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CHARLES, individually, and on behalf of all
others similarly aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ASBERRY CHARLES, individually, and on
behalf of all others similarly aggrieved,

Plaintiffs,

vs.

HOLLYWOOD PARK CASINO
COMPANY, INC., a California Corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: **20STCV10332**

PAGA ENFORCEMENT ACTION COMPLAINT

(1) Civil Penalties for Violations of California Labor
Code, Pursuant to PAGA, §§ 2698, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff ASBERRY CHARLES (“CHARLES”), individually, as an aggrieved employee and on
2 behalf of all other nonparty aggrieved employees as set forth herein, collectively, “Plaintiff,” by and
3 through his attorneys, Shegerian & Associates, Inc., hereby files this PAGA Representative Action
4 Complaint against Defendant HOLLYWOOD PARK CASINO COMPANY, INC. (“HOLLYWOOD
5 PARK CASINO”), a California corporation; and DOES 1 through 100 inclusive, (collectively,
6 “Defendants”), and states as follows:

7 JURISDICTION AND VENUE

8 1. This is an enforcement action under the Labor Code Private Attorneys General Act of
9 2004, California Labor Code section 2698 *et seq.* (“PAGA”) to recover civil penalties and any other
10 available relief on behalf of Plaintiff, the State of California, and other current and former employees
11 who worked for Defendants in California as hourly, nonexempt employees and who received at least
12 one wage statement during their employment, and against whom one or more violations of any
13 provision in Division 2, Part 2, Chapter 1 of the Labor Code or any provision regulating hours and days
14 of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set
15 forth in this complaint (“Aggrieved Employees”), at any time between one year and sixty-five (65) days
16 prior to the filing of this complaint (i.e., January 8, 2020) until judgment (the “PAGA Period”).
17 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over this action pursuant to the California Constitution,
19 Article VI, section 10. The statute under which this action is brought does not specify any other basis
20 for jurisdiction.

21 3. This Court has jurisdiction over all Defendants because, on information and belief,
22 Defendants are either citizens of California, have sufficient minimum contacts in California, or
23 otherwise intentionally avail themselves of the California market so as to render the exercise of
24 jurisdiction over them by the California courts consistent with traditional notions of fair play and
25 substantial justice. There is no basis for federal diversity jurisdiction in this action given that the State
26 of California, as the real party in interest in this action, is not a “citizen” for purposes of satisfying
27 diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino*
28 also holds that civil penalties cannot be aggregated to satisfy the amount in controversy requirement for

1 federal diversity jurisdiction in this action, and that diversity jurisdiction cannot be established when
2 Plaintiff's share of the civil penalties attributable to violations personally suffered are less than \$75,000.
3 *Id.* at 1122.

4 4. Venue is proper in this Court, because Defendants employ persons in this county and
5 employed at least one plaintiff in this county, and thus a substantial portion of the transactions and
6 occurrences related to this action occurred in this county.

7 5. California Labor Code sections 2698 *et seq.*, the "Labor Code Private Attorneys General
8 Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private attorneys general their current
9 or former employers for various civil penalties for violating the California Labor Code.

10 **THE PARTIES**

11 6. Plaintiff ASBERRY CHARLES ("Plaintiff" or "Plaintiff CHARLES") is a resident of
12 Los Angeles, California. Defendants employed Plaintiff CHARLES as an hourly-paid, nonexempt
13 employee from approximately October 9, 2016 through April 21, 2019, first in the position of Security
14 Guard and second, in the position of Security Supervisor. Throughout his employment, Plaintiff
15 CHARLES always worked at Defendants' location in Inglewood, California. Plaintiff CHARLES
16 typically worked five (5) days per week for eight (8) hours per day. As of September 1, 2018, Plaintiff
17 CHARLES was earning \$17.50 per hour at the time of his separation. Prior to that, Plaintiff CHARLES
18 was earning \$16.00 per hour.

19 7. Defendant HOLLYWOOD PARK CASINO COMPANY, INC. ("HOLLYWOOD
20 PARK CASINO") is, on information and belief, a California corporation doing business in California,
21 with its principal place of business in San Francisco, California, located at 4 Embarcadero Center, Suite
22 3300, San Francisco, California 90272, and at all times hereinafter mentioned, an employer whose
23 employees are engaged throughout this county, the State of California, and/or the various states of the
24 United States of America.

25 8. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under
26 the fictitious names DOES 1 through 100 but will seek leave of this Court to amend the complaint and
27 serve such fictitiously named Defendants once their names and capacities become known.

28 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are the

1 partners, agents, owners, shareholders, managers, or employees of HOLLYWOOD PARK CASINO at
2 all relevant times.

3 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
4 omissions alleged herein was performed by, or is attributable to, HOLLYWOOD PARK CASINO
5 and/or DOES 1 through 100 (collectively “Defendants”), each acting as the agent for the other, with
6 legal authority to act on the other’s behalf. The acts of any and all Defendants were in accordance with,
7 and represent, the official policy of Defendants.

8 11. At all relevant times, Defendants, and each of them, ratified each and every act or
9 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted
10 the acts and omissions of each and all the other Defendants in proximately causing the violations herein
11 alleged.

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

15 **PAGA REPRESENTATIVE ALLEGATIONS**

16 13. Upon information and belief, Defendant HOLLYWOOD PARK CASINO maintains in
17 San Francisco, California its corporate operations headquarters and a single, centralized Human
18 Resources (“HR”) department, which is responsible for conducting Defendants’ recruiting and hiring of
19 new employees, as well as communicating and implementing Defendants’ company-wide policies,
20 including timekeeping policies, to employees in California. In particular, Plaintiff and other nonparty
21 Aggrieved Employees, upon information and belief, received the same standardized documents and/or
22 written policies upon hire. Upon information and belief, the use of standardized documents and/or
23 written policies, including new hire documents, indicate that Defendants dictated policies at the
24 corporate-level and implemented them company-wide, regardless of their employees’ assigned
25 positions. On information and belief, all transactions regarding hiring, terminations, promotions, pay
26 increases, and employee transfers, etc., relating to Defendants’ California employees were submitted to
27 and processed by Defendants’ HR department in San Francisco, California.

28 14. Upon information and belief, Defendants’ corporate records, business records, data, and

1 other information related to HOLLYWOOD PARK CASINO, including, in particular, HR records
2 pertaining to Defendants' California employees, are also maintained at HOLLYWOOD PARK
3 CASINO operations headquarters in San Francisco, California.

4 15. Upon information and belief, Defendants set forth uniform policies and procedures in
5 several documents provided at an employee's time of hire. Upon further information and belief, at the
6 time Plaintiff was hired, he received documents informing him that he would be subject to the policies
7 and rules set forth in the documents provided.

8 16. Upon information and belief, Plaintiff and other nonparty Aggrieved Employees suffered
9 the same meal break violations arising out of Defendants' maintenance and implementation of meal
10 break policies and adoption of an understaffed staffing model in conjunction with the requisite daily
11 operational needs imposed by HOLLYWOOD PARK CASINO.

12 17. Upon information and belief, Defendants maintain a centralized Payroll department at
13 their corporate and operations headquarters in San Francisco, California, which processes payroll for all
14 hourly-paid, nonexempt Employees working for Defendants at their various locations in California,
15 including Plaintiff and other nonparty Aggrieved Employees.

16 18. Upon information and belief, Defendants issue the same formatted wage statements to
17 all hourly, nonexempt paid employees in California, irrespective of their work location. Upon further
18 information and belief, during the relevant time period, Defendants processed and issued uniform,
19 standardized wage statements to Plaintiff and other nonparty Aggrieved Employees. Thus, Plaintiff is
20 informed and believes that other nonparty Aggrieved Employees throughout California were also
21 affected by Defendants' alleged noncompliance with wage statement reporting requirements.

22 19. Upon information and belief, Defendants process payroll for departing employees in the
23 same manner throughout the State of California, regardless of the manner in which the employees'
24 employment ends.

25 20. Defendants continue to employ hourly-paid, nonexempt employees throughout
26 California.

27 21. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned,
28 Defendants were advised by skilled lawyers and other professionals, employees and advisors

1 knowledgeable about California labor and wage law, employment and personnel practices, and about
2 the requirements of California law.

3 22. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other nonparty
4 Aggrieved Employees were not paid for all hours worked, because all hours worked were not recorded.

5 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
6 have known that Plaintiff and other nonparty Aggrieved Employees were entitled to receive certain
7 wages for overtime compensation and that they were not receiving certain wages for overtime
8 compensation.

9 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
10 have known that Plaintiff and other nonparty Aggrieved Employees were entitled to receive at least
11 minimum wages for compensation and that, in violation of the California Labor Code, they were not
12 receiving at least minimum wages and overtime wages for work that Defendants knew or should have
13 known was performed off-the-clock.

14 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
15 have known that Plaintiff and other nonparty Aggrieved Employees were entitled to meal periods in
16 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular rates of
17 pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that
18 Plaintiff and other nonparty Aggrieved Employees were not provided with all meal periods or payment
19 of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
20 uninterrupted, thirty (30) minute meal period.

21 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
22 have known that Plaintiff and other nonparty Aggrieved Employees were entitled to rest periods in
23 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1) additional
24 hour of pay at their regular rates of pay when they were not provided with a compliant rest period and
25 that Plaintiff and other nonparty Aggrieved Employees were not provided compliant rest periods or
26 payment of one (1) additional hour of pay at their regular rates of pay when they were not provided a
27 compliant rest period.

28 27. Plaintiff is informed and believes, and thereon alleges, that Defendants did not remit all

1 gratuities to all Aggrieved Employees during the PAGA Period. Plaintiff is informed and believes, and
2 thereon alleges, that Defendants HOLLYWOOD PARK CASINO engaged in improper tip pooling
3 practices by including employees who were not entitled to participate in the tip pool and/or excluding
4 employees who were entitled to participate in the tip pool.

5 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
6 have known that Plaintiff and other nonparty Aggrieved Employees were entitled to receive complete
7 and accurate wage statements in accordance with California law. In violation of the California Labor
8 Code, Defendants did not provide Plaintiff and other nonparty Aggrieved Employees with complete and
9 accurate wage statements.

10 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
11 have known that Plaintiff and other nonparty Aggrieved Employees were entitled to timely payment of
12 wages upon separation of employment. In violation of the California Labor Code, Defendants did not
13 pay Plaintiff and other nonparty Aggrieved Employees all wages due, including, but not limited to,
14 overtime wages, minimum wages, gratuities, and meal and rest period premium wages, within
15 permissible time periods.

16 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
17 have known that Plaintiff and other nonparty Aggrieved Employees were entitled to timely payment of
18 wages during their employment. In violation of the California Labor Code, Defendants did not pay
19 Plaintiff and other nonparty Aggrieved Employees all wages, including, but not limited to, overtime
20 wages, minimum wages, gratuities, and meal and rest period premium wages, within permissible time
21 periods.

22 31. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned,
23 Defendants knew or should have known that they had a duty to compensate Plaintiff and other nonparty
24 Aggrieved Employees for all hours worked, and that Defendants had the financial ability to pay such
25 compensation but willfully, knowingly, and intentionally failed to do so, and falsely represented to
26 Plaintiff and other nonparty Aggrieved Employees that they were properly denied wages, all in order to
27 increase Defendants' profits.

28 32. At all times herein set forth, PAGA provides that any provision of law under the Labor

Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

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

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

35. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- (a) The aggrieved employee shall give written notice by certified mail (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within thirty (30) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within thirty-three (33) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

36. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, including Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those

1 listed in Section 2699.5 after the following requirements have been met:

- 2 (a) The aggrieved employee or representative shall give written notice by certified
3 mail to the LWDA and the employer-of the specific provisions of the California
4 Labor Code alleged to have been violated (other than those listed in Section
5 2699.5), including the facts and theories to support the alleged violation.
- 6 (b) The employer may cure the alleged violation within thirty-three (33) calendar
7 days of the postmark date of the notice. The employer shall give written notice
8 by certified mail within that period of time to the aggrieved employee or
9 representative and the agency if the alleged violation is cured, including a
10 description of actions taken, and no civil action pursuant to Section 2699 may
11 commence. If the alleged violation is not cured within the 33-day period, the
12 employee may commence a civil action pursuant to Section 2699.

13 37. On January 8, 2020, Plaintiff provided written notice by certified mail to the LWDA and
14 Defendant HOLLYWOOD PARK CASINO of the specific provisions of the California Labor Code
15 alleged to have been violated, including facts and theories to support the alleged violations, in
16 accordance with California Labor Code section 2699.3. A true and correct copy of Plaintiff's written
17 notice to the LWDA and HOLLYWOOD PARK CASINO dated January 8, 2020 is attached hereto as
18 **"Exhibit I."**

19 38. As of the filing date of this amended complaint, over 65 days have passed since Plaintiff
20 sent the LWDA Notice described above, and the LWDA has not responded that it intends to investigate
21 Plaintiff's claims.

22 39. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code
23 section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in addition to other
24 remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510,
25 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

26 40. Labor Code section 558(a) provides that, "[a]ny employer or other person acting on
27 behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision
28 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to

1 a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
2 for each pay period for which the employee was underpaid in addition to an amount sufficient to
3 recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each
4 underpaid employee for each pay period for which the employee was underpaid in addition to an
5 amount sufficient to recover underpaid wages.” Labor Code section 558(c) provides “[t]he civil
6 penalties provided for in this section are in addition to any other civil or criminal penalty provided by
7 law.”

8 41. Defendants, at all times relevant to this complaint, were employers or persons acting on
9 behalf of an employer(s) who violated Plaintiff’s and other nonparty Aggrieved Employees’ rights by
10 violating various sections of the California Labor Code as set forth above.

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

13 43. Pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3,
14 2699.5, and section 558, Plaintiff, acting in the public interest as private attorney general, seeks
15 assessment and collection of civil penalties for themselves, all other nonparty Aggrieved Employees,
16 and the State of California against Defendants, in addition to other remedies, for violations of California
17 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a), 1174(d), 1182.12, 1194, 1197,
18 1197.1, and 1198.

19 FIRST CAUSE OF ACTION

20 For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.* (Against All Defendants)

21 44. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover various
22 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5.
23 Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a),
24 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c) permits aggrieved employees,
25 including Plaintiff, to recover civil penalties for violations of Labor Code section 1182.12.

26 45. Defendants’ conduct, as alleged herein, violates the applicable IWC Wage Order and
27 numerous sections of the California Labor Code, including, but not limited to, the following:

28 (a) Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC

Wage Order for Defendants' failure to provide Plaintiff and other nonparty Aggrieved Employees with meal and/or rest periods, as set forth below;

- (b) Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other nonparty Aggrieved Employees with at least minimum wages for all hours worked as set forth below;
- (c) Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other nonparty Aggrieved Employees with overtime wages for all hours worked in excess of eight (8) in one day or forty (40) in one week, as set forth below;
- (d) Violations of Labor Code section 351 for failure to remit all gratuities earned during employment;
- (e) Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other nonparty Aggrieved Employees as set forth below;
- (f) Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order for failure to maintain payroll records as set forth below;
- (g) Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below; and
- (h) Violations of Labor Code section 204 for failure to pay all earned wages during employment, as set forth below.

FAILURE TO PROVIDE MEAL PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), AND 1198

46. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California Labor Code sections 226.7, 512(a), and 1198 were applicable to Plaintiff and other nonparty Aggrieved Employees' employment by Defendants.

47. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5)

1 hours per day without providing the employee with a meal period of not less than thirty (30) minutes,
2 except that if the total work period per day of the employee is not more than six (6) hours, the meal
3 period may be waived by mutual consent of both the employer and the employee. Under California law,
4 first meal periods must start after no more than five (5) hours. *Brinker Rest. Corp. v. Superior Court*,
5 53 Cal.4th 1004, 1041-1042 (Cal. 2012).

6 48. At all relevant times herein set forth, California Labor Code section 226.7 and 512(a)
7 provide that no employer shall require an employee to work during any meal period mandated by an
8 applicable order of the IWC.

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

15 50. As stated, Defendants' uniform adoption of an understaffed staffing model for its
16 operations prevented Plaintiff and other nonparty Aggrieved Employees from being relieved of all
17 duties to take complaint meal periods. Defendants also had no policy or practice of scheduling meal
18 breaks for Aggrieved Employees. The combination of Defendants' failure to schedule meal periods,
19 adoption of an understaffed staffing model, and failure to register and compensate Aggrieved
20 Employees for all noncompliant meal periods in all instances, impeded and prevented Plaintiff and
21 other nonparty Aggrieved Employees from taking timely, uninterrupted meal periods. As a result,
22 Plaintiff and other nonparty Aggrieved Employees were not relieved of their duties such as that they
23 could take duty-free meal periods, and thus had to work through some or all of their meal periods, have
24 their meal periods interrupted to return to work, and/or wait extended periods of time before taking
25 meal periods. For example, Plaintiff frequently had his meal periods interrupted or cut short due to a
26 rush of customers and/or constant flow of customers, and understaffing, causing a need to return to
27 work before his meal periods were done.

28 51. As stated herein, Defendants also did not schedule second meal periods and had no

1 policy for permitting and authorizing Plaintiff and other nonparty Aggrieved Employees to take second
2 30-minute meal periods on days that they worked in excess of 10 hours in one day. Because of
3 Defendants' company-wide understaffed staffing model, Plaintiff and other nonparty Aggrieved
4 Employees were not relieved of all duties such that they could take second 30-minute meal periods and
5 instead had to work through them. Accordingly, Defendants failed to provide all meal periods in
6 violation of California Labor Code sections 226.7 and 512. Defendants knew or should have known
7 that its company-wide adoption of an understaffed staffing model and scheduling policies would result
8 in a failure to provide Plaintiff and other nonparty Aggrieved Employees with full and timely meal
9 periods as required by the applicable IWC Wage Order and Labor Code sections 226.7 and 512(a). In
10 not all instances was premium pay for noncompliant meal periods paid, because Plaintiff's and
11 Aggrieved Employees' time records were never corrected to reflect a noncompliant meal period.

12 52. Moreover, Defendants engaged in a systematic, company-wide policy to not pay meal
13 period premiums by failing to capture noncompliant meal periods. Alternatively, to the extent that
14 Defendants did pay Plaintiff and other nonparty Aggrieved Employees one (1) additional hour of
15 premium pay for missed meal periods, Defendants did not pay Plaintiff and other nonparty Aggrieved
16 Employees at the correct rate of pay for premium wages because Defendants failed to include all forms
17 of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the regular
18 rate of pay. As a result, to the extent Defendants paid Plaintiff and other nonparty Aggrieved
19 Employees premium pay for missed meal periods, it did so at a lower rate than required by law. As a
20 result, Defendants failed to provide Plaintiff and other nonparty Aggrieved Employees compliant meal
21 periods and failed to pay the full meal period premiums due.

22 53. Defendants' conduct violates the applicable IWC Wage Order, and California Labor
23 Code sections 226.7, 512(a) and 1198. Plaintiff and other nonparty Aggrieved Employees are therefore
24 entitled to recover civil penalties pursuant to sections 558 and/or 2699(a), (f), and (g).

25 **FAILURE TO PROVIDE REST PERIODS**

26 **VIOLATION OF LABOR CODE SECTION 226.7 AND 1198**

27 54. At all relevant times, the applicable IWC Wage Order and California Labor Code
28 sections 226.7 and 1198 were applicable to Plaintiff's and other nonparty Aggrieved Employees'

1 employment by Defendants.

2 55. At all relevant times, the applicable IWC Wage Order provides that “[e]very employer
3 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
4 middle of each work period” and that the “rest period time shall be based on the total hours worked
5 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the
6 total daily work time is less than three and one-half (3½) hours.

7 56. At all relevant times, California Labor Code section 226.7 provides that no employer
8 shall require an employee to work during any rest period mandated by an applicable order of the
9 California IWC. Pursuant to the applicable IWC Wage Order, Wage Order 11020(12)(A),
10 “[a]uthorized rest period time shall be counted as hours worked for which there shall be no deduction
11 from wages.” Because rest periods are considered hours worked, they must be compensated.

12 57. During the relevant time period, Defendants regularly failed to authorize and permit
13 Plaintiff and other nonparty Aggrieved Employees to take 10-minute rest period per each four (4) hour
14 period worked or major fraction thereof. As with meal periods, Defendants’ scheduling policies,
15 understaffed staffing model, and resultant lack of break coverage prevented Plaintiff and other nonparty
16 Aggrieved Employees from being relieved of all duty in order to take compliant rest periods and forced
17 Plaintiff and other nonparty Aggrieved Employees to forego rest breaks. As a result, Plaintiff and other
18 nonparty Aggrieved Employees would work shifts in excess of 3.5 hours without 10-minute rest periods
19 to which they were entitled. Throughout his employment, Plaintiff regularly worked straight through
20 his shifts, continuing to perform his employee duties such as ensuring the safety and security of the
21 casino; patrolling the parking lot; escorting customers with winnings to their cars or else removing
22 others from the premises; preparing daily reports for each shift to report incidents or anything else of
23 importance that occurred during each shift; training other employees; and assisting others with their
24 regular duties; among other miscellaneous tasks.

25 58. At the same time, Defendants implemented a company-wide policy to not pay rest
26 period premiums. And, in not all instances was premium pay for noncompliant rest breaks paid,
27 because Plaintiff’s and Aggrieved Employees’ time records were never corrected to reflect a
28 noncompliant rest break. Additionally and/or alternatively, to the extent that Defendants did pay

1 Plaintiff and other nonparty Aggrieved Employees one (1) additional hour of premium pay for missed
2 rest periods, Defendants did not pay Plaintiff and other nonparty Aggrieved Employees at the correct
3 rate of pay for premium wages because Defendants failed to include all forms of compensation, such as
4 commissions, incentive pay, and/or nondiscretionary bonuses, in the regular rate of pay. As a result, to
5 the extent Defendants paid Plaintiff and other nonparty Aggrieved Employees premium pay for missed
6 rest periods, it did so at a lower rate than required by law. As a result, Plaintiff and other nonparty
7 Aggrieved Employees were denied rest periods and failed to pay the full rest period premiums due, in
8 violation of Labor Code section 226.7 and the applicable IWC Wage Order.

9 59. Defendants' conduct violates the applicable IWC Wage Order and California Labor
10 Code sections 226.7 and 1198. Plaintiff and other nonparty Aggrieved Employees are therefore entitled
11 to recover civil penalties pursuant to section 2699(a), (f), and (g).

12 **FAILURE TO PAY MINIMUM WAGES**

13 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, 1197.1, AND 1198**

14 60. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
15 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid
16 to employees, and the payment of a wage less than the minimum so fixed is unlawful.

17 61. As described above, Defendants required Plaintiff and other nonparty Aggrieved
18 Employees to work, such as ensuring the safety and security of the casino; patrolling the parking lot;
19 escorting customers with winnings to their cars or else removing others from the premises; preparing
20 daily reports for each shift to report incidents or anything else of importance that occurred during each
21 shift; training other employees; and assisting others with their regular duties; general housekeeping and
22 janitorial duties; bartending; and preparing and serving customers food and drink, among other
23 miscellaneous tasks during their meal periods due to Defendants' lack of coverage for its employees
24 and decision to staff too few employees during shifts. Defendants did not pay at least minimum wages
25 for *de minimus* time and all off-the-clock hours that qualified for overtime premium payment. Also, to
26 the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did
27 not pay at least minimum wages for those hours worked off-the-clock.

28 62. During the relevant period herein, HOLLYWOOD PARK CASINO has failed to pay

1 Claimants the legal minimum wage. Instead, HOLLYWOOD PARK CASINO has paid Plaintiff
2 CHARLES and all others similarly situated less than the minimum wage. For instance,
3 HOLLYWOOD PARK CASINO did not authorize and permit Claimants to take compliant meal
4 periods and rest breaks on eligible shifts. HOLLYWOOD PARK CASINO'S corresponding failure to
5 provide premium pay in lieu of authorizing and permitting compliant meal periods and rest breaks
6 constitutes HOLLYWOOD PARK CASINO'S failure to pay minimum wages for all hours worked
7 every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a),
8 510, 1182.12, 1194, and 1197. In essence, HOLLYWOOD PARK CASINO'S failure to pay Claimants
9 their premium pay constitutes HOLLYWOOD PARK CASINO'S failure to pay minimum wages to
10 Claimants. Additionally, Claimants performed work prior to clocking in, and their time was never
11 adjusted to account for this work performed at the beginning of their shifts. Correspondingly,
12 Claimants performed tasks after clocking out, such as ensuring the safety and security of the casino;
13 patrolling the parking lot; escorting customers with winnings to their cars or else removing others from
14 the premises; preparing daily reports for each shift to report incidents or anything else of importance
15 that occurred during each shift; training other employees; and assisting others with their regular duties;
16 general housekeeping and janitorial duties; bartending; and preparing and serving customers food and
17 drink., and other general closing duties. Again, their time was never adjusted to account for this work
18 performed after clocking out at the end of their shifts. Accordingly, not all hours that Claimants
19 worked were recorded, adjusted, nor subsequently compensated.

20 63. Defendants' failure to pay Plaintiff and other nonparty Aggrieved Employees minimum
21 wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Plaintiff and
22 other nonparty Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
23 sections 1197.1 and/or 2699(a), (f), and (g).

24 **FAILURE TO PAY OVERTIME**

25 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

26 64. California Labor Code section 1198 makes it illegal to employ an employee under
27 conditions of labor that are prohibited by the applicable Wage Order. California Labor Code section
28 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ...

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

3 65. Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful
4 to employ persons without compensating them at a rate of pay either time-and-one-half or two times
5 that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or
6 weekly basis.

7 66. Specifically, the applicable IWC Wage Order provides that Defendants are and were
8 required to pay Plaintiff and other nonparty Aggrieved Employees working more than eight (8) hours in
9 a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half (1 ½) for all hours
10 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

11 67. The applicable IWC Wage Order further provides that Defendants are and were required
12 to pay Plaintiff and other nonparty Aggrieved Employees working more than twelve (12) hours in a
13 day, overtime compensation at a rate of two (2) times their regular rate of pay, and required to pay
14 Plaintiff and other nonparty Aggrieved Employees at a rate of two (2) times their regular rate of pay for
15 hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of a work in a
16 workweek. An employee’s regular rate of pay includes all remuneration for employment paid to, or on
17 behalf of, the employee, including commissions, non-discretionary bonuses, and incentive pay.

18 68. California Labor Code section 510 codifies the right to overtime compensation at one-
19 and-one-half times the regular rate of pay for hours worked in excess of eight (8) hours in a day or forty
20 (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime
21 compensation at twice the employees regular rate of pay for hours worked in excess of twelve (12)
22 hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

23 69. During the relevant time period, Defendants willfully failed to pay all overtime wages
24 owed to Plaintiff and other nonparty Aggrieved Employees. During the relevant time period, Plaintiff
25 and other nonparty Aggrieved Employees were not paid overtime premiums for all of the hours they
26 worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of eight
27 (8) hours on the seventh (7th) consecutive day of a work in a workweek, and/or in excess of forty (40)
28 hours in a week, because all hours worked were not recorded.

1 70. Defendants have systematically, and on a company-wide basis, frequently staffed only
2 one employee to work at its various posts. Defendants' uniform adoption of an understaffed staffing
3 model for its business often required Plaintiff and other nonparty Aggrieved Employees to remain
4 available and on duty at all times, including during meal periods. Defendants had no effective policy of
5 providing meal break coverage to Plaintiff and other nonparty Aggrieved Employees. At all relevant
6 times, Defendants knew or should have known that their understaffed staffing model required Plaintiff
7 and other nonparty Aggrieved Employees to perform their assigned employee duties during meal
8 periods.

9 71. Defendants could have staffed additional cashiers, waitstaff, and other support staff at
10 each post to relieve Plaintiff and other nonparty Aggrieved Employees of their duties for meal periods.
11 Instead, Defendants elected to implement an understaffed staffing model and provide limited,
12 infrequent meal break coverage, if any, to Plaintiff and other nonparty Aggrieved Employees. Because
13 Plaintiff and other nonparty Aggrieved Employees were required to remain at their posts and because
14 Defendants did not provide meal period coverage for them, Plaintiff and other nonparty Aggrieved
15 Employees were not relieved of all duties such that they could take uninterrupted 30-minute meal
16 periods.

17 72. Moreover, Defendants, on a company-wide basis, did not adhere to any schedule of meal
18 periods even though they were aware and knew that employees were entitled to such meal periods.
19 Plaintiff and other nonparty Aggrieved Employees did not receive compliant 30-minute meal breaks
20 after clocking out for lunch, either because they were missed entirely, taken late, cut short, and/or were
21 interrupted. In these instances, their time records would not reflect a noncompliant meal period,
22 therefore, they did not then receive the premium pay in lieu of a compliant meal period. Plaintiff and
23 other nonparty Aggrieved Employees oftentimes had to spend time working during their meal periods
24 engaged in ensuring the safety and security of the casino; patrolling the parking lot; escorting customers
25 with winnings to their cars or else removing others from the premises; preparing daily reports for each
26 shift to report incidents or anything else of importance that occurred during each shift; training other
27 employees; and assisting others with their regular duties; general housekeeping and janitorial duties;
28 bartending; and preparing and serving customers food and drink, among other miscellaneous tasks but

1 were not paid for the time they spent off-the-clock.

2 73. Moreover, Defendants systematically failed to schedule and provide second 30-minute
3 meal periods for employees working shifts of ten (10) hours or more and failed to authorize or permit
4 Plaintiff and other nonparty Aggrieved Employees to take second 30-minute meal periods to which they
5 were entitled. Because of Defendants' company-wide understaffed staffing model, Plaintiff and other
6 nonparty Aggrieved Employees were not relieved of all duties such that they could take second 30-
7 minute meal periods and instead had to work through them. For example, during his employment,
8 Plaintiff regularly worked over 10 (ten) hours in a day but did not receive a second uninterrupted 30-
9 minute meal period on those days. Plaintiff and other nonparty Aggrieved Employees did not sign valid
10 meal break waivers on days that they were entitled to meal periods but were not relieved of all duties.

11 74. Because Plaintiff and other nonparty Aggrieved Employees sometimes worked shifts of
12 eight (8) hours a day or more and/or forty (40) hours a week or more, some of this off-the-clock work
13 qualified for overtime premium pay. Therefore, Plaintiff and other nonparty Aggrieved Employees
14 were not paid overtime wages for all of the overtime hours they worked. Defendants' failure to pay
15 Plaintiff and other nonparty Aggrieved Employees the balance of overtime compensation, as required
16 by California law, violates the provisions of California Labor Code sections 510 and 1198.

17 75. Furthermore, Defendants did not pay Plaintiff and other nonparty Aggrieved Employees
18 the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly
19 wage, Defendants paid other nonparty Aggrieved Employees commissions, incentive pay, and/or
20 nondiscretionary bonuses. However, in violation of the California Labor Code, Defendants failed to
21 incorporate all remunerations, including commissions, incentive pay and/or nondiscretionary bonuses,
22 into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate.
23 Therefore, during times when other nonparty Aggrieved Employees worked overtime and received
24 these other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate
25 than required.

26 76. Defendants' failure to pay Plaintiff and other nonparty Aggrieved Employees the
27 balance of overtime compensation and failure to include all applicable remuneration in calculating the
28 regular rate of pay for overtime pay, as required by California law, violates the provisions of California

1 Labor Code sections 510 and 1198. Plaintiff and other nonparty Aggrieved Employees are therefore
2 entitled to recover civil penalties pursuant to sections 558 and/or 2699(a), (f), and (g).

3 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

4 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

9 78. During the relevant time period, Defendants have knowingly and intentionally provided
10 Plaintiff and other nonparty Aggrieved Employees with uniform, incomplete and inaccurate wage
11 statements. The wage statement deficiencies include, among other things, failing to list gross wages
12 earned; failing to list total hours worked by employees; failing to list all applicable hourly rates in effect
13 during the pay period, including overtime rates of pay, and the corresponding number of hours worked
14 at each hourly rate; failing to list the number of piece-rate units earned and any applicable piece rate if
15 the employee is paid on a piece-rate basis; failing to list all deductions; failing to list net wages earned;
16 failing to list the name of the employee and only the last four digits of his or her social security number
17 or an employee identification number other than a social security number; failing to list the correct
18 name of the legal entity that is the employer; failing to list the inclusive dates of the period for which
19 aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or
20 stating the hours they worked off-the-clock.

21 79. California Labor Code section 1198 provides that the maximum hours of work and the
22 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
23 applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees
24 for longer hours than those fixed by the order or under conditions of labor prohibited by the order is
25 unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time
26 records showing when the employee begins and ends each work period and meal period. During the
27 relevant time period, Defendants failed, on a company-wide basis, to keep records of meal period start
28 and stop times for Plaintiff and other nonparty Aggrieved Employees in violation of section 1198.

1 80. California Labor Code section 1174(d) provides that “[e]very person employing labor in
2 this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the
3 ages of all minors” and “[keep, at a central location in the state or at the plants or establishments at
4 which employees are employed, payroll records showing the hours worked daily by and the wages paid
5 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
6 employed at the respective plants or establishments” During the relevant time period, and in
7 violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll
8 records for Plaintiff and other nonparty Aggrieved Employees showing the daily hours they worked and
9 the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

10 81. Because Defendants’ violations of 226(a) and 1174(d) were committed against Plaintiff
11 and other nonparty Aggrieved Employees, Plaintiff and other nonparty Aggrieved Employees are
12 entitled to recover civil penalties pursuant to sections 226(e), 226.3, 1174.5, and/or 2699(a), (f), and (g).

13 **FAILURE TO PAY WAGES UPON TERMINATION**

14 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

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

21 83. During the relevant time period, Defendants willfully failed to pay Plaintiff and other
22 nonparty Aggrieved Employees who are no longer employed by Defendants the earned and unpaid
23 wages set forth above, including but not limited to, overtime wages, minimum wages, and meal and rest
24 period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving
25 Defendants’ employ.

26 84. Defendants’ failure to pay Plaintiff CHARLES and those nonparty Aggrieved
27 Employees who are no longer employed by Defendants all of their wages earned and unpaid at the time
28 of discharge, or within seventy-two (72) hours of their leaving Defendants’ employ, violates Labor

Code sections 201 and 202.

85. On or about April 21, 2019, Plaintiff CHARLES was terminated, without advance notice, but Defendants failed to tender all of his final wages immediately upon his separation and have still failed to tender all of his final wages, in violation of Labor Code section 201 and 202.

86. Therefore, Plaintiff and other nonparty Aggrieved Employees are entitled to recover civil penalties pursuant to section 2699(a), (t), and (g).

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

87. At all relevant times herein, Labor Code section 204 provides 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. Labor Code section 204 further provides 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.

88. At all relevant times 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 relevant times 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.

89. During the relevant time period, Defendants willfully failed to pay Plaintiff and other nonparty Aggrieved Employees all wages due including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages within the time periods specified by California Labor Code section 204. For example, Plaintiff received his paychecks on time, however, the paychecks did not include all wages due for overtime wages, minimum wages, and meal and rest period premium wages. Plaintiff and other nonparty Aggrieved Employees are therefore entitled to recover civil penalties pursuant to sections 210 and/or 2699(a), (t), and (g).

FAILURE TO REMIT ALL GRATUITIES
VIOLATION OF LABOR CODE SECTION 351

90. At all relevant times herein, California Labor Code section 351 provides that no employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron. Defendants collected, took, or received gratuities or parts thereof that patrons paid, gave to, or left for Plaintiff and other non-party Aggrieved Employees.

91. Defendants violated Labor Code section 351 by collecting, taking, or receiving any gratuity or a part thereof that was paid, given to, or left for Plaintiff and other non-party Aggrieved Employees by patrons. Defendants violated Labor Code section 351 by failing to remit to Plaintiff and all Aggrieved Employees the entire gratuity paid by customers that customers intended to leave for them. Furthermore, Plaintiff is informed and believes, and thereon alleges, that Defendants engaged in improper tip pooling practices by including employees who were not entitled to participate in the tip pool and/or excluding employees who were entitled to participate in the tip pool. Accordingly, Plaintiff and Aggrieved Employees are entitled to penalties as set forth by Labor Code section 2699(f).

PRAYER FOR RELIEF

Plaintiff, on behalf of other nonparty Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars (\$25,000).

2. For an accounting of Defendants' records for the PAGA Period.

As to the First Cause of Action

3. That the Court declare, adjudge, and decree that Defendants violated the following California Labor Code sections as to Plaintiff and/or other nonparty Aggrieved Employees: 510 and 1198 (by failing to pay all overtime wages); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), and 1198 (by failing to provide meal or rest periods); 226(a) and 1198 (by failing to provide accurate and complete wage statements); 1174(d) and 1198 (by failing to maintain accurate and complete payroll records); 201, 202, 203 (by failing timely to pay all unpaid wages upon termination); 204 (by failing timely to pay all earned wages during

employment); and 351 (by failing to remit all gratuities);

4. For civil penalties pursuant to California Labor Code sections 210, 225.5, 226.3, 351, 558, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

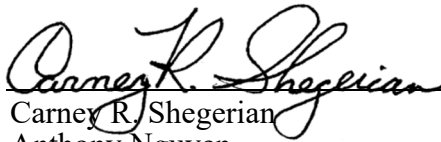
5. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

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

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

Dated: March 13, 2020

SHEGERIAN & ASSOCIATES, INC.

By: 
Carney R. Shegerian
Anthony Nguyen
Cheryl A. Kenner

Attorneys for Plaintiff ASBERRY
CHARLES, individually, and on behalf of
all others similarly aggrieved

1 **DEMAND FOR JURY TRIAL**

2

3 Plaintiff ASBERRY CHARLES, on behalf of himself, individually, and all others similarly

4 aggrieved, hereby demand a jury trial with respect to all issues triable of right by jury.

5

6 Dated: March 13, 2020

SHEGERIAN & ASSOCIATES, INC.

7

8 By:  _____

9 Carney R. Shegerian

10 Anthony Nguyen

11 Cheryl A. Kenner

12 Attorneys for Plaintiff ASBERRY

13 CHARLES, individually, and on behalf of

14 all others similarly aggrieved

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EXHIBIT 1

SHEGERIAN & ASSOCIATES, INC.

January 8, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce
Development Agency
Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave, 10th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL

Hollywood Park Casino Company, Inc.
4 Embarcadero Center, Suite 3300
San Francisco, CA 94111

Hollywood Park Casino Company, Inc.
3883 West Century Blvd.
Inglewood, CA 90303

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTION 2698, ET SEQ.

To: The California Labor and Workforce Development Agency; Hollywood
Park Casino Company, Inc.

From: Asberry Charles, on behalf of himself and all other current and former
nonexempt, hourly employees for violations of the California Labor Code

To Whom It May Concern:

Shegerian & Associates, Inc. has been retained by employee Asberry Charles (“Mr. Charles”) to seek compensation and all other available relief, including civil penalties on his behalf and on the behalf of all those similarly aggrieved (collectively, with Mr. Charles, “Claimants”) who have been injured by violations of the California Labor Code. Mr. Charles, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt employees of Hollywood Park Casino Company, Inc. (“Hollywood Park Casino”), intends to seek civil penalties, attorneys’ fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Factual Statement:

Hollywood Park Casino is a casino and sports bar located in Inglewood, California. Hollywood Park Casino offers casino gaming options and a restaurant and sports bar to its patrons. Claimant Mr. Charles worked for Hollywood Park Casino in California as an hourly, nonexempt employee of Hollywood Park Casino in the position of Security Supervisor, currently earning \$16.00 per hour. Mr. Charles, on behalf of himself and all other similarly aggrieved current and former employees of Hollywood Park Casino are or were nonexempt, hourly employees who are or were engaged in providing casino gaming (a variety of card games and tournaments), a sit-down restaurant and sports bar for patrons of Hollywood Park Casino in California. As part of their employment with Hollywood Park Casino, Claimant and other nonexempt, hourly employees, collectively, “nonexempt, hourly employees,” are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to: ensuring the safety and security of the casino; patrolling the parking lot; escorting customers with winnings to their cars or else removing others from the premises; preparing daily reports for each shift to report incidents or anything else of importance that occurred during each shift; training other employees; and assisting others with their regular duties; general housekeeping and janitorial duties; bartending; and preparing and serving customers food and drink.

Claimant Mr. Charles regularly works five (5) days per week for shifts of eight (8) hours or more per day. During the entire course of his employment, Hollywood Park Casino has failed to provide and continues to fail to provide Mr. Charles and all others similarly situated with all overtime pay and compliant meal periods and rest breaks. Hollywood Park Casino regularly interrupted Mr. Charles and other Claimants’ meal periods and rest breaks and did not thereafter properly compensate Claimants with premium pay. As a consequence, Hollywood Park Casino has failed to comply with Labor Code sections 226.7, 510, and 512, and all applicable Industrial Welfare Commission (“IWC”) Wage Orders, including IWC Wage Order No. 5-2001, sections 3, 11, and 12. Hollywood Park Casino has also failed to pay minimum wages to Mr. Charles and other nonexempt, hourly employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and all applicable IWC Wage Orders, including IWC Wage Order No. 5-2001, section 4. Not all reporting pay owed under all applicable IWC Wage Orders, including IWC Wage Order No. 5-2001, section 5 was paid to Mr. Charles and Claimants either. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Hollywood Park Casino has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours

worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Hollywood Park Casino has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Hollywood Park Casino has failed and continues to fail to provide timely, accurate wage statements to Mr. Charles and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by Hollywood Park Casino, including Mr. Charles, Hollywood Park Casino violated Labor Code section 203 by failing to pay all wages due upon separation. Mr. Charles is informed and believes that such violations are ongoing, systematic, and continuous. He intends to bring an action against Hollywood Park Casino under the Private Attorneys General Act (“PAGA”) to recover wages and penalties as provided by California law.¹

Theories of Labor Code Violations and Remedies:

Claimant Mr. Charles was employed continuously by Hollywood Park Casino from approximately October 9, 2016 through the present, first as a Security Guard, and second, presently as a nonexempt Security Supervisor. The positions of Security Guard and Security Supervisor generally entail ensuring the safety and security of the casino; patrolling the parking lot; escorting customers with winnings to their cars or else removing others from the premises; preparing daily reports for each shift to report incidents or anything else of importance that occurred during each shift; training other employees; and assisting others with their regular duties. For a period of at least four (4) years prior to

¹ Without limitation, Mr. Charles, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

January 2020, but for our purposes here, one (1) year, Hollywood Park Casino has failed and continues to fail to pay such employees all overtime wages, yet regularly requires and has required employees to work in excess of eight (8) hours per workday and/or forty (40) hours per workweek without adequate pay under Labor Code section 1194.

Claimants were at all times entitled to off-duty, uninterrupted unpaid meal periods on time. Hollywood Park Casino failed to provide meal periods to Mr. Charles and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and all applicable IWC Wage Orders, including IWC Wage Order No. 5-2001, section 11. Because of understaffing and poor scheduling, Hollywood Park Casino regularly interrupts Mr. Charles and other Claimants' meal periods and has not thereafter properly compensated Claimants with premium pay. Accordingly, Mr. Charles and all similarly aggrieved persons took their meal periods late, had their meal periods interrupted, and remained on duty as they were required to perform work during their meal periods. And Hollywood Park Casino has not compensated Claimants with an extra hour of pay for noncompliant meal periods for each workday on which they occurred. Accordingly, since Hollywood Park Casino requires Mr. Charles and others similarly situated to work during their meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code section 558 and in all applicable IWC Wage Orders, including IWC Wage Order No. 5-2001, section 20, and 2699(f).

Claimants were at all times entitled to take paid off duty rest breaks. However, Hollywood Park Casino has failed to authorize and permit Mr. Charles and all other similarly aggrieved employees to take off duty rest breaks as required by Labor Code sections 226.7 and all applicable IWC Wage Orders, including IWC Wage Order No. 5-2001, section 12. This is largely due to understaffing and poor scheduling in light of the volume of patrons. Hollywood Park Casino regularly interrupts Mr. Charles and other Claimants' rest breaks and has not thereafter properly compensated Claimants with premium pay. Accordingly, Mr. Charles and all similarly aggrieved persons are required to perform work during their rest breaks by either taking no break or else returning to work during the rest break and, therefore, remaining on duty during their rest breaks. Hollywood Park Casino has not compensated Claimants with an extra hour of pay for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and all applicable IWC Wage Orders, including IWC Wage Order No. 5-2001, section 20. Furthermore, since Hollywood Park Casino required its nonexempt employees to work during rest periods in violation of Labor Code section 226.7(b), Claimants seek all available penalties set forth in Labor Code sections 558 and 2699.

Claimants also were at all times entitled to the payment of minimum wages. Hollywood Park Casino has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and all applicable IWC Wage Orders, including IWC Wage Order No. 5-2001, section 4. For instance, as previously explained, due to understaffing and poor scheduling, Claimants are not able to take all rest breaks because of frequent interruptions or no stop in work for a break; they effectively remained on duty during rest breaks out of necessity from being short-staffed. This causes Claimants to remain on duty during rest breaks, and therefore, constitutes a failure on Hollywood Park Casino's part to provide compliant rest breaks. With that, Hollywood Park Casino's corresponding failure to provide premium pay in lieu of compliant rest breaks constitutes Hollywood Park Casino's failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. Similarly, in other instances, Claimants were and are unable to take their meal periods and in turn, continue to work through their meal periods. Hollywood Park Casino's failure to pay Claimants meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in the preceding paragraphs, also constitutes a failure to pay minimum wages to Claimants. In addition, Claimants regularly work off-the-clock before and after their shifts, however, that time has not ultimately been recorded, adjusted, nor subsequently compensated. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and all applicable IWC Wage Orders, including IWC Wage Order No. 5-2001, section 20.

At all times relevant herein, Claimants were entitled to the payment of overtime. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Hollywood Park Casino was required to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Hollywood Park Casino has failed to and continues to fail to pay Claimants all overtime wages owed, yet regularly required them to work in excess of eight (8) hours per day and/or forty (40) hours per week without premium pay under Labor Code section 1194. Claimant Mr. Charles regularly worked six (6) days per week for over eight (8) hours per day but did not receive all overtime wages owed. During the period Mr. Charles was not paid minimum wage based on Hollywood Park Casino's failure to pay for all hours worked, so as explained above, Hollywood Park Casino also did not pay him the correct rate for all of his overtime hours either. Claimants also received bonuses that were not properly included in calculations of Claimants' respective regular rates, which are applicable in calculating their overtime rates. In short, during the entire course of their employment, Hollywood Park Casino has failed to provide and continues to fail to provide Mr. Charles

and all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including IWC Wage Order No. 5-2001(3).

Claimants were at all times entitled to be provided timely and accurate wage statements from Hollywood Park Casino pursuant to Labor Code section 226. Because Hollywood Park Casino failed to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, and failed to pay Claimants minimum wages for all hours worked and overtime wages, Claimants' wage statements were inaccurate in reflecting meal period and rest break premium compensation owed, overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants' wage statements also do not reflect the accurate amount of gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Hollywood Park Casino's uniform failure to pay overtime and minimum wages, failure to authorize and permit off duty rest breaks and meal periods or pay Claimants premium compensation in lieu thereof, and failure to furnish timely and accurate wage statements violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1182.12, 1194, and 1197, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys' fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Charles, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Hollywood Park Casino for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

Should you require any additional information, please feel free to contact me.

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LABOR AND WORKFORCE DEVELOPMENT AGENCY
HOLLYWOOD PARK CASINO COMPANY, INC.
January 8, 2020
Page 7

Very truly yours,

SHEGERIAN & ASSOCIATES, INC.

A handwritten signature in black ink, reading "Carney R. Shegerian". The signature is written in a cursive, flowing style with a large, stylized "C" at the beginning.

Carney R. Shegerian

CRS/ck