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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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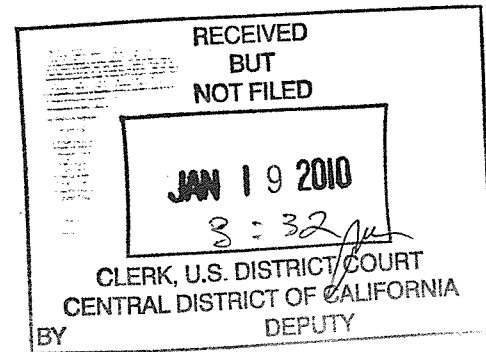
11 CELIA ALVAREZ, BENJAMIN
12 CUISON, BENJAMIN LEONEN and
13 JOSEPH NAVATA on behalf of
themselves and all others similarly
situated,

14 Plaintiffs,

15 v.

16 HYATT CORPORATION D/B/A
17 HYATT REGENCY LONG BEACH and
HYATT HOTELS CORPORATION and
18 Does 1-100,

19 Defendants.
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Case No. CV 09-04791-GAF (VBKx)

Assigned to the Honorable Gary A.
Feess - Courtroom #740

**THIRD AMENDED CLASS
ACTION COMPLAINT FOR:**

1. **FAILURE TO PROVIDE
MEAL PERIODS**
2. **FAILURE TO PROVIDE
REST PERIODS**
3. **VIOLATION OF LABOR
CODE SECTION 203**
4. **VIOLATION OF LABOR
CODE SECTION 1197**
5. **VIOLATION OF LABOR
CODE SECTION 1198**
6. **VIOLATION OF LABOR
CODE SECTION 226**
7. **UNFAIR BUSINESS
PRACTICES
IN VIOLATION OF B& P
CODE 17200, ET SEQ.**

DEMAND FOR JURY TRIAL

1 On behalf of themselves and all others similarly situated, and on behalf of the
2 general public, plaintiffs CELIA ALVAREZ, BENJAMIN CUISON, BENJAMIN
3 LEONEN and JOSEPH NAVATA (“Plaintiffs”), bring this action against defendants
4 HYATT CORPORATION D/B/A HYATT REGENCY LONG BEACH and HYATT
5 HOTELS CORPORATION and Does 1-100, inclusive (collectively “Defendants”), for:
6 back wages, restitution, liquidated damages, interest, declaratory and injunctive relief,
7 costs and attorneys’ fees resulting from Defendants’ unlawful conduct and unfair
8 business practices, and as grounds therefor allege:

9 **INTRODUCTION**

10 1. Plaintiffs CELIA ALVAREZ, BENJAMIN CUISON and BENJAMIN
11 LEONEN are current employees of Defendants who are classified as nonexempt under
12 the Industrial Welfare Commission (“IWC”) Wage Orders and are paid on an hourly
13 basis. All three are residents of California. Ms. Alvarez has worked as a “housekeeper”
14 for Defendants since 1990. Mr. Cuisson has worked as a “houseman” for Defendants
15 since 1996. Mr. Leonen has worked as a “line cook” for defendants since approximately
16 2002.

17 2. Plaintiff JOSEPH NAVATA is a former employee of Defendants and is
18 classified as nonexempt under the Industrial Welfare Commission (“IWC”) Wage Orders
19 and was paid on an hourly basis. Mr. Navata worked for defendants as a “steward” from
20 1996 to May 2009.

21 3. Plaintiffs contend that Defendants failed to pay them for all hours worked,
22 provide them and other similarly situated workers with meal and rest breaks and failed to
23 pay the compensation due to them under the IWC for missed meal and rest breaks.
24 Defendants also failed to provide plaintiffs with proper documentation concerning their
25 hours worked and their compensation, as required by state law, and failed to meet other
26 legal requirements, all of which violate various provisions of the Labor Code and IWC
27 Wage Orders, with respect to their employment.

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PARTIES

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2 4. Plaintiffs reside in Los Angeles County, California. Each of the Plaintiffs
3 and all members of the Plaintiff Class as defined below are or were employed by the
4 Defendants within the state of California during the relevant statutory period.

5 5. Plaintiffs bring their claims on behalf of a class (“Plaintiff Class”) which
6 consists of all current and former nonexempt employees employed at the Hyatt Regency
7 Long Beach during the relevant statutory period. Members of the Plaintiff Class were not
8 compensated in the amounts required by the Labor Code and the IWC Wage Orders
9 promulgated pursuant thereto. Members of the Plaintiff Class were not paid for all hours
10 worked, did not receive meal or rest breaks, or compensation for missed breaks, to which
11 they are entitled under Labor Code § 226.7 and IWC Wage Orders. Defendants’ failure
12 to compensate the Plaintiff Class as required and to provide them with required breaks,
13 or compensation for missed breaks, is and was a result of unlawful policies and practices
14 that were commonly applied to all members of the Plaintiff Class. Defendants also failed
15 to compensate members of the Plaintiff Class in accordance with the minimum wage and
16 overtime requirements of the Labor Code and the IWC Wage Orders promulgated
17 pursuant thereto.

18 6. Plaintiffs also bring this action on behalf of themselves, the general public,
19 and all others similarly situated pursuant to Business and Professions Code §§ 17200, *et*
20 *seq.*

21 7. Plaintiffs are informed and believe and thereon allege that at all relevant
22 times Defendant Hyatt Corporation owned and/or operated Hyatt Regency Long Beach.
23 Plaintiffs are ignorant of the true names and capacities of defendants sued herein
24 as DOES 1 through 100, inclusive, and therefore sue these defendants by such fictitious
25 names and capacities. Plaintiffs will seek leave to amend this complaint to allege the
26 true names and capacities of said fictitiously-named defendants once they have been
27 ascertained. Plaintiffs are informed and believe, and on that basis allege, that at all
28 relevant times, each of the fictitiously-named defendants was an agent or employee of

1 the named Defendants and/or was acting within the course and scope of said agency or
2 employment at the time of the events herein alleged, and/or was acting directly or
3 indirectly in the interest of Defendants in relation to Plaintiffs and the Plaintiff Class.
4 Plaintiffs are further informed and believe and on that basis allege that each of the
5 fictitiously-named defendants aided and assisted the named Defendants in committing
6 the wrongful acts alleged herein, and that Plaintiffs' damages, as alleged herein, were
7 proximately caused by such defendants. To the extent that the conduct and omissions
8 alleged herein were perpetrated by one or more defendants, the remaining defendants
9 confirmed and ratified said conduct and omissions.

10 8. Plaintiffs are informed and believe and thereupon allege that at all times
11 material herein, each defendant named herein, including DOES 1 through 100, acted as
12 the agent, joint venturer, representative, or alter ego of or for the other defendants, and
13 all aided and abetted the wrongful acts of the others.

14 **FACTUAL ALLEGATIONS**

15 9. Throughout the relevant statutory period, Plaintiffs and all members of the
16 Plaintiff Class are and/or were nonexempt employees of Defendants, entitled to all of the
17 protections afforded to nonexempt employees under the Labor Code and applicable IWC
18 Wage Orders.

19 10. Plaintiffs allege that at all times material herein, Defendants have been
20 aware of California laws requiring meal and rest breaks and have nevertheless engaged
21 in widespread and flagrant violations of these laws. On information and belief,
22 Defendants' payroll records reveal that hundreds of Plaintiff Class members routinely
23 did not receive rest breaks for several years. For example, Defendants required
24 housekeepers to clean as many as 30 rooms each shift, thus forcing them to miss their
25 meal and rest breaks or risk being disciplined and/or fired.

26 11. Defendants have failed to establish any system to allow employees to cover
27 each others' job responsibilities to enable them to give each other breaks and ensure
28 compliance with the meal and rest break laws. For example, Defendants did not provide

1 additional employees or relief at “front services,” in the restaurant, turn down lobby,
2 convention services, in the housekeeping, banquet, bell, or laundry/uniform departments.
3 Defendants regularly gave members of the Plaintiff Class job assignments they knew, or
4 should have known, did not allow enough time for these nonexempt employees to take
5 the required meal and rest breaks. For example, Defendants required “housekeepers” to
6 clean 22-30 rooms in an eight hour shift. The industry standard is 12-16 rooms a day as it
7 typically takes 25-30 minutes to clean each room. Hyatt Regency Long Beach
8 employees were subject to discipline for failing not to clean the required number of
9 rooms. Thus Defendants knew or should have known that in order for housekeepers to
10 fulfill their room quota, they cannot and did not take rest breaks and frequently miss
11 meal breaks and were working off the clock in order to meet the room requirements.

12 12. Likewise, Defendants did not permit “stewards” to take their rest breaks
13 because the kitchen—where they work—was too busy. Because Defendants assign one
14 “houseman” to respond to guest requests on several floors, they are unable to complete
15 their job assignments—moving refrigerators, flipping mattresses and stripping beds—if
16 they take their breaks. Defendants also did not sufficiently employ enough “lead cooks”
17 and “server assistants” so that these members of the Plaintiff Class could serve customers
18 in the restaurants and prepare food for the buffet as well as take rest breaks. Likewise,
19 Defendants discouraged Plaintiff Class members who worked at the front desk from
20 taking breaks and harassed those who requested rest breaks.

21 13. Plaintiff Class Members are required to regularly start work off the clock
22 before actually “swiping” in and being paid for their time. Evidence of this is indicated
23 in Defendants’ records, which show the time employees enter and leave the parking lot,
24 employee entrance/exit and the locker room. Class Members can also testify that they
25 were forced by Defendants to work off the clock and required employees to perform
26 more duties than could be done in an eight hours shift.

27 14. One example of the work Class Members performed off the clock is that
28 they were required to stock supplies and other equipment in cleaning carts—items which

1 are necessary to cleaning rooms. This work took between 15 and 45 minutes. Class
2 Members believed that if they failed to perform all duties or asked to be paid overtime,
3 they would be disciplined or terminated.

4 15. Defendants also failed to pay Plaintiff Class Members who worked as,
5 among other positions, housekeepers, housemen, at the front desk, stewards, lobby
6 attendants, room attendants, front desk agents, phone operators, concierge, cooks,
7 dishwashers, bartenders, waiters/waitresses, hosts/hostesses, cashiers, servers, bussers,
8 banquet servers, banquet housemen, as well as those who worked in convention services,
9 the purchasing department and the laundry department/uniforms for the time spent
10 changing into and out of required uniforms that were integral and indispensable to their
11 job duties. Defendants also failed Plaintiff Class Members for time spent waiting in line
12 to pick up and drop off uniforms at the beginning and end of their shifts.

13 16. Defendants require Plaintiffs to be in uniform prior to clock-in. Defendants
14 assign Plaintiffs uniforms, which they are required to pick up off-the-clock from the
15 uniform department prior to beginning their shift. At the end of their shifts, Plaintiffs are
16 required to drop off their dirty uniform at laundry services. Plaintiffs are required to wait
17 in line, where they are subject to Defendants' control, to pick up and drop off their
18 uniforms. Plaintiffs spend an aggregate of 7 to 22 minutes a day or 35 to 110 minutes a
19 week, waiting in line under Defendants' control, to pick up and drop off uniforms at
20 laundry services.

21 17. Upon information and belief, Hyatt requires all of the Plaintiff Class to use
22 its facilities to launder and alter required uniforms, in order to comply with California
23 law which requires that employers provide and maintain uniforms required by non-
24 exempt employees as a condition of employment.

25 18. Defendants would have little administrative difficulty recording the time
26 spent by employees picking up, dropping off and donning and doffing their uniforms as
27 Defendants have multiple systems for recording each class members' time and location
28 in the hotel, including electronic security and time keeping systems.

1 19. Defendants provided these uniforms, which are unique to the hotel and
2 restaurant industry and vary according to the position, as well as a locker room to change
3 into and out of the uniforms.

4 20. Approximately 90% of the Plaintiff Class don and doff uniforms in
5 Defendants' locker rooms. Defendants required that members of the Plaintiff Class be in
6 uniform and properly groomed prior to clocking-in. According to Defendants' Employee
7 Handbook, Plaintiff Class members' "appearance is an important part of the impression
8 guests have of [the] hotel," and are thus a benefit to Defendants. Moreover, uniforms
9 convey and legitimize Plaintiff Class members' authority, in addition to increasing their
10 safety.

11 21. For example, housekeepers' and housemen's uniforms legitimize their
12 authority to enter guests' rooms, and move their personnel belongings. Uniforms
13 increase housekeepers' and housemen's safety because in street clothes guests might
14 legitimately assume these members of the Plaintiff Class are thieves or criminals who
15 have broken into their rooms. Uniforms are also necessary to the principal work
16 performed by Plaintiff Class. Plaintiff Class Members each wear a uniform tailored to
17 the specific work they are hired to perform. For example, Line Cooks and Lead Cooks
18 are required to wear uniform jackets (in addition to uniform pants). These uniforms
19 protect cooks' bodies against burns from boiling liquids in addition to heat rays from
20 grills and ovens. Hyatt Regency Long Beach also requires Plaintiff Class Members who
21 handle and prepare food, for example servers, server assistants, bussers, waiters,
22 waitresses, line cooks, lead cooks, banquet servers and banquet housemen, to wear
23 uniforms for hygienic purposes.

24 22. Class Members spend a substantial and significant time beyond their
25 scheduled working hours—between 15 and 30 minutes per shift—donning and doffing
26 these required uniforms.

27 23. Defendants routinely require Plaintiff Class Members to leave their rest and
28 meal breaks early to return to work.

1 24. At relevant times, Defendants failed to pay Plaintiffs for all hours worked,
2 failed to provide Plaintiffs and the Plaintiff Class meal and rest periods as required by
3 the applicable IWC Wage Orders, failed to pay Plaintiffs and the Plaintiff Class
4 compensation required by the Labor Code for missed meal and rest periods, and failed to
5 comply with other requirements of those statutes as alleged herein.

6 25. The underpayment of wages to the Plaintiffs and the Plaintiff Class is a
7 consequence of Defendants' unlawful compensation policies and practices which were
8 centrally devised, implemented, communicated, and applied to all members of the
9 Plaintiff Class at the Hyatt Regency Long Beach. These unlawful compensation
10 practices include, but are not limited to, the following:

- 11 • Defendants failed to pay hourly employees for all hours worked by
12 requiring them to work off the clock, by not paying them for all hours in
13 which the employee was clocked in and by insisting that hourly employees
14 work through breaks;
- 15 • Defendants failed to permit employees to take meal and rest breaks required
16 by law by forcing employees to work through breaks;
- 17 • Defendants failed to include the time employees spent working through
18 their required breaks in the number of hours worked for compensation
19 purposes;
- 20 • Defendants failed to pay one hour pay for each occasion an employee was
21 denied a break pursuant to Labor Code § 226.7 and applicable IWC Wage
22 Orders;
- 23 • Defendants failed to pay waiting time penalties required by Labor Code
24 § 203 when employees were terminated;
- 25 • Defendants failed to pay the legally-required minimum wage;
- 26 • Defendants failed to pay legally-required overtime compensation by
27 denying employees pay for hours time spent in necessary preparation for
28 work activities which led to employees working more than forty hours a

1 week;

- 2 • Defendants failed to provide accurate wage statements by failing to include
3 all hours worked, for example hours spent preparing supplies and work carts
4 as well as donning and doffing uniforms; and
- 5 • Other violations of the Labor Code and applicable IWC Wage Orders
6 according to proof.
- 7 • As a result of Defendants' unlawful conduct, Plaintiffs and the Plaintiff
8 Class have been and continue to be systematically deprived of the wages to which they
9 are entitled by law, to the detriment of themselves, their families, and to the public at
10 large.

11 CLASS ALLEGATIONS

12 23. Proposed Class and Nature Of The Class Claims. The individual Plaintiffs,
13 as Class Representatives, bring this action on their own behalf and on behalf of a class
14 comprised of all nonexempt current and former employees who have been employed at
15 the Hyatt Regency Long Beach during the relevant statutory period.

16 24. Numerosity. The size of the Plaintiff Class makes a class action both
17 necessary and efficient. On information and belief, Plaintiffs estimate that the Plaintiff
18 Class consists of several hundred current and former employees. Members of the
19 Plaintiff Class are ascertainable but so numerous that joinder is impracticable.

20 25. Typicality. The claims of the Class Representatives are typical of the claims
21 of the class as a whole. Each of the Class Representatives is and/or was employed by
22 Defendants during the relevant statutory period. Each of the Class Representatives was
23 underpaid, and continues to be underpaid, because of Defendants' unlawful employment
24 policies and practices. The unlawful policies and practices that have operated to deny
25 the Class Representatives wages, penalties, meal and rest periods, and other
26 compensation, benefits, and protections required by law are typical of the unlawful
27 practices that have and will continue to operate to deny other class members the
28 compensation and benefits to which they are entitled.

1 26. Common Questions Of Law And Fact. This case poses common questions
2 of law and fact affecting the rights of all class members, including but not limited to:

3 (a) Whether the following compensation policies and practices are
4 unlawful under the Labor Code and/or IWC Wage Orders:

- 5 • Failure to pay employees all hours worked;
- 6 • Failure to permit employees to take meal and rest breaks required by
7 law;
- 8 • Failure to include the time employees spend working through their
9 required breaks in the number of hours worked for compensation
10 purposes;
- 11 • Failure to pay required compensation for missed break time pursuant
12 to Labor Code § 226.7 and applicable IWC Wage Orders;
- 13 • Failure to pay waiting time penalties required by Labor Code § 203;
- 14 • Failure to pay the legally-required minimum wage;
- 15 • Failure to pay legally-required overtime compensation; and
- 16 • Failure to provide accurate wage statements;

17 (b) What relief is necessary to remedy Defendants' unfair and unlawful
18 conduct as herein alleged; and

19 (c) Other questions of law and fact.

20 27. Adequacy Of Class Representation. The Class Representatives can
21 adequately and fairly represent the interests of the Plaintiff Class as defined above,
22 because their individual interests are consistent with, not antagonistic to, the interests of
23 the class.

24 28. Adequacy Of Counsel For The Class. Counsel for Plaintiffs possess the
25 requisite resources and ability to prosecute this case as a class action and are experienced
26 labor and employment attorneys who have successfully litigated other cases involving
27 similar issues.

28 29. Propriety of Class Action Mechanism. Class certification is appropriate

1 because Defendants have implemented a scheme which is generally applicable to the
2 Plaintiff Class, making it appropriate to issue final injunctive relief and corresponding
3 declaratory relief with respect to the class as a whole. Class certification is also
4 appropriate because the common questions of law and fact predominate over any
5 questions affecting only individual members of the class. Further, the prosecution of
6 separate actions against Defendants by individual class members would create a risk of
7 inconsistent or varying adjudications which would establish incompatible standards of
8 conduct for Defendants. For all these and other reasons, a class action is superior to
9 other available methods for the fair and efficient adjudication of the controversy set forth
10 in this complaint.

11 ALLEGATIONS OF CLASS REPRESENTATIVES

12 **A. Celia Alvarez.**

13 30. Celia Alvarez has worked for Defendants since January 1990. Throughout
14 her employment with Defendants, Ms. Alvarez has been classified as a nonexempt
15 employee. Ms. Alvarez is normally scheduled to work from 8 a.m. to 4:30 p.m., five
16 days a week. Defendants have consistently not paid Ms. Alvarez, a housekeeper,
17 compensation for time spent changing into and out of her uniform in the company locker
18 room and stocking her cleaning cart. Defendants' Human Resources representative told
19 Ms. Alvarez during her orientation that Ms. Alvarez was required to wear a uniform at
20 work consisting of a green jacket, green pants, black socks and black shoes. At
21 orientation, Ms. Alvarez was taken to the uniform department for measurements and was
22 assigned uniform identification # 56. Ms. Alvarez was assigned three uniforms,
23 consisting of green pants and a green jacket.

24 31. Every morning, Ms. Alvarez arrives to work, swipes her card to gain access
25 through the employee entrance and obtain her keys. Ms. Alvarez is required to pick up
26 her uniform on the first floor, time for which she is not compensated. Ms. Alvarez
27 changes into her uniform in Defendants' locker room. On at least ten different occasions,
28 Ms. Alvarez clocked in prior to picking up her uniform. Defendants gave Ms. Alvarez a

1 verbal warning for swiping in without a uniform on. Her supervisor told Ms. Alvarez that
2 she had to wear a uniform before clocking in and out for the day. Defendants require Ms.
3 Alvarez to drop off dirty uniforms and pick up clean uniforms at the uniform
4 department, and submit uniforms for alterations should she lose or gain weight.

5 32. Frequently, there is a long line of workers at the uniform department which
6 means that Ms. Alvarez is required to spend up to 10 minutes waiting to retrieve her
7 uniform. Ms. Alvarez arrives at the uniform department between approximately 7:35
8 a.m. and 7:50 a.m. When there is only one person working in the uniform department it
9 takes Ms. Alvarez up to ten minutes to receive her uniform. This occurred occasionally,
10 but not daily. Defendants also require that Ms. Alvarez drop off her uniform at the
11 laundry department at the end of every shift before leaving the premises, which typically
12 took her one to two minutes. Ms. Alvarez is not paid for time spent waiting to collect
13 her uniform, dropping off her uniform or donning and doffing her uniform.

14 33. After changing into her uniform before her shift, Ms. Alvarez returns to the
15 office where Defendants require her to fill small bottles of cleaning supplies, coffee,
16 shampoo and other amenities in preparation of her cleaning duties. Defendants knew
17 that Ms. Alvarez was working off the clock because managers observed her and other
18 housekeepers preparing carts on several different occasions. Ms. Alvarez was also told
19 by Defendants to get linens from the laundry department prior to clocking in on several
20 occasions. Moreover, Defendants should have known Ms. Alvarez was working off the
21 clock because nearly all housekeepers do the same preparatory work off-the-clock and
22 are given more work than can be done during their shift.

23 34. A few minutes before 8 a.m., Ms. Alvarez clocks in by swiping her card.
24 At the end of the day Ms. Alvarez clocks out, changes out of her uniform in Defendants'
25 locker room, stores empty supply bottles in her locker, and leaves her uniform at the
26 uniform department to be cleaned by Defendants. Defendants do not pay Ms. Alvarez
27 for the time spent changing in and out of the uniform they provide her and require her to
28 wear. Nor do they pay her for the time spent preparing her cart with the supplies she

1 needs to clean rooms. Defendants do not pay Ms. Alvarez for the time they require her
2 to spend waiting in line to pick up a fresh uniform.

3 35. Ms. Alvarez has received a ten minute rest break approximately four or
4 five times a year. Defendants did not permit Ms. Alvarez to take a rest break nearly
5 every day she worked in 2009, 2008, 2007, 2006, 2005, 2004 and 2003.

6 **B. Benjamin Cuison.**

7 36. Benjamin Cuison has worked for Defendants since December 1996.
8 Throughout his employment with Defendants, Mr. Cuison has been classified as a
9 nonexempt employee. Mr. Cuison works in the housekeeping department as a “house
10 man,” where his job duties include cleaning hallways, dusting and mopping the vending
11 areas and assisting the housekeepers with tasks such as moving beds, flipping mattresses
12 and attending to guest requests for refrigerators and roll-away beds. Because Mr. Cuison
13 is in charge of responding to requests between 6 and 8 floors (depending on whether
14 there are two or three housemen working per shift) he frequently cannot take rest breaks
15 because there are not sufficient other “housemen” to do the work. Thus, Mr. Cuison
16 typically does not receive a rest break at least two days a week. Even when Mr. Cuison
17 is permitted to take a rest break, Defendants do not permit him to leave the hotel and
18 control his break time by calling him back to work on the radio. Likewise, Mr. Cuison is
19 under the control of Defendants during his meal breaks, because he is required to carry a
20 radio and respond to calls regarding guest requests during his meal break, which he is
21 not paid for.

22 37. Defendants informed Mr. Cuison at orientation that he was required to wear
23 a uniform. Prior to orientation, Mr. Cuison was measured for a uniform by a Hyatt
24 uniform attendant. Mr. Cuison was assigned uniform identification #23, and is required
25 to wear the uniform, unique to housemen, consisting of a brown shirt, black pants and
26 black shoes. Mr. Cuison spends approximately 5-10 minutes changing into his uniform
27 and 5-10 minutes changing out of his uniform during a given shift in Defendants’ locker
28 room.

1 38. Defendants require Mr. Cuison to pick up a clean uniform at the uniform
2 department before the start of his shift, drop off his dirty uniform at the end of his shift
3 and submit uniforms for alterations should he lose or gain weight. Mr. Cuison arrives at
4 the uniform department to pick up his uniform a few minutes before 8 a.m. Frequently,
5 there is a line to pick up his uniform at the uniform department which requires Mr.
6 Cuison to spend up to 10 minutes waiting to retrieve his uniform. Approximately twice a
7 week, there is a longer line of employees waiting to pick up their uniforms. On these
8 days, Mr. Cuison is forced to wait in line for about 15 to 20 minutes. When Mr. Cuison
9 arrives at the front of the line, the attendant retrieves and issues Mr. Cuison's uniform.

10 39. Defendants also require that Mr. Cuison drop off his uniform at the laundry
11 department at the end of every shift before leaving the premises, which typically takes a
12 few minutes. Defendants have consistently not paid Mr. Cuison compensation for time
13 spent changing into and out of his uniform in Defendants' locker room or for the time he
14 is required to spend waiting in line to pick up his uniform.

15 **C. Benjamin Leonin**

16 40. Benjamin Leonen has worked for Defendants for the past seven years.
17 Throughout his employment with Defendants, Mr. Leonen has been classified as a
18 nonexempt employee. Mr. Leonen works as a "line cook" where his duties include,
19 preparing the breakfast buffet, cooking food, putting everything away after breakfast,
20 "prepping" stations for lunch and watching over three stations. Due to understaffing,
21 Defendants rarely permit Mr. Leonen to take rest breaks. Mr. Leonen is often required to
22 miss meal breaks as well.

23 41. Defendants have consistently not paid Mr. Leonen compensation for time
24 spent changing into and out of his uniform, which is unique to his department. The
25 uniform consists of black pants and a white jacket. Mr. Leonen typically spends 15
26 minutes changing into his uniform in the morning, and approximately 10-15 minutes
27 changing back into his street clothes at the end of his shift in Defendants' locker room.
28 Defendants told Mr. Leonen he was required to wear a uniform and assigned Mr. Leonen

1 3 sets of uniform #5. Mr. Leonen's uniform consists of black and white checkered pants,
2 a jackets, and an apron.

3 42. Defendants require that Mr. Leonen drop off his dirty uniform and pick up a
4 clean uniform at the uniform department before leaving the premises at the end of his
5 shift, because the uniform department is closed at the start of Mr. Leonen's shift at 4:30
6 a.m. Defendants also require that Mr. Leonen submit uniforms for alterations should he
7 lose or gain weight. Frequently, there is a line to pick up his uniform at the uniform
8 department which requires Mr. Leonen to spend up to 10 minutes waiting to retrieve and
9 drop off uniforms under Defendants' control, which he is also not paid for. Mr. Leonen
10 waits in line between approximately 1:05 and 1:15 p.m., every day after clocking out at
11 the end of his shift.

12 **D. Joseph Navata.**

13 43. Joseph Navata worked for Defendants from approximately January 1996 to
14 May 2009. Throughout his employment with Defendants, Mr. Navata has been
15 classified as a nonexempt employee. Mr. Navata worked varying schedules during his
16 thirteen years at Hyatt Regency Long Beach as a "steward," where his job duties
17 included washing dishes and putting food on plates. During his tenure at Hyatt Regency
18 Long Beach, Mr. Navata was typically not permitted to take any rest breaks. When
19 Defendants did permit Mr. Navata to take a rest break, his supervisor often called him
20 back to work to cover for another employee who did not come to work.

21 44. Defendants required Mr. Navata to wear a uniform, consisting of
22 black pants, a white shirt, a cap and a name tag, unique to the hotel and restaurant
23 industry. Defendants required Mr. Navata to drop off dirty uniforms and pick up clean
24 uniforms at the uniform department, and submit uniforms for alterations should he lose
25 or gain weight.

26 45. Frequently there was a line to pick up uniforms at the uniform department,
27 which required Mr. Navata to spend up to 10 minutes waiting to retrieve his uniform.
28 Because Mr. Navata worked varying schedules while at Hyatt Long Beach, he was

1 required to wait in line to retrieve his uniforms at different times. When he worked
2 morning shifts, he had to arrive at 6 a.m. and would wait in line between 5 and 10
3 minutes to retrieve his uniform. When Mr. Navata worked evening shifts, he had to
4 arrive at Hyatt Long Beach at 4:25 p.m. and would wait in line for 10-15 minutes to
5 retrieve his uniform. At the end of his shift, Mr. Navata clocked out, took the elevator to
6 the first floor, which took approximately five to ten minutes, changed back into his
7 clothes, dropped of his uniform in the uniform department located adjacent to the locker
8 room and left. Mr. Navata was required to spend a few minutes at the end of every shift
9 dropping off his dirty uniform. The entire process at the end of his shift took
10 approximately 15 minutes when he worked on the fourth floor (3 days per week), and 10
11 minutes the 2 days per week when he worked on the first floor.

12 46. Mr. Navata typically took ten minutes to change into his uniform, after
13 which he would "swipe-in" approximately five minutes before his shift was scheduled to
14 start. At the end of his shift, Mr. Navata would swipe-out, walk down the hall to the
15 locker room about a five to ten minute walk away (depending on whether he was
16 working in the cafeteria on the fourth floor, or in Tides restaurant, downstairs). Mr.
17 Navata would then change back into his street clothes, drop of his uniform in a laundry
18 bag, which took between five and ten minutes. Defendants did not pay Mr. Navata for
19 the time he spent donning and doffing his required uniform or waiting in line to retrieve
20 the uniform under Defendants' control. Defendants issued Mr. Navata 3 sets of the
21 uniform.

22 47. Defendants have also denied Plaintiffs meal and rest breaks to which they
23 are entitled under state law, and have consistently not paid Plaintiffs compensation for
24 missed meal and rest breaks or compensation for time spent working through required
25 breaks. Defendants also failed to provide Plaintiffs with accurate wage statements.

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1 **FIRST CAUSE OF ACTION**

2 **CLASS ACTION CLAIM FOR FAILURE TO PROVIDE MEAL PERIODS**

3 [Plaintiffs against All Defendants]

4 48. Plaintiffs reallege and incorporate by reference the allegations contained in
5 paragraphs 1 through 47 above.

6 49. At all relevant times, Defendants failed to conform their pay practices to
7 the requirements of the law as follows: Under § 11 of the applicable IWC Wage Orders,
8 “[n]o employer shall employ any person for a work period of more than five (5) hours
9 with a meal period of not less than 30 minutes.” The Class representatives and the
10 putative class members who worked for periods of more than five hours were regularly
11 denied meal periods as required by California law.

12 50. Since October 1, 2000, Labor Code § 226.7 and/or applicable IWC Wage
13 Orders required employers to pay employees one-hour of pay at the employee’s regular
14 rate for each workday in which the meal periods guaranteed to workers under California
15 law were not provided to an employee. Defendants have not compensated the Class
16 Representatives and the Plaintiff Class for their missed meal periods as required by
17 Labor Code § 226.7 and/or applicable IWC Wage Orders.

18 **SECOND CAUSE OF ACTION**

19 **CLASS ACTION CLAIM FOR FAILURE TO PROVIDE REST PERIODS**

20 [Plaintiffs against All Defendants]

21 51. Plaintiffs reallege and incorporate by reference the allegations contained in
22 paragraphs 1 through 50 above.

23 52. At all relevant times, Defendants failed to conform their pay practices to
24 the requirements of the law as follows:

25 53. Under § 12 of the applicable IWC Wage Orders, “[e]very employer shall
26 authorize and permit all employees to take rest periods, which insofar as practicable shall
27 be in the middle of each work period. The authorized rest period time shall be based on
28 the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

1 hours or major fraction thereof.” The Class representatives and the putative class
2 members were regularly denied the ability to take ten minute rest periods for every four
3 hours of work performed.

4 54. Since October 1, 2000, Labor Code § 226.7 and/or applicable IWC Wage
5 Orders required employers to pay employees one-hour of pay at the employee’s regular
6 rate for each workday in which the rest periods guaranteed to workers under California
7 law were not provided to an employee. Defendants have not compensated the Class
8 Representatives and the Plaintiff Class for their missed rest periods as required by Labor
9 Code § 226.7 and/or applicable IWC Wage Orders.

10 **THIRD CAUSE OF ACTION**

11 **CLASS ACTION CLAIM FOR FAILURE TO PAY TIMELY WAGES,**

12 **LABOR CODE SECTION 203**

13 [Plaintiffs against All Defendants]

14 55. Plaintiffs reallege and incorporate by reference the allegations contained in
15 paragraphs 1 through 54 above.

16 56. At all relevant times, Defendants failed to conform their pay practices to
17 the requirements of the law as follows:

18 57. Members of the Plaintiff Class who resigned or were terminated were not
19 paid the wages due to them at the time they left their employment, including but not
20 limited to payments for all missed meal and rest breaks, entitling them to recover waiting
21 time penalties equal to thirty days’ pay pursuant to Labor Code § 203.

22 **FOURTH CAUSE OF ACTION**

23 **CLASS ACTION CLAIM FOR FAILURE TO PAY MINIMUM WAGE,**

24 **LABOR CODE SECTION 1197**

25 [Plaintiffs against All Defendants]

26 58. Plaintiffs reallege and incorporate by reference the allegations contained in
27 paragraphs 1 through 57 above.

28 59. At all relevant times, Defendants failed to conform their pay practices to

1 the requirements of the law as follows:

2 60. Labor Code § 1197 establishes the right of employees to be paid minimum
3 wages for their work, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a)
4 provide that an employee who has not been paid the legal minimum wage as required by
5 § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as
6 well as liquidated damages in an amount equal to the wages unpaid and interest thereon.

7 61. At all relevant times, Defendants failed to conform their pay practices to
8 the requirements of the law. This unlawful conduct includes, but is not limited to, failing
9 to pay to Plaintiffs the minimum wage compensation to which they were and are entitled
10 under the California Labor Code and the applicable IWC Wage Orders.

11 **FIFTH OF ACTION**

12 **CLASS ACTION CLAIM FOR FAILURE TO PAY OVERTIME WAGES,**

13 **LABOR CODE SECTION 1198**

14 [Plaintiffs against All Defendants]

15 62. Plaintiffs reallege and incorporate by reference the allegations contained in
16 paragraphs 1 through 61 above.

17 63. At all relevant times, Defendants failed to conform their pay practices to
18 the requirements of the law as follows:

19 64. During times relevant to this action, California Labor Code § 1198 and
20 IWC Wage Orders required employers to pay employees, including all members of the
21 Plaintiff Class, additional compensation beyond their regular wages in amounts specified
22 by law for all overtime hours worked. California Labor Code §§ 1194(a) and 1194.2(a)
23 provide that an employee who has not been paid overtime compensation as required by
24 § 1198 may recover the unpaid balance of the full amount of such wages, interest,
25 attorneys' fees and the costs of suit. At all times relevant herein, the IWC Wage Orders
26 were applicable to the Plaintiff Class.

27 65. At all relevant times, Defendants failed to conform their pay practices to
28 the requirements of the law. This unlawful conduct includes, but is not limited to, failing

1 to pay to Plaintiffs the overtime compensation to which they were and are entitled under
2 the California Labor Code and the applicable IWC Wage Orders.

3 **SIXTH OF ACTION**

4 **CLASS ACTION CLAIM FOR FAILURE TO PROVIDE ITEMIZED**
5 **STATEMENT**

6 **LABOR CODE SECTION 226**

7 [Plaintiffs against All Defendants]

8 66. Plaintiffs reallege and incorporate by reference the allegations contained in
9 paragraphs 1 through 65 above.

10 67. At all relevant times, Defendants failed to conform their pay practices to
11 the requirements of the law as follows:

12 68. During times relevant to this action, California Labor Code § 226(a)
13 required that employers, at the time of payment of wages, furnish each employee with an
14 accurate itemized statement showing gross wages earned and total hours worked, among
15 other things. Section 226 further provides that “an employee suffering injury as a result
16 of a knowing and intentional failure by an employer to comply with subdivision (a) is
17 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial
18 pay period in which a violation occurs and one hundred dollars (\$100) per employee for
19 each violation in a subsequent pay period, not exceeding an aggregate penalty of four
20 thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
21 fees.”

22 69. At all relevant times, Defendants failed to conform their pay practices to
23 the requirements of the law. This unlawful conduct includes, but is not limited to, failing
24 to provide plaintiffs and class members with an accurate itemized wage statement.

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SEVENTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
IN VIOLATION OF CALIFORNIA BUSINESS AND
PROFESSIONS CODE SECTIONS 17200, ET SEQ.

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4
5 70. Plaintiffs reallege and incorporate by reference the allegations contained in
6 paragraphs 1 through 69 above.

7 71. This claim is brought by the Class Representatives on behalf of themselves,
8 the Plaintiff Class, and the general public, pursuant to Business and Professions Code
9 §§ 17200, *et seq.* Defendants' conduct in failing to provide meal and rest breaks,
10 minimum wages and overtime pay to the plaintiffs and class members constitutes unfair,
11 unlawful, and fraudulent business practices which have been and continue to be
12 deleterious to Plaintiffs and to those similarly situated and to the general public.
13 Business and Professions Code §§ 17200, *et seq.* prohibits unlawful, unfair, and
14 fraudulent business practices. Plaintiffs seek to enforce important rights affecting the
15 public interest within the meaning of Code of Civil Procedure § 1021.5.

16 72. Plaintiffs are "persons" within the meaning of Business and Professions
17 Code § 17204, with standing to bring this suit for injunctive relief, restitution,
18 disgorgement, and other appropriate equitable relief on behalf of all similarly-situated
19 employees and on behalf of the general public.

20 73. Labor Code § 90.5(a) sets forth the public policy of this State to enforce
21 minimum labor standards vigorously, to ensure that employees are not required or
22 permitted to work under substandard and unlawful conditions, and to protect employers
23 who comply with the law from those who attempt to gain a competitive advantage by
24 failing to comply with minimum labor standards.

25 74. Through the conduct alleged herein, Defendants have acted contrary to
26 these public policies, have violated specific provisions of the Labor Code, and have
27 engaged in other unlawful and unfair business practices in violation of Business and
28 Professions Code §§ 17200, *et seq.*, depriving Class Representatives, members of the

1 Plaintiff Class, and other interested persons of rights, benefits, and privileges guaranteed
2 to all employees in California.

3 75. At all times relevant to this action, Defendants have committed unfair and
4 unlawful business practices within the meaning of Business & Professions Code
5 §§ 17200, *et seq.* by engaging in conduct which includes, but is not limited to, failing to
6 provide meal and rest breaks, failing to pay compensation for missed break time, failing
7 to pay for time spent working through required breaks, and failing to pay legally-
8 required minimum wage and overtime compensation.

9 76. As a direct and proximate result of these unfair business practices,
10 Defendants have received and continue to receive funds that rightfully belong to
11 Plaintiffs.

12 77. Plaintiffs are entitled to, and hereby seek such relief as may be necessary to
13 restore to them the funds of which Plaintiffs have been deprived, by means of
14 Defendants' unlawful and unfair business practices.

15 78. Pursuant to Business and Professions Code § 17203, injunctive relief is
16 necessary to prevent Defendants from continuing to engage in unfair business practices
17 as alleged herein. Defendants, and persons acting in concert with them, have done, are
18 now doing, and will continue to do or cause to be done, the above-described unlawful
19 acts unless restrained and enjoined by this Court. Unless the relief prayed for below is
20 granted, a multiplicity of actions will result. Plaintiffs have no plain, speedy, or adequate
21 remedy at law, in that it is difficult to measure the amount of monetary damages that
22 would compensate Plaintiffs or the general public for Defendants' wrongful acts.
23 Further, pecuniary compensation alone would not afford adequate and complete relief.
24 The above-described acts will cause great and irreparable damage to Plaintiffs and the
25 general public if injunctive relief is not granted.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully pray that this Court award relief as follows:

- 3 1. An order certifying this case as a class action and appointing Plaintiffs and
4 their counsel to represent the Class;
- 5 2. Unpaid wages, and statutory penalties, according to proof;
- 6 3. Liquidated damages pursuant to California Labor Code § 1194.2(a) for
7 failure to pay minimum wage;
- 8 4. Preliminary and permanent injunctions enjoining and restraining Defendants
9 from continuing the unfair and unlawful business practices set forth above
10 and requiring the establishment of appropriate and effective means to
11 prevent future violations;
- 12 5. Restitution of all compensation due, including but not limited to unpaid
13 wages, as a result of Defendants' unlawful and unfair business practices,
14 according to proof;
- 15 6. Declaratory relief;
- 16 7. Reasonable attorneys' fees and costs;
- 17 8. Interest;
- 18 9. Such other and further relief as the Court deems just and proper.


19 **JURY TRIAL DEMAND**

20 Plaintiffs hereby demand a jury trial on all issues so triable.

21
22 DATED: January 19, 2010

Respectfully submitted,

23 HADSELL STORMER KEENY
24 RICHARDSON & RENICK, LLP

25 By  for Randy Renick
26 Randy Renick, Esq.
27 Attorneys for Plaintiffs
28

1 **PROOF OF SERVICE**

2 I am employed in the county of Los Angeles, State of California. I am over
3 the age of 18 and not a party to the within action; my business address is 128 N. Fair
4 Oaks Avenue, Pasadena, California 91103

5 On January 19, 2010, I served the foregoing document described as **THIRD**
6 **AMENDED CLASS ACTION COMPLAINT** on all interested parties in this action by
7 a true copy thereof enclosed in sealed envelopes addressed as follows:

8 SEYFARTH SHAW LLP Aaron R. Lubeley (S.B.#199837) Catherine V. Meek (S. B. # 262084) 333 South Hope Street, Suite 3900 Los Angeles, California 90067-3063 Telephone: (213) 270-9600 Facsimile: (213) 270-9601	9 Attorneys for Defendants HYATT CORPORATION D/B/A HYATT REGENCY LONG BEACH and HYATT HOTELS CORPORATION
10 SEYFARTH SHAW LLP George E. Preonas (S.B.# 120284) Laurie E. Barnes (S.B.# 229038) 2029 Century Park East, Suite 3500 Los Angeles, California 90067-3021 Telephone: (310) 277-7200 Facsimile: (310) 201-5219	11 Attorneys for Defendants HYATT CORPORATION D/B/A HYATT REGENCY LONG BEACH and HYATT HOTELS CORPORATION

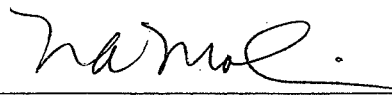
12 **XX BY MAIL**

13 I deposited such envelope in the mail at Pasadena, California. The
14 envelope was mailed with postage thereon fully prepaid.

15 XX I am readily familiar with the firm's practice of collection and
16 processing correspondence for mailing. Under that practice it would be deposited with
17 U.S. postal service on the same day with postage thereon fully prepaid at Pasadena,
18 California in the ordinary course of business. I am aware that on motion of the party
19 served, service is presumed invalid if postal cancellation date or postage meter date is
20 more than one day after date of deposit for mailing this affidavit.

21 Executed on January 19, 2010, at Pasadena, California.

22 XX (Federal) I declare that I am employed in the office of a member of the bar of
23 this Court at whose direction the serve was made.

24 
25 _____
26 Norma A. Molina
27 Declarant
28