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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 10 2021

BY Sandra Ortega
SANDRA ORTEGA, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ANTHONY QUINTERO, individually, and
on behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

JC RESORTS LLC, a California limited
liability company; JC RESORTS
MANAGEMENT LLC, a California limited
liability company; BCR MANAGEMENT,
INC., a California corporation; KSC
MANAGEMENT, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CIV-SB-2115731

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of Labor Code §§ 226.7, 516, and 1198 (Failure to Provide Recovery Periods)
- (6) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (8) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);

RECEIVED

AUG 10 2021

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT**

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- (9) Violation of California Labor Code §§ 551, 552, and 558 (Failure to Provide One Day's Rest in Seven)
- (10) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (11) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (13) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Anthony Quintero, individually and on behalf of all other members of the public
2 similarly situated and as an aggrieved employee and on behalf of all other aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* ("PAGA") to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission ("IWC")
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff's share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to "minimal diversity"
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

1 for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years
2 on behalf of the same proposed class against Defendants asserting the same or similar factual
3 allegations.

4 3. Venue is proper in this Court, because Defendants employ persons within the
5 County of San Bernardino and have violated the requirements of the California Labor Code and
6 applicable Wage Order in this county which give rise to the penalties sought in this action. Cal.
7 Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California
8 Labor Code and applicable Wage Order in at least one location within the County of San
9 Bernardino, including one of Defendants' locations in Chino Hills, at 15656 Yorba Ave., Chino
10 Hills, California 91709. Pursuant to California Civil Code of Procedure section 393, venue is
11 proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the
12 cause, or some part of the cause, arose. Because Defendants have employees in San Bernardino
13 County and Plaintiff could bring this action to recover penalties in San Bernardino County,
14 venue is proper. *Id.*

15 THE PARTIES

16 4. Plaintiff ANTHONY QUINTERO is a resident of Vista, in San Diego County,
17 California. Defendants employed Plaintiff as an hourly paid, non-exempt Security Officer from
18 approximately February 2016 to June 2020. During his employment, Plaintiff typically worked
19 eight (8) hours to twelve (12) hours per day, and five (5) to six (6) days per week. Plaintiff's
20 primary job duties included, without limitation, administering first aid; responding to
21 emergencies; escorting employees and guests to the hospital; preparing incident reports;
22 patrolling, closing, and locking various parts of the resort; attending to guest inquiries regarding
23 lost-and-found issues; and conducting safety trainings for employees.

24 5. JC RESORTS LLC was and is, upon information and belief, a California limited
25 liability company, and at all times hereinafter mentioned, an employer whose employees are
26 engaged throughout this county, the State of California, or the various states of the United States
27 of America.

28 6. JC RESORTS MANAGEMENT LLC was and is, upon information and belief, a

1 California limited liability company, and at all times hereinafter mentioned, an employer whose
2 employees are engaged throughout this county, the State of California, or the various states of
3 the United States of America.

4 7. BCR MANAGEMENT, INC. was and is, upon information and belief, a
5 California corporation, and at all times hereinafter mentioned, an employer whose employees
6 are engaged throughout this county, the State of California, or the various states of the United
7 States of America.

8 8. KSC MANAGEMENT, INC. was and is, upon information and belief, a
9 California corporation, and at all times hereinafter mentioned, an employer whose employees
10 are engaged throughout this county, the State of California, or the various states of the United
11 States of America.

12 9. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
13 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
14 complaint and serve such fictitiously named Defendants once their names and capacities
15 become known.

16 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
17 were the partners, agents, owners, or managers of JC RESORTS LLC; JC RESORTS
18 MANAGEMENT LLC; BCR MANAGEMENT, INC.; and KSC MANAGEMENT, INC. at all
19 relevant times.

20 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
21 acts and omissions alleged herein was performed by, or is attributable to, JC RESORTS LLC;
22 JC RESORTS MANAGEMENT LLC; BCR MANAGEMENT, INC.; KSC MANAGEMENT,
23 INC.; and/or DOES 1 through 10 (collectively, "Defendants" or "JC RESORTS"), each acting
24 as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of
25 the other co-Defendants and was acting within the course and scope of such agency,
26 employment, joint venture, or concerted activity with legal authority to act on the others' behalf.
27 The acts of any and all Defendants were in accordance with, and represent, the official policy
28 of Defendants.

1 12. At all relevant times, Defendants, and each of them, ratified each and every act
2 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
3 and abetted the acts and omissions of each and all the other Defendants in proximately causing
4 the damages herein alleged.

5 13. Plaintiff is informed and believes, and thereon alleges, that each of said
6 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
7 omissions, occurrences, and transactions alleged herein.

8 14. Under California law, Defendants are jointly and severally liable as employers
9 for the violations alleged herein because they have each exercised sufficient control over the
10 wages, hours, working conditions, and employment status of Plaintiff and class members. Each
11 Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled
12 their work schedule and/or conditions of employment, determined their rate of pay, and
13 maintained their employment records. Defendants suffered or permitted Plaintiff and class
14 members to work and/or "engaged" Plaintiff and class members so as to create a common-law
15 employment relationship. As joint employers of Plaintiff and class members, Defendants are
16 jointly and severally liable for the civil penalties and all other relief available to Plaintiff and
17 class members under the law.

18 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
19 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
20 members because Defendants have:

- 21 (a) jointly exercised meaningful control over the work performed by Plaintiff
22 and class members;
- 23 (b) jointly exercised meaningful control over Plaintiff's and class members'
24 wages, hours, and working conditions, including the quantity, quality
25 standards, speed, scheduling, and operative details of the tasks performed
26 by Plaintiff and class members;
- 27 (c) jointly required that Plaintiff and class members perform work which is
28 an integral part of Defendants' businesses; and

1 (d) jointly exercised control over Plaintiff and class members as a matter of
2 economic reality in that Plaintiff and class members were dependent on
3 Defendants, who shared the power to set the wages of Plaintiff and class
4 members and determined their working conditions, and who jointly
5 reaped the benefits from the underpayment of their wages and
6 noncompliance with other statutory provisions governing their
7 employment.

8 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
9 there has existed a unity of interest and ownership between Defendants such that any
10 individuality and separateness between the entities has ceased.

11 17. JC RESORTS LLC; JC RESORTS MANAGEMENT LLC; BCR
12 MANAGEMENT, INC.; KSC MANAGEMENT, INC.; and/or DOES 1 through 10 are therefore
13 alter egos of each other.

14 18. Adherence to the fiction of the separate existence of Defendants would permit an
15 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
16 liability for the wrongful acts committed by them under the name JC RESORTS.

17 19. Plaintiff further alleges, upon information and belief, that Defendants JC
18 RESORTS LLC; JC RESORTS MANAGEMENT LLC; BCR MANAGEMENT, INC.; and
19 KSC MANAGEMENT, INC. are alter egos of each other for the following reasons:

20 (a) On the California Secretary of State's website
21 (<https://businesssearch.sos.ca.gov/>), JC RESORTS LLC; JC RESORTS
22 MANAGEMENT LLC; BCR MANAGEMENT, INC.; and KSC
23 MANAGEMENT, INC. share the same entity address and entity mailing
24 address, "533 COAST BLVD SOUTH, LA JOLLA, CA 92037;"

25 (b) Based on the Statement of Information forms filed with the California
26 Secretary of State's website (<https://businesssearch.sos.ca.gov/>), JC
27 RESORTS LLC; JC RESORTS MANAGEMENT LLC; BCR
28 MANAGEMENT, INC.; and KSC MANAGEMENT, INC. share the

1 same Chief Executive Officer and Agent for Service of Process, "Paul L.
2 Reed;"

3 (c) Based on the Statement of Information form filed with the California
4 Secretary of State's website (<https://businesssearch.sos.ca.gov/>), BCR
5 MANAGEMENT, INC. is a Manager or Member of both JC RESORT
6 LLC and JC RESORTS MANAGEMENT LLC; and

7 (d) On information and belief, JC RESORTS LLC; JC RESORTS
8 MANAGEMENT LLC; BCR MANAGEMENT, INC.; and KSC
9 MANAGEMENT, INC. utilize the same standardized employment forms
10 and issue the same employment policies.

11 GENERAL ALLEGATIONS

12 20. Defendants manage and operate premium golf and resort properties in Southern
13 California and New Mexico. Upon information and belief, Defendants maintain a single,
14 centralized Human Resources ("HR") department at their company headquarters in La Jolla,
15 California, which is responsible for the recruiting and hiring of new employees, and
16 communicating and implementing Defendants' company-wide policies, including timekeeping
17 policies and meal and rest period policies, to employees throughout California.

18 21. In particular, Plaintiff and class members, on information and belief, received
19 the same standardized documents and/or written policies. Upon information and belief, the
20 usage of standardized documents and/or written policies, including new-hire documents,
21 indicate that Defendants dictated policies at the corporate level and implemented them
22 company-wide, regardless of their employees' assigned locations or positions. Upon
23 information and belief, Defendants set forth uniform policies and procedures in several
24 documents provided at an employee's time of hire.

25 22. Upon information and belief, Defendants maintain a centralized Payroll
26 department at their company headquarters in La Jolla, California, which processes payroll for
27 all non-exempt, hourly paid employees working for Defendants at their various locations and
28 jobsites in California, including Plaintiff and class members. Based upon information and

1 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
2 employees in California, irrespective of their work locations. Upon information and belief,
3 Defendants process payroll for departing employees in the same manner throughout the State
4 of California, regardless of the manner in which each employee's employment ends.

5 23. Defendants continue to employ non-exempt or hourly paid employees in
6 California.

7 24. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
9 advisors knowledgeable about California labor and wage law, employment and personnel
10 practices, and about the requirements of California law.

11 25. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
12 members were not paid for all hours worked because all hours worked were not recorded.

13 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to receive certain wages for
15 overtime compensation and that they were not receiving certain wages for overtime
16 compensation.

17 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to be paid at a regular rate of
19 pay, and corresponding overtime rate of pay, that included as eligible income all remuneration
20 required by law, including but not limited to, all income derived from incentive pay,
21 nondiscretionary bonuses, and/or other forms of compensation, but failed to include all forms
22 of remuneration in calculating the regular rate of pay for Plaintiff and class members.

23 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to receive at least minimum
25 wages for compensation and that they were not receiving at least minimum wages for work that
26 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
27 class members were not paid at least minimum wages for work done off-the-clock.

28 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to meal periods in accordance
2 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
3 additional hour of pay at their regular rates of pay when they were not provided with timely,
4 uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not
5 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
6 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

7 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to rest periods in accordance
9 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
10 additional hour of pay at their regular rates of pay when they were not authorized and permitted
11 to take a compliant rest period. In violation of the California Labor Code, Plaintiff and class
12 members were not authorized and permitted to take compliant rest periods, nor did Defendants
13 provide Plaintiff and class members with payment of one (1) additional hour of pay at their
14 regular rates of pay when they were not authorized and permitted to take a compliant rest period.

15 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to recovery periods in
17 accordance with the California Labor Code and applicable General Industry Safety Order or
18 payment of one (1) additional hour of pay at their regular rates of pay when they were not
19 provided a compliant recovery period. In violation of the California Labor Code, Plaintiff and
20 class members were not provided compliant recovery periods, nor did Defendants provide
21 Plaintiff and class members with payment of one (1) additional hour of pay at their regular rates
22 of pay when they were not provided a compliant recovery period.

23 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to receive complete and
25 accurate wage statements in accordance with California law. In violation of the California
26 Labor Code, Plaintiff and class members were not provided complete and accurate wage
27 statements.

28 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that they had a duty to maintain accurate and complete payroll records in
2 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
3 and intentionally failed to do so.

4 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to timely payment of all
6 wages earned upon termination of employment. In violation of the California Labor Code,
7 Plaintiff and class members did not receive payment of all wages due, including, but not limited
8 to, overtime wages; minimum wages; and/or meal, rest, and recovery period premiums, within
9 permissible time periods.

10 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to timely payment of wages
12 during their employment. In violation of the California Labor Code, Plaintiff and class members
13 did not receive payment of all wages, including, but not limited to, overtime wages; minimum
14 wages; and/or meal, rest, and recovery period premiums, within permissible time periods.

15 36. Plaintiff is informed and believes, and thereon alleges, that at all time herein
16 mentioned, Defendants knew or should have known that they had a duty to cover the costs and
17 expenses Plaintiff and/or class members incurred obtaining mandatory examinations and/or
18 drug tests, but failed to do so.

19 37. Plaintiff is informed and believe, and thereon allege, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to one day's rest in seven. In
21 violation of the California Labor Code, Defendants required Plaintiff and class members to work
22 more than six consecutive days without a day of rest, where the total hours worked exceeded 30
23 hours in any week or six hours in any one day thereof.

24 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and/or class members were entitled to be paid a split-shift
26 premium when they returned to work for an additional shift in the same day, after having been
27 clocked out for more than an hour. In violation of the California Labor Code and applicable
28 IWC Wage Order, Defendants did not pay Plaintiff and/or class members an additional hour at

1 minimum wage when they worked split-shifts.

2 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and/or class members were entitled to suitable seating and/or
4 were entitled to sit when it did not interfere with the performance of their duties and also have
5 seats nearby to use during a lull in tasks that do require moving about or standing. In violation
6 of the California Labor Code and applicable IWC Wage Order, Defendants failed to provide
7 Plaintiff and/or class members suitable seating.

8 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to receive full reimbursement
10 for all business-related expenses and costs they incurred during the course and scope of their
11 employment and that they did not receive full reimbursement of applicable business-related
12 expenses and costs incurred.

13 41. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff and
15 class members with safety devices and safeguards, such as personal protective equipment to
16 protect their life, safety, and health in the workplace, but failed to do so.

17 42. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
19 and class members for all hours worked, and that Defendants had the financial ability to pay
20 such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
21 represented to Plaintiff and class members that they were properly denied wages, all in order to
22 increase Defendants' profits.

23 **PAGA REPRESENTATIVE ALLEGATIONS**

24 43. At all times herein set forth, PAGA provides that any provision of law under the
25 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
26 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
27 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
28 behalf of themselves and other current or former employees pursuant to procedures outlined in

1 California Labor Code section 2699.3.

2 44. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
3 person who was employed by the alleged violator and against whom one or more of the alleged
4 violations was committed.”

5 45. Plaintiff and other current and former employees of Defendants are “aggrieved
6 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
7 or former employees and one or more of the alleged violations were committed against them.

8 46. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
9 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
10 requirements have been met:

11 (a) The aggrieved employee or representative shall give written notice by
12 online filing with the LWDA and by certified mail to the employer of the
13 specific provisions of the California Labor Code alleged to have been
14 violated, including the facts and theories to support the alleged violation.

15 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
16 2699.3(a) and any employer response to that notice shall be accompanied
17 by a filing fee of seventy-five dollars (\$75).

18 (c) The LWDA shall notify the employer and the aggrieved employee or
19 representative by certified mail that it does not intend to investigate the
20 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
21 the postmark date of the aggrieved employee’s notice. Upon receipt of
22 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
23 (65) calendar days of the postmark date of the aggrieved employee’s
24 notice, the aggrieved employee may commence a civil action pursuant to
25 California Labor Code section 2699 to recover civil penalties.

26 47. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
27 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
28 other than those listed in Section 2699.5 after the following requirements have been met:

- 1 (a) The aggrieved employee or representative shall give written notice by
2 online filing with the LWDA and by certified mail to the employer of the
3 specific provisions of the California Labor Code alleged to have been
4 violated (other than those listed in Section 2699.5), including the facts
5 and theories to support the alleged violation.
- 6 (b) An aggrieved employee's notice filed with the LWDA pursuant to
7 2699.3(c) and any employer response to that notice shall be accompanied
8 by a filing fee of seventy-five dollars (\$75).
- 9 (c) The employer may cure the alleged violation within thirty-three (33)
10 calendar days of the postmark date of the notice sent by the aggrieved
11 employee or representative. The employer shall give written notice
12 within that period of time by certified mail to the aggrieved employee or
13 representative and by online filing with the LWDA if the alleged violation
14 is cured, including a description of actions taken, and no civil action
15 pursuant to Section 2699 may commence. If the alleged violation is not
16 cured within the 33-day period, the aggrieved employee may commence
17 a civil action pursuant to Section 2699.

18 48. On June 4, 2021, Plaintiff provided written notice by online filing to the LWDA
19 and by Certified Mail to Defendants of the specific provisions of the California Labor Code
20 alleged to have been violated, including facts and theories to support the alleged violations, in
21 accordance with California Labor Code section 2699.3. Plaintiff's written notice was
22 accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA
23 Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case
24 Number LWDA-CM-834068-21. A true and correct copy of Plaintiff's written notice to the
25 LWDA and Defendants is attached hereto as "Exhibit 1."

26 49. As of the filing date of this complaint, over 65 days have passed since Plaintiff
27 sent the notice described above to the LWDA, and the LWDA has not responded that it intends
28 to investigate Plaintiff's claims and Defendants have not cured the violations.

1 50. Thus, Plaintiff has satisfied the administrative prerequisites under California
2 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
3 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
4 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

5 51. Labor Code section 558(a) provides “[a]ny employer or other person acting on
6 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
7 provision regulating hours and days of work in any order of the Industrial Welfare Commission
8 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
9 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
10 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
11 each pay period for which the employee was underpaid. . . .” Labor Code section 558(c)
12 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
13 criminal penalty provided by law.”

14 52. Defendants, at all times relevant to this complaint, were employers or persons
15 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
16 rights by violating various sections of the California Labor Code as set forth above.

17 53. As set forth below, Defendants have violated numerous provisions of both the
18 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
19 Order.

20 54. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
21 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
22 private attorney general, seeks assessment and collection of civil penalties for himself, all other
23 aggrieved employees, and the State of California against Defendants for violations of California
24 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552,
25 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

26 **CLASS ACTION ALLEGATIONS**

27 55. Plaintiff brings this action on his own behalf, as well as on behalf of each and all
28 other persons similarly situated, and thus seeks class certification under California Code of Civil

1 Procedure section 382.

2 56. All claims alleged herein arise under California law for which Plaintiff seeks
3 relief authorized by California law.

4 57. Plaintiff's proposed class consists of and is defined as follows:

5 All persons who worked for Defendants as non-exempt, hourly
6 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

7 58. Plaintiff's proposed subclass consists of and is defined as follows:

8 All persons who worked for Defendants as non-exempt, hourly
9 paid employees in California and who received at least one wage
10 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

11 59. Members of the Class and Subclass are referred to herein as "class members."

12 60. Plaintiff reserves the right to redefine the Class and Subclass and to add
13 additional subclasses as appropriate based on further investigation, discovery, and specific
14 theories of liability.

15 61. There are common questions of law and fact as to class members that
16 predominate over questions affecting only individual members, including, but not limited to:

- 17 (a) Whether Defendants required Plaintiff and class members to work over
18 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
19 hours per week and failed to pay all legally required overtime
20 compensation to Plaintiff and class members;
- 21 (b) Whether Defendants failed to properly calculate the "regular rate" of pay
22 on which Plaintiff's and class members' overtime rate of pay was based;
- 23 (c) Whether Defendants failed to pay Plaintiff and class members at least
24 minimum wages for all hours worked;
- 25 (d) Whether Defendants failed to provide Plaintiff and class members with
26 meal periods;
- 27 (e) Whether Defendants failed to authorize and permit Plaintiff and class
28 members to take rest periods;

- (f) Whether Defendants failed to provide Plaintiff and class members with recovery periods;
- (g) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (h) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (i) Whether Defendants failed to pay earned overtime wages; minimum wages; and/or meal, rest, and recovery period premiums due to Plaintiff and class members upon their discharge;
- (j) Whether Defendants failed timely to pay overtime wages; minimum wages; meal, rest, and recovery period premiums due to Plaintiff and class members during their employment;
- (k) Whether Defendants failed to pay Plaintiff and/or class members for the costs of mandatory physical examinations and/or drug testing;
- (l) Whether Defendants failed to provide Plaintiff and class members one day's rest in seven;
- (m) Whether Defendants required Plaintiff and/or class members to return to work for an additional shift in the same day, after having been clocked out for more than an hour, without paying Plaintiff and/or class members an additional hour of pay at the minimum wage as required by California Code of Regulations, Title 8, section 11050(4)(C);
- (n) Whether Defendants failed to provide Plaintiff and/or class members with suitable seating;
- (o) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (p) Whether Defendants failed to provide Plaintiff and class members with

safety devices and safeguards, such as personal protective equipment;

(q) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and

(r) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

62. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

(a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of

1 each class member.

2 (d) Superiority: The nature of this action makes the use of class action
3 adjudication superior to other methods. A class action will achieve
4 economies of time, effort, and expense as compared with separate
5 lawsuits, and will avoid inconsistent outcomes because the same issues
6 can be adjudicated in the same manner and at the same time for the entire
7 class.

8 (e) Public Policy Considerations: Employers in the State of California
9 violate employment and labor laws every day. Current employees are
10 often afraid to assert their rights out of fear of direct or indirect retaliation.
11 Former employees are fearful of bringing actions because they believe
12 their former employers might damage their future endeavors through
13 negative references and/or other means. Class actions provide the class
14 members who are not named in the complaint with a type of anonymity
15 that allows for the vindication of their rights while simultaneously
16 protecting their privacy.

17 **FIRST CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

19 **(Against all Defendants)**

20 63. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 64. Labor Code section 1198 makes it illegal to employ an employee under
23 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
24 Code section 1198 requires that "... the standard conditions of labor fixed by the commission
25 shall be the ... standard conditions of labor for employees. The employment of any employee
26 ... under conditions of labor prohibited by the order is unlawful."

27 65. California Labor Code section 1198 and the applicable IWC Wage Order provide
28 that it is unlawful to employ persons without compensating them at a rate of pay either time-

1 and-one-half or two-times that person's regular rate of pay, depending on the number of hours
2 worked by the person on a daily or weekly basis.

3 66. Specifically, the applicable IWC Wage Order provides that Defendants are and
4 were required to pay Plaintiff and class members working more than eight (8) hours in a day or
5 more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours
6 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

7 67. The applicable IWC Wage Order further provides that Defendants are and were
8 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
9 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
10 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
11 employee, including nondiscretionary bonuses and incentive pay.

12 68. California Labor Code section 510 codifies the right to overtime compensation
13 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
14 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
15 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
16 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
17 the seventh (7th) day of work.

18 69. During the relevant time period, Defendants willfully failed to pay all overtime
19 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class
20 members were not paid overtime premiums for all of the hours they worked in excess of eight
21 (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours
22 in a week, because all hours worked were not recorded.

23 70. First, during the relevant period, Defendants had a policy and/or practice of
24 discouraging and impeding Plaintiff and class members from recording hours worked that were
25 outside of their scheduled shifts, in order to limit the amount of overtime employees could
26 accrue. On information and belief, this policy of limiting overtime, coupled with Defendants'
27 use of labor budgets and assignment of heavy workloads (*see infra*), led Plaintiff and class
28 members to work off-the-clock before and after their scheduled shift times in order to complete

1 their assigned duties, but prevented them from accounting for and recording this time in the
2 timekeeping system. For example, twice per week, Plaintiff would arrive to work prior to the
3 start of his shift and be required to assist with an emergency situation before clocking in. This
4 could take up to 30-60 minutes each instance due to the short-staffing of personnel with medical
5 training to tend to such emergencies. Likewise, about 2-3 times per week, after Plaintiff had
6 clocked out at the end of his shift, he would continue to receive radio calls while at the security
7 office and would be required to attend to situations on the premises, due to the understaffing of
8 security personnel during the night shift. This off-the-clock work would take 15-30 minutes
9 and up to three (3) hours per instance. As a further example, Plaintiff's managers would ask
10 him to run errands while off-the-clock, such as picking up printer toner cartridges from Staples
11 on his way to work; Plaintiff spent approximately 35 minutes doing so. Likewise, on
12 information and belief, while off-the-clock, other employees were required to drive to deliver
13 lost-and-found items to guests who had left the premises. Although Defendants' supervisors
14 claimed that they would manually adjust time records to account for such off-the-clock work,
15 on information and belief, they failed to adequately capture all of Plaintiff and class members'
16 time spent performing this off-the-clock work. Thus, Defendants failed to track all hours
17 Plaintiff and class members spent working before clocking in and/or after clocking out, and
18 Plaintiff and class members did not receive all compensation for this time.

19 71. Second, Defendants had, and continue to have, a company-wide policy and/or
20 practice of failing to compensate Plaintiff and class members for the time they spent donning
21 and doffing required uniforms and/or security gear, including earpieces, walkie-talkies,
22 flashlights, and radios. During the relevant time period, Plaintiff and class members were
23 required to change into their uniforms at Defendants' facility; however, Defendants did not
24 allow Plaintiff and class members to report the time spent donning and doffing their uniforms
25 and gear as hours worked, despite being on Defendants' premises and under Defendants'
26 control. Specifically, Plaintiff and class members were instructed by Defendants to report to
27 work in their without their uniforms on and to change into their uniforms and "gear up" prior to
28 the start of their shift and before they clocked in. Plaintiff's supervisor would discuss the day's

1 activities with Plaintiff and other class members while they were changing into their uniforms
2 and putting on their gear, which took approximately 10-15 minutes. As a result, Defendants
3 suffered and/or permitted Plaintiff and class members to perform work for which they were not
4 paid.

5 72. Third, Defendants, on a company-wide basis, had a practice of conducting
6 randomized security searches of employees' bags, either for loss prevention or safety purposes.
7 At times, these random security checks would occur prior to the start of Plaintiff's and class
8 members' shifts, requiring Plaintiff and class members to wait in line for several minutes and
9 having the search performed prior to clocking in. Other times, the security checks would occur
10 after Plaintiff and class members had clocked out at the end of their shifts. Thus, Plaintiff and
11 class members were not compensated for the time they spent off-the-clock undergoing random
12 security searches and under Defendants' control.

13 73. Fourth, as stated above, on information and belief, Defendants had, and continue
14 to have, a company-wide policy and/or practice of strictly staffing their locations based on the
15 labor hours allocated by corporate. Defendants' uniform use of labor budgets, combined with
16 the assignment of heavy workloads (such as a daily checklist of duties to be completed by
17 certain deadlines throughout the day), resulted in chronic understaffing. Also, Defendants have
18 systematically, and on a company-wide basis, understaffed their locations by adopting a single-
19 staffing model for some positions, thereby failing to provide adequate meal period coverage to
20 permit those employees to take compliant meal periods. Moreover, Plaintiff's managers
21 instructed Plaintiff to have his radio on his person at all times and required Plaintiff to respond
22 when called, even during his meal periods. Additionally, Defendants, on a company-wide basis,
23 had a practice of failing to schedule meal periods, which further caused Plaintiff and class
24 members to not be relieved of their duties for compliant meal periods. Finally, due to the lack
25 of meal period coverage resulting from understaffing, Defendants required Plaintiff and class
26 members to remain on or near the premises for their meal periods. Because Plaintiff and class
27 members were restricted from leaving the premises during meal periods, they were denied the
28 ability to use their meal periods freely for their own purposes, such as running personal errands.

1 Thus, Defendants effectively maintained control over Plaintiff and class members during meal
2 periods.

3 74. As a result, Plaintiff and class members were not always afforded uninterrupted
4 30-minute meal periods during shifts when they were entitled to receive a meal period. For
5 example, Plaintiff and class members were required to perform their duties during unpaid meal
6 periods, or would have their meal periods interrupted to complete work-related tasks. Plaintiff
7 missed his meal periods approximately 2-3 times per week due to the heavy workload and lack
8 of coverage. Likewise, Plaintiff's meal periods would be interrupted and cut short
9 approximately 2-3 times per week, as Plaintiff would be forced to continue working and prepare
10 incident reports in accordance with the deadlines set by Defendants. Additionally, upon
11 information and belief, because Defendants frowned upon employees accruing meal period
12 penalties, Defendants pressured Plaintiff and class members to clock out for meal periods, on
13 threat of discipline, and/or adjusted employee time records to reflect compliant meal periods,
14 regardless of whether they had received a compliant meal period, in order to strictly limit meal
15 penalties that Defendants would otherwise owe. Thus, Plaintiff and class members performed
16 work during meal periods for which they were not paid.

17 75. Sixth, Defendants' company-wide electronic timekeeping system prevented
18 Plaintiff and class members from recording all hours worked when their meal periods were
19 shortened or interrupted, because the system locked out Plaintiff and class members once they
20 had clocked out for a meal period and would not permit them to clock back in from a meal
21 period before the 30 minutes elapsed. Similarly, Defendants' rigid company-wide electronic
22 timekeeping system prevented Plaintiff and class members from clocking in early, prior to the
23 start of their scheduled shifts, or after the end of their scheduled shifts. For example, when
24 Plaintiff had clocked out at the end of shift and was called back in to assist with a work-related
25 situation, on information and belief, Plaintiff was prevented from clocking back in until 30
26 minutes had elapsed due to the system logging the "clock out" as the start of a meal period.
27 Thus, Defendants' timekeeping system prevented Plaintiff and class members from recording
28 all hours worked when their meal periods were shortened or interrupted, or when they worked

1 prior to or past their scheduled shifts.

2 76. Defendants knew or should have known that as a result of these company-wide
3 practices and/or policies, Plaintiff and class members were performing their assigned duties off-
4 the-clock before and after their shifts and during meal periods, and were suffered or permitted
5 to perform work for which they were not paid. Because Plaintiff and class members worked
6 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-
7 clock work qualified for overtime premium pay. Therefore, Plaintiff and class members were
8 not paid overtime wages for all of the overtime hours they actually worked.

9 77. Furthermore, Defendants did not pay Plaintiff and class members the correct
10 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
11 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
12 and/or other forms of compensation. However, in violation of the California Labor Code,
13 Defendants failed to incorporate all compensation, including but not limited to, incentive pay,
14 nondiscretionary bonuses, and/or other forms of compensation into the calculation of the regular
15 rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when
16 Plaintiff and class members worked overtime and received these other forms of pay, Defendants
17 failed to pay all overtime wages by paying a lower overtime rate than required.

18 78. Defendants' failure to pay Plaintiff and class members the balance of overtime
19 compensation as required by California law, violates the provisions of California Labor Code
20 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
21 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
22 and attorneys' fees.

23 **SECOND CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 25 **Minimum Wages** 26 **(Against all Defendants)**

27 79. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 80. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
2 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
3 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
4 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the
5 time during which an employee is subject to the control of an employer, and includes all the
6 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
7 Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

8 81. As set forth above, Defendants had a company-wide practice and/or policy of
9 utilizing labor budgets and limiting overtime accrual, leading to the failure to compensate
10 Plaintiff and class members for their time spent working off-the-clock, including running work-
11 related errands, donning and doffing their required uniforms and gear, and undergoing security
12 searches. In addition, due to Defendants’ policy and/or practice of understaffing and/or single-
13 staffing, requiring employees to respond to radio calls at all times, and failure to schedule meal
14 periods, Plaintiff and class members were forced to forego meal periods, have their meal periods
15 interrupted, or continue working through their meal period to complete their daily assigned tasks
16 and/or were otherwise not relieved of all duties during meal periods. Additionally, as set forth
17 above, on information and belief, Defendants systematically failed to pay Plaintiff and class
18 members for actual hours worked during unpaid meal periods or beyond their scheduled shifts,
19 because these hours were not always correctly recorded.

20 82. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
21 and class members. To the extent that these off-the-clock hours did not qualify for overtime
22 premium payment, Defendants did not pay at least minimum wages for those hours worked off-
23 the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

24 83. Defendants’ failure to pay Plaintiff and class members minimum wages violates
25 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
26 Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated
27 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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1 **THIRD CAUSE OF ACTION**

2 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

3 **Violations**

4 **(Against all Defendants)**

5 84. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 85. At all relevant times herein set forth, California Labor Code section 512(a)
8 provides that an employer may not require, cause, or permit an employee to work for a period
9 of more than five (5) hours per day without providing the employee with a meal period of not
10 less than thirty (30) minutes, except that if the total work period per day of the employee is not
11 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
12 and the employee. Under California law, first meal periods must start after no more than five
13 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

14 86. At all relevant times herein set forth, California Labor Code sections 226.7,
15 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
16 meal period mandated by an applicable order of the IWC.

17 87. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
18 the applicable IWC Wage Order also require employers to provide a second meal period of not
19 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
20 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
21 hours worked is no more than twelve (12) hours, the second meal period may be waived by
22 mutual consent of the employer and the employee only if the first meal period was not waived.

23 88. During the relevant time period, Defendants had, and continue to have, a
24 company-wide policy and/or practice of understaffing/single-staffing their locations due to
25 labor budgeting. Further, as stated, Plaintiff's managers instructed him to have his radio on his
26 person at all times and respond when called, even during his meal periods. Additionally, as
27 stated, Defendants had a company-wide practice of failing to schedule meal periods, which
28 further caused Plaintiff and class members to not be relieved of their duties for compliant meal

1 periods. Thus, Plaintiff and class members were not provided adequate meal period coverage
2 to take all timely, uninterrupted 30-minute meal periods to which they were entitled.

3 89. Furthermore, Defendants maintained and implemented a company-wide practice
4 and/or policy of effectively requiring that Plaintiff and class members to remain on the work
5 premises during their meal periods. Because Plaintiff and class members were restricted from
6 leaving the work premises during meal periods, they were denied the ability to use their meal
7 periods freely for their own purposes, such as running personal errands. Thus, Defendants
8 effectively maintained control over Plaintiff and class members during meal periods. Moreover,
9 as stated, because Defendants frowned upon employees accruing meal period penalties,
10 Defendants' management pressured employees to clock out for meal periods, upon threat of
11 discipline, and/or would adjust Plaintiff's and class members' time records to reflect compliant
12 meal periods, regardless of whether they had received a compliant meal period, in order to
13 strictly limit meal penalties that would need to be paid by Defendants. As also stated,
14 Defendants' company-wide timekeeping system further prevented Plaintiff and class members
15 from recording all hours worked when their meal periods were shortened or interrupted, because
16 the system locked out Plaintiff and class members once they clocked out for a meal period and
17 would not permit them to clock back in from a meal period before 30 minutes elapsed.

18 90. Defendants' practices and/or policies prevented Plaintiff and class members from
19 taking all compliant meal periods for which they were entitled. As a result, Plaintiff and class
20 members were forced to work in excess of five (5) hours before taking a meal period and, at
21 times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For
22 example, as stated, Plaintiff would miss his meal period entirely and/or work through his meal
23 period, preparing incident reports while he ate, due to a lack of coverage and having to complete
24 a daily checklist of duties while assisting with work-related emergencies. At times, Plaintiff
25 was not provided with meal periods until six (6) or seven (7) hours into his shift.

26 91. Furthermore, during the relevant time period, Plaintiff and class members
27 worked shifts in excess of 10 hours without receiving an uninterrupted second 30-minute meal
28 period. For example, Plaintiff was not provided his second meal period when he worked shifts

1 in excess of 10 hours. Plaintiff and class members did not sign valid meal period waivers on
2 days that they were entitled to meal periods and were not relieved of all duties.

3 92. At all times herein mentioned, Defendants knew or should have known that, as a
4 result of these policies, Plaintiff and class members were prevented from being relieved of all
5 duties and required to perform some of their assigned duties during meal periods. Defendants
6 further knew or should have known that Defendants did not pay Plaintiff and class members
7 meal period premiums when meal periods were late, interrupted, shortened, or missed.

8 93. Furthermore, Defendants engaged in a company-wide practice and/or policy of
9 not paying all meal period premiums owed when compliant meal periods are not provided.
10 Because of this practice and/or policy, Plaintiff and class members have not received premium
11 pay for missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants
12 did pay Plaintiff and class members premium pay for missed, late, and interrupted meal periods,
13 Defendants did not pay Plaintiff and class members at the correct rate of pay for premiums
14 because Defendants systematically failed to include all forms of compensation, such as
15 incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate
16 of pay. As a result, Defendants failed to provide Plaintiff and class members compliant meal
17 periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay
18 the full meal period premiums due.

19 94. Defendants' conduct violates the applicable IWC Wage Order, and California
20 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
21 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
22 rate of compensation for each work day that the meal period was not provided.

23 **FOURTH CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**

25 **(Against all Defendants)**

26 95. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 96. At all relevant times herein set forth, the applicable IWC Wage Order and

1 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
2 members' employment by Defendants.

3 97. At all relevant times, the applicable IWC Wage Order provides that "[e]very
4 employer shall authorize and permit all employees to take rest periods, which insofar as
5 practicable shall be in the middle of each work period" and that the "rest period time shall be
6 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
7 hours or major fraction thereof" unless the total daily work time is less than three and one-half
8 (3 ½) hours.

9 98. At all relevant times, California Labor Code section 226.7 provides that no
10 employer shall require an employee to work during any rest period mandated by an applicable
11 order of the California IWC. To comply with its obligation to authorize and permit rest periods
12 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
13 must "relinquish any control over how employees spend their break time, and relieve their
14 employees of all duties—including the obligation that an employee remain on call. A rest
15 period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
16 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code
17 section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1)
18 additional hour of pay at their regular rates of pay for each work day that a required rest period
19 was not authorized and permitted.

20 99. During the relevant time period, Defendants regularly failed to authorize and
21 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
22 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
23 practices, including understaffing or single-staffing and assigning heavy workloads, such as the
24 implementation of strict daily checklists, prevented Plaintiff and class members from being
25 relieved of all duty to take rest periods. Moreover, as with meal periods, Plaintiff was instructed
26 by his supervisors to carry and keep his radio on his person at all times and was thus required
27 to continue responding to work-related inquiries during his rest periods. Additionally,
28 Defendants failed to schedule rest periods, which, coupled with Defendants' failure to provide

adequate rest period coverage, further led to Plaintiff and class members not being authorized and permitted to take compliant rest periods.

100. Furthermore, Defendants maintained and implemented a company-wide on-premises rest period policy, which mandated that Plaintiff and class members remain on the work premises during their rest periods. Because Plaintiff and class members were restricted from leaving Defendants' work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, Defendants effectively maintained control over Plaintiff and class members during rest periods.

101. As a result of Defendants' practices and policies, Plaintiff and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Plaintiff missed rest periods and had rest periods cut short or interrupted due to the heavy workload and lack of coverage.

102. Defendants have also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that Defendants did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for premiums because Defendants failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay. As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

103. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

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1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226.7, 516, and 1198 & California Code of**
3 **Regulations Title 8, Section 3395—Heat Recovery Period Violations**

4 **(Against all Defendants)**

5 104. Plaintiff incorporates by reference and re-allege as if fully stated herein each and
6 every allegation set forth above.

7 105. At all relevant times herein set forth, the applicable General Industry Safety
8 Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and
9 class members' employment by Defendants.

10 106. At all relevant times, California Labor Code section 226.7(a) defines "recovery
11 period" to mean a cooldown period afforded an employee to prevent heat illness. California
12 Labor Code section 226.7 provides that no employer shall require an employee to work during
13 any recovery period mandated by an applicable order of the California IWC, the Occupational
14 Safety and Health Standards Board, or the Division of Occupational Safety and Health. The
15 applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the
16 work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more
17 areas with shade at all times while employees are present that are either open to the air or
18 provided with ventilation or cooling." Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore,
19 "[t]he amount of shade present shall be at least enough to accommodate the number of
20 employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade
21 without having to be in physical contact with each other." *Id.* "Employees shall be allowed
22 and encouraged to take a preventative cool-down rest in the shade when they feel the need to
23 do so to protect themselves from overheating. Such access to shade shall be permitted at all
24 times." *Id.*

25 107. During the relevant time period, Defendants violated California Labor Code
26 section 226.7 and California Code of Regulations, Title 8, section 3395(d), because Defendants
27 failed to provide Plaintiff and class members with recovery periods. For example, Plaintiff was
28 never provided a shaded area for recovery and was not permitted to take recovery periods in a

1 shaded area while working, even though the majority of his work was performed outside.

2 108. Defendants also have engaged in a company-wide practice and/or policy of not
3 paying all recovery period premiums owed when compliant recovery periods are not provided.
4 Because of this practice and/or policy, Plaintiff and class members have not received premium
5 pay for all missed recovery periods. Alternatively, to the extent that Defendants did pay
6 Plaintiff and class members for missed recovery periods, Defendants did not pay Plaintiff and
7 class members at the correct rate of pay, because Defendants systematically failed to include all
8 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
9 remuneration in the regular rate of pay.

10 109. As a result, Defendants denied Plaintiff and class members recovery periods and
11 failed to pay them recovery period premiums due, in violation of California Labor Code section
12 226.7 and the applicable General Industry Safety Order.

13 110. Defendants' conduct violates the applicable General Industry Safety Order and
14 California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore
15 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
16 rate of compensation for each work day that a compliant recovery period was not provided.

17 **SIXTH CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**

19 **Statements and Failure to Maintain Accurate Payroll Records**

20 **(Against all Defendants)**

21 111. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 112. At all relevant times herein set forth, California Labor Code section 226(a)
24 provides that every employer shall furnish each of his or her employees an accurate and
25 complete itemized wage statement in writing, including, but not limited to, the name and address
26 of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked,
27 and all applicable rates of pay.

28 113. At all relevant times, Defendants have knowingly and intentionally provided

1 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For
2 example, Defendants issued uniform wage statements to Plaintiff and Subclass members that
3 fail to correctly list: gross wages earned; total hours worked; net wages earned; name of the
4 legal entity that is the employer; and all applicable hourly rates in effect during the pay period,
5 including rates of pay for overtime wages and/or meal, rest, and recovery periods, and the
6 corresponding number of hours worked at each hourly rate. Specifically, Defendants violated
7 sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

8 114. Because Defendants did not record the time Plaintiff and Subclass members spent
9 working off-the-clock and deducted time from their records for meal periods that were
10 interrupted and/or missed (and therefore time for which they should have been paid),
11 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and
12 Subclass members in compliance with section 226(a)(1) and section 226(a)(5), respectively.
13 For the same reason, Defendants failed to accurately list the total number of hours worked by
14 Plaintiff and Subclass members, in violation of section 226(a)(2), and failed to list the applicable
15 hourly rates of pay in effect during the pay period and the corresponding accurate number of
16 hours worked at each hourly rate, in violation of section 226(a)(9)).

17 115. Additionally, because Defendants did not calculate Plaintiff's and Subclass
18 members' regular rate of pay correctly for purposes of paying overtime wages and/or meal, rest,
19 and recovery periods, Defendants did not list the correct amount of gross wages earned by
20 Plaintiff and Subclass members in compliance with section 226(a)(1). For the same reason,
21 Defendants failed to list the correct amount of net wages earned by Plaintiff and Subclass
22 members in violation of section 226(a)(5). Defendants also failed to correctly list all applicable
23 hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages
24 and/or meal, rest, and recovery period premiums, in violation of section 226(a)(9).

25 116. The wage statement deficiencies also include, among other things, failing to list
26 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
27 piece-rate basis; failing to list all deductions; failing to list the name of the employee and only
28 the last four digits of his or her social security number or an employee identification number

1 other than a social security number; failing to list the name and address of the legal entity that
2 is the employer; failing to list the inclusive dates of the period for which employees were paid;
3 and/or failing to state all hours worked as a result of not recording or stating the hours they
4 worked off-the-clock.

5 117. California Labor Code section 1198 provides that the maximum hours of work
6 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
7 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
8 of any employees for longer hours than those fixed by the order or under conditions of labor
9 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
10 are required to keep accurate time records showing when the employee begins and ends each
11 work period and meal period. During the relevant time period, Defendants failed, on a
12 company-wide basis, to keep accurate records of work period and meal period start and stop
13 times for Plaintiff and Subclass members, in violation of section 1198. As stated, Defendants
14 engaged in a company-wide practice and/or policy of falsifying Plaintiff’s and Subclass
15 members’ time records by recording that compliant meal periods were taken regardless of if or
16 when meal periods were actually taken, and thereby failed to keep accurate records of meal start
17 and end times for Plaintiff and Subclass members. Furthermore, in light of Defendants’ failure
18 to provide Plaintiff and Subclass with second 30-minute meal periods to which they were
19 entitled, Defendants kept no records of meal start and end times for second meal periods.

20 118. California Labor Code section 1174(d) provides that “[e]very person employing
21 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
22 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
23 plants or establishments at which employees are employed, payroll records showing the hours
24 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
25 applicable piece rate paid to, employees employed at the respective plants or
26 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
27 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
28 members showing the daily hours they worked and the wages paid thereto as a result of failing

1 to record the off-the-clock hours that they worked.

2 119. Plaintiff and Subclass members are entitled to recover from Defendants the
3 greater of their actual damages caused by Defendants' failure to comply with California Labor
4 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
5 employee.

6 **SEVENTH CAUSE OF ACTION**

7 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

8 **Upon Termination**

9 **(Against all Defendants)**

10 120. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
11 and every allegation set forth above.

12 121. This cause of action is dependent upon, and wholly derivative of, the overtime
13 wages; minimum wages; and/or meal, rest, and recovery period premiums that were not timely
14 paid to Plaintiff and those class members no longer employed by Defendants upon their
15 termination.

16 122. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
17 that if an employer discharges an employee, the wages earned and unpaid at the time of
18 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
19 her employment, his or her wages shall become due and payable not later than seventy-two (72)
20 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
21 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
22 quitting.

23 123. Defendants willfully failed to pay Plaintiff and class members who are no longer
24 employed by Defendants the earned and unpaid wages set forth above, including but not limited
25 to, overtime wages; minimum wages; and/or meal, rest, and recovery period premiums either at
26 the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

27 124. Defendants' failure to pay Plaintiff and class members who are no longer
28 employed by Defendants their wages earned and unpaid at the time of discharge, or within

seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment (Against all Defendants)

125. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

126. This cause of action is dependent upon, and wholly derivative of, the overtime wages; minimum wages; and/or meal, rest, and recovery period premiums that were not timely paid to Plaintiff and those class members.

127. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

128. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

129. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

130. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages; minimum wages; and/or meal, rest, and recovery period premiums within the time periods specified by California Labor Code section 204. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

NINTH CAUSE OF ACTION

Violation of California Labor Code §§ 551, 552, and 558—Failure to Provide One Day's

Rest in Seven

(Against all Defendants)

131. Plaintiff incorporates by reference and re-allege as if fully stated herein each and every allegation set forth above.

132. At all relevant times herein, California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. Additionally, California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest.

133. At all relevant times herein set forth, California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

134. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

1 135. During the relevant time period, Defendants sometimes scheduled Plaintiff and
2 class members to work six (6) or more hours per day and more than seven (7) consecutive days
3 in a workweek. For example, Plaintiff worked seven (7) consecutive days between June 6, 2018
4 and June 14, 2018. Because Plaintiff and class members worked over 30 hours per week and
5 over six (6) hours per day in a workweek, they were not exempt from the day-of-rest
6 requirement. To the extent that Plaintiff and class members may have signed purported waivers
7 of their right to a day's rest in seven, such waivers are invalid.

8 136. Thus, during the relevant time period, and in violation of Labor Code sections
9 551 and 552, Defendants willfully caused Plaintiff and class members to work more than six
10 days in seven. Plaintiff and class members are therefore entitled to recover civil penalties
11 pursuant to Labor Code section 558.

12 **TENTH CAUSE OF ACTION**

13 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**

14 **(Against all Defendants)**

15 137. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 138. At all times herein set forth, California Labor Code section 2802 provides that
18 an employer must reimburse employees for all necessary expenditures and losses incurred by
19 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
20 to prevent employers from passing off their cost of doing business and operating expenses on
21 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
22 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools
23 or equipment are required by the employer or are necessary to the performance of a job, such
24 tools and equipment shall be provided and maintained by the employer, except that an employee
25 whose wages are at least two (2) times the minimum wage provided herein may be required to
26 provide and maintain hand tools and equipment customarily required by the trade or craft."

27 139. First, during the relevant time period, Defendants had a company-wide policy of
28 requiring Plaintiff and class members to utilize their own personal cellular phones and cellular

1 data to carry out their job duties, but Defendants failed to reimburse them for the costs of their
2 work-related cellular phone expenses. Although Plaintiff and class members were provided
3 company-issued cellular phones, there were occasions when the company phones did not have
4 reception, were out of range, or were not set up to make calls. Since Plaintiff and class members
5 did not work in an office setting, they had no access to additional communication devices other
6 than their own. Additionally, Plaintiff was required to download a mobile application onto his
7 personal cellular phone in order to access company emails. For example, when the company
8 phones did not have reception, Plaintiff would be required to use his personal cellular phone to
9 call 911 for emergency services and to review email inquiries from other departments during
10 his shifts. Although Defendants required Plaintiff and class members to utilize their personal
11 cellular phones to carry out their work-related responsibilities, Defendants failed to reimburse
12 them for this cost.

13 140. Second, during the relevant time period, Defendants had a company-wide policy
14 of requiring Plaintiff and class members to utilize their own personal vehicles for work
15 purposes, but failed to reimburse them for all costs of travel, including mileage. For example,
16 Plaintiff's managers would ask him to pick up printer toner cartridges from Staples on his way
17 to work using his own personal vehicle, adding approximately 10 miles to his commute, but
18 Plaintiff was not reimbursed for his travel expenses or mileage. Likewise, on information and
19 belief, other class members were required to use their own personal vehicles to deliver lost-and-
20 found items to guests who had left the premises, but they were not reimbursed for their travel
21 expenses or mileage. Although Defendants required Plaintiff and class members to use their
22 own vehicles to carry out their work-related responsibilities, Defendants did not reimburse them
23 for their travel expenses.

24 141. Third, during the relevant time period, Defendants, on a company-wide basis,
25 required Plaintiff and class members to purchase supplies, tools, and/or equipment, such as
26 flashlights, that were necessary for the completion of their work-related duties. For example,
27 Plaintiff was forced to purchase a new flashlight because the company-provided flashlight was
28 broken. In addition, Plaintiff purchased steel-toed boots which he was required to wear while

1 at work. Thus, Defendants failed to provide supplies, tools, and/or equipment to Plaintiff and
2 class members, forcing them to procure their own, and failed to reimburse Plaintiff and class
3 members for these costs.

4 142. Fourth, Defendants, on a company-wide basis, expected Plaintiff and class
5 members to wear clean and presentable uniforms while at work, but Defendants only provided
6 them two (2) uniforms and/or company shirts at the beginning of their employment. Because
7 Defendants failed to provide Plaintiff and class members with an adequate number of uniforms
8 in relation to their scheduled shifts, Plaintiff and class members had to wash their company
9 shirts more frequently than they would otherwise do laundry, and separately from their own
10 clothes, and incurred expenses in doing so. For example, because Plaintiff typically worked six
11 (6) days a week and was mostly outdoors throughout his shift, he would perspire, and his
12 uniform would get dirty each shift. Thus, the number of uniforms and/or shirts provided were
13 insufficient to get him through the week without Plaintiff having to do an extra load of laundry.

14 143. Fifth, Defendants, on a company-wide basis, required Plaintiff and class
15 members to obtain and pay for certain licenses, such as the Security Guard License issued by
16 the California Bureau of Security and Investigative Services (BSIS), also known as a "guard
17 card," that were required for their continued employment. Defendants had a uniform policy of
18 requiring employees to maintain an active license, but did not reimburse them for the costs of
19 renewing the license.

20 144. Defendants could have provided Plaintiff and class members with the actual tools
21 for use on the job, such working company phones and company vehicles; supplies, tools, and/or
22 equipment; as well as an adequate number of uniforms and/or access to laundering or cleaning
23 service. Or, Defendants could have reimbursed employees for the costs of their cellular phones;
24 mileage and travel expenses; supplies, tools, and/or equipment; uniform laundering expenses;
25 and license fees. Instead, Defendants passed these operating costs off onto Plaintiff and class
26 members. At all relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

27 145. Defendants' company-wide policy and/or practice of passing on their operating
28 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants

1 have intentionally and willfully failed to reimburse Plaintiff and other class members for
2 necessary business-related expenses and costs.

3 146. Plaintiff and class members are entitled to recover from Defendants their
4 business-related expenses incurred during the course and scope of their employment, plus
5 interest.

6 **ELEVENTH CAUSE OF ACTION**

7 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

8 **(Against all Defendants)**

9 147. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
10 and every allegation set forth above.

11 148. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
12 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
13 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5, 226(a),
14 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
15 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
16 violations of those Labor Code sections not found in section 2699.5, including sections 516,
17 1182.12, 6401, and 6403.

18 149. Defendants' conduct, as alleged herein, violates numerous sections of the
19 California Labor Code, including, but not limited to, the following:

- 20 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
21 Wage Order for Defendants' failure to compensate Plaintiff and other
22 aggrieved employees with all required overtime pay and failure to
23 properly calculate the overtime rates paid to Plaintiff and other aggrieved
24 employees, as alleged herein;
- 25 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
26 and the applicable IWC Wage Order for Defendants' failure to
27 compensate Plaintiff and other aggrieved employees with at least
28 minimum wages for all hours worked, as alleged herein;

- (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (e) Violation of California Labor Code §§ 226.7, 516, and 1198, Calif. Code of Reg. Title 8 section 3395, and the applicable General Industry Safety Order, for Defendants' failure to provide Plaintiff and other aggrieved employees with recovery periods, as alleged herein;
- (f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination, as alleged herein;
- (i) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (j) Violation of Labor Code section 222.5 for failure to compensate other aggrieved employees for mandatory physical examinations and/or drug testing, as set forth below;
- (k) Violation of Labor Code sections 551 and 552 for failure to provide one day's rest in seven to other aggrieved employees, as alleged herein;
- (l) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay split-shift premiums when other aggrieved employees returned to work for an additional shift in the same day, after

1 having been clocked out for more than an hour, as set forth below;

2 (m) Violation of Labor Code section 1198 for failing to provide suitable
3 seating to other aggrieved employees, as set forth below;

4 (n) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
5 and other aggrieved employees for all business expenses necessarily
6 incurred, as alleged herein; and

7 (o) Violation of Labor Code sections 6401 and 6403 for failure to provide
8 Plaintiff and other aggrieved employees with safety devices and
9 safeguards, such as personal protective equipment, as set forth below.

10 150. At all relevant times herein, California Labor Code section 222.5 requires
11 employers to pay for the costs an employee incurs for obtaining any medical or physical
12 examination taken.

13 151. At all times relevant herein, Defendants implemented, on a company-wide basis,
14 an employer-imposed requirement that other aggrieved employees undergo mandatory drug
15 testing and/or physical examinations, but required them to do so at their own expense.
16 Defendants had a company-wide policy requiring that other aggrieved employees travel to a
17 specified medical facility on their own time and use their own personal vehicles to undergo drug
18 testing and/or physical examinations. At all times, Defendants were in control of scheduling
19 the date and time for the testing and/or examinations, selecting the provider/facility where the
20 testing and/or examinations were to take place, and determining the scope of the testing and/or
21 examinations. However, Defendants did not compensate other aggrieved employees for the
22 time they spent traveling to and from the medical facilities; for the time they spent undergoing
23 the drug testing and/or physical examinations; or reimburse them for the travel expenses they
24 incurred getting to and from the medical facilities.

25 152. Defendants' policy and/or practice of not paying for all costs other aggrieved
26 employees incurred obtaining mandatory drug tests and/or physical examinations violates
27 California Labor Code section 222.5. Other aggrieved employees are therefore entitled to
28 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

1 153. California Labor Code section 1198 provides that no employer may employ an
2 employee under conditions of labor that are prohibited by the applicable IWC wage order.
3 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
4 fixed by the commission shall be the . . . standard conditions of labor for employees. The
5 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

6 154. California Code of Regulations, Title 8, section 11050(4)(C) provides that,
7 “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid
8 in addition to the minimum wage for that workday, except when the employee resides at the
9 place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work
10 schedule, which is interrupted by non-paid non-working periods established by the employer,
11 other than bona fide rest or meal periods.”

12 155. Defendants willfully violated California Labor Code section 1198 and California
13 Code of Regulations, Title 8, section 11050(4)(C), because Defendants failed to pay other
14 aggrieved employees a split-shift premium when they returned to work for an additional shift
15 in the same day, after having been clocked out for more than an hour. For example, other
16 aggrieved employees were required to attend a training for two (2) hours, and then were told to
17 clock out for several hours before returning to work in the late afternoon and/or evening to start
18 their regular shifts. When this occurred, Defendants did not always pay other aggrieved
19 employees an additional hour at minimum wages. Accordingly, Defendants required other
20 aggrieved employees to work split shifts but failed to pay them an additional hour at minimum
21 wage, in violation of California Labor Code section 1198.

22 156. Defendants’ failure to provide other aggrieved employees with split-shift pay
23 when they returned to work for an additional shift in the same day, after having been clocked
24 out for more than an hour, violates California Labor Code section 1198 and California Code of
25 Regulations Title 8, section 11050(4)(C). Other aggrieved employees are therefore entitled to
26 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

27 157. At all relevant times herein, California Labor Code section 1198 makes it illegal
28 to employ an employee under conditions of labor that are prohibited by the applicable wage

1 order. California Labor Code section 1198 requires that “. . . the standard conditions of labor
2 fixed by the commission shall be the . . . standard conditions of labor for employees. The
3 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

4 158. California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll
5 working employees shall be provided with suitable seats when the nature of the work reasonably
6 permits the use of seats.”

7 159. Plaintiff alleges that Defendants’ California resort and golf properties’ front
8 desk, registration desk, and concierge desk areas are generally similar in their layout and design
9 and there was, and continues to be, space behind the front desk, registration desk, and concierge
10 desk areas to allow for the presence and use of a seat or stool by other aggrieved employees
11 (with reasonable or no modification to these work areas) during the performance of their work
12 duties. Defendants could have provided other aggrieved employees with a seat or stool at their
13 front desks, registration desks, and concierge desks, but instead denied them seating and forced
14 other aggrieved employees to stand throughout the day.

15 160. Other aggrieved employees spent a substantial portion of their day behind the
16 front desks, registration desks, and concierge desks, regardless of their actual job title or
17 description. The nature of the work of an employee performing front desk, registration desk,
18 and concierge duties can reasonably be accomplished from a seated position. However,
19 Defendants systematically, and on a company-wide basis, did not provide seats or stools at or
20 near the front desks, registration desks, or concierge desks, forcing other aggrieved employees
21 to stand throughout their work shifts.

22 161. During the relevant time period, Defendants violated California Labor Code
23 section 1198 and California Code of Regulations, Title 8, section 11050(14)(A), because other
24 aggrieved employees were not allowed to sit, even when it would not have interfered with the
25 performance of their duties, nor were they provided with suitable seats. Defendants’
26 management did not inform other aggrieved employees that they were allowed to sit down,
27 provide any feasible means for them to sit down, or mention any policy regarding sitting.

28 162. As a result of Defendants’ company-wide policy and/or practice of prohibiting

1 employees from sitting during their shifts and company-wide failure to provide suitable seating,
2 other aggrieved employees were forced to stand during shifts and denied seats. Defendants'
3 failure to provide suitable seating to other aggrieved employees violated and continues to violate
4 California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).
5 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
6 Code sections 2699(a), (f), and (g).

7 163. At all relevant times herein, California Labor Code section 1198 makes it illegal
8 to employ an employee under conditions of labor that are prohibited by the applicable wage
9 order. California Labor Code section 1198 requires that "... the standard conditions of labor
10 fixed by the commission shall be the ... standard conditions of labor for employees. The
11 employment of any employee ... under conditions of labor prohibited by the order is unlawful."

12 164. California Code of Regulations, Title 8, section 11050(14)(B) provides that
13 "[w]hen employees are not engaged in the active duties of their employment and the nature of
14 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
15 proximity to the work area and employees shall be permitted to use such seats when it does not
16 interfere with the performance of their duties."

17 165. During the relevant time period, Defendants violated California Labor Code
18 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because other
19 aggrieved employees were not allowed to sit, even during lulls in their work duties, nor were
20 they provided with suitable seats in reasonable proximity to their work areas.

21 166. As stated, Defendants' California resort and golf properties are generally similar
22 in their layout and design and there was, and continues to be, space near their work areas (with
23 reasonable or no modification to these work areas) to allow for the presence and use of a seat
24 or stool by other aggrieved employees during lulls in operation. Defendants could provide other
25 aggrieved employees with a seat or stool in its work areas, but instead denies employees seating
26 and forces other aggrieved employees to stand throughout the day.

27 167. Defendants did not provide other aggrieved employees with seats or stools in
28 reasonable proximity to their work areas to allow them to use seats when it would not interfere

1 with the performance of their duties for times when they were not engaged in active duties that
2 require standing. In other words, to the extent other aggrieved employees engaged in duties in
3 which the nature of the work required standing, Defendants denied them the use of seats nearby
4 during lulls in their work duties. Moreover, Defendants did not inform other aggrieved
5 employees of their rights to a seat or stool under California law.

6 168. As a result of Defendants' company-wide policy and/or practice of prohibiting
7 employees from sitting at any time, even when they were not engaged in active duties requiring
8 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
9 and other aggrieved employees were forced to stand during shifts and denied seats. Defendants'
10 failure to provide suitable seating to other aggrieved employees violates California Labor Code
11 section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B). Other aggrieved employees
12 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
13 (g).

14 169. California Labor Code section 6401 provides that employers must furnish and
15 use safety devices and safeguards, and adopt and use practices, means, methods, operations, and
16 processes which are reasonably adequate to render the employment and place of employment
17 safe and healthy. California Labor Code Section 6401 further provides that an employer must
18 do everything reasonably necessary to protect the life, safety and health of its employees.
19 California Labor Code section 6403(a) requires that employers provide and use safety devices
20 and safeguards reasonably adequate to render the employment and place of employment safe.

21 170. During the relevant time period, Defendants, on a company-wide basis, failed to
22 provide Plaintiff and other aggrieved employees with personal protective equipment, such as
23 steel-toed boots, to keep them safe in the workplace. Despite the fact that Defendants required
24 employees to wear certain personal protective equipment, including steel-toed boots,
25 Defendants failed to provide such reasonably necessary equipment to Plaintiff and other
26 aggrieved employees to keep them safe. Defendants' failure to provide Plaintiff and other
27 aggrieved employees with safety devices and safeguards for the workplace violates California
28 Labor Code sections 6401 and 6403. Plaintiff and other aggrieved employees are entitled to

1 recover civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g).

2 **TWELFTH CAUSE OF ACTION**

3 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

4 **Unlawful Business Practices**

5 **(Against all Defendants)**

6 171. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
7 and every allegation set forth above.

8 172. Defendants are “persons” as defined by California Business & Professions Code
9 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
10 associations.

11 173. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
12 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
13 suffered injury in fact and has lost money as a result of Defendants’ unlawful business practices.
14 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
15 Code of Civil Procedure section 1021.5.

16 174. Defendants’ activities, as alleged herein, are violations of California law, and
17 constitute unlawful business acts and practices in violation of California Business & Professions
18 Code sections 17200, *et seq.*

19 175. A violation of California Business & Professions Code sections 17200, *et seq.*
20 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
21 policies and practices have violated state law in at least the following respects:

- 22 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
23 class members, to work overtime without paying them proper
24 compensation in violation of California Labor Code sections 510 and
25 1198, and the applicable IWC Wage Order, and paying Plaintiff and class
26 members overtime at a lower rate than required by law by failing to
27 properly calculate the regular rate of pay for purposes of overtime, as
28 alleged herein;

- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to provide recovery periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 516, and 1198, Calif. Code of Reg. Title 8 section 3395, and the applicable General Industry Safety Order, as alleged herein;
- (f) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;
- (g) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;
- (h) Failing to provide one day's rest in seven to Plaintiff and class members in violation of California Labor Code sections 551 and 552, as alleged herein;
- (i) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein; and
- (j) Failing to provide Plaintiff and class members with safety devices and safeguards, such as personal protective equipment, in violation of

California Labor Code sections 6401 and 6403, as set forth below.

176. At all relevant times herein, California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees.

177. Defendants, on a company-wide basis, failed to provide Plaintiff and class members with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that Defendants required employees to wear certain protective equipment, including steel-toed boots, Defendants failed to provide such reasonably necessary equipment to Plaintiff and class members to keep them safe. Thus, Defendants' failure to provide Plaintiff and class members with safety devices and safeguards violates Labor Code sections 6401 and 6403.

178. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

179. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

THIRTEENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

180. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 181. Defendants are “persons” as defined by California Business & Professions Code
3 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
4 associations.

5 182. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, and
6 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
7 fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff seeks to
8 enforce important rights affecting the public interest within the meaning of Code of Civil
9 Procedure section 1021.5. Defendants’ activities, namely Defendants’ company-wide practice
10 and/or policy of not paying Plaintiff and class members meal and rest period premiums due to
11 them under Labor Code section 226.7, deprived Plaintiff and class members of the
12 compensation guarantee and enhanced enforcement implemented by section 226.7. The
13 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
14 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v. Superior*
15 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
16 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
17 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an unfair
18 business practice in violation of California Business & Professions Code sections 17200, *et seq.*
19 (*Id.*)

20 183. A violation of California Business & Professions Code sections 17200, *et seq.*
21 may be predicated on any unfair business practice. In the instant case, Defendants’ policies and
22 practices have violated the spirit of California’s meal and rest period laws and constitute acts
23 against the public policy behind these laws.

24 184. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
25 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
26 benefits implemented by section 226.7 withheld and retained by Defendants during a period that
27 commences four years prior to the filing of this complaint; a permanent injunction requiring
28 Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class

1 members; an award of attorneys' fees pursuant to California Code of Civil Procedure section
2 1021.5 and other applicable laws; and an award of costs.

3 **REQUEST FOR JURY TRIAL**

4 Plaintiff requests a trial by jury.

5 **PRAYER FOR RELIEF**

6 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against
7 Defendants, jointly and severally, as follows:

8 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
9 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
10 reserves the right to amend his prayer for relief to seek a different amount.

11 **Class Certification**

12 2. That this case be certified as a class action;

13 3. That Plaintiff be appointed as the representative of the Class and Subclass;

14 4. That counsel for Plaintiff be appointed as class counsel.

15 **As to the First Cause of Action**

16 5. That the Court declare, adjudge, and decree that Defendants violated California
17 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
18 pay all overtime wages due to Plaintiff and class members;

19 6. For general unpaid wages at overtime wage rates and such general and special
20 damages as may be appropriate;

21 7. For pre-judgment interest on any unpaid overtime compensation commencing
22 from the date such amounts were due, or as otherwise provided by law;

23 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
24 California Labor Code section 1194(a); and

25 9. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Second Cause of Action**

28 10. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
2 Order by willfully failing to pay minimum wages to Plaintiff and class members;

3 11. For general unpaid wages and such general and special damages as may be
4 appropriate;

5 12. For pre-judgment interest on any unpaid compensation from the date such
6 amounts were due, or as otherwise provided by law;

7 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
8 California Labor Code section 1194(a);

9 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

10 15. For such other and further relief as the Court may deem equitable and
11 appropriate.

12 **As to the Third Cause of Action**

13 16. That the Court declare, adjudge, and decree that Defendants violated California
14 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by
15 willfully failing to provide all meal periods to Plaintiff and class members;

16 17. That the Court make an award to the Plaintiff and class members of one (1) hour
17 of pay at each employee's regular rate of pay for each workday that a meal period was not
18 provided;

19 18. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 19. For premiums pursuant to California Labor Code section 226.7(c);

22 20. For pre-judgment interest on any unpaid meal period premiums from the date
23 such amounts were due, or as otherwise provided by law;

24 21. For attorneys' fees pursuant to California Code of Civil Procedure section
25 1021.5, or as otherwise provided by law; and

26 22. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 ///

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable General Industry Safety Order by willfully failing to provide all recovery periods to Plaintiff and class members;

31. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a recovery period was not provided;

32. For all actual, consequential, and incidental losses and damages, according to proof;

33. For premiums pursuant to California Labor Code section 226.7(c);

34. For pre-judgment interest on any unpaid recovery period premiums from the date such amounts were due, or as otherwise provided by law;

1 35. For attorneys' fees pursuant to California Code of Civil Procedure section
2 1021.5, or as otherwise provided by law; and

3 36. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Sixth Cause of Action**

6 37. That the Court declare, adjudge and decree that Defendants violated the
7 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
8 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
9 itemized wage statements thereto;

10 38. For all actual, consequential, and incidental losses and damages, according to
11 proof;

12 39. For injunctive relief pursuant to California Labor Code section 226(h);

13 40. For statutory penalties pursuant to California Labor Code section 226(e);

14 41. For attorneys' fees and costs pursuant to California Labor Code section
15 226(e)(1); and

16 42. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Seventh Cause of Action**

19 43. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code sections 201 and 202 by willfully failing to pay overtime wages; minimum wages;
21 and/or meal, rest, and recovery period premiums owed at the time of termination of the
22 employment of Plaintiff and other terminated class members;

23 44. For all actual, consequential and incidental losses and damages, according to
24 proof;

25 45. For waiting time penalties according to proof pursuant to California Labor Code
26 section 203 for all employees who have left Defendants' employ;

27 46. For pre-judgment interest on any unpaid wages from the date such amounts were
28 due, or as otherwise provided by law;

47. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

48. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

49. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages; minimum wages; and/or meal, rest, and recovery period premiums during their employment;

50. For all actual, consequential and incidental losses and damages, according to proof;

51. For statutory penalties according to proof pursuant to California Labor Code section 210;

52. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

53. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

54. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

55. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 551 and 552 by failing to provide a day's rest in seven; and that Defendants committed said violations of the Labor Code against Plaintiff and class members;

56. For civil penalties for conduct occurring any time between one year prior to the filing of this complaint and judgment, pursuant to California Labor Code section 558;

57. For pre-judgment and post-judgment interest as provided by law; and

58. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

60. For unpaid business-related expenses and such general and special damages as may be appropriate;

61. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

62. For all actual, consequential, and incidental losses and damages, according to proof;

63. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

64. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

65. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226.7, 516, and 1198 (by failing to provide recovery periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical examinations); 551 and 552 (by failing to provide one day's rest in seven); 1198 and the applicable IWC Wage Order (by failing to pay split-shift premiums); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); 2802 (by failing to reimburse business expenses); and 6401 and 6403 (by failing to

1 provide safety devices and safeguards, such as personal protective equipment.)

2 66. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
3 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections
4 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194,
5 1197, 1197.1, 1198, 2802, 6401, and 6403.

6 67. For attorneys' fees and costs pursuant to California Labor Code section
7 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
8 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552,
9 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

10 68. For pre-judgment and post-judgment interest as provided by law; and

11 69. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Twelfth Cause of Action**

14 70. That the Court declare, adjudge and decree that Defendants' conduct of failing
15 to provide Plaintiff and class members all overtime wages due to them, failing to provide
16 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
17 class members all meal periods, failing to authorize and permit Plaintiff and class members to
18 take all rest periods, failing to provide Plaintiff and class members all recovery periods, failing
19 to provide Plaintiff and class members accurate and complete wage statements, failing to
20 maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff
21 and class members all earned wages during employment, failing to pay Plaintiff and class
22 members reporting time pay, failing to authorize and permit Plaintiff and class members to take
23 one day's rest in seven, failing to reimburse Plaintiff and class members for business-related
24 expenses, and failing to provide Plaintiff and class members with safety devices and safeguards,
25 constitutes an unlawful business practice in violation of California Business and Professions
26 Code sections 17200, *et seq.*;

27 71. For restitution of unpaid wages to Plaintiff and all class members and
28 prejudgment interest from the day such amounts were due and payable;

72. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

73. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

74. For such other and further relief as the Court may deem equitable and appropriate.

As to the Thirteenth Cause of Action

75. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

76. For restitution of the statutory benefits under section 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the day such amounts were due and payable;

77. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

78. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

79. For pre-judgment and post-judgment interest as provided by law; and

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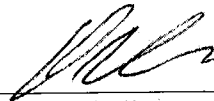
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1 80. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: August 10, 2021

Respectfully submitted,

Capstone Law APC

6
7 By: 
8 Orlando Villalba
9 Helga Hakimi
Roxanna Tabatabaeepour

10 Attorneys for Plaintiff Anthony Quintero
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EXHIBIT “1”



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

June 4, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Anthony Quintero v. JC Resorts, LLC, et al.*

Dear PAGA Administrator:

This office represents Anthony Quintero in connection with his claims under the California Labor Code. Mr. Quintero was an employee of JC RESORTS LLC; JC RESORTS MANAGEMENT LLC; BCR MANAGEMENT, INC.; and/or KSC MANAGEMENT, INC. For the purpose of this letter, Mr. Quintero collectively refers to these entities as "JC RESORTS."

The employers may be contacted directly at the addresses below:

JC RESORTS LLC
533 COAST BLVD SOUTH
LA JOLLA CA 92037

BCR MANAGEMENT, INC.
533 COAST BLVD S
LA JOLLA CA 92037

JC RESORTS MANAGEMENT LLC
533 COAST BLVD SOUTH
LA JOLLA CA 92037

KSC MANAGEMENT, INC.
533 COAST BLVD S
LA JOLLA CA 92037

Mr. Quintero intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Quintero seeks relief on behalf of himself, the State of California, and other persons who are or were employed by JC RESORTS as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

JC RESORTS employed Mr. Quintero as an hourly paid, non-exempt employee from approximately February 2016 to June 2020. Mr. Quintero worked for JC RESORTS as a Security Officer at its location in San Bernardo, California. During his employment, Mr. Quintero typically worked eight (8) to twelve (12) hours per day, and five (5) to six (6) days per week. At the time Mr. Quintero's

employment with JC RESORTS ended, he earned approximately \$15.50 per hour. His job duties included, without limitation, administering first aid; responding to emergencies; escorting employees and guests to the hospital; preparing incident reports; patrolling, closing, and locking various parts of the resort; attending to guest inquiries regarding lost-and-found issues; and conducting safety trainings for employees.

JC RESORTS committed one or more of the following Labor Code violations against Mr. Quintero, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

JC RESORTS’s Company-Wide and Uniform Payroll and HR Practices

JC RESORTS LLC and JC RESORTS MANAGEMENT LLC are California limited liability companies, while BCR MANAGEMENT, INC. and KSC MANAGEMENT, INC. are California corporations. Together, JC RESORTS manages and operates premium golf and resort properties in Southern California and New Mexico. Upon information and belief, JC RESORTS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in La Jolla, California, for all non-exempt, hourly paid employees working for JC RESORTS in California, including Mr. Quintero and other aggrieved employees. At all relevant times, JC RESORTS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Quintero and other aggrieved employees, regardless of its location or position.

Upon information and belief, JC RESORTS maintains a centralized Payroll department at its corporate headquarters in La Jolla, California, which processes payroll for all non-exempt, hourly paid employees working for JC RESORTS in California, including Mr. Quintero and other aggrieved employees. Further, JC RESORTS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Quintero and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, JC RESORTS utilized the same methods and formulas when calculating wages due to Mr. Quintero and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration

¹ These facts, theories, and claims are based on Mr. Quintero’s experience and counsel’s review of those records currently available relating to Mr. Quintero’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Quintero reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

JC RESORTS willfully failed to pay all overtime wages owed to Mr. Quintero and other aggrieved employees. During the relevant time period, Mr. Quintero and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, JC RESORTS had a policy and/or practice of discouraging and impeding Mr. Quintero and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with JC RESORTS's use of labor budgets and assignment of heavy workloads (*see infra*), led Mr. Quintero and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned duties, but prevented them from accounting for and recording this time in the timekeeping system.

For example, twice per week, Mr. Quintero would arrive to work prior to the start of his shift and be required to assist with an emergency situation before clocking in. This could take up to 30-60 minutes each instance due to the short-staffing of personnel with medical training to tend to such emergencies. Likewise, about 2-3 times per week, after Mr. Quintero had clocked out at the end of his shift, he would continue to receive radio calls while at the security office and would be required to attend to situations on the premises, due to the understaffing of security personnel during the night shift. This off-the-clock work would take 15-30 minutes and up to three (3) hours per instance. As a further example, Mr. Quintero's managers would ask him to run errands while off-the-clock, such as picking up printer toner cartridges from Staples on his way to work; Mr. Quintero spent approximately 35 minutes doing so. Likewise, on information and belief, while off-the-clock, other aggrieved employees were required to drive to deliver lost-and-found items to guests who had left the premises. Although JC RESORTS's supervisors claimed that they would manually adjust time records to account for such off-the-clock work, on information and belief, they failed to adequately capture all of Mr. Quintero's and other aggrieved employees' time spent performing this off-the-clock work. Thus, JC RESORTS failed to track all hours Mr. Quintero and other aggrieved employees spent working before clocking in and/or after clocking out, and Mr. Quintero and other aggrieved employees did not receive all compensation for this time.

Second, JC RESORTS had, and continues to have, a company-wide policy and/or practice of failing to compensate Mr. Quintero and other aggrieved employees for the time they spent donning and doffing required uniforms and/or security gear, including earpieces, walkie-talkies, flashlights, and radios. During the relevant time period, Mr. Quintero and other aggrieved employees were required to change into their uniforms at JC RESORTS's facility; however, JC RESORTS did not allow Mr. Quintero and other aggrieved employees to report the time spent donning and doffing their uniforms and gear as hours worked, despite being on JC RESORTS's premises and under JC RESORTS's control. Specifically, Mr. Quintero and other aggrieved employees were instructed by JC RESORTS to report to work in their street clothing and to change into their uniforms and "gear up" prior to the start of their shift and before they clocked in. Mr. Quintero's supervisor would discuss the day's activities with Mr. Quintero and other aggrieved employees while they were changing into their uniforms and putting on their gear, which took approximately 10-15 minutes. As a result, JC

RESORTS suffered and/or permitted Mr. Quintero and other aggrieved employees to perform work for which they were not paid.

Third, JC RESORTS, on a company-wide basis, had a practice of conducting randomized security searches of employees' bags, either for loss prevention or safety purposes. At times, these random security checks would occur prior to the start of Mr. Quintero's and other aggrieved employees' shifts, requiring Mr. Quintero and other aggrieved employees to wait in line for several minutes and having the search performed prior to clocking in. Other times, the security checks would occur after Mr. Quintero and other aggrieved employees had clocked out at the end of their shifts. Thus, Mr. Quintero and other aggrieved employees were not compensated for the time they spent off-the-clock undergoing random security searches and under JC RESORTS's control.

Fourth, as stated above, on information and belief, JC RESORTS had, and continues to have, a company-wide policy and/or practice of strictly staffing its locations based on the labor hours allocated by corporate. JC RESORTS's uniform use of labor budgets, combined with the assignment of heavy workloads (such as a daily checklist of duties to be completed by certain deadlines throughout the day), resulted in chronic understaffing. Also, JC RESORTS has systematically, and on a company-wide basis, understaffed its locations by adopting a single-staffing model for some positions, thereby failing to provide adequate meal period coverage to permit those employees to take compliant meal periods. Moreover, Mr. Quintero's managers instructed him to have his radio on his person at all times and required him to respond when called, even during his meal periods. Additionally, JC RESORTS, on a company-wide basis, had a practice of failing to schedule meal periods, which further caused Mr. Quintero and other aggrieved employees to not be relieved of their duties for compliant meal periods. Finally, due to the lack of meal period coverage resulting from understaffing, JC RESORTS required Mr. Quintero and other aggrieved employees to remain on or near the premises for their meal periods. Because Mr. Quintero and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, JC RESORTS effectively maintained control over Mr. Quintero and other aggrieved employees during meal periods.

As a result, Mr. Quintero and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Quintero and other aggrieved employees were required to perform their duties during unpaid meal periods, or would have their meal periods interrupted to complete work-related tasks. Mr. Quintero missed his meal periods approximately 2-3 times per week due to the heavy workload and lack of coverage. Likewise, Mr. Quintero's meal periods would be interrupted and cut short approximately 2-3 times per week, as Mr. Quintero would be forced to continue working and prepare incident reports in accordance with the deadlines set by JC RESORTS. Additionally, upon information and belief, because JC RESORTS frowned upon employees accruing meal period penalties, JC RESORTS pressured Mr. Quintero and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that JC RESORTS would otherwise owe. Thus, Mr. Quintero and other aggrieved employees performed work during meal periods for which they were not paid.

Sixth, JC RESORTS's company-wide electronic timekeeping system prevented Mr. Quintero and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Quintero and other aggrieved employees once they

had clocked out for a meal period and would not permit them to clock back in from a meal period before the 30 minutes elapsed. Similarly, JC RESORTS's rigid company-wide electronic timekeeping system prevented Mr. Quintero and other aggrieved employees from clocking in early, prior to the start of their scheduled shifts, or after the end of their scheduled shifts. For example, when Mr. Quintero had clocked out at the end of shift and was called back in to assist with a work-related situation, on information and belief, Mr. Quintero was prevented from clocking back in until 30 minutes had elapsed due to the system logging the "clock out" as the start of a meal period. Thus, JC RESORTS's timekeeping system prevented Mr. Quintero and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, or when they worked prior to or past their scheduled shifts.

JC RESORTS knew or should have known that as a result of these company-wide practices and/or policies, Mr. Quintero and other aggrieved employees were working off-the-clock before and after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Quintero and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Furthermore, JC RESORTS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, JC RESORTS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, JC RESORTS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, JC RESORTS failed to pay all overtime wages by paying a lower overtime rate than required.

Therefore, Mr. Quintero and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked, in violation of California Labor Code sections 510 and 1198. Mr. Quintero and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As stated above, JC RESORTS had a company-wide practice and/or policy of utilizing labor budgets and limiting overtime accrual, leading to the failure to compensate Mr. Quintero and other aggrieved employees for their time spent working off-the-clock, including running work-related errands, donning and doffing their required uniforms and gear, and undergoing security searches. In addition, due to JC RESORTS's policy and/or practice of understaffing and/or single-staffing, requiring employees to respond to radio calls at all times, and failure to schedule meal periods, Mr. Quintero

and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, or continue working through their meal period to complete their daily assigned tasks and/or were otherwise not relieved of all duties during meal periods. Additionally, as set forth above, on information and belief, JC RESORTS systematically failed to pay Mr. Quintero and other aggrieved employees for actual hours worked during unpaid meal periods or beyond their scheduled shifts, because these hours were not always correctly recorded.

Moreover, JC RESORTS maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time to undergo mandatory drug testing and/or physical examinations. At all times, JC RESORTS was in control of scheduling the date and time for the drug testing and/or physical examinations, selecting the provider or facility where the drug testing and/or physical examinations were to take place, and determining the scope of the drug testing and/or physical examinations. JC RESORTS gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of JC RESORTS. However, JC RESORTS did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, JC RESORTS did not pay for all hours worked by Mr. Quintero and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, JC RESORTS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, JC RESORTS regularly failed to pay at least minimum wages to Mr. Quintero and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mr. Quintero and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As set forth above, during the relevant time period, JC RESORTS had, and continues to have, a

company-wide policy and/or practice of understaffing/single-staffing its locations due to labor budgeting. Further, as stated, Mr. Quintero's managers instructed him to have his radio on his person at all times and respond when called, even during his meal periods. Additionally, as stated, JC RESORTS had a company-wide practice of failing to schedule meal periods, which further caused Mr. Quintero and other aggrieved employees to not be relieved of their duties for compliant meal periods. Thus, Mr. Quintero and other aggrieved employees were not provided adequate meal period coverage to take all timely, uninterrupted 30-minute meal periods to which they were entitled.

Furthermore, JC RESORTS maintained and implemented a company-wide practice and/or policy of effectively requiring that Mr. Quintero and other aggrieved employees to remain on the work premises during their meal periods. Because Mr. Quintero and other aggrieved employees were restricted from leaving the work premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, JC RESORTS effectively maintained control over Mr. Quintero and other aggrieved employees during meal periods.

Moreover, as stated, because JC RESORTS frowned upon employees accruing meal period penalties, JC RESORTS's management pressured employees to clock out for meal periods, upon threat of discipline, and/or would adjust Mr. Quintero's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by JC RESORTS. As also stated, JC RESORTS's company-wide timekeeping system further prevented Mr. Quintero and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Quintero and other aggrieved employees once they clocked out for a meal period and would not permit them to clock back in from a meal period before 30 minutes elapsed.

JC RESORTS's practices and policies prevented Mr. Quintero and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Quintero and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, as stated, Mr. Quintero would miss his meal period entirely and/or work through his meal period, preparing incident reports while he ate, due to a lack of coverage and having to complete a daily checklist of duties while assisting with work-related emergencies. At times, Mr. Quintero was not provided with meal periods until six (6) or seven (7) hours into his shift.

In addition, during the relevant time period, Mr. Quintero and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For example, Mr. Quintero was not provided a second meal period when he worked shifts in excess of ten (10) hours. Mr. Quintero and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

JC RESORTS knew or should have known that as a result of its policies and practices, that Mr. Quintero and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. JC RESORTS further knew or should have known that it did not pay Mr. Quintero and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

Furthermore, JC RESORTS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Quintero and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that JC RESORTS did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, JC RESORTS did not pay other aggrieved employees at the correct rate of pay for premiums because JC RESORTS systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, JC RESORTS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Quintero and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, JC RESORTS regularly failed to authorize and permit Mr. Quintero and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, JC RESORTS's company-wide policies and/or practices, including understaffing or single-staffing and assigning heavy workloads, such as the implementation of strict daily checklists, prevented Mr. Quintero and other aggrieved employees from being relieved of all duty to take rest periods. Moreover, as with meal periods, Mr. Quintero was instructed by his supervisors to carry and keep his radio on his person at all times and was thus required to continue responding to work-related inquiries during his rest periods. JC RESORTS also failed to schedule rest periods, which, coupled with JC RESORTS's failure to provide adequate rest period coverage, further led to Mr. Quintero and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, JC RESORTS maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Quintero and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Quintero and other

aggrieved employees were restricted from leaving JC RESORTS's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, JC RESORTS effectively maintained control over Mr. Quintero and other aggrieved employees during rest periods.

As a result, Mr. Quintero and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Quintero missed rest periods and had rest periods cut short or interrupted due to the heavy workload and lack of coverage.

JC RESORTS also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that JC RESORTS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, JC RESORTS did not pay other aggrieved employees at the correct rate of pay for premiums because JC RESORTS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, JC RESORTS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Quintero and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 & California Code of Regulations Title 8, Section 3395 – Failure to Provide Heat Recovery Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide recovery periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest or recovery period is not provided. California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other." *Id.* "Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times." *Id.*

During the relevant time period, JC RESORTS violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because JC RESORTS failed to provide Mr. Quintero and other aggrieved employees with recovery periods. For example, Mr. Quintero was never provided a shaded area for recovery and was not permitted to take recovery periods in a shaded area while working, even though the majority of his work was performed outside.

JC RESORTS also has engaged in a company-wide practice and/or policy of not paying all recovery period premiums owed when compliant recovery periods are not provided. Because of this practice and/or policy, Mr. Quintero and other aggrieved employees have not received premium pay for all missed recovery periods. Alternatively, to the extent that JC RESORTS did pay other aggrieved employees for missed recovery periods, JC RESORTS did not pay other aggrieved employees at the correct rate of pay, because JC RESORTS systematically failed to include all compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration in the regular rate of pay.

Accordingly, JC RESORTS failed to authorize and permit all recovery periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Quintero and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. JC RESORTS has not provided Mr. Quintero and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, JC RESORTS has knowingly and intentionally provided Mr. Quintero and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, JC RESORTS issued uniform wage statements to Mr. Quintero and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, JC RESORTS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because JC RESORTS did not record the time Mr. Quintero and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), JC RESORTS did not list the correct amount of gross wages and net wages earned by Mr. Quintero and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, JC RESORTS failed to accurately list the total number of hours worked by Mr. Quintero and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because JC RESORTS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, JC RESORTS did not list the correct amount of gross

wages in compliance with section 226(a)(1). For the same reason, JC RESORTS also failed to list the correct amount of net wages in violation of section 226(a)(5). JC RESORTS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), JC RESORTS willfully failed to maintain accurate payroll records for Mr. Quintero and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, JC RESORTS failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Quintero and other aggrieved employees, in violation of section 1198. As stated, JC RESORTS engaged in a company-wide practice and/or policy of falsifying Mr. Quintero’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Quintero and other aggrieved employees. Furthermore, in light of JC RESORTS’s failure to provide Mr. Quintero and other aggrieved employees with second 30-minute meal periods to which they were entitled, JC RESORTS kept no records of meal start and end times for second meal periods.

Because JC RESORTS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Quintero and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Quintero and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Quintero and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, JC RESORTS failed to pay Mr. Quintero and other aggrieved employees all wages due to them, including, but not limited to, overtime wages; minimum wages; and/or meal, rest, and recovery period premiums, within any time period specified by California Labor Code section 204.

Mr. Quintero and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

JC RESORTS willfully failed to pay Mr. Quintero and other aggrieved employees who are no longer employed by JC RESORTS all their earned wages, including, but not limited to, overtime wages; minimum wages; and/or meal, rest, and recovery period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving JC RESORTS's employ.

Mr. Quintero and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, JC RESORTS implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, JC RESORTS had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, JC RESORTS was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

However, JC RESORTS did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. JC RESORTS's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant period, JC RESORTS required other aggrieved employees to work eight (8) or more hours per day and seven (7) consecutive days in a workweek. Because other aggrieved employees worked over thirty (30) hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, JC RESORTS caused other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11050(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

JC RESORTS’s California resort and golf properties’ front desk, registration desk, and concierge desk areas are generally similar in their layout and design and there was, and continues to be, space behind the front desk, registration desk, and concierge desk areas to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. JC RESORTS could provide other aggrieved employees with a seat or stool at the front desks, registration desks, and concierge desks, but instead denies them seating and forces aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind the front desks, registration desks, and concierge desks, regardless of their actual job title or description. The nature of the work of an employee performing front desk, registration desk, and concierge duties can reasonably be accomplished from a seated position. However, JC RESORTS systematically, and on a company-wide basis, does not provide seats or stools at or near front desks, registration desks, or concierge desks, forcing other aggrieved employees to stand throughout their work shifts.

JC RESORTS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. JC RESORTS’s management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of JC RESORTS’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. JC RESORTS’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring JC RESORTS into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires

that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

As stated, JC RESORTS’s California resort and golf properties are generally similar in their layout and design and there was, and continues to be, space near its work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. JC RESORTS could provide other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

JC RESORTS did not provide other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent other aggrieved employees engaged in duties in which the nature of the work required standing, JC RESORTS denied them the use of seats nearby during lulls in their work duties. Moreover, JC RESORTS did not inform other aggrieved employees of their rights to a seat or stool under California law.

As a result of JC RESORTS’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, and other aggrieved employees were forced to stand during shifts and denied seats. JC RESORTS’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring JC RESORTS into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall

be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(4)(C) provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

JC RESORTS willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because JC RESORTS failed to pay other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. For example, other aggrieved employees were required to attend a training for two (2) hours, and then were told to clock out for several hours before returning to work in the late afternoon and/or evening to start their regular shifts. When this occurred, JC RESORTS did not always pay other aggrieved employees an additional hour at minimum wage. Accordingly, JC RESORTS required other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage, in violation of California Labor Code section 1198.

JC RESORTS’s failure to provide other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, JC RESORTS, on a company-wide basis, required that Mr. Quintero and other aggrieved employees use their own personal cellular phones and cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. Although Mr. Quintero and other aggrieved employees were provided company-issued cellular phones, there were occasions when the company phones did not have reception, were out of range, or were not set up to make calls. Since Mr. Quintero and other aggrieved employees did not work in an office setting, they had no access to additional communication devices other than their own. Additionally, Mr. Quintero was required to download a mobile application onto his personal cellular phone in order to access company emails. For example, when the company phones did not have reception, Mr. Quintero would be required to use his personal cellular phone to call 911 for emergency services and to review email inquiries from other departments during his shifts.

Although JC RESORTS required Mr. Quintero and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, JC RESORTS failed to reimburse them for this cost.

Second, during the relevant time period, JC RESORTS had a company-wide policy of requiring Mr. Quintero and other aggrieved employees to utilize their own personal vehicles for work purposes, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Quintero's managers would ask him to pick up printer toner cartridges from Staples on his way to work using his own personal vehicle, adding approximately 10 miles to his commute, but Mr. Quintero was not reimbursed for his travel expenses or mileage. Likewise, on information and belief, other aggrieved employees were required to use their own personal vehicles to deliver lost-and-found items to guests who had left the premises, but they were not reimbursed for their travel expenses or mileage. Although JC RESORTS required Mr. Quintero and other aggrieved employees to use their own vehicles to carry out their work-related responsibilities, JC RESORTS did not reimburse them for their travel expenses.

Third, during the relevant time period, JC RESORTS had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, JC RESORTS was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. JC RESORTS gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of JC RESORTS. Although JC RESORTS required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, JC RESORTS never reimbursed them for their travel expenses.

Fourth, during the relevant time period, JC RESORTS, on a company-wide basis, required Mr. Quintero and other aggrieved employees to purchase supplies, tools, and/or equipment, such as flashlights, that were necessary for the completion of their work-related duties. For example, Mr. Quintero was forced to purchase a new flashlight because the company-provided flashlight was broken. In addition, Mr. Quintero purchased steel-toed boots which he was required to wear while at work. Thus, JC RESORTS failed to provide supplies, tools, and/or equipment to Mr. Quintero and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Quintero and other aggrieved employees for these costs.

Fifth, JC RESORTS, on a company-wide basis, expected Mr. Quintero and other aggrieved employees to wear clean and presentable uniforms while at work, but JC RESORTS only provided them two (2) uniforms and/or company shirts at the beginning of their employment. Because JC RESORTS failed to provide Mr. Quintero and other aggrieved employees with an adequate number of uniforms in relation to their scheduled shifts, Mr. Quintero and other aggrieved employees had to wash their company shirts more frequently than they would otherwise do laundry, and separately from their own clothes, and incurred expenses in doing so. For example, because Mr. Quintero typically worked six (6) days a week and was mostly outdoors throughout his shift, he would perspire, and his uniform would get dirty each shift. Thus, the number of uniforms and/or shirts provided were insufficient to get him through the week without Mr. Quintero having to do an extra load of laundry.

Sixth, JC RESORTS, on a company-wide basis, required Mr. Quintero and other aggrieved employees to obtain and pay for certain licenses, such as the Security Guard License issued by the California Bureau of Security and Investigative Services (BSIS), also known as a “guard card,” that were required for their continued employment. JC RESORTS had a uniform policy of requiring employees to maintain an active license, but did not reimburse them for the costs of renewing the license.

JC RESORTS could have provided Mr. Quintero and other aggrieved employees with the actual tools required for use on the job, including company phones and vehicles; supplies, tools, and/or equipment; as well as an adequate number of uniforms and/or access to laundering or cleaning services. Or, JC RESORTS could have reimbursed employees for their cellular phone usage; mileage and travel costs; supplies, tools, and/or equipment; uniform laundering expenses; and license fees. Instead, JC RESORTS passed these operating costs off onto Mr. Quintero and other aggrieved employees. At all relevant times, Mr. Quintero and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, JC RESORTS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Quintero and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

JC RESORTS, on a company-wide basis, failed to provide Mr. Quintero and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that JC RESORTS required employees to wear certain personal protective equipment, including steel-toed boots, JC RESORTS failed to provide such reasonably necessary equipment to Mr. Quintero and other aggrieved employees to keep them safe. JC RESORTS’s failure to provide Mr. Quintero and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Quintero and other aggrieved employees are entitled to recover penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

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

violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” JC RESORTS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Quintero’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Quintero seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Quintero, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against JC RESORTS for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Quintero seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Mao Shiokura

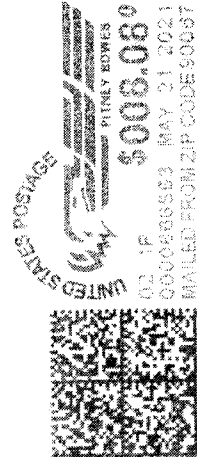
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CA 90067



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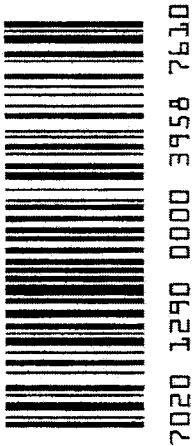
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1. Article Addressed to:

KSC MANAGEMENT, INC.
533 COAST BLVD S
LA JOLLA CA 92037



9590 9402 5816 0034 8455 98

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7627

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Covid 19

☐ Agent☒ Addressee

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C. Date of Delivery

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- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JC RESORTS LLC
533 COAST BLVD SOUTH
LA JOLLA CA 92037



9590 9402 5816 0034 8456 04

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7597

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Covid 19

☐ Agent☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

6/7/21

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

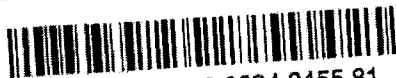
Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JC RESORTS MANAGEMENT LLC
533 COAST BLVD SOUTH
LA JOLLA CA 92037



9590 9402 5816 0034 8455 81

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7610

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Covid/19 ☐ Agent ☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

6/17/20

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

1 **PROOF OF SERVICE**

2 I am employed in the State of California, County of Los Angeles. I am over the age of 18
3 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los
4 Angeles, California 90067.

5 On **August 10, 2021**, I served the document(s) described as: **FIRST AMENDED CLASS**
6 **ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE**
7 **ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the
8 interested parties in this action by sending ☐ the original ☒ a true copy thereof ☒ to interested
9 parties as follows [or] ☐ as stated on the attached service list:

10 Joshua Daniel Levine
11 jdlevine@littler.com
12 Jocelyn D. Hannah
13 jhannah@littler.com
14 LITTLER MENDELSON, P.C.
15 501 W. Broadway, Suite 900
16 San Diego, CA 92101

Attorneys for Defendant
JC RESORTS LLC; JC RESORTS
MANAGEMENT LLC; BCR
MANAGEMENT, INC.; KSC
MANAGEMENT, INC.

17 ☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s)
18 for mailing in the ordinary course of business at Los Angeles, California. I am "readily
19 familiar" with this firm's practice of collection and processing correspondence for
20 mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service
21 that same day in the ordinary course of business with postage thereon fully prepaid at
22 Los Angeles, California.

23 ☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
24 California, by e-mail delivery on the parties listed herein at their most recent known e-
25 mail address or e-mail of record in this action.

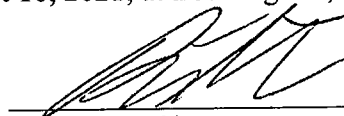
26 ☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California,
27 by facsimile delivery on the parties listed herein at their most recent fax number of record
28 in this action.

☐ **BY PERSONAL SERVICE:** I caused delivery of the document(s), enclosed in a sealed
envelope, by hand via ProLegal Network to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of
collection and processing correspondence for overnight delivery. Under that practice,
overnight packages are enclosed in a sealed envelope with a packing slip attached thereto
fully prepaid. The packages are picked up by the carrier at our offices or delivered by
our office to a designated collection site.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct. Executed on **August 10, 2021**, at Los Angeles, California.

25 Riley McIntire
26 Type or Print Name


Signature

RECEIVED
AUG 10 2021
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT