

Guillermo A. Escobedo (SBN 206198)
Lara P. Besser (SBN 282289)
Bayan Salehi (SBN 333585)
JACKSON LEWIS P.C.
225 Broadway, Suite 2000
San Diego, CA 92101
Telephone: (619) 573-4900
Facsimile: (619) 573-4901
guillermo.escobedo@jacksonlewis.com
lara.besser@jacksonlewis.com
bayan.salehi@jacksonlewis.com

Attorneys for Defendants
2018HMO LLC dba HIKEI MODERN
CANNABIS; 2018HMPF LLC; AARON
MAGAGNA; and MICHAEL STRATMAN

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

03/29/2022 at 12:24:00 PM

Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DISTRICT

JON WOOD, as an individual and on behalf of all
others similarly situated,

Plaintiff,

vs.

2018HMO LLC dba HIKEI MODERN
CANNABIS; 2018HMPF LLC; AARON
MAGAGNA, an individual; MICHAEL
STRATMAN, an individual; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 37-2021-00053035-CU-OE-CTL

[Assigned for all purposes to Hon. Carolyn Caietti,
Dept. C-70]

CLASS ACTION

**DEFENDANTS 2018HMO LLC DBA HIKEI
MODERN CANNIBIS, 2018HMPF LLC,
AARON MAGAGNA AND MICHAEL
STRATMAN'S ANSWER TO PLAINTIFF'S
FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

IMAGED FILE

FAC filed: February 17, 2022
Trial Date: Not Assigned

Defendants 2018 HMOLLC DBA HIKEI MODERN CANNIBIS, 2018HMPF LLC, AARON
MAGAGNA and MICHAEL STRATMAN (collectively referred to as "Defendants") on behalf of
themselves and for no other defendant, hereby respond to the First Amended Class and Representative
Action Complaint ("FAC") filed by Plaintiff JON WOOD ("Plaintiff"), as follows:

///

///

1 **GENERAL DENIAL**

2 Pursuant to California Code of Civil Procedure section 431.30(d), Defendants generally and
3 specifically deny each and every allegation contained in the FAC, and each cause of action of said FAC,
4 and deny that Plaintiff or the putative class and/or putative aggrieved employees have been damaged in
5 any sum, or at all, by reason of any act or omission on the part of Defendants.

6 **AFFIRMATIVE DEFENSES**

7 As separate and distinct affirmative defenses to Plaintiff's FAC, and the causes of action alleged
8 therein, and to each of them, Defendants allege as follows:

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Failure to State a Cause of Action)**

11 1. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
12 in part, as it fails to state facts sufficient to constitute a cause of action against Defendants upon which
13 relief may be granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15 **(Arbitration Agreement)**

16 2. Plaintiff and some or all of the alleged putative class members and/or aggrieved
17 employees are barred from pursuing their claims against Defendants in this Court to the extent they
18 agreed in writing to arbitrate any dispute, claim or controversy arising out of their employment with
19 Defendants, including the causes of action asserted in the FAC. Plaintiff is further barred from bringing
20 any class or collective action under the terms of that arbitration agreement and instead, is required to
21 arbitrate his individual claims in arbitration.

22 **THIRD AFFIRMATIVE DEFENSE**

23 **(Statutes of Limitation)**

24 3. Plaintiff's FAC as a whole, and each purported cause of action alleged therein, is barred
25 in whole or in part by the applicable statutes of limitation, including but not limited to Code of Civil
26 Procedure §§ 337, 338, 338(a), 339, 340, 340(a), 340(b) and 343, and Business & Professions Code §
27 17208, to the extent Plaintiff or any alleged putative class member and/or putative aggrieved employee
28 seeks recovery in excess of the time limitations set forth in these statutes.

1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Not a Class Action)**

3 4. Plaintiff's FAC, and each purported cause of action alleged therein, fails to state facts
4 sufficient to satisfy the requirements of California Code of Civil Procedure section 382 to certify a class
5 action, and therefore this case cannot be properly maintained as a class action.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 **(Accord and Satisfaction)**

8 5. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
9 in part, to the extent that Plaintiff or any member(s) of the putative class or any putative aggrieved
10 employee entered into an accord and satisfaction of any claim asserted in this Action.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 **(Release)**

13 6. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
14 in part, to the extent that Plaintiff or any member(s) of the putative class or any putative aggrieved
15 employee previously released the claims asserted in this Action.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 **(Waiver, Estoppel, and Unclean Hands)**

18 7. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
19 in part, by the equitable doctrines of laches, estoppel, waiver, and unclean hands.

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 **(Discharge)**

22 8. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
23 in part, because any duty or obligation by Defendants to pay wages, whether contractual or otherwise,
24 which Plaintiff claims are owed to him or any putative class member and/or putative aggrieved
25 employee, has been fully performed, satisfied, or discharged.

26 ///

27 ///

28 ///

1 **NINTH AFFIRMATIVE DEFENSE**

2 **(Waiting Time Penalties - Not Willful)**

3 9. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
4 in part, because Plaintiff or putative class members or putative aggrieved employees remain employed
5 by Defendants, so they are not entitled to waiting-time penalties under Labor Code section 203, or
6 recovery is precluded because Defendants' conduct was not willful.

7 **TENTH AFFIRMATIVE DEFENSE**

8 **(All Compensation Paid)**

9 10. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
10 in part, because Plaintiff and any putative class members and/or putative aggrieved employees have
11 been provided all income, compensation, and pay to which he or they are entitled.

12 **ELEVENTH AFFIRMATIVE DEFENSE**

13 **(Payment of Wages – Not Willful)**

14 11. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
15 in part, to the extent that, if it is found that Defendants owe Plaintiff or putative class members or
16 putative aggrieved employees any income, wages, or salary, Defendants' failure to pay such monies was
17 not willful. Defendants had a reasonable and good faith belief that all wages earned and all vacation
18 accrued by Plaintiff or putative class members or putative aggrieved employees were fully and timely
19 paid. Therefore, Defendants are not subject to waiting time penalties pursuant to California Labor Code
20 section 203, or other applicable laws.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 **(No Irreparable Harm)**

23 12. Plaintiff and the putative class and putative aggrieved employees are not entitled to any
24 equitable or injunctive relief as prayed for in the FAC given that Plaintiff and the putative class and
25 putative aggrieved employees have not suffered any irreparable injury based on any alleged conduct of
26 Defendants, and Plaintiff, the putative class and putative aggrieved employees have an adequate remedy
27 at law for any such conduct.

28 ///

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(Claims Barred)**

3 13. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
4 in part, because Plaintiff's monetary damage and penalty claims under California Business &
5 Professions Code section 17200 *et seq.* are barred in their entirety by statute and other legal authority.

6 **FOURTEENTH AFFIRMATIVE DEFENSE**

7 **(No Standing)**

8 14. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
9 in part, because Plaintiff lacks standing.

10 **FIFTEENTH AFFIRMATIVE DEFENSE**

11 **(Substantial Compliance)**

12 15. Defendants are informed and believe, and thereon allege, that any recovery on Plaintiff's
13 FAC, and each purported cause of action alleged therein, is barred, in whole or in part, by California
14 Labor Code sections 2854 and 2856 in that Plaintiff and members of the putative class and putative
15 aggrieved employees failed to use ordinary care and diligence in the performance of their duties and
16 failed to comply substantially with the reasonable directions of Defendants.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 **(Conflict of Interest)**

19 16. Plaintiff cannot establish and maintain a class action due to conflicts of interest that exist
20 among putative class members.

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 **(Lack of Manageability)**

23 17. Plaintiff cannot establish and maintain a class action because a problem of manageability
24 would be created by reason of the complexity or proliferation of issues in this Action.

25 ///

26 ///

27 ///

28 ///

1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 **(Lack of Size)**

3 18. Plaintiff cannot establish and maintain a class action because the size of the possible
4 individual claims of the putative class members is sufficiently large to enable and motivate the putative
5 class members to sue on their own or to intervene in an individual action.

6 **NINETEENTH AFFIRMATIVE DEFENSE**

7 **(Not the Superior Method)**

8 19. This Action is not appropriate for class certification because far speedier administrative
9 remedies before the California State Labor Commissioner are available to Plaintiff and each alleged
10 putative class member, and thus, class treatment is not the superior method for resolving the alleged
11 claims of unpaid wages and other compensation.

12 **TWENTIETH AFFIRMATIVE DEFENSE**

13 **(Setoff)**

14 20. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
15 in part, because Defendants are entitled to a set-off for amounts Plaintiff or the putative class members
16 or putative aggrieved employees owe Defendants for receipt of any wages and other benefits to which he
17 or they were not entitled or did not earn.

18 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

19 **(No Hours Worked)**

20 21. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
21 in part, because Defendants are informed and believes that a reasonable opportunity for investigation
22 and discovery will reveal that, and, on that basis, Defendants allege that, some or all or certain hours
23 claimed by Plaintiff and the putative class members and putative aggrieved employees are not "hours
24 worked" within the meaning of any Wage Order(s) of the California Industrial Welfare Commission or
25 under applicable California and federal law; thus, compensation need not be paid for those hours.

26 ///

27 ///

28 ///

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 **(Unconstitutional)**

3 22. Although Defendants deny that it has committed, or has responsibility for, any act that
4 could support the recovery against Defendants in this Action, such recovery, if any, is barred because, to
5 the extent any such act is found, such recovery against Defendants are unconstitutional under numerous
6 provisions of the United States Constitution and the California Constitution, including the Excessive
7 Fines Clause of the Eighth Amendment, the Due Process clauses of the Fifth Amendment and Section 1
8 of the Fourteenth Amendment, and other provisions of the United States Constitution, and the Excessive
9 Fines Clause of Section 17 of Article I, the Due Process Clause of Section 7 of Article I, and other
10 provisions of the California Constitution.

11 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

12 **(Frivolous)**

13 23. Defendants have engaged attorneys to represent it in defense of Plaintiff's frivolous,
14 unfounded, and unreasonable Action, and Defendants are thereby entitled to an award of reasonable
15 attorneys' fees and costs pursuant to California Code of Civil Procedure section 1021.5 upon judgment
16 in its favor.

17 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

18 **(Not Knowing)**

19 24. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
20 in part, because, assuming *arguendo* that Plaintiff or putative class members or putative aggrieved
21 employees were not provided with a proper itemized statement of wages and deductions, Plaintiff and
22 the putative class members and putative aggrieved employees are not entitled to recover damages
23 because Defendants alleged failure to comply with California Labor Code section 226(a) was not a
24 "knowing and intentional failure" under California Labor Code section 226(e).

25 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

26 **(No Injury)**

27 25. Plaintiff's FAC, and the purported cause of action therein, is barred, in whole or in part,
28 because, assuming *arguendo* that Plaintiff or putative class members or putative aggrieved employees

1 were not provided with a proper itemized statement of wages and deductions, Plaintiff and the putative
2 class members and putative aggrieved employees are not entitled to recover damages because they did
3 not suffer any injury.

4 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

5 **(No Attorneys' Fees)**

6 26. Plaintiff is not entitled to the recovery of attorneys' fees for any common law claims, or
7 any statutory claims under which attorneys' fees are not specifically provided for.

8 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

9 **(Claims Barred)**

10 27. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
11 in part, to the extent that Plaintiff or putative class members or putative aggrieved employees have
12 previously pursued any claim before the California Department of Industrial Relations, Division of
13 Labor Standards Enforcement, or the U.S. Department of Labor.

14 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

15 **(No knowing, willful, purposeful, or malicious conduct)**

16 28. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
17 in part, because, to the extent that alleged violations of any provision of the California Labor Code
18 occurred, Defendants' conduct was not knowing, willful, purposeful, malicious, reckless, or negligent.

19 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

20 **(*In Pari Delicto*)**

21 29. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
22 in part, by reason of the fact that Plaintiff or putative class members or putative aggrieved employees
23 have engaged in acts and courses of conduct which rendered Plaintiff or putative class members or
24 putative aggrieved employees *in pari delicto*.

25 ///

26 ///

27 ///

28 ///

1 **THIRTIETH AFFIRMATIVE DEFENSE**

2 **(No Collective Action)**

3 30. Because liability may not be determined by a single jury on a class-wide basis allowing
4 this Action to proceed as a collective action would violate Defendants' rights under the Seventh
5 Amendment of the U.S. Constitution.

6 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

7 **(Good Faith)**

8 31. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
9 in part, because the acts or omissions complained of therein were done in good faith with reasonable
10 grounds for believing that the acts or omissions were not in violation of California law.

11 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

12 **(De Minimis)**

13 32. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
14 in part, because any insubstantial or insignificant periods of recorded working time beyond the
15 scheduled working hours of Plaintiff or putative class members or putative aggrieved employees, which,
16 as a practical administrative matter, cannot be recorded precisely for payroll purposes, are *de minimis*
17 and may be properly disregarded for payroll purposes, in accordance with 29 C.F.R. § 785.47, the
18 California Labor Code, and any other applicable state or federal laws, regulations, or court opinions.

19 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

20 **(Inadequate Class Representative)**

21 33. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
22 in part, because Plaintiff is not similarly situated to any other person or persons for purposes of the
23 California Labor Code.

24 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

25 **(No Work)**

26 34. Plaintiff's FAC, and each purported cause of action alleged therein, is barred, in whole or
27 in part, because the regular rate cannot be computed based upon, and overtime compensation cannot be
28 recovered by Plaintiff or putative class members or putative aggrieved employees for, periods of time

1 during which Plaintiff or putative class members or putative aggrieved employees performed no work,
2 including vacation or sick/medical leave, or for periods of time during which Plaintiff or putative class
3 members or putative aggrieved employees were otherwise absent from the workplace including,
4 holidays and other functions voluntarily attended.

5 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

6 **(Arbitrary Award)**

7 35. The penalties sought in the FAC would result in an award that is unjust, arbitrary and
8 oppressive, or confiscatory based on the facts and circumstances of this particular case.

9 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

10 **(Compliance with the Law)**

11 36. Defendants allege that it is in substantial or total compliance with all applicable laws and
12 statutes.

13 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

14 **(No Unfair Business Practice)**

15 37. Plaintiff's cause of action under California Business and Professions Code sections
16 17200, *et seq.* is barred because the practices alleged are not unfair, unlawful, fraudulent or deceptive,
17 the public is not likely to be deceived, Defendants gained no competitive advantage by such alleged
18 practices, and the benefits of the alleged practices outweigh any harm or other impact they may cause.

19 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

20 **(Failure to Properly Record Time Worked and Breaks Taken)**

21 38. Plaintiff's claims are barred, in whole or in part, because Plaintiff or any current or former
22 employee he seeks to represent failed to work or record all time worked, and failed to take or record all
23 breaks taken, as reasonably permitted, expected, or required by Defendants.

24 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

25 **(Chose Not to Take Meal Periods and Rest Breaks)**

26 39. Plaintiff or any current or former employees he seeks to represent are barred from asserting
27 claims for missed meal periods and rest breaks, and any additional claims derivative thereof, because he
28 was or they were provided with and never denied the right to take all meal periods and rest breaks to

1 which they were entitled under California law, and, if Plaintiff or any current or former employees he
2 seeks to represent did not take a meal period or rest break it is because he or they voluntarily waived
3 such right and deliberately chose not to take the required break.

4 **FORTIETH AFFIRMATIVE DEFENSE**

5 **(Authorized and Permitted to Take Rest Breaks)**

6 40. Even assuming, *arguendo*, that Plaintiff or any current or former employees he seeks to
7 represent were entitled to rest breaks, he or they are barred from asserting claims for missed rest breaks,
8 and any additional claims derivative thereof, because he was or they were authorized and permitted to
9 take rest periods as required by the California Labor Code and the applicable Wage Order of the
10 Industrial Welfare Commission.

11 **FORTY-FIRST AFFIRMATIVE DEFENSE**

12 **(“Provided” Meal Periods)**

13 41. Even assuming, *arguendo*, that Plaintiff or any current or former employees he seeks to
14 represent were entitled to meal periods, he is or they are barred from asserting claims for missed meal
15 breaks, and any additional claims derivative thereof, to the extent they were “provided” a meal period
16 within the meaning of the California Labor Code or they took an off-duty meal period of at least thirty
17 (30) minutes duration at the appropriate times.

18 **FORTY-SECOND AFFIRMATIVE DEFENSE**

19 **(Expenses Not Necessary or Reasonable)**

20 42. Plaintiff’s FAC, and each purported cause of action alleged therein, is barred, in whole or
21 in part, or recovery is precluded to the extent that, Plaintiff or the current and former employees he seeks
22 to represent seek reimbursement of expenses that were neither necessary nor reasonable in the
23 fulfillment of employment duties.

24 **FORTY-THIRD AFFIRMATIVE DEFENSE**

25 **(Res Judicata/Collateral Estoppel)**

26 43. As a separate and distinct affirmative defense, Defendants are informed and believe that
27 further investigation and discovery will reveal, and on that basis alleges, that the FAC and each cause of
28 action set forth therein, or some of them, are barred by the doctrine of collateral estoppel and/or *res*

1 *judicata* to the extent that Plaintiff and/or putative class members or putative aggrieved employees
2 Plaintiff seeks to represent have litigated or will litigate issues raised by the FAC prior to adjudication of
3 those issues in the instant action.

4 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

5 **(Class Action – Lack of Predominance)**

6 44. As a separate and distinct affirmative defense, Defendants allege that the types of claims
7 alleged by Plaintiff on behalf of herself and/or the alleged putative group she purports to represent are
8 matters in which individual questions dominate and thus are not appropriate for class treatment.

9 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

10 **(Class Action – Violation of Due Process)**

11 45. As a separate and distinct affirmative defense, Defendants allege that certification of a
12 class, as applied to the facts and circumstances of this case, would constitute a denial of Defendants' due
13 process rights, both substantive and procedural, in violation of the Fourteenth Amendment to the United
14 States Constitution and the California Constitution. Defendants reserve the right to amend this Answer
15 upon further investigation and discovery of facts supporting this defense.

16 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

17 **(Class Action – No Damages)**

18 46. As a separate and distinct affirmative defense, Defendants allege that this case cannot be
19 tried on a representative basis or with the use of statistical sampling consistent with due process because
20 the use of representative evidence or statistical sampling would result in damages being awarded to
21 those who have suffered no injury and have no legal right to damages.

22 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

23 **(Secreted or Absented)**

24 47. As a separate and distinct affirmative defense, Defendants allege that the FAC, and each
25 and every alleged cause of action therein, or some of them, are barred to the extent that Plaintiff and/or
26 some, or all, of the putative class members or putative aggrieved employees Plaintiff seeks to represent
27 secreted or absented themselves to avoid payment of wages, thereby relieving Defendants of liability for

28 ///

1 waiting time penalties under the California Labor Code, including but not limited to California Labor
2 Codes §§ 201, 202 and 203.

3 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

4 **(Labor Code section 203 – Refusal of Payment)**

5 48. As a separate and distinct affirmative defense, Defendants allege that the FAC, and each
6 and every alleged cause of action therein, or some of them, cannot be maintained against Defendants to
7 the extent that Plaintiff and some, or all, of the putative class members or putative aggrieved employees
8 Plaintiff seeks to represent refused payment fully tendered to him or her by Defendants, thereby
9 relieving Defendants of liability for alleged violations of California Labor Code § 203.

10 **FORTY-NINTH AFFIRMATIVE DEFENSE**

11 **(Injury Resulted from Act or Omission of Plaintiff/Putative Class Members)**

12 49. As a separate and distinct affirmative defense, Defendants allege that each purported
13 cause of action contained in the FAC, or some of the causes of action, are barred because the alleged
14 losses or harms, if any, sustained by Plaintiff and/or some or all of putative class members or putative
15 aggrieved employees resulted from the acts or omissions of Plaintiff and/or some or all of the putative
16 class members or putative aggrieved employees.

17 **FIFTIETH AFFIRMATIVE DEFENSE**

18 **(Avoidable Consequences)**

19 50. As a separate and distinct affirmative defense, Defendants allege that the FAC, and each
20 and every alleged cause of action therein, or some of them, are barred, or any recovery should be
21 reduced pursuant to the avoidable consequences doctrine because Defendants took reasonable steps to
22 prevent and correct any of the harm/violations alleged. Plaintiff and some, or all, of the putative class
23 members or putative aggrieved employees Plaintiff seeks to represent unreasonably failed to use the
24 preventative and corrective opportunities provided to them by Defendants, and reasonable use of
25 Defendants' procedures would have prevented at least some, if not all, of the harm that Plaintiff and
26 some, or all, of the putative class members or putative aggrieved employees Plaintiff seeks to represent
27 allegedly suffered.

28 ///

1 **FIFTY-FIRST AFFIRMATIVE DEFENSE**

2 **(Unreasonable and Bad Faith)**

3 51. As a separate and distinct affirmative defense, Defendants are informed and believe that
4 further investigation and discovery will reveal, and on that basis alleges, that the FAC and each and
5 every cause of action set forth therein, or some of them, are unreasonable and/or were filed in bad faith
6 and/or are frivolous and, for that reason, justify an award of attorneys' fees and costs against Plaintiff
7 and her attorneys.

8 **FIFTY-SECOND AFFIRMATIVE DEFENSE**

9 **(Failure and/or Waiver by Plaintiff)**

10 52. As a separate and distinct affirmative defense, Defendants allege that Plaintiff, and the
11 putative class members or putative aggrieved employees whom Plaintiff seeks to represent, have no
12 right to premium payments under California Labor Code section 226.7 because, to the extent, if any,
13 Plaintiff did not take meal periods or rest breaks, it was because she: (1) failed to take meal periods or
14 rest breaks that were provided by Defendants in compliance with California law; (2) chose not to take
15 meal periods or rest breaks that were authorized and permitted by Defendants; or (3) waived her right to
16 meal periods under California Labor Code section 512(a).

17 **FIFTY-THIRD AFFIRMATIVE DEFENSE**

18 **(Failure to Mitigate)**

19 53. As a separate and distinct affirmative defense, Defendants allege Plaintiff and/or the
20 alleged putative class members or other allegedly aggrieved employees have failed to exercise
21 reasonable care to mitigate their damages, if any were suffered, and their right to recover against
22 Defendants should be reduced and/or eliminated by such a failure.

23 **FIFTY-FOURTH AFFIRMATIVE DEFENSE**

24 **(Bus. & Pro. Code §§ 17200 *et seq.* – No Injury)**

25 54. As a separate and distinct affirmative defense, Defendants alleges that Defendants
26 provided Plaintiff and/or the alleged putative class members or other allegedly aggrieved employees
27 with proper compensation and California-compliant wage statements. Accordingly, because no injury

28 ///

1 resulted, they lack standing to bring a cause of action under California Business and Professions Code
2 section 17200, *et seq.*

3 **FIFTY-FIFTH AFFIRMATIVE DEFENSE**

4 **(PAGA Civil Penalties Unconstitutionally Excessive)**

5 55. Defendants assert that the FAC, and each and every alleged cause of action therein, or
6 some of them, are barred because the PAGA violates the prohibition against excessive fines in violation
7 of the Eighth Amendment to the United States Constitution and Article I, section 7 of the California
8 Constitution. *People ex rel Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal.4th 707 (2005).

9 **FIFTY-SIXTH AFFIRMATIVE DEFENSE**

10 **(Unconstitutionally Vague)**

11 56. Defendants allege that the California Business and Professions Code § 17200, *et seq.* and
12 claims pursuant to Labor Code section 2699, *et seq.* are unconstitutionally vague and overbroad in the
13 manner in which Plaintiff and the putative class members or other allegedly aggrieved employees claim
14 that said statutes apply to Defendants' business practices and thus constitute a violation of Defendants'
15 right to due process under the Fourteenth Amendment to the United States Constitution and Article I, § 7
16 of the California Constitutions. *See People ex rel Lockyer v. R.J. Reynolds Tobacco Company*, 37
17 Cal.4th 707 (2005).

18 **FIFTY-SEVENTH AFFIRMATIVE DEFENSE**

19 **(Labor Code § 2699 – PAGA Unconstitutional Separation of Powers)**

20 57. Defendants allege that Plaintiff's claim for penalties based upon PAGA is
21 unconstitutional on the basis that it violates the separation of powers doctrine by empowering private
22 attorneys to prosecute public claims, thereby impairing the judiciary's inherent power to regulate
23 attorney conduct.

24 **FIFTY-EIGHTH AFFIRMATIVE DEFENSE**

25 **(Failure to Exhaust PAGA Prerequisites)**

26 58. Defendants are informed and believe that further investigation and discovery will reveal,
27 and on that basis alleges, that the FAC and each and every cause of action set forth therein, or some of

28 ///

1 them, are barred by Plaintiff's failure to properly exhaust all administrative remedies and satisfy the
2 prerequisites of the PAGA, which are required prior to filing a civil lawsuit.

3 **FIFTY-NINTH AFFIRMATIVE DEFENSE**

4 **(Claims Not Suitable for Litigation on Representative Basis)**

5 59. Defendants allege that the FAC, and each and every alleged cause of action therein, or
6 some of them, are barred because Plaintiff is not an adequate and proper representative of any group or
7 putative class of allegedly aggrieved employees Plaintiff seeks to represent.

8 **SIXTIETH AFFIRMATIVE DEFENSE**

9 **(Representative Litigation a Violation of Due Process)**

10 60. Defendants allege that under the PAGA, determination/litigation of Plaintiff's claims on a
11 representative basis would deny Defendants their due process right to present individual evidence,
12 argument, and defenses as to each alleged individual aggrieved employee.

13 **SIXTY-FIRST AFFIRMATIVE DEFENSE**

14 **(Representative Litigation A Violation of Due Process with Commonality, Typicality)**

15 61. Defendants allege that Defendants' due process rights would be violated if Plaintiff is
16 allowed to adjudicate the claims of other present or former employees, pursuant to the PAGA, without
17 first establishing that Plaintiff's claims or defenses are typical of the claims or defenses of the other
18 employees Plaintiff purports to represent, or without first establishing that there are common questions
19 of law and fact as to all of the employees whom Plaintiff purports to represent.

20 **SIXTY-SECOND AFFIRMATIVE DEFENSE**

21 **(PAGA – Lack of Manageability)**

22 62. Defendants allege that the FAC and each cause of action set forth therein, or some of
23 them, cannot proceed as a PAGA action because of difficulties likely to be encountered that render the
24 action unmanageable.

25 **SIXTY-THIRD AFFIRMATIVE DEFENSE**

26 **(CAL. LAB. CODE § 2699 – Aggrieved Employee)**

27 63. Defendants allege that Plaintiff lacks standing to bring claims for civil penalties on behalf
28 of herself or others because she is not an aggrieved employee, pursuant to the PAGA.

1 **SIXTY-FOURTH AFFIRMATIVE DEFENSE**

2 **(Less Than Maximum Award Required)**

3 64. Defendants allege that, without conceding that any penalties are due, less than the
4 maximum penalties authorized under the PAGA must be imposed under the facts of this case. To do
5 otherwise would result in an award that is “unjust, arbitrary, and oppressive or confiscatory.” Cal. Labor
6 Code § 2699(e)(2).

7 **SIXTY-FIFTH AFFIRMATIVE DEFENSE**

8 **(Reservation of Rights)**

9 65. Defendants allege that Plaintiff’s FAC does not describe the claims or facts being alleged
10 with sufficient particularity to permit Defendants to ascertain what other defenses may exist. Defendants
11 will rely on any and all further defenses that become available or appear during discovery in this Action
12 and specifically reserve the right to amend this Answer for purposes of asserting such additional
13 affirmative defenses.

14 WHEREFORE, Defendants pray for judgment as follows:

- 15 1. That Plaintiff and the putative class and putative aggrieved employees take nothing by
16 the FAC;
- 17 2. That the FAC be dismissed in its entirety with prejudice;
- 18 3. That Plaintiff and the putative class and putative aggrieved employees be denied each and
19 every demand and prayer for relief contained in the FAC;

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

- 1 4. For cost of suits incurred herein, including reasonable attorneys' fees; and
2 5. For such other and further relief as the Court deems just and equitable.
3

4 Respectfully submitted,

5 DATED: March 29, 2022

JACKSON LEWIS P.C.

6
7 By: 

Guillermo A. Escobedo

Lara P. Besser

Bayan Salehi

Attorneys for Defendants

2018HMO LLC dba HIKEI MODERN CANNABIS;

2018HMPF LLC; AARON MAGAGNA; and

MICHAEL STRATMAN

8
9
10
11
12
13 4862-7126-6840, v. 2
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28