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18 MARIA RIOS-ROMAN, and all others similarly situated

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

20 **FOR THE COUNTY OF SANTA CRUZ**

21 **(UNLIMITED JURISDICTION)**

22 MARIA RIOS-ROMAN, on behalf of herself
23 and all others similarly situated,

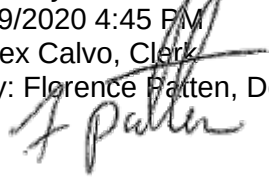
24 *Plaintiff(s),*

25 vs.

26 SEASONS MANAGEMENT, LLC, an Oregon
27 limited liability company; and DOES 1-50,
28 inclusive,

Defendant(s).

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
3/9/2020 4:45 PM
Alex Calvo, Clerk
By: Florence Patten, Deputy



Case No.: 20CV00783

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



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1 Plaintiff MARIA RIOS-ROMAN (hereafter “Plaintiff”), on behalf of herself, the State of
2 California, and other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
6 Order”) and the Business and Professions Code against defendants SEASONS MANAGEMENT,
7 LLC, an Oregon limited liability company; and DOES 1 through 50, inclusive (collectively
8 “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 her, the State of California, and other similarly situated current and former employees who
11 worked in California as non-exempt employees, including, but not limited to caregivers,
12 housekeepers, nurses, medication technicians, and persons in similar positions, at any time during
13 the period beginning four years prior to the filing of this action to the present, for civil penalties
14 and other related relief. These claims are based on Defendants’ alleged failures to (1) provide all
15 rest and meal periods, (2) compensate Plaintiff and the below-described Aggrieved Employees
16 for all hours worked at the correct rates of pay, (3) provide accurate written wage statements, (4)
17 timely pay wages upon termination of employment, and (5) fairly compete. Accordingly, Plaintiff
18 now seeks to recover civil penalties and related relief through this representative action.

19 **II. JURISDICTION AND VENUE**

20 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
21 and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in controversy.

22 4. There is no basis for federal question subject matter jurisdiction in this case.
23 Specifically, Plaintiff asserts claims on behalf of herself and the Aggrieved Employees that solely
24 arise under California law, rather than federal law.

25 5. Venue is proper in Santa Cruz County pursuant to California Code of Civil
26 Procedure § 395(a) and § 395.5 in that liability arose in Santa Cruz County because at least some
27 of the transactions that are the subject matter of this Complaint occurred therein and/or because
28 each defendant is found, maintains offices, transacts business, and/or has an agent therein.

III. THE PARTIES

6. Plaintiff MARIA RIOS-ROMAN is a resident of California.

7. Defendant SEASONS MANAGEMENT, LLC is a limited liability company



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1 organized and existing under the laws of Oregon based on Plaintiff's information and belief.

2 8. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
3 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
4 is informed and believes and thereon alleges that said defendants are legally responsible for the
5 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
6 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants
7 when ascertained.

8 9. Plaintiff is informed and believes and thereon alleges that, at all relevant times
9 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
10 remaining Defendants, and in doing the things hereinafter alleged, were acting within the course
11 and scope of such agency or employment, and with the approval and ratification of each of the
12 other Defendants.

13 10. At all relevant times, in perpetrating the acts and omissions alleged herein,
14 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
15 of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved Employees in
16 accordance with applicable California labor laws as alleged herein.

17 11. Plaintiff is informed and believes and thereon alleges that each and every one of
18 the acts and omissions alleged herein were performed by, and/or are attributable to, all
19 Defendants, each acting as agents and/or employees, and/or under the direction and control of
20 each of the other Defendants, and that said acts and failures to act were within the course and
21 scope of said agency, employment, and/or direction and control.

22 **A. THE AGGRIEVED EMPLOYEES**

23 12. The "Aggrieved Employees" are all persons Defendants employed in California
24 as non-exempt hourly employees, including but not limited to caregivers, housekeepers, nurses,
25 medication technicians, and workers employed in comparable positions, at any time during the
26 period beginning January 2, 2019, and ending on the date that final judgment is rendered in this
27 action (the "PAGA Period").

28 **STATEMENT OF FACTS**

13. In or about October of 2018, Defendants first employed Plaintiff to work as a
caregiver at their residential care facility for the elderly, Westwind Memory Care, in Santa Cruz,
California. Defendants continuously employed Plaintiff as a caregiver from that time until



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1 approximately April 17, 2019, when her employment ended. At all relevant times, the position
2 of caregiver was hourly and non-exempt.

3 14. Plaintiff and the Aggrieved Employees earned their wages at an hourly rate and
4 Defendants issued their paychecks on a bi-weekly basis. At relevant times, Plaintiff and the
5 Aggrieved Employees worked shifts in excess of eight hours, and worked over 40 hours in a
6 workweek.

7 15. At all relevant times within the applicable limitations period, Defendants failed to
8 consistently provide Plaintiff and the Aggrieved Employees with an off-duty, 30-minute meal
9 period before the end of the fifth hour worked. Defendants regularly required Plaintiff and the
10 Aggrieved Employees to work through their meal periods without pay due to the absence of other
11 employees to cover for them. On the occasions that Defendants allowed Plaintiff and the
12 Aggrieved Employees to take timely meal periods, Defendants required Plaintiff and the
13 Aggrieved Employees to remain on the premises and to remain available in order to assist the
14 residents of Defendants' facilities. Thus, even though clocked out, Plaintiff and the Aggrieved
15 Employees remained on-duty. Neither Plaintiff nor the Aggrieved Employees entered into on-
16 duty meal period agreements with Defendants.

17 16. At all relevant times within the applicable limitations period, Defendants also
18 failed to authorize and permit Plaintiff and the Aggrieved Employees to take a ten-minute, paid,
19 duty-free rest break every four hours or major portion thereof. Defendants failed to provide duty-
20 free rest periods to Plaintiff and the Aggrieved Employees because there were no employees to
21 cover for them. Defendants have not requested an exemption from California's rest period law
22 from the Division of Labor Standards Enforcement.

23 17. Defendants failed to pay premium wages for days on which they failed to provide
24 Plaintiff and the Aggrieved Employees with all timely, duty-free, uninterrupted meal and rest
25 periods. Defendants further failed to compensate Plaintiff and the Aggrieved Employees for all
26 hours worked on days that Defendants failed to pay Plaintiff and the Aggrieved Employees for
27 work performed off-the-clock during their 30-minute meal periods and when Defendants
28 required them to engage in work while off-the-clock before their scheduled shifts and after. For
instance, Defendants instructed Plaintiff to clock out at 6:30 p.m. and warned her that if she did
not do so, she would be written up. After Plaintiff and the Aggrieved Employees had clocked
out, Defendants directed them to continue to oversee patients until replacement caretakers



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1 arrived. At relevant times, Defendants required Plaintiff and the Aggrieved Employees to work
2 for fifteen or more minutes after clocking out before replacement caretakers arrived.

3 18. Defendants required Plaintiff and the Aggrieved Employees to work in excess of
4 eight hours in one workday and forty hours in one workweek without compensating them for
5 such time worked at the overtime rates required by California law. Defendants failed to pay one
6 and one half times (1 ½ x) the hourly rates of pay of Plaintiff and the Aggrieved Employees by
7 failing to pay for off-the-clock work performed by Plaintiff and the Aggrieved Employees during
8 their meal periods and after clocking out at the end of their shifts. Further, Plaintiff and the
9 Aggrieved Employees earned non-discretionary bonuses including, but not limited to, signing
10 bonuses. However, Defendants failed to include such non-discretionary bonuses in Plaintiffs'
11 and the Aggrieved Employees' regular rates of pay for purposes of calculating their overtime pay
12 rates.

13 **FIRST (AND ONLY) CAUSE OF ACTION**

14 **CIVIL PENALTIES**

15 **(Lab. Code §§ 2698, et seq.)**

16 **(By Plaintiff and the Aggrieved Employees against all Defendants)**

17 19. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 20. At all relevant times during the applicable limitations period, Plaintiff and the
19 Aggrieved Employees have been non-exempt employees of Defendants and entitled to the
20 benefits and protections of the California Labor Code and the Wage Order.

21 **A. FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

22 21. In relevant part, California Labor Code § 1198 states:

23 The maximum hours of work and the standard conditions of labor
24 fixed by the commission shall be the maximum hours of work and
25 the standard conditions of labor for employees. The employment
26 of any employee for longer hours than those fixed by the order or
27 under conditions of labor prohibited by the order is unlawful.

28 22. In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of
more than five hours per day without providing the employee with
a meal period of not less than 30 minutes, except that if the total
work period per day of the employee is no more than six hours, the
meal period may be waived by mutual consent of both the



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1 employer and employee.

2 An employer shall not employ an employee for a work period of
3 more than 10 hours per day without providing the employee with
4 a second meal period of not less than 30 minutes, except that if the
5 total hours worked is no more than 12 hours, the second meal
6 period may be waived by mutual consent of the employer and the
7 employee only if the first meal period was not waived.

8 23. In relevant part, Section 12 of the Wage Order states:

9 **Rest Periods**

10 (A) “Every employer shall authorize and permit all employees
11 to take rest periods, which insofar as practicable shall be in the
12 middle of each work period. The authorized rest period time shall
13 be based on the total hours worked daily at the rate of ten (10)
14 minutes net rest time per four (4) hours or major fraction thereof.
15 However, a rest period need not be authorized for employees
16 whose total daily work time is less than three and one-half (3 1/2)
17 hours. Authorized rest period time shall be counted as hours
18 worked for which there shall be no deduction from wages.”

19 (B) If an employer fails to provide an employee a rest period in
20 accordance with the applicable provisions of this Order, the
21 employer shall pay the employee one (1) hour of pay at the
22 employee’s regular rate of compensation for each work day that
23 the rest period is not provided.”

24 24. In relevant part, Section 11 of the Wage Order states:

25 **Meal Periods**

26 (A) “No employer shall employ any person for a work period
27 of more than five (5) hours without a meal period of not less than
28 30 minutes, except that when a work period of not more than six
(6) hours will complete the day’s work the meal period may be
waived by mutual consent of the employee and the employer.
Unless the employee is relieved of all duty during a 30 minute meal
period, the meal period shall be considered an ‘on duty’ meal
period and counted as time worked. An ‘on duty’ meal period shall
be permitted only when the nature of the work prevents an
employee from being relieved of all duty and when by written
agreement between the parties an on-the-job paid meal period is
agreed to. The written agreement shall state that the employee
may, in writing, revoke the agreement at any time.”

(B) If an employer fails to provide an employee a meal period



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1 in accordance with the applicable provisions of this Order, the
2 employer shall pay the employee one (1) hour of pay at the
3 employee's regular rate of compensation for each work day that
4 the meal period is not provided."

5 25. In relevant part, California Labor Code § 226.7 states:

6 (b) An employer shall not require an employee to work during
7 a meal or rest period mandated pursuant to an applicable statute,
8 or applicable regulation, standard, or order of the Industrial
9 Welfare Commission, the Occupational Safety and Health
10 Standards Board, or the Division of Occupational Safety and
11 Health.

12 (c) If an employer fails to provide an employee a meal period
13 or rest period in accordance with a state law, including, but not
14 limited to, an applicable statute or applicable regulation, standard,
15 or order of the Industrial Welfare Commission, the Occupational
16 Safety and Health Standards Board, or the Division of
17 Occupational Safety and Health, the employer shall pay the
18 employee one additional hour of pay at the employee's regular rate
19 of compensation for each work day that the meal or rest period is
20 not provided.

21 26. Within the health care industry, the term "hours worked" means the time during
22 which an employee is suffered or permitted to work for the employer, whether or not required to
23 do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA").
24 Wage Order §2(K).

25 27. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
26 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
27 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
28 entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

29 28. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
30 to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or
31 major fraction thereof.

32 29. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
33 with all required 30-minute duty free meal periods and 10-minute rest periods in accordance with
34 the Wage Order. Plaintiff is informed and believes and thereon alleges that, at all relevant times
35 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy



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1 which resulted in Defendants not providing the Aggrieved Employees with all off-duty meal
2 periods and rest breaks required by California law.

3 **B. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

4 30. Section 2 of the Wage Order defines “hours worked” as “the time during which
5 an employee is subject to the control of an employer, and includes all the time the employee is
6 suffered or permitted to work, whether or not required to do so, and in the case of an employee
7 who is required to reside on the employment premises, that time spent carrying out assigned
8 duties shall be counted as hours worked. Within the health care industry, the term "hours worked"
9 means the time during which an employee is suffered or permitted to work for the employer,
10 whether or not required to do so, as interpreted in accordance with the provisions of the Fair
Labor Standards Act.”

11 31. Section 3 of the Wage Order states:

12 (A) Daily Overtime - General Provisions

13 (1) The following overtime provisions are applicable to employees
14 18 years of age or over and to employees 16 or 17 years of age who
15 are not required by law to attend school and are not otherwise
16 prohibited by law from engaging in the subject work. Such
17 employees shall not be employed more than eight (8) hours in any
18 workday or more than 40 hours in any workweek unless the
19 employee receives one and one-half (1 ½) times such employee’s
20 regular rate of pay for all hours worked over 40 hours in the
workweek. Eight (8) hours of labor constitutes a day’s work.
Employment beyond eight (8) hours in any workday or more than
six (6) days in any workweek is permissible provided the employee
is compensated for such overtime at not less than:

21 (a) One and one-half (1 ½) times the employee’s regular rate of
22 pay for all hours worked in excess of eight (8) hours up to and
23 including 12 hours in any workday, and for the first eight (8) hours
24 worked on the seventh (7th) consecutive day of work in a
workweek.

25 (b) Double the employee’s regular rate of pay for all hours worked
26 in excess of 12 hours in any workday and for all hours worked in
27 excess of eight (8) hours on the seventh (7th) consecutive day of
28 work in a workweek.

(c) The overtime rate of compensation required to be paid to a
nonexempt full-time salaried employee shall be computed by using



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the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

32. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

33. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

34. California Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

35. California Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

36. California Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

37. In conjunction, these provisions of the California Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

38. Plaintiff is informed and believes that, at all relevant times, Defendants have applied centrally devised policies and practices to her and the Aggrieved Employees with respect



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1 to working conditions and compensation arrangements.

2 39. At all relevant times, Defendants paid Plaintiff and the Aggrieved Employees at
3 an hourly rate on a weekly basis.

4 40. At all relevant times, Defendants failed to pay Plaintiff and the Aggrieved
5 Employees for all hours worked at the correct rates of pay, including, but not limited to, regular
6 and overtime wages for all regular and overtime hours they worked while clocked out, as well as
7 all wages for work they performed during off duty meal and rest periods. Further, Plaintiff and
8 the Aggrieved Employees earned non-discretionary bonuses including, but not limited to, signing
9 bonuses, the value of which Defendants failed to include in Plaintiff's and the Aggrieved
Employees' regular rates of pay for purposes of calculating their overtime pay rates.

10 41. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
11 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
12 failure to compensate the Aggrieved Employees for all hours worked at the correct rate of pay as
13 required by California law.

14 **C. FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

15 42. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
16 Employees were entitled to receive, semimonthly or at the time of each payment of wages, an
17 accurate itemized statement showing, among other items, 1) gross wages earned; 2) total hours
18 worked, except for any employee whose compensation is solely based on a salary and who is
19 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order
20 of the Industrial Welfare Commission; 3) net wages earned; and 4) all applicable hourly rates in
21 effect during the pay period and the corresponding number of hours worked at each hourly rate
by the employee.

22 43. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
23 injury if the employer fails to provide a wage statement. Additionally, an employee is deemed to
24 suffer injury if the employer fails to provide accurate and complete information as required by
25 California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from
26 the wage statement alone one or more of the following:

27 A. The amount of the gross wages or net wages paid to the employee during
28 the pay period or any of the other information required to be provided on the itemized wage
statement pursuant to California Labor Code § 226(a);



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1 B. Which deductions the employer made from gross wages to determine the
2 net wages paid to the employee during the pay period;

3 C. The name and address of the employer and, if the employer is a farm labor
4 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
5 and address of the legal entity that secured the services of the employer during the pay period;
6 and

7 D. The name of the employee and only the last four digits of his or her social
8 security number or an employee identification number other than a social security number.

9 44. "Promptly and easily determine," as stated in California Labor Code § 226(e),
10 means a reasonable person would be able to readily ascertain the information without reference
11 to other documents or information.

12 45. As alleged herein, Defendants failed to provide Plaintiff and the Aggrieved
13 Employees all wages owed, including but not limited to, all regular and overtime wages owed at
14 the correct rates. As a result, Defendants have failed to properly and accurately itemize each
15 employee's gross wages earned, net wages earned, the total hours worked, the corresponding
16 number of hours worked by employees, and other requirements of California Labor Code § 226.
17 As a result, Defendants have violated California Labor Code § 226.

18 46. Defendants' failure to provide Plaintiff and the Aggrieved Employees with
19 accurate wage statements was knowing and intentional. Defendants had the ability to provide
20 Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided
21 wage statements that Defendants knew were not accurate.

22 47. As a result of being provided with inaccurate wage statements by Defendants,
23 Plaintiff and the Aggrieved Employees have suffered injury. Their legal rights to receive accurate
24 wage statements were violated and they were misled about the amount of wages they had actually
25 earned and were owed. In addition, the absence of accurate information on their wage statements
26 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
27 and mathematical computations to determine the amounts of wages owed, has caused difficulty
28 and expense in attempting to reconstruct time and pay records and/or has led to the submission
of inaccurate information about wages to state and federal government agencies. Further,
Plaintiff and the Aggrieved Employees were not able to ascertain from the wage statements
whether Defendants complied with their obligations under California Labor Code § 226(a).



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1 **D. UNTIMELY FINAL WAGES**

2 48. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

3 49. At all relevant times during the applicable limitations period, Plaintiff and the
4 Aggrieved Employees have been non-exempt employees of Defendants and entitled to the
benefits and protections of California Labor Code §§ 201-203 and the Wage Order.

5 50. California Labor Code § 201 provides that all earned and unpaid wages of an
6 employee who is discharged are due and payable immediately at the time of discharge.

7 51. California Labor Code § 202 provides that all earned and unpaid wages of an
8 employee who quits after providing at least 72-hours notice before quitting are due and payable
9 at the time of quitting and that all earned and unpaid wages of an employee who quits without
10 providing at least 72-hours notice before quitting are due and payable within 72 hours.

11 52. By failing to pay earned regular and overtime wages to Plaintiff and the Aggrieved
12 Employees at the correct rates, Defendants failed to timely pay them all earned and unpaid wages
13 in violation of California Labor Code § 201 or § 202.

14 53. Plaintiff is informed and believes that Defendants' failures to timely pay all final
15 wages to her and the Aggrieved Employees have been willful in that Defendants have the ability
16 to pay final wages in accordance with California Labor Code §§ 201 and 202 but have
intentionally adopted policies or practice that are incompatible with those requirements.

17 54. California Labor Code § 203 provides that the wages of an employee continue on
18 a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned
19 and unpaid wages to the employee in accordance with California Labor Code § 201 or § 202.

20 55. Plaintiff is informed and believes that Defendants' failures to timely pay her and
21 the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at all
22 relevant times, Defendants have deliberately maintained policies and practices that violate the
23 requirements of the Labor Code and the Wage Order even though, at all relevant times, they have
24 had the ability to comply with those legal requirements.

25 **E. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

26 56. Labor Code § 1174 states:

27 Every person employing labor in this state shall:

28 ...

(c) Keep a record showing the names and addresses of all employees
employed and the ages of all minors.



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(d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

57. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

58. Section 7 of the Wage Order states,

(a) Every employer shall keep accurate information with respect to each employee including the following:

1. Full name, home address, occupation, and social security number.
2. Birth date, if under 18 years, and designation as a minor.
3. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
4. Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
5. Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
6. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

59. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

60. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium



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wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

F. UNTIMELY WAGES DURING EMPLOYMENT

61. Labor Code § 204 states:

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

62. Because of Defendants' failure to pay Plaintiff and the Aggrieved Employees regular and overtime wages for off-the-clock work and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Defendants failed to timely pay all wages due during employment to Plaintiff and the Aggrieved Employees.

G. CIVIL PENALTIES SOUGHT

63. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

64. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on



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1 behalf of themselves and other current or former employees, to bring a civil action to recover
2 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

3 65. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
4 Employees are entitled to recover civil penalties for each of Defendants' violations of California
5 Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198 during the
6 applicable limitations period in the following amounts:

7 A. For violations of California Labor Code § 204, one hundred dollars
8 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
9 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
10 established by California Labor Code § 210).

11 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
12 (\$250.00) for each Aggrieved Employee for each initial violation and one thousand dollars
13 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
14 established by California Labor Code § 226.3).

15 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
16 (\$50.00) for each Aggrieved Employee for each initial violation and one hundred dollars
17 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
18 established by California Labor Code § 558).

19 D. For violations of California Labor Code § 1174, five hundred dollars
20 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
21 California Labor Code § 1174.5).

22 E. For violations of California Labor Code § 1197, one hundred dollars
23 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
24 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
25 pay period (regardless of whether the initial violations were intentionally committed)(penalty
26 amounts established by California Labor Code § 1197.1).

27 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
28 and 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each
initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period
for each subsequent violation (penalty amounts established by California Labor Code §
2699(f)(2)).



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1 **H. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

2 66. Plaintiff has complied with the procedures for bringing suit specified in California
3 Labor Code § 2699.3. By letter dated January 2, 2020, Plaintiff gave written notice by certified
4 mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the
5 specific provisions of the California Labor Code alleged to have been violated, including the
6 facts and theories to support the alleged violations. A true and correct copy of Plaintiff's letter to
7 the LWDA dated January 2, 2020 is attached hereto as **Exhibit A**. The LWDA has not responded
8 to Plaintiff's letter.

9 67. Pursuant to California labor Code § 2699(g), Plaintiff and the Aggrieved
10 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
11 connection with their claims for civil penalties.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays for
14 relief and judgment against Defendants as follows:

- 15 A. Civil penalties;
16 B. Costs of suit;
17 C. Reasonable attorneys' fees; and
18 D. Such other relief as the Court deems just and proper.

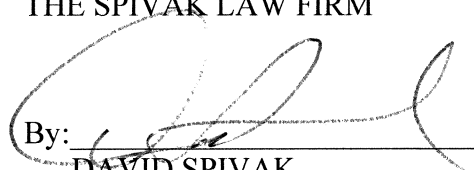
19 **DEMAND FOR JURY TRIAL**

20 Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial
21 on all issues so triable.

22 Respectfully submitted,

23 THE SPIVAK LAW FIRM

24 Dated: March 9, 2020

25 By: 

26 DAVID SPIVAK

27 CARL KAPLAN

28 Attorneys for Plaintiff, MARIA RIOS-
ROMAN and all others similarly situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

January 2, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Maria Rios / Seasons Management, LLC*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Maria Rios-Roman (hereafter “Rios”) provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt employees, including but not limited to caregivers, housekeepers, nurses, medication technicians, and workers employed in comparable positions (hereafter “Aggrieved Employees”) by Seasons Management, LLC (hereafter “Seasons”), an Oregon limited liability company and operator of residential care facilities for the elderly in California, of violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

At all relevant times, Seasons has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Rios and the Aggrieved Employees are “employees” within the meaning of Wage Order 5-2001 (hereafter “the Wage Order”) § 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

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Statement of Facts

Seasons employed Rios as a caregiver from approximately October 2018 to approximately April 17, 2019 at its residential care facility for the elderly, Westwind Memory Care, in Santa Cruz, California. At all relevant times, Rios resided in California.

At all relevant times, Seasons employed Rios and the other Aggrieved Employees at an hourly rate of pay on a bi-weekly basis. At all relevant times, Seasons classified Rios and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Seasons failed to consistently provide Rios and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Seasons regularly required Rios and the Aggrieved Employees to work through their meal periods without pay due to the absence of other employees to cover for them. Further, on the occasions that Seasons allowed Rios and the Aggrieved Employees to take timely meal periods, Seasons required Rios and the Aggrieved Employees to remain on the premises and to remain available in order to assist the residents of Seasons' facilities. Thus, even though clocked out, Rios and the Aggrieved Employees remained on-duty.

At all relevant times, Seasons failed to authorize and permit Rios and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. Seasons failed to provide duty-free rest periods to Rios and the Aggrieved Employees because there were no employees to cover for them. Seasons has not requested an exemption from California's rest period law from the Division of Labor Standards Enforcement. Further, neither Rios nor the Aggrieved Employees entered into on duty meal period agreements with Seasons.

Seasons failed to pay premium wages for days on which it failed to provide Rios and the Aggrieved Employees with all timely meal and rest periods. Seasons further failed to compensate Rios and the Aggrieved Employees for all hours worked on days that Seasons failed to pay Rios and the Aggrieved Employees

for an off-the-clock 30-minute meal period and when Seasons required them to engage in work while off-the-clock before their scheduled shift and after. For instance, Seasons instructed Rios to clock out at 6:30 p.m. and warned her that if she did not do so, she would be written up. After Rios and the Aggrieved Employees had clocked out, Seasons directed them to continue to supervise patients until replacement caretakers arrived. At relevant times, Seasons required Rios and the Aggrieved Employees to work for fifteen or more minutes after clocking out before replacement caretakers arrived.

Seasons required Rios and the Aggrieved Employees to work in excess of eight hours in one workday and forty hours in one workweek without compensating them for such time worked at the overtime rates required by California law. Seasons failed to pay one and one half times ($1 \frac{1}{2} \times$) the hourly rates of pay of Rios and the Aggrieved Employees by failing to pay for off-the-clock work performed by Rios and the Aggrieved Employees during their meal periods and after clocking out at the end of their shifts. Further, Rios and the Aggrieved Employees earned non discretionary bonuses, including, but not limited to, signing bonuses. However, Seasons failed to include such non-discretionary bonuses in Rios' and the Aggrieved Employees' regular rates of pay for purposes of calculating their overtime pay rates.

As set forth below, Rios alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and the Aggrieved Employees:

- a) Seasons failed to provide Rios and the Aggrieved Employees with all meal periods as required by law;
- b) Seasons failed to provide Rios and the Aggrieved Employees with all rest periods as required by law;
- c) Seasons failed to compensate Rios and the Aggrieved Employees at one hour's pay on days when Seasons failed to provide them with one or more meal periods in a workday;

- d) Seasons failed to compensate Rios and the Aggrieved Employees at one hour's pay on days when Seasons failed to provide them with one or more rest periods in a workday;
- e) Seasons failed to pay Rios and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock work;
- f) Seasons failed to timely pay Rios and the Aggrieved Employees all earned and unpaid wages during employment; and
- g) Seasons failed to timely pay Rios and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, Rios now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on Season's violations of the California Labor Code.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The Wage Order defines "Public Housekeeping Industry" to include:

"any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following: ... Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care . . ."

§ 2(P).

At all relevant times during the applicable limitations period, Rios was employed by Seasons as a caregiver in an adult residential care facility. Accordingly, Rios and the Aggrieved Employees are entitled to the protections afforded by the Wage Order.

Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the

employee's regular rate of compensation for each workday that the rest period is not provided.

- (C) However, employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, are receiving 24 hour residential care and employees of 24 hour residential care facilities for elderly, blind or developmentally disabled individuals may, without penalty, require an employee to remain on the premises and maintain general supervision of residents during rest periods if the employee is in sole charge of residents. Another rest period shall be authorized and permitted by the employer when an employee is affirmatively required to interrupt his/her break to respond to the needs of residents.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

...

- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

- (E) Employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, are receiving 24 hour residential care, and employees of 24 hour residential care facilities for the elderly, blind or developmentally disabled individuals may be required to work on-duty meal periods without penalty when necessary to meet regulatory or approved program standards and one of the following two conditions is met

- (1)(a) The residential care employees eats with residents during residents' meals and the employer provides the same meal at no charge to the employee; or

- (b) The employee is in sole charge of the resident(s) and, on the day shift, the employer provides a meal at no charge to the employee.

- (2) An employee, except for the night shift, may exercise the right to have an off-duty meal period upon 30 days' notice to the employer for each instance where an off-duty meal is desired, provided that, there shall be no more than one off-duty meal period every two weeks.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA"). Wage Order §2(K).

The FLSA does not define the phrase "hours worked." However, it is defined by federal regulations:

...As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not

limited to the hours spent in active productive lab or, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, ... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on "hours worked") and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). . . .

29 C.F.R. § 778.223

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business." (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U.S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that "an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer." *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes "all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place." *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680.

29 C.F.R. § 785.7

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinert*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

29 C.F.R. § 785.18.

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

29 C.F.R. § 785.19. "It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period." *Id.* Respiratory therapists required to wear pagers and respond to patient

emergencies during meal breaks are entitled to payment from their employer for meal breaks because their employer has not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect. Wage Order 5, § 11(D).

By not providing adequate staff to relieve its hourly employees of their duties, Seasons has intentionally and improperly failed to provide all rest breaks and/or meal periods free from any work or duties to Rios and the Aggrieved Employees as required by law. In failing to do so, Seasons violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Rios seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay

(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half ($1 \frac{1}{2}$) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half ($1 \frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the

rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Seasons knowingly failed to pay Rios and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed during interrupted meal periods and after clocking out at the end of their shifts. Season also failed to include all non-discretionary bonuses, including, but not limited to, signing bonuses, in Rios’ and the Aggrieved Employees’ regular rates of pay for purposes of calculating their overtime pay rates.

At all relevant times during the applicable limitations period, Seasons failed to compensate Rios and the Aggrieved Employees for their work during overtime hours at the correct rates of pay. Accordingly, Rios seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and
3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by California Labor Code § 1197.1).

Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) Gross wages earned
- 2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment

of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

- 3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- 4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- 5) Net wages earned;
- 6) The inclusive dates of the period for which the employee is paid;
- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 8) The name and address of the legal entity that is the employer; and
- 9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, Seasons violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Seasons failed to state in the wage statements it issued to Rios and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock.

Accordingly, Rios now seeks civil penalties for the labor Code violations that Seasons has committed against her and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California

Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Seasons' failure to pay Rios and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Seasons failed to timely pay all wages due during employment. Accordingly, Rios seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code §§ 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable

immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, quits 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. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, Seasons failed to provide Rios and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work they performed off-the-clock. As a result, Seasons failed to pay Rios and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Seasons has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Rios seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

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Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order 5 states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

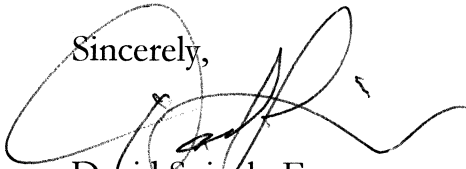
Seasons has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Rios and the Aggrieved Employees. Accordingly, Rios seeks civil penalties from Seasons on behalf of herself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



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cc: Maria Rios
Walter Haines, Esq.

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