiffs bring this action on behalf of all current and former individuals who
27 provided services to the Camps at the Bohemian Grove as valets ("the Class") at any time
28

1 between May 28, 2011 through December 31, 2014 (the “Class Period”), excluding David
2 Gelsinger.

3 13. Plaintiffs and all Class members have performed work at the Camps as valets.
4 Throughout the relevant period, all valets, including Plaintiffs, have consistently been
5 misclassified as independent contractors.

6 14. The services provided by valets during the Class Period were an integral part of
7 business at the Camps because, without valets, Defendant could not satisfy its obligations to camp
8 participants.

9 15. During the Class Period, valets’ work was controlled, and their freedom and
10 discretion were limited, through various mechanisms, including close supervision by camp
11 captains, direct supervisors, and camp participants.

12 16. During the Class Period, valets had to adhere to detailed rules and procedures as
13 specified in documents distributed by Defendant to all valets. These documents placed
14 significant control over and restrictions on what valets could and could not do. Valets had
15 virtually no discretion in how they carried out their duties.

16 17. During the Class Period, valets, including Plaintiffs, were paid by check, without
17 wage statements. They were paid a flat, per diem rate of approximately \$100 to 700 regardless of
18 how many hours they worked each day.

19 **B. Valets’ Job Duties**

20 18. During the Class period, valets’ primary duty was to serve the needs of Camp
21 participants, primarily through manual labor. Valet job duties included clean-up; set-up; personal
22 service work, including moving wine cases, chairs, tables, beer kegs, firewood, and luggage;
23 building fires; cooking meals; stocking refrigerators; delivering newspapers; making coffee;
24 serving cocktails; washing dishes; scrubbing floors; doing laundry; making beds; and cleaning
25 showers and campgrounds.

26 19. Valets routinely performed these labor-intensive tasks for up to 16 to 18 hours per
27 day. In addition, many valets slept at the Camps and were required to be available to serve Camp
28 needs 24-hours per day, including during sleep hours or other “off” time.

1 **C. Supervision and Control Over Valets**

2 20. During the Class Period, valets were closely supervised. Supervisors assigned
3 daily tasks and ensured that valets completed them in the approved manner by monitoring them.

4 21. Defendant’s “camp captains” were required to keep order in the respective
5 regiments by enforcing Defendant’s rules as they related to the valets working at the Camps.

6 22. Valets were instructed as to the precise manner in which to perform their duties.
7 Valets even received printed instructions describing how to perform basic tasks, such as climbing
8 a ladder.

9 23. Valets were required to adhere to a dress code wherein Defendant prescribed the
10 dress, badges, and insignia to be worn by valets.

11 24. Valets were expected to refrain from engaging in certain discussions with Camp
12 participants.

13 25. Control over valets was so pervasive and detailed that valets were prohibited from
14 seeing friends or even family members at work locations.

15 26. Valets were also required to be available on a 24-hour basis. In short, even the
16 valet’s time outside of “working hours” was not his own to do with as he chose.

17 27. A valet’s failure to follow instructions or these rules could result in termination.

18 **D. Valets’ Hours**

19 28. Defendant required valets to work during normal business hours as well as on
20 evenings and weekends, including “on call” time. Many valets worked more than seven days at a
21 time without having a single day off.

22 29. Most valets slept at the Camps, and did not receive regular meal or rest breaks.

23 30. Valets regularly worked in excess of 40 hours per workweek and 8 hours per day.

24 31. During the Class Period, Defendant had a policy and practice of not paying valets
25 for hours worked in excess of 40 per week or 8 hours per day. Because of Defendant’s
26 misclassification of valets as independent contractors, valets were not paid time-and-a-half or
27 double-time overtime compensation as required by applicable state law. Plaintiffs similarly were
28

1 not paid overtime despite being made to work in excess of 40 hours per week or 8 hours per day
2 regularly throughout their tenure.

3 **II. Misclassification**

4 32. During the Class Period, valets were misclassified as so-called “independent
5 contractors.” However, the valets should have been classified as non-exempt employees, as
6 defined by applicable state law.

7 33. Valets were hired by the Bohemian Club through the individual Camps.

8 34. On information and belief, the Bohemian Club changed its classification practices
9 for Grove events starting in 2015.

10 **III. Meal and Rest Breaks**

11 35. Plaintiffs and other Class Members were not provided thirty-minute meal breaks in
12 which they were relieved of all duties when they worked shifts in excess of five hours.

13 36. Plaintiffs and other Class Members were not provided a second thirty-minute meal
14 break in which they were relieved of all duties when they worked shifts in excess of ten hours.

15 37. Plaintiffs and other Class Members were not provided a fifteen minute rest break
16 for every four hour period of work (or substantial fraction thereof) which they performed.

17 **IV. Record-Keeping Violations**

18 38. Defendant did not keep records of the hours worked by Plaintiffs and other Class
19 Members, nor did they provide these records to Plaintiffs and other Class Members with itemized
20 wage statements.

21 **CLASS ACTION ALLEGATIONS**

22 39. Plaintiffs incorporate by reference each of the preceding paragraphs as fully set
23 forth herein.

24 40. Pursuant to Code of Civil Procedure section 382 and Civil Code section 1781, *et*
25 *seq.*, representative Plaintiffs bring this action on their own behalf and on behalf of a class of all
26 persons similarly situated: all current and former individuals who provided services to the Camps
27 at the Bohemian Grove as valets at any time between May 28, 2011 through December 31, 2014,
28 excluding David Gelsinger.

1 41. There is a well-defined community of interest in the questions of law and fact
2 involved affecting the Class in that the questions of fact are common amongst the Class and the
3 questions of law, the law's application, and what remedy is necessary to compensate and protect
4 the Class are common among the Class members. These questions of law and fact predominate
5 over questions that affect only individual Class members in that the Class members' matters have
6 been dealt with and they have been damaged by the Defendant in a closely similar fashion to
7 Plaintiffs' own. The claims of the representative Plaintiffs are typical of those of the Class and
8 the representative Plaintiffs will fairly and adequately represent the interests of the Class.

9 42. There is no plain, speedy, or adequate remedy other than by maintenance of this
10 class action, since the damage to each Plaintiff may be relatively small, making it economically
11 unfeasible to pursue remedies other than by a class action. Consequently, there would be a failure
12 of justice but for the maintenance of the present class action.

13 43. The prosecution of individual remedies by members of the Class would tend to
14 establish inconsistent standards of conduct for the Defendant and result in the impairment of
15 Class members' rights and the disposition of their interests through actions to which they are not
16 parties. It would also result in the unnecessary duplication of effort and expense.

17 44. Finally, Plaintiffs seek injunctive relief, allowing for broader provision of the class
18 action form of relief.

19 45. Class Requirements:

20 a. **Numerosity** – The Class is so numerous that joinder of all members is
21 impracticable. Plaintiffs are informed and believe, and on that basis allege, that during the Class
22 Period, at least 644 persons who satisfy the definition of a California class have been employed at
23 the Camps.

24 b. **Common Questions Predominate** – Common questions of law and fact
25 exist as to all members of the Class and those questions clearly predominate over any questions
26 which might affect members individually. These common questions of law and fact include, for
27 example:
28

1 i. Whether Class members were unlawfully classified as independent
2 contractors when they worked as valets during the Class Period;

3 ii. Whether the Class members are non-exempt employees entitled to
4 overtime compensation for overtime hours worked under the overtime pay requirements of
5 California law during the Class Period;

6 iii. Whether, during the Class Period, Defendant unlawfully failed to
7 pay overtime compensation in violation of the California Unfair Competition Law, Cal. Bus. &
8 Prof. Code §§ 17200 *et seq.*, and the California Labor Code and related regulations, Cal. Labor
9 Code §§ 201, 202, 203, 226, 510, 1174, 1174.5, and 1194, Cal. Wage Order No. 4-2001;

10 iv. Whether, during the Class Period, Defendant unlawfully failed to
11 keep and furnish California Class members with records of hours worked, in violation of Labor
12 Code §§ 226 and 1174;

13 v. Whether, during the Class Period, Defendant was legally required
14 to provide California Class members with meal and rest breaks, in violation of Labor Code
15 §§ 226.7 and 512, but failed to do so;

16 vi. Whether, during the Class Period, Defendant's policy and practice
17 of failing to pay its employees all wages due within the time required by law after their
18 employment ended violates California law;

19 vii. Whether, during the Class Period, Defendant's treatment of Class
20 Members violated the California Unfair Competition Law; and

21 viii. The proper measure of damages sustained and the proper measure
22 of restitution recoverable by members of the California Class.

23 46. **Typicality** – The Plaintiffs' claims are typical of Class members' claims. The
24 Plaintiffs, like other Class members, were subjected to Defendant's policy and practice of
25 refusing to pay overtime, refusing to keep and furnish records, and failing to provide valets with
26 meal and rest breaks in violation of California law. The Plaintiffs' job duties were typical of
27 those of other Class members.
28

1 47. **Adequacy** – The Plaintiffs will fairly and adequately represent and protect the
2 interests of Class members.

3 48. **Adequacy of counsel** – The Plaintiffs have retained counsel competent in complex
4 class actions, and state labor and employment litigation. Plaintiffs’ counsel intends to commit the
5 necessary resources to prosecute this action vigorously for the benefit of all Class members.

6 49. **Superiority** – Class certification is appropriate because a class action is superior
7 to other available methods for the fair and efficient adjudication of this litigation. Defendant’s
8 common and uniform policies and practices unlawfully treat Class members as independent
9 contractors exempt from overtime pay requirements. The damages suffered by individual Class
10 members are small compared to the expense and burden of individual prosecution of this
11 litigation. In addition, class certification is superior because it will obviate the need for unduly
12 duplicative litigation that might result in inconsistent judgments about Defendant’s practices.

13 50. Plaintiffs and the Class have incurred and, during the pendency of this action, will
14 incur expenses for attorney’s fees and costs herein. Such attorney’s fees and costs are necessary
15 for the prosecution of this action and will result in a benefit to each of the members of the Class.

16 **UNENFORCEABLE WAIVERS OF CLAIMS**

17 51. Plaintiffs have not entered into any contract with the Bohemian Club that contains
18 any waiver of claims.

19 52. However, on information and belief, the Bohemian Club has imposed a take-it-or-
20 leave-it waiver on certain Class Members purporting to extinguish their right to seek damages for
21 “all claims and causes of action” against the Bohemian Club or the camps. Specifically, on the
22 afternoon of the last day of the 2014 Encampment, Camp captains offered then-working Class
23 Members cash payments of between \$250 and \$1500, in exchange for their signature on a waiver.

24 53. Any purported waiver is not enforceable or applicable to the claims at issue here.

25 54. The California Labor Code prohibits employers from coercing “an employee to
26 settle claims against the employer by conditioning the payment of amounts due to the employee
27 upon execution of a settlement agreement.” *Aguilar v. Zep Inc.*, No. 13–cv–00563–WHO, 2014
28 WL 1900460, at *3 (N.D. Cal. May 12, 2014) (citing *Reid v. Overland Machined Prods.*, 55 Cal.

1 2d 203, 207 (1961)). While an employee may release disputed wage claims, there must be “a
2 good faith dispute as to whether they are owed.” *Chindarah v. Pick Up Stix, Inc.*, 171 Cal. App.
3 4th 796, 802 (2009) (citation omitted). Here, the waivers are not enforceable because there was
4 no good faith dispute that the valets were misclassified as independent contractors at the time they
5 signed the waivers.

6 55. The waivers are also procedurally and substantively unconscionable. *Armendariz*
7 *v. Found. Health Pyschcare Servs., Inc.*, 24 Cal. 4th 83, 114 (2000). The waivers are one-sided
8 contracts of adhesion in that they are standardized forms, imposed and drafted by the Bohemian
9 Club, which is a party of vastly superior bargaining strength, and only relegate to the Class
10 Member the opportunity to adhere to them or reject the agreements in their entirety.

11 **FIRST CLAIM FOR RELIEF**
12 **(Unpaid Wages, Cal. Labor Code §§ 221, 1194 et seq.)**

13 56. Plaintiffs incorporate by reference each of the preceding paragraphs as fully set
14 forth herein.

15 57. Pursuant to California Labor Code § 221, “It shall be unlawful for any employer to
16 collect or receive from an employee any part of wages theretofore paid by said employer to said
17 employee.”

18 58. Pursuant to California Labor Code § 1194, “Notwithstanding any agreement to
19 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
20 overtime compensation applicable to the employee is entitled to recover in a civil action the
21 unpaid balance of the full amount of this minimum wage or overtime compensation, including
22 interest thereon, reasonable attorney’s fees, and costs of suit.”

23 59. Defendant’s conduct as alleged above constitutes a violation of California Labor
24 Code §§ 221 and 1194, because some valets received as little as \$100 per day and worked in
25 excess of twelve hours per day. These valets were not paid for all hours worked and/or did not
26 receive California’s minimum wage.

27 60. As a direct and proximate result of Defendant’s unlawful conduct, as set forth
28 herein, Plaintiffs and Class members have sustained damages in an amount to be established at

1 trial, prejudgment interest, and costs and attorney's fees, pursuant to statute and other applicable
2 law.

3 **SECOND CLAIM FOR RELIEF**
4 **(Overtime Pay, Cal. Wage Order No. 4-2001; Cal. Labor Code §§ 510, 1194)**

5 61. Plaintiffs incorporate by reference each of the preceding paragraphs as fully set
6 forth herein.

7 62. California law requires an employer to pay overtime compensation to all non-
8 exempt employees for all hours worked over forty per week, or over eight per day.

9 63. Under California law, Plaintiffs and Class members are non-exempt employees
10 entitled to be paid overtime compensation for all overtime hours worked.

11 64. During the Class Period, Plaintiffs and Class members worked in excess of eight
12 hours in a workday and/or forty hours in a workweek. Certain Class members also worked in
13 excess of twelve hours in a workday.

14 65. During the Class Period, Defendant misclassified Plaintiffs and Class members as
15 independent contractors, exempt from overtime pay entitlement, and failed and refused to pay
16 them overtime premium pay for their overtime hours worked.

17 66. As a direct and proximate result of Defendant's unlawful conduct, as set forth
18 herein, Plaintiffs and Class members have sustained damages, including loss of earnings for hours
19 of overtime worked on behalf of Defendant in an amount to be established at trial, prejudgment
20 interest, and costs and attorney's fees, pursuant to statute and other applicable law.

21 **THIRD CLAIM FOR RELIEF**
22 **(Wage Payment Provisions, Cal. Labor Code §§ 201, 202, & 203)**

23 67. Plaintiffs incorporate by reference each of the preceding paragraphs as fully set
24 forth herein.

25 68. California Labor Code sections 201 and 202 require employers to pay their
26 employees all wages due within the time specified by law. California Labor Code section 203
27 provides that if an employer willfully fails to timely pay such wages, the employer must continue
28

1 to pay the subject employees' wages until the back wages are paid in full or an action is
2 commenced, up to a maximum of thirty days of wages.

3 69. The Plaintiffs and all California Class members who ceased employment are
4 entitled to unpaid compensation, but to date have not received such compensation.

5 70. More than thirty days have passed since Plaintiffs and certain California Class
6 members left Defendant's employ.

7 71. As a consequence of Defendant's willful conduct in not paying compensation for
8 all hours worked, Plaintiffs and Class members whose employment ended during the Class Period
9 are entitled to thirty days' wages under Labor Code section 203, together with interest thereon
10 and attorney's fees and costs.

11 **FOURTH CLAIM FOR RELIEF**
12 **(Record-Keeping Provisions,**
Cal. Wage Order No. 4-2001; Cal. Labor Code §§ 226, 1174, & 1174.5)

13 72. Plaintiffs incorporate by reference each of the preceding paragraphs as fully set
14 forth herein.

15 73. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
16 wage statements including, *inter alia*, hours worked, to Plaintiffs and Class members in
17 accordance with Labor Code section 226(a) and the IWC Wage Orders. Such failure caused
18 injury to Plaintiffs and Class members, by, among other things, impeding them from knowing the
19 amount of wages to which they are and were entitled. At all times relevant herein, Defendant has
20 failed to maintain records of hours worked by Plaintiffs and Class members as required under
21 Labor Code section 1174(d).

22 74. Plaintiffs and Class members are entitled to and seek injunctive relief requiring
23 Defendant to comply with Labor Code sections 226(a) and 1174(d), and further seek the amount
24 provided under Labor Code sections 226(e) and 1174.5, including the greater of all actual
25 damages or fifty dollars (\$50) for the initial pay period in which a violation occurred and one
26 hundred dollars (\$100) per employee for each violation in a subsequent pay period.

1 **FIFTH CLAIM FOR RELIEF**
2 **(Failure to Pay Wages When Due,**
3 **Cal. Wage Order No. 4-2001; Cal. Labor Code §§ 204, 210)**

4 75. Plaintiffs incorporate by reference each of the preceding paragraphs as fully set
5 forth herein.

6 76. Pursuant to California Labor Code § 204, an employer must pay its employees full
7 wages when due twice each month.

8 77. Defendant's conduct as alleged above constitutes a violation of California Labor
9 Code § 204.

10 78. Plaintiffs and Class members are entitled civil penalties pursuant to California
11 Labor Code § 210 in the amount of one hundred dollars (\$100) per employee per initial violation
12 of the timely payment requirements of California Labor Code § 204b and two hundred dollars
13 (\$200) per employee for each subsequent violation, plus twenty-five percent (25%) of the amount
14 unlawfully withheld.

15 **SIXTH CLAIM FOR RELIEF**
16 **(Meal And Rest Period Provisions,**
17 **Cal. Wage Order No. 4-2001; Cal. Labor Code §§ 226.7 & 512)**

18 79. Plaintiffs incorporate by reference each of the preceding paragraphs as fully set
19 forth herein.

20 80. During the Class Period, Plaintiffs and Class members regularly worked in excess
21 of five-hour shifts without being afforded at least a half-hour meal break in which they were
22 relieved of all duty and more than ten-hour shifts without being afforded a second half-hour meal
23 break in which they were relieved of all duty, as required by Labor Code sections 226.7 and 512
24 and Wage Order No. 4-2001, section 11(a).

25 81. In addition, during the Class Period, Plaintiffs and Class members regularly
26 worked without being afforded at least one ten-minute rest break, in which they were relieved of
27 all duty, per four hours of work performed or major fraction thereof, as required by Labor Code
28 section 226.7 and Wage Order No. 4-2001, section 12.

82. As a result of Defendant's failure to afford proper meal periods, it is liable to
Plaintiffs and Class members for one hour of additional pay at the regular rate of compensation

1 for each workday that the proper meal periods were not provided, pursuant to Labor Code
2 section 226.7 and Wage Order No. 4-2001, section 11(b).

3 83. As a result of Defendant's failure to afford proper rest periods, they are liable to
4 Plaintiffs and Class members for one hour of additional pay at the regular rate of compensation
5 for each workday that the proper rest periods were not provided, pursuant to Labor Code
6 section 226.7 and Wage Order No. 4-2001, section 12(b).

7 **SEVENTH CLAIM FOR RELIEF**
8 **(California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq.)**

9 84. Plaintiffs incorporate by reference each of the preceding paragraphs as fully set
10 forth herein.

11 85. The foregoing conduct, as alleged, violates the California Unfair Competition Law
12 ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq.* Section 17200 of the Cal. Bus. & Prof. Code
13 prohibits unfair competition by prohibiting, *inter alia*, any unlawful or unfair business acts or
14 practices.

15 86. During the Class Period, Defendant committed acts of unfair competition, as
16 defined by the UCL, by, among other things, engaging in the acts and practices described herein.
17 Defendant's conduct as herein alleged has injured Plaintiffs and Class members by wrongfully
18 denying them earned wages, and therefore was substantially injurious to the Plaintiffs and to
19 Class members.

20 87. Defendant engaged in unfair competition in violation of the UCL by violating,
21 *inter alia*, each of the following laws. Each of these violations constitutes an independent and
22 separate violation of the UCL:

23 a. California Labor Code §§ 221 (unlawful receipt of paid wages), 1194
24 (minimum wage);

25 b. California Labor Code §§ 201, 202, 203 (untimely payment of wages);
26 §§ 226, 226.3, 226.7 (failure to furnish records and wage statements), and 512 (rest break
27 violations);

28 c. California Labor Code § 1174 (failure to keep records); and

1 d. California Labor Code § 510, which provides in relevant part:

2 Any work in excess of eight hours in one workday and any work in
3 excess of 40 hours in any one workweek and the first eight hours
4 worked on the seventh day of work in any one workweek shall be
5 compensated at the rate of no less than one and one-half times the
6 regular rate of pay for an employee. Any work in excess of 12
7 hours in one day shall be compensated at the rate of no less than
8 twice the regular rate of pay for an employee. In addition, any
9 work in excess of eight hours on any seventh day of a workweek
10 shall be compensated at the rate of no less than twice the regular
11 rate of pay of an employee.

12 88. Defendant's course of conduct, acts, and practices in violation of the California
13 laws mentioned in the above paragraph constitute a separate and independent violation of the
14 UCL. Defendant's conduct described herein violates the policy or spirit of such laws or
15 otherwise significantly threatens or harms competition.

16 89. The unlawful and unfair business practices and acts of Defendant, described
17 above, have injured Class members in that they were wrongfully denied the payment of earned
18 overtime wages.

19 90. The Plaintiffs, on behalf of themselves and the Class, seek restitution in the
20 amount of the respective unpaid wages earned and due at a rate of at least one and one-half times
21 the regular rate of pay for work performed in excess of forty hours in a workweek, or eight hours
22 in a day, and double the regular rate of pay for work performed in excess of twelve hours per day.

23 91. The Plaintiffs, on behalf of themselves and Class members, seek recovery of
24 attorney's fees and costs of this action to be paid by Defendant, as provided by the UCL and
25 California Labor Code §§ 218, 218.5, and 1194.

26 **EIGHTH CLAIM FOR RELIEF**
27 **(California Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698-2699.5)**

28 92. Plaintiffs incorporate by reference each of the preceding paragraphs as fully set
forth herein.

93. Under the California Private Attorneys General Act ("PAGA") of 2004, Cal. Lab.
Code §§ 2698-2699.5, an aggrieved employee, on behalf of himself and other current or former
employees as well as the general public, may bring a representative action as a private attorney

1 general to recover penalties for an employer's violations of the California Labor Code and IWC
2 Wage Orders. These civil penalties are in addition to any other relief available under the
3 California Labor Code, and must be allocated 75% to California's Labor and Workforce
4 Development Agency ("LWDA") and 25% to the aggrieved employee, pursuant to California
5 Labor Code § 2699.

6 94. Plaintiffs Martin and Horvat allege, on behalf of themselves and all aggrieved
7 employees, as well as the general public, that Defendant has violated the following provisions of
8 the California Labor Code and the following provisions of the IWC Wage Orders that are
9 actionable through the California Labor Code and PAGA, as previously alleged herein: Cal. Lab.
10 Code §§ 201-03, 218.5, 226, 226.7, 226.8, 510, 512, 1174, 1174.5, and 1194, and IWC Wage
11 Order No. 4-2001. Each of these violations entitles Plaintiffs Martin and Horvat, as private
12 attorneys general, to recover the applicable civil penalties on their own behalf, on behalf of all
13 aggrieved employees, and on behalf of the general public.

14 95. California Labor Code § 2699(a), which is part of PAGA, provides in pertinent
15 part:

16 Notwithstanding any other provision of law, any provision of this
17 code that provides for a civil penalty to be assessed and collected
18 by the Labor and Workforce Development Agency or any of its
19 departments, divisions, commissions, boards, agencies, or
20 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 themselves or themselves and other current or former
employees pursuant to the procedures specified in § 2699.3.

21 96. California Labor Code § 2699(f), which is part of PAGA, provides in pertinent
22 part:

23 For all provisions of this code except those for which a civil penalty
24 is specifically provided, there is established a civil penalty for a
25 violation of these provisions, as follows: . . . (2) If, at the time of
26 the alleged violation, the person employs one or more employees,
27 the civil penalty is one hundred dollars (\$100) for each aggrieved
28 employee per pay period for the initial violation and two hundred
dollars (\$200) for each aggrieved employee per pay period for each
subsequent violation.

1 97. Plaintiffs Martin and Horvat are entitled to civil penalties, to be paid by Defendant
2 and allocated as PAGA requires, pursuant to California Labor Code § 2699(a) for Defendant's
3 violations of the California Labor Code and IWC Wage Orders for which violations a civil
4 penalty is already specifically provided by law. Furthermore, Plaintiffs Martin and Horvat are
5 entitled to civil penalties, to be paid by Defendant and allocated as PAGA requires, pursuant to
6 California Labor Code § 2699(f) for Defendant's violations of the California Labor Code and
7 IWC Wage Orders for which violations a civil penalty is not already specifically provided.

8 98. On July 6, 2015, the Plaintiffs provided written notice by certified mail to the
9 LWDA of the legal claims and theories of this case. As of the date of filing of this complaint,
10 Plaintiffs have not received a response from the LWDA. Because no notice has been "provided
11 within 33 calendar days of the postmark date of" Plaintiffs' July 6 letter, the Plaintiffs are entitled
12 to assert this claim. Cal. Labor Code § 2699.3(a)(2).

13 99. Under PAGA, Plaintiff Horvat and the State of California are entitled to recover
14 the maximum civil penalties permitted by law for the violations of the California Labor Code and
15 IWC Wage Order No. 4-2001 that are alleged in this complaint.

16 **PRAYER FOR RELIEF**

17 100. WHEREFORE, Plaintiffs, on behalf of themselves and all Class members, pray for
18 relief as follows:

- 19 A. For an order certifying a Class pursuant to Civil Code sections 382 and
20 1781;
- 21 B. Designation of the Plaintiffs as Class representatives;
- 22 C. Designation of Plaintiffs' counsel of record as Class Counsel for the Class;
- 23 D. A declaratory judgment that the practices complained of herein are
24 unlawful under applicable state law;
- 25 E. Appropriate injunctive and equitable relief, including an order enjoining
26 Defendant from continuing its unlawful practices;
- 27 F. Appropriate statutory penalties;
- 28 G. Appropriate civil penalties;

1 H. An award of damages, liquidated damages, and restitution to be paid by
2 Defendant according to proof;

3 I. Pre-judgment and post-judgment interest, as provided by law;

4 J. Such other injunctive and equitable relief as the Court may deem just and
5 proper; and

6 K. Attorney's fees and costs of suit, including expert fees and costs.

7 **JURY TRIAL DEMANDED**

8 Plaintiffs request trial by jury on all claims so triable.

9
10 Dated: April 28, 2016

Respectfully submitted,

11
12 By: 
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