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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION**

SARA LANGLANDS, LEIGHLAND
HOOKS, and MARISOL HERNANDEZ,
individually, and on behalf of all other
similarly situated persons,

Plaintiffs,

v.

LELAND STANFORD JUNIOR
UNIVERSITY,

Defendant.

CASE NO. 19CV343871

**THIRD AMENDED COMPLAINT AND
JURY DEMAND**

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1 Plaintiffs SARA LANGLANDS, LEIGHLAND HOOKS, and MARISOL HERNANDEZ
2 (“PLAINTIFFS”), on behalf of themselves and all other similarly situated individuals, complain and
3 allege, upon information and belief, including the investigation of PLAINTIFFS’ counsel, unless
4 otherwise, the following:

5 **I. INTRODUCTION**

6 1. Plaintiffs SARA LANGLANDS (“LANGLANDS”), LEIGHLAND HOOKS
7 (“HOOKS”), and MARISOL HERNANDEZ (“HERNANDEZ”) who worked as nonexempt
8 employees for the LELAND STANFORD JUNIOR UNIVERSITY (“STANFORD” or
9 “DEFENDANT”) bring this class action against DEFENDANT.

10 2. DEFENDANT had and/or has a policy and practice of failing to provide their non-
11 exempt, non-unionized employees in California with:

- 12 A. Overtime payments when they work at more than one location per day for a total
13 of over 8 hours;
- 14 B. A meal break or missed meal break penalty wages, when such employees work
15 more than 5 hours without being provided with a meal break and/or a second meal
16 break, or missed meal break penalty wages, when such employees worked shifts
17 of more than 10 hours without being provided with a second meal break;
- 18 C. A rest break or missed rest break penalty wages, when such employees work more
19 than 3.5 hours without being authorized and permitted to take a duty-free 10-
20 minute rest period for every 4 hours, or major fraction thereof, worked;
- 21 D. Wages for travel time between locations, and/or to mandatory meetings;
- 22 E. Expense reimbursement for travel (mileage and gas) between locations and to
23 mandatory meetings;
- 24 F. Expense reimbursement for cell phone usage;
- 25 G. Failing to produce accurate wage statements based upon the policies and practices
26 described above;

1 H. Failing to provide the required information in a clear manner on the wage
2 statements;

3 I. Failing to provide employee records after being asked to do so by former
4 employees; and

5 J. Waiting time penalties.

6 3. DEFENDANT's policies and practices violate California Industrial Welfare Commission
7 ("IWC") Order 4-2001; California Code of Regulations, Title 8, Chapter 5, § 11070; California
8 Labor Code ("Labor Code") §§ 201, 202, 203, 204, 210, 226.7, 432, 512, 510, 558, 1194 and
9 2699(f)(2); and California Business and Professions Code ("B&P Code") §§ 17200 *et seq.* (the
10 "Unfair Business Practices Act"). These laws require, *inter alia*, employers to pay their non-exempt
11 employees minimum overtime rates for overtime work. These laws also require that employees be
12 paid for all hours worked, and that all hours worked be accurately reflected on an itemized wage
13 statement. PLAINTIFFS bring this action on behalf of themselves and all other similarly situated
14 individuals who worked as non-exempt employees for DEFENDANT in California in order to
15 challenge the following policies and practices: A-I above in paragraph 2.

16 4. PLAINTIFFS, on behalf of themselves and all others similarly situated, seek injunctive
17 and declaratory relief, compensation for all uncompensated work, liquidated and/or other damages as
18 permitted by applicable law, as well as attorneys' fees, statutory and civil penalties, interest, and
19 costs.

20 II. PARTIES

21 5. LANGLANDS is an individual who, at all relevant times, was a resident of the State of
22 California. LANGLANDS was an employee of DEFENDANT in California from approximately
23 January 2013 to February 2018. At times, she was classified by DEFENDANT as "part-time."

24 6. HOOKS is an individual who, at all relevant times, was a resident of the State of
25 California. HOOKS was an employee of DEFENDANT in California from approximately
26 September 2014 to January 2019.

7. HERNANDEZ is an individual who, at all relevant times, was a resident of the State of California. HERNANDEZ was an employee of DEFENDANT in California from October 2014 to March 2022 and worked as a “Public Safety Officer.”

8. STANFORD is, upon information and belief, a California non-profit corporation doing business in California.

9. Upon information and belief, STANFORD has more than 12,000 employees of whom more than 1,500 are non-exempt and non-unionized.

III. JURISDICTION

9. PLAINTIFFS filed the original complaint in this case in the Superior Court of California - County of Santa Clara.

10. On April 4, 2019, DEFENDANT removed this case to the United States District Court for the Northern District of California; and then on September 13, 2019, this case was remanded back to the Superior Court by Stipulation and Order to Remand.

IV. FACTUAL ALLEGATIONS

11. PLAINTIFFS and other Class Members worked as non-exempt, non-unionized employees of DEFENDANT in California.

12. PLAINTIFFS and other Class Members worked in excess of 8 hours per day (sometimes at different job sites) but were not paid overtime premium wages for their overtime hours worked.

13. At times, DEFENDANT paid PLAINTIFFS and Class Members straight wages for overtime work.

14. At times, DEFENDANT employed an unlawful scheme in which PLAINTIFFS and Class Members' overtime hours on one day were added to other shifts so that DEFENDANT could pay them straight wages for overtime hours.

15. From April 19, 2018 through the present, PLAINTIFFS and other Class Members were not properly compensated for all hours worked at the appropriate rate of pay because DEFENDANT failed to properly include all non-discretionary compensation when calculating their

1 regular rate for the purpose of determining the correct overtime rate in pay periods where they were
2 paid additional non-discretionary compensation and were also paid overtime.

3 16. From April 19, 2018 through the present, PLAINTIFFS and other Class Members
4 were not properly compensated for all hours worked at the appropriate rate of pay because
5 DEFENDANT required them to handwash, conduct temperature checks, and undergo Covid
6 screening prior to clocking in. This time spent was “off the clock” and thus Class Members
7 performed compensable activities before each working shift for which no pay was provided.

8 17. From April 19, 2018 through the present, PLAINTIFF HERNANDEZ and other
9 Public Safety Officers were not properly compensated for all hours worked at the appropriate rate of
10 pay because DEFENDANT required them to routinely don and doff their uniforms and necessary
11 equipment “off the clock.” Since they were required to don and doff before clocking in at the
12 beginning of each shift and after clocking out at the end of each shift, they were required to perform
13 compensable activities before and after each working shift for which no pay was provided.

14 18. PLAINTIFFS and other Class Members were not provided with 30-minute
15 uninterrupted meal breaks in which they were relieved of all work when they worked shifts in excess
16 of 5 hours and were not provided with missed meal break penalty wages.

17 19. PLAINTIFFS and other Class Members who worked in excess of 10 hours per day
18 were not provided with a second meal break by DEFENDANT, nor were they provided with missed
19 meal break penalty wages, when they worked in excess of 10 hours per day.

20 20. From April 19, 2018 through the present, PLAINTIFFS and other Class Members
21 were not paid meal period premiums at the correct rate because when DEFENDANT did pay meal
22 period premiums, it paid at the base rate and not the blended rate in violation of *Ferra v. Loews*
23 *Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 (“*Ferra*”) and Labor Code §§ 226.7, 512.

24 21. PLAINTIFFS and other Class Members were not authorized and permitted to take 10-
25 minute duty-free rest periods, in which they were relieved of all work, for every 4 hours, or major
26 fraction thereof, worked and were not provided with missed rest break premiums.

22. From April 19, 2018 through the present, PLAINTIFFS and other Class Members were not paid rest period premiums at the correct rate because when DEFENDANT did pay rest period premiums, it paid at the base rate and not the blended rate in violation of *Ferra, supra*, 11 Cal. 5th 858, 863 and Labor Code § 226.7.

23. PLAINTIFFS and Class Members were not paid for their travel time between job locations and between their job locations and mandatory meetings.

24. PLAINTIFFS and Class Members were not reimbursed for travel expenses (mileage and gas) for travel to and from mandatory meeting locations and travel between job locations.

25. PLAINTIFFS and other Class Members were not reimbursed for their work-related cell phone usage.

26. DEFENDANT did not accurately record the hours worked, overtime premiums, meal and rest break premiums on PLAINTIFFS' and other Class Members' wage statements. Moreover, the wage statements provided did not clearly display all mandatory information.

27. PLAINTIFFS and Class Members were not provided with waiting time penalties when they were entitled to them.

28. On March 9, 2018, LANGLANDS requested copies of all documents that she signed, her personnel file, and her wage and hour records. DEFENDANT did not provide LANGLANDS and Class Members who requested personnel records with the records requested.

V. CLASS ALLEGATIONS

29. PLAINTIFFS LANGLANDS, HOOKS, and HERNANDEZ bring this action on behalf of themselves and others similarly situated, and the Class Members.

30. The Classes that PLAINTIFFS LANGLANDS, HOOKS, and HERNANDEZ seek to represent are the following classes, defined as follows:

a. Main Class 1: All non-exempt, non-student, non-unionized employees of DEFENDANT in the State of California during the four years prior to the commencement of this lawsuit through the date of final resolution of the claims herein.

- 1 i. Subclass 1: All non-exempt, non-student, non-unionized employees of
2 DEFENDANT in the State of California during the four years prior to the
3 commencement of this lawsuit through the date of final resolution of the
4 claims herein who worked over five hours in a shift.
- 5 ii. Subclass 2: All non-exempt, non-student, non-unionized employees of
6 DEFENDANT in the State of California during the four years prior to the
7 commencement of this lawsuit through the date of final resolution of the
8 claims herein who worked over four hours, or a major fraction thereof, in
9 a shift.
- 10 iii. Subclass 3: All non-exempt, non-student, non-unionized employees of
11 DEFENDANT in the State of California during the four years prior to the
12 commencement of this lawsuit through the date of final resolution of the
13 claims herein who worked over eight hours in a shift or forty hours in a
14 week.
- 15 iv. Subclass 4: All non-exempt, non-student, non-unionized employees of
16 DEFENDANT in the State of California during the four years prior to the
17 commencement of this lawsuit through the date of final resolution of the
18 claims herein who incurred reasonable business expenses while employed
19 by DEFENDANT.
- 20 v. Subclass 5: All non-exempt, non-student, non-unionized employees of
21 DEFENDANT in the State of California during the four years prior to the
22 commencement of this lawsuit through the date of final resolution of the
23 claims herein who had a work schedule that was interrupted by non-paid
24 non-working periods established by the employer, other than bona fide
25 rest or meal periods.
- 26 vi. Subclass 6: All non-exempt, non-student employees that DEFENDANT
27 employed in the Department of Music who (1) worked at different venues
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1 including, but are not limited to, Bing Concert Hall, Bing
2 Studio, Dinkelspiel Auditorium, Campbell Recital Hall, CCRMA Stage
3 (The Knoll), Frost Amphitheatre, Memorial Auditorium, Memorial
4 Church; or (2) worked for Stanford Live during the class period. These
5 individuals include, but are not limited to, non-student hourly employees
6 that performed duties related to concert production, including stage
7 technicians, stage management, backline, lighting, video, general venue
8 operations, and communication and coordination for specific groups or
9 artists.

10 vii. Subclass 7: All non-exempt, non-student, non-unionized employees that
11 DEFENDANT employed as public safety officers in the State of
12 California during the four years prior to April 19, 2022 through the date of
13 final resolution of the claims herein.

14 b. Main Class 2: All former non-student and non-unionized employees of
15 DEFENDANT who requested documents pursuant to Labor Code §§ 226, 432, or
16 1198.5 during a one-year period prior to the commencement of this lawsuit.

17 31. This action has been brought and may properly be maintained as a class action. The
18 class certification requirements are met because the class is numerous, common questions of law and
19 fact exist, the named PLAINTIFFS are typical of the class and will adequately represent the interests
20 of the class with no conflicts, as factually explained above. Class counsel is experienced in class
21 action litigation. Further, this case was properly brought as a class case because common questions
22 of law or fact predominate over any individual issues, and a class action is superior to other available
23 method to fairly and efficiently adjudicate the controversy.

24 a. Numerosity: The potential Class Members as defined are so numerous that joinder of
25 all the Class Members is impracticable. DEFENDANT employed/employs numerous
26 non-exempt employees in California at any given time, and it is estimated that there
27 are more than 1,500 Class Members.

1 b. Commonality: There are questions of law and fact common to the PLAINTIFFS and
2 to the Classes and Subclasses that predominate over any questions affecting only
3 individual Class Members. These common questions of law and fact include, without
4 limitation:

- 5 i. Whether DEFENDANT has or had a policy of failing to provide
6 overtime premium pay to Class Members who worked more than 8
7 hours per day – sometimes at different locations and sometimes by
8 putting hours on different shifts (an unlawful scheme to avoid overtime);
9 ii. Whether DEFENDANT failed to pay wages and/or overtime
10 compensation at the appropriate rate for all hours worked as required by
11 the Labor Code and Wage Orders under Labor Code §§ 510, 1194,
12 1194.2, and 1199;
13 iii. Whether DEFENDANT has or had a policy and practice of failing to
14 provide a first or second meal break to Class Members who are entitled
15 to them in violation of California labor laws and/or failing to
16 compensate said employees one (1) hour of wages at their regular rate of
17 compensation in lieu of meal periods;
18 iv. Whether DEFENDANT has or had a policy and practice of failing to
19 authorize and permit Subclass 6 Members to take rest periods in
20 violation of California labor laws and/or failing to compensate said
21 employees one (1) hour of wages at their regular rate of compensation in
22 lieu of meal periods;
23 v. Whether DEFENDANT has or had a policy and practice of failing to
24 authorize and permit Subclass 7 Members to take rest periods in
25 violation of California labor laws and/or failing to compensate said
26 employees one (1) hour of wages at their regular rate of compensation in
27 lieu of meal periods;
28 vi. Whether DEFENDANT’S policy and practice of denying meal breaks to

1 Class Members is an unlawful, unfair or fraudulent business act or
2 practice in violation of California Business & Professions Code §§
3 17200 and 17203, *et seq.*;

4 vii. Whether DEFENDANT’S policy and practice of denying rest breaks to
5 Subclass 6 Members is an unlawful, unfair or fraudulent business act or
6 practice in violation of California Business & Professions Code §§
7 17200 and 17203, *et seq.*;

8 viii. Whether DEFENDANT’S policy and practice of failing to pay all wages
9 (including for travel time between work locations and/or to mandatory
10 meetings) to Class Members is an unlawful, unfair or fraudulent
11 business act or practice in violation of California Business & Professions
12 Code §§ 17200 and 17203, *et seq.*;

13 ix. Whether DEFENDANT has or had a policy and practice of failing to
14 reimburse Class Members travel expenses;

15 x. Whether DEFENDANT has or had a policy and practice of failing to
16 reimburse Class Members for work related cell phone usage;

17 xi. Whether DEFENDANT violated Labor Code §§ 201-202 and/or the
18 Unfair Business Practices Act by failing to promptly pay PLAINTIFFS
19 and all Class Members wages due to them upon the termination of their
20 employment;

21 xii. Whether DEFENDANT’S payroll policies and practices have violated
22 the Labor Code and/or the Unfair Business Practices Act by providing
23 Class Members with wage statements that do not accurately reflect the
24 employees’ earnings, hours worked, or other items listed in Labor Code
25 § 226;

26 xiii. Whether DEFENDANT failed to produce employment records to Class
27 Members who requested them; and

xiv. The proper formula for calculating restitution, damages, and waiting time penalties owed to PLAINTIFFS and similarly situated Class Members.

c. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Classes predominate over any questions affecting only individual members of each Class. Each Class Member has been damaged and is entitled to recovery by reason of DEFENDANT'S illegal policies and practices of failing to provide adequate meal and rest breaks, of interrupting the employees' meal and rest periods, of failing to timely and accurately pay non-exempt employees all wages due, and of failing to provide accurate itemized wage statements as required by law. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

FIRST CAUSE OF ACTION

(Failure to Pay All Overtime Earned for Hours Worked In
Violation of Labor Code §§ 510 and 1194 and IWC Wage Orders as to Main Class 1 Members)

32. PLAINTIFFS allege and incorporate by reference all paragraphs of this complaint and all of the previous allegations on behalf of themselves and Main Class 1 Members.

33. Labor Code § 510(a) provides that work in excess of 8 hours in a day, or 40 hours in a week, must be compensated at a rate not less than one and one-half times the regular rate of pay for an employee.

34. Labor Code § 510(a) provides that work in excess of 12 hours in a day, and in excess of 8 hours on the seventh day, must be compensated at a rate not less than two times the regular rate of pay for an employee.

35. IWC Wage Order 4 and/or Title 8 of Cal. Code of Regulations § 11010 *et seq.* also provide that work in excess of 8 hours in a day, or 40 hours in a week, must be compensated at not less than one and one-half times the regular rate of pay for an employee.

36. Overtime wages must incorporate bonuses of the employees in the calculation of the regular rate of pay for purposes of determining the time and half- and double-time amounts.

37. PLAINTIFFS and Main Class 1 Members worked a shift or shifts totaling more than 8 hours in a workday.

38. PLAINTIFFS and Main Class 1 Members worked more than 40 hours in a week.

39. DEFENDANT failed to pay PLAINTIFFS and Main Class 1 Members all overtime wages.

40. DEFENDANT failed to pay PLAINTIFFS and Main Class 1 Members for travel time between job locations and to mandatory meetings.

41. From April 19, 2018 through the present, DEFENDANT failed to pay PLAINTIFFS and Main Class 1 Members for all hours worked at the appropriate rate of pay because DEFENDANT failed to include all non-discretionary “bonus” compensation when calculating their regular rate for the purpose of determining the correct overtime rate in pay periods in which they were paid non-discretionary “bonus” compensation and were also paid overtime.

42. From April 19, 2018 through the present, DEFENDANT failed to pay PLAINTIFFS and Main Class 1 Members for all hours worked at the appropriate rate of pay because DEFENDANT required them to arrive approximately 15-20 minutes before their scheduled shift start time for handwashing, temperature checks, and COVID screenings while they were “clocked out” and as such they are not compensated for this time worked even though these activities and time are compensable.

43. From April 19, 2018 through the present, DEFENDANT failed to pay PLAINTIFFS and Subclass 7 Members for all hours worked at the appropriate rate of pay because DEFENDANT required them to put their uniforms and equipment on and take their uniforms and equipment off before and after every shift while clocked out. Because they were required to don and doff uniforms and equipment “off the clock” before and after each scheduled shift, Subclass 7 Members were not paid for all hours worked at the appropriate of pay.

44. Pursuant to Labor Code § 1194, PLAINTIFFS and Main Class 1 Members are entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation for all hours worked in excess of eight hours a workday.

45. As a direct and proximate result of DEFENDANT'S conduct, PLAINTIFFS and Main Class 1 Members have suffered damages, in an amount to be proven at trial.

46. As a direct and proximate result of DEFENDANT'S conduct, PLAINTIFFS and Main Class 1 Members are also entitled to attorneys' fees under Labor Code § 1194, in addition to interest, expenses, and costs of suit.

SECOND CAUSE OF ACTION

(Failure to Provide Meal Periods in Violation
of Labor Code §§ 226.7 and 512 and IWC Wage Orders as to Subclass 1 and Subclass 7 Members)

47. PLAINTIFFS re-allege and incorporate by reference all of the previous allegations on behalf of themselves and Subclass 1 and Subclass 7 Members.

48. At all times relevant herein, Labor Code §§ 226.7 and 512 and the applicable wage IWC orders, including IWC Wage Order 4-2001 (Cal. Code Reg., tit. 8, § 11010, subds. 11(A) and 12(A)), have required DEFENDANT to provide meal break periods to its employees.

49. Labor Code §§ 226.7 and 512 and the IWC wage orders, including IWC Wage Order 4-2001 (Cal. Code Reg., tit. 8, § 11010, subds. 11(A) and 12(A)), prohibit employers from employing an employee for more than five hours without a meal period of at least 30 minutes, unless the employee works less than six hours.

50. Labor Code §§ 226.7 and 512 and the IWC wage orders, including IWC Wage Order 4-2001 (Cal. Code Reg., tit. 8, § 11010, subds. 11(A) and 12(A)), prohibit employers from employing an employee for 10 or more hours without a second meal period of at least 30 minutes.

51. Unless an employee is relieved of all duty during the 30 minute meal period, the employee is considered “on duty” and the meal periods are counted as time worked, under the applicable wage orders.

1 52. Under Labor Code § 226.7(b) and the IWC wage orders, an employer who fails to
2 provide a required meal period must, as compensation, pay the employee one hour of pay at the
3 employee's regular rate of compensation for each workday that the meal period was not provided.

4 53. DEFENDANT has or had a policy and practice of not providing to employees the
5 first nor second meal breaks to which they are entitled when the employees work more than 10 hours
6 per day.

7 54. From April 19, 2018 through the present, DEFENDANT has or had a policy and
8 practice of requiring Subclass 7 Members to keep their radios on during meal breaks, especially
9 during sporting and/or other on-campus events.

10 55. From April 19, 2018 through the present, DEFENDANT has or had a consistent
11 policy and practice of failing to pay Subclass 1 Members one (1) hour of pay at the employees'
12 regular rate of compensation for each workday that the compliant meal period was not provided. On
13 July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, the California
14 Supreme Court set forth the formula for calculating the one extra hour of premium pay that
15 employees are owed if an employer fails to provide a compliant meal period or rest break.
16 Specifically, the Court held that those premium payments must include the hourly value of any
17 nondiscretionary earnings (such as nondiscretionary bonuses, commissions, etc.), and cannot simply
18 be paid at an employee's base hourly rate. Here, when meal periods are not provided,
19 DEFENDANT has had a consistent policy of paying meal period premiums at the base rate and not
20 the appropriate blended rate in violation of Labor Code §§ 226.7 and 512.

21 56. The aforementioned policies and practices are in violation of law, in that
22 DEFENDANT'S policies and practices have denied PLAINTIFFS and Subclass 1 Members their
23 first and second meal breaks to which they are legally entitled.

24 57. As a direct and proximate result of DEFENDANT'S conduct, PLAINTIFFS and
25 Subclass 1 Members have suffered damages in an amount to be proven at trial.

26 58. As a direct and proximate result of DEFENDANT'S conduct, PLAINTIFFS and
27 Subclass 1 Members are also entitled to attorneys' fees in addition to interest, expenses and costs of
28 suit.

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THIRD CAUSE OF ACTION

(Failure to Provide Rest Periods in Violation
of Labor Code § 226.7 and IWC Wage Orders as to Subclass 6 and Subclass 7 members)

59. PLAINTIFFS re-allege and incorporate by reference all of the previous allegations on behalf of themselves and Subclass 6 and Subclass 7 Members.

60. At all times relevant herein, Labor Code §§226.7 and the applicable wage IWC orders, including IWC Wage Order 4-2001 (Cal. Code Reg., tit. 8, § 11010, subd. 12(A)), has required DEFENDANT to provide rest break periods to its employees.

61. Labor Code § 226.7 and the IWC wage orders, including IWC Wage Order 4-2001 (Cal. Code Reg., tit. 8, § 11010, subd. 12(A)), prohibit employers from employing an employee for more than four hours, or a major fraction thereof, without a rest period of at least 10 minutes, unless the employee works less than three and one-half hours.

62. Unless an employee is relieved of all duty during the 10-minute meal period, the employee is considered “on duty.”

63. Under Labor Code § 226.7(b) and the IWC wage order, an employer who fails to authorize and permit an employee to take a required rest period must, as compensation, pay the employee one hour of pay at the employee’s regular rate of compensation for each workday that a rest period was not provided.

64. DEFENDANT has or had a policy and practice of failing to authorize and permit employees to take 10-minute rest periods for every four hours, or major fraction thereof, worked.

65. From April 19, 2018 through the present, DEFENDANT has or had a policy and practice of requiring Subclass 7 Members to keep their radios on during rest breaks, especially during sporting and/or other on-campus events.

66. From April 19, 2018 through the present, DEFENDANT has or had a consistent policy and practice of failing to pay Subclass 6 Members one (1) hour of pay at the employees’ regular rate of compensation for each workday that the compliant rest period was not provided. On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that

1 employees are owed if an employer fails to provide a compliant meal period or rest break.
2 Specifically, the Court held that those premium payments must include the hourly value of any
3 nondiscretionary earnings (such as nondiscretionary bonuses, commissions, etc.), and cannot simply
4 be paid at an employee's base hourly rate. Here, when rest periods are not provided, DEFENDANT
5 has had a consistent policy of paying meal period premiums at the base rate and not the appropriate
6 blended rate in violation of Labor Code §§ 226.7 and 512. The aforementioned policies and practices
7 are in violation of law, in that DEFENDANT'S policies and practices have denied PLAINTIFFS and
8 Subclass 6 Members their legally entitled rest periods.

9 67. As a direct and proximate result of DEFENDANT'S conduct, PLAINTIFFS and
10 Subclass 6 Members have suffered damages in an amount to be proven at trial.

11 68. As a direct and proximate result of DEFENDANT'S conduct, PLAINTIFFS and
12 Subclass 6 Members are also entitled to interest, expenses, and costs of suit.

13 **FOURTH CAUSE OF ACTION**

14 (Failure to Pay Wages for All Hours Worked In
15 Violation of Labor Code §§ 201, 202 and 203 as to Main Class 1 Members)

16 69. PLAINTIFFS re-allege and incorporate by reference all of the previous allegations
17 on behalf of themselves and Main Class 1 Members.

18 70. Labor Code § 201(a) requires an employer who discharges an employee to pay
19 compensation due and owing to the employee immediately upon discharge.

20 71. Labor Code § 202(a) requires an employer to pay compensation due and owing to an
21 employee who has quit or resigned within seventy-two (72) hours of that the time at which the
22 employee provided notice of his intention to quit or resign.

23 72. Labor Code § 203 provides that if an employer willfully fails to pay compensation
24 promptly upon discharge or resignation, as required under Labor Code §§ 201 and 202, then the
25 employer is liable for waiting time penalties in the form of continued compensation for up to thirty
26 (30) workdays.

27 73. PLAINTIFFS and Main Class 1 Members are entitled to unpaid compensation for all
28 hours worked at the legally mandated rates, but for which they have not yet been paid.

1 74. Some PLAINTIFFS and similarly situated Main Class 1 Members have left the
2 employ of DEFENDANT but have not yet been fully compensated for the hours that they worked.

3 75. DEFENDANT has willfully failed and refused to make timely payment of wages to
4 PLAINTIFFS and other similarly situated Main Class 1 Members.

5 76. As a direct and proximate result of DEFENDANT'S conduct, DEFENDANT is
6 liable to PLAINTIFFS, similarly situated Main Class 1 Members for up to thirty (30) days of waiting
7 time penalties pursuant to Labor Code § 203.

8 77. As a direct and proximate result of DEFENDANT'S conduct, PLAINTIFFS and
9 similarly situated Main Class 1 Members are also entitled to attorneys' fees under Labor Code §
10 1194, in addition to interest, expenses and costs of suit.

11 **FIFTH CAUSE OF ACTION**
12 (Violation of Labor Code §§ 204 and 210)

13 78. PLAINTIFFS re-allege and incorporate by reference all of the previous allegations on
14 behalf of themselves and Main Class 1 Members.

15 79. All wages due to any employee are due and payable twice (2) during each month and
16 all overtime wages must be paid no later than the payday for the next regular payroll period pursuant
17 to Labor Code § 204.

18 80. DEFENDANT did not pay PLAINTIFFS and Main Class 1 Members all of their
19 regular wages and all of the overtime wages within the applicable time periods set forth in Labor
20 Code § 204 and have not paid them to date.

21 81. Labor Code § 210 provides for penalties for failure to pay wages pursuant to
22 California Labor Code § 204 as one-hundred dollars (\$100) for any initial violation and two-hundred
23 dollars (\$200) for each subsequent violation, plus twenty-five percent (25%) of the amount withheld.

24 82. As a direct and proximate result of DEFENDANT'S conduct, PLAINTIFFS and
25 Main Class 1 Members are also entitled to attorneys' fees, in addition to interest, expenses, and costs
26 of suit.

27 83. As a direct and proximate result of DEFENDANT'S conduct, PLAINTIFFS and
28 Main Class 1 Members have suffered damages, in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

(Failure to Provide Accurate Wage
Statements in Violation of Labor Code § 226 as to Main Class 1 Members)

84. PLAINTIFFS re-allege and incorporate by reference all of the previous allegations on behalf of themselves and Main Class 1 Members.

85. Labor Code § 226(a) and/or IWC Wage Orders (*See* 8 Cal. Code of Regs., §11040(8)) provide that every employer shall, semimonthly or at the time of each payment of wages, provide each employee with an accurate, written, itemized statement showing, *inter alia*, the gross wages earned, the total hours worked by the employee, and the applicable hourly rate in effect during the pay period and the corresponding number of hours earned at each hourly rate.

86. Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

87. DEFENDANT has failed and continues to fail to provide accurate, itemized wage statements to PLAINTIFFS and Main Class 1 Members in that the wage statements that DEFENDANT provided do not accurately reflect the actual hours worked and the wages earned.

88. From April 19, 2018 through the present, DEFENDANT has failed and continues to fail to provide accurate, itemized wage statements to PLAINTIFFS and Main Class 1 Members that show accurate meal and rest premiums as a result of the claims alleged above.

89. Additionally, the wage statements provided by DEFENDANT are excessively complex, making it difficult for PLAINTIFFS and Main Class 1 Members to understand the information contained therein.

90. DEFENDANT is liable to PLAINTIFFS and Main Class 1 Members for the amounts described above, in addition to the civil penalties provided for in Labor Code § 226.3.

91. As a direct and proximate result of DEFENDANT'S conduct, PLAINTIFFS and Main Class 1 Members are also entitled to attorneys' fees under Labor Code § 226(e), in addition to interest, expenses, and costs of suit.

SEVENTH CAUSE OF ACTION
(Unlawful, Unfair and Fraudulent Business Practices
In Violation of B&P Code §§ 17200 and 17203, *et seq.*)

92. PLAINTIFFS re-allege and incorporate by reference all of the previous allegations on behalf of themselves and all Class Members.

93. The California Business & Professions Code (“B&P Code”) § 17200 *et seq.* prohibits unfair competition in the form of any unlawful, unfair or fraudulent business act or practice.

94. B&P Code § 17202 provides: “Notwithstanding Section 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in case of unfair competition.”

95. B&P Code § 17203 provides that the Court may restore to any person in interest any money or property which may have been acquired by means of such unfair competition.

96. B&P Code § 17203 also provides that any person who meets the standing requirements of Section 17204 and complies with CCP Section 382 may pursue representative claims for relief on behalf of others.

97. B&P Code § 17204 allows “a person who has suffered injury in fact and has lost money or property as a result of the unfair competition” to prosecute a civil action for violation of the Unfair Business Practices Act.

98. Labor Code § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with the minimum standards law.

99. Pursuant to B&P § 17202, PLAINTIFFS and Class Members are entitled to enforce all applicable provisions of the Labor Code.

100. Beginning at an exact date unknown to PLAINTIFFS, but at least since the date four years prior to the filing of this suit, DEFENDANT has committed acts of unfair competition as

1 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent
2 practices and acts described in this Complaint, including, but not limited to:

- 3 a. Violations of Labor Code §§ 510 and 1194, and IWC Wage Order 4 pertaining to
4 overtime compensation;
- 5 b. Violations of Labor Code §§ 226.7 and 512, and IWC Wage Order 4 pertaining to
6 meal periods;
- 7 c. Violations of Labor Code § 226.7, and IWC Wage Order 4 pertaining to rest
8 periods;
- 9 d. Failing to reimburse for expenses;
- 10 e. Violations of Labor Code § 226, pertaining to itemized statements of wages;
- 11 f. Waiting time penalties; and
- 12 g. Violations of Labor Code § 1198.

13 101. By violating these statutes and regulations, the acts of DEFENDANT constitute
14 unfair and unlawful business practices under B&P § 17200 *et seq.*

15 102. The violations of these laws and regulations, as well as of fundamental California
16 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
17 B&P Code §§ 17200 and 17203, *et seq.*

18 103. The acts and practices described above constitute unfair, unlawful and fraudulent
19 business practices, and unfair competition, within the meaning of B&P Code §§ 17200 and 17203, *et*
20 *seq.* DEFENDANT'S violation of the law and regulations described above constitutes a business
21 practice because it was done repeatedly over a significant period of time and in a systematic manner
22 to the detriment of PLAINTIFFS and other Class Members. Among other things, DEFENDANT'S
23 acts and practices have forced PLAINTIFFS and other similarly situated workers to labor for many
24 hours in a row without receiving minimum (overtime) pay and the meal and rest periods to which
25 they were entitled by law and which are important to employee safety. The acts and practices
26 described above have allowed DEFENDANT to gain an unfair competitive advantage over law-
27 abiding employers and competitors.

104. As a direct and proximate result of the acts and practices described herein, PLAINTIFFS and other Class Members have been denied compensation, in an amount to be proven at trial. PLAINTIFFS and Class Members have accordingly each suffered injury in fact and have lost money or property as a result of DEFENDANT'S unfair, unlawful and fraudulent business practices, and unfair competition.

105. PLAINTIFFS and other Class Members are entitled to restitution pursuant to B&P Code § 17203 for all wages and other compensation unlawfully withheld from employees during the four year period prior to the filing of the complaint.

106. Injunctive relief is necessary and appropriate to prevent DEFENDANT from repeating their unlawful, unfair and fraudulent business acts and practices described herein.

107. Pursuant to § 17203 and/or any other applicable law, PLAINTIFFS seeks an order preventing DEFENDANT from engaging in unlawful, unfair and fraudulent conduct, and preventing DEFENDANT from profiting and benefiting from illegal and wrongful acts.

108. PLAINTIFFS' success in this action will enforce important rights affecting the public interest. Therefore, PLAINTIFFS sue on behalf of the general public as well as themselves and Class Members.

109. An award of attorneys' fees is appropriate pursuant to CCP § 1021.5 and other applicable laws because: 1) this action will confer a significant benefit upon a large class of persons; 2) there is a financial burden involved in pursuing this action; and 3) it would be against the interest of justice to force PLAINTIFFS to pay attorneys' fees from any amount recovered in this action.

EIGHTH CAUSE OF ACTION

Expense Reimbursement
Labor Code § 2802 as to Subclass 4 Members

110. PLAINTIFFS re-allege all of the previous allegations herein allegations on behalf of themselves and Subclass 4 Members.

111. DEFENDANT'S policies and practices failed to comply with the California Labor Code with regard to expense reimbursement.

112. DEFENDANT did not have a cell phone use policy that accounted for the mandatory calls that their employees were required to participate in.

113. DEFENDANT did not reimburse PLAINTIFFS and Subclass 4 Members for their gas, mileage, or work cell phone use expenses as required by Labor Code section 2802.

114. DEFENDANT owes PLAINTIFFS and Subclass 4 Members unreimbursed business expenses.

NINTH CAUSE OF ACTION

Failure to Produce Records

Labor Code § 226, 432, and 1198.5 as to Main Class 2 Members

115. PLAINTIFF LANGLANDS re-alleges all of the previous allegations herein
allegations on behalf of herself and Main Class 2 Members.

116. LAGLANDS and Main Class 2 Members requested employment records from DEFENDANT after their employment ended.

117. DEFENDANT failed to produce the requested records.

118. DEFENDANT’S failure to produce records is a violation of CA Labor Code §§ 226, 432, and 1198.5.

119. DEFENDANT is liable for statutory damages, attorneys' fees and costs.

TENTH CAUSE OF ACTION

PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Labor Code §§ 2698 *et seq.*

120. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference. PLAINTIFFS bring this claim as a representative cause of action on behalf of themselves and the following aggrieved employees: All of DEFENDANT's non-exempt employees in California during the relevant time period.

121. Pursuant to Labor Code section 2699.3(a), on March 7, 2019, PLAINTIFFS LANGLANDS AND HOOKS gave written notice by certified mail to DEFENDANT, and by electronic delivery to the California Labor Workforce Development Agency (“LWDA”), of some of the factual and legal basis for the labor law violations alleged in this complaint. The LWDA did not provide notice pursuant to Labor Code section 2699.3(a)(2)(A), and 65 calendar days passed since

1 the postmark date of Plaintiffs' LWDA notice.

2 122. Pursuant to Labor Code section 2699.3(a), on April 19, 2022, PLAINTIFF
3 HERNANDEZ gave written notice by certified mail to DEFENDANT, and by electronic delivery to
4 the California Labor Workforce Development Agency ("LWDA"), of the factual and legal basis for
5 some of the labor law violations alleged in this complaint. The LWDA did not provide notice
6 pursuant to Labor Code section 2699.3(a)(2)(A), and 65 calendar days passed since the postmark
7 date of Plaintiffs' LWDA notice.

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

14 124. Labor Code section 2699(g)(1) provides, in pertinent part: "[A]n aggrieved employee
15 may recover the civil penalty described in subdivision (f) in a civil action . . . filed on behalf of
16 himself or herself and other current or former employees against whom one or more of the alleged
17 violations was committed. Any employee who prevails in any action shall be entitled to an award of
18 reasonable attorney's fees and costs."

19 125. PLAINTIFFS are aggrieved employees as defined by Labor Code section 2699(a).

20 126. PLAINTIFFS' cause of action under Labor Code section 2698 *et seq.* is based on the
21 allegations stated above in this Complaint.

22 127. As a direct and proximate result of DEFENDANT'S unlawful practices and policies,
23 PLAINTIFFS and the other aggrieved employees have suffered and continue to suffer monetary
24 losses.

25 128. PLAINTIFFS, on behalf of themselves and other aggrieved employees, request civil
26 penalties against DEFENDANT for violations of the Labor Code, as provided under Labor Code
27

1 section 2699(f), plus reasonable attorneys' fees and costs, as provided under Labor Code section
2 2699(g)(1), in amounts to be proved at trial.

3 129. PLAINTIFFS are not seeking PAGA penalties for alleged violations of Labor Code
4 sections 204 and 210.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFFS pray for an order as follows:

7 1. Pursuant to Code of Civil Procedure section 382, certifying this action as a class action;

8 2. Certifying the Class and appointing PLAINTIFFS LANGLANDS, HOOKS, and
9 HERNANDEZ as Class Representatives, and KLETTER LAW, HUNTER PYLE LAW,
10 KINGSLEY & KINGSLEY, ACP, and COHELAN KHOURY & SINGER as Class Counsel;

11 3. For declaratory judgment that DEFENDANT has violated California Labor Laws and
12 public policy, as alleged herein;

13 4. For declaratory judgment that DEFENDANT has violated B&P Code §§ 17200 and
14 17203, *et seq.*, as a result of the aforementioned violations of the Labor Code and of California
15 public policy protecting workers, ensuring that workers are paid at the legally mandated rate for all
16 hours worked, and prohibiting work without adequate meal breaks (second meal breaks where
17 required) and rest breaks;

18 5. For a permanent and mandatory injunction prohibiting DEFENDANT, their officers,
19 agents, employees, affiliated companies, and all those working in concert with them, from
20 committing future violations of the laws and public policies described herein;

21 6. For an award of restitution;

22 7. For injunctive relief preventing DEFENDANT from continuing with the unlawful
23 conduct described herein;

24 8. Imposing all statutory and/or civil penalties provided by law, including but not limited
25 to, penalties under Labor Code §§ 201-204, 210, 211, 226, 226(e), 226.3, 226.7(b), 432, 558, 1198.5,
26 2699(f), and Wage Order 4-2001 together with interest on these amounts;

1 9. Awarding PLAINTIFFS and Class Members compensatory damages, including but not
2 limited to wages, earnings, expense reimbursement and other compensation, according to proof, and
3 interest on these amounts;

4 10. For award of reasonable attorneys' fees, as provided by Labor Code §§ 226(e), 1194,
5 2699(g)(1), and CCP § 1021.5, and/or other applicable law;

6 11. For statutory prejudgment interest;

7 12. For all costs of suit; and

8 13. For such other and further relief as this Court deems just and proper.

9 Plaintiffs and Class Members request a trial by jury on each cause of action for which a trial
10 by jury is proper.

11
12 Dated: November 17, 2022

KLETTER LAW

13
14 By: /s/ RACHEL HALLAM
15 CARY KLETTER
16 RACHEL HALLAM
Attorneys for PLAINTIFF
SARA LANGLANDS

17 Dated: November 17, 2022

HUNTER PYLE LAW

18
19 By: /s/ HUNTER PYLE
20 HUNTER PYLE
21 ANDREA NÚÑEZ
Attorneys for PLAINTIFF
LEIGHLAND HOOKS

22
23 Dated: November 17, 2022

KINGSLEY & KINGSLEY APC

24
25 By: /s/ KELSEY SZAMET
26 ERIC B. KINGSLEY
27 KELSEY M. SZAMET
Attorneys for PLAINTIFF
MARISOL HERNANDEZ

1 Dated: November 17, 2022

COHELAN KHOURY & SINGER

2
3 By: /S/ MICHAEL SINGER
4 MICHAEL SINGER
5 Attorneys for PLAINTIFF
6 MARISOL HERNANDEZ
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I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Hunter Pyle Law, 505 14th Street, Suite 600, Oakland, California 94612. On this day, I served the following Document(s):

THIRD AMENDED COMPLAINT AND JURY DEMAND

☒ By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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COHELAN KHOURY & SINGER

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Attorneys for Defendant

LELAND STANFORD JUNIOR UNIVERSITY

1 I declare under penalty of perjury that the foregoing is true and correct. Executed in
2 Oakland, California, on this date, December 6, 2022.

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5 _____
6 DARLENE SANCHEZ
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