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19 Attorneys for Plaintiff,
20 JUAN CARLOS MARTINEZ, and all other similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
(UNLIMITED JURISDICTION)

JUAN CARLOS MARTINEZ, as an “aggrieved
employee” on behalf of other similarly situated
“aggrieved employees” under the Labor Code
Private Attorney General Act of 2004,

Plaintiff(s),

vs.

IRVINE MANAGEMENT COMPANY, a
Delaware corporation; and DOES 1 through 50,
inclusive,

Defendant(s).

Case No.: 30-2021-01181926-CU-OE-CXC

**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

Assigned for all purposes to: Judge Peter Wilson
Dept: CX102



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1 Plaintiff JUAN CARLOS MARTINEZ (hereafter “Plaintiff”), on behalf of himself, the
2 State of 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 and Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”), against Defendants IRVINE MANAGEMENT COMPANY, a Delaware
7 corporation; and DOES 1-50, inclusive (collectively “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him, the State of California, and other similarly situated aggrieved current and former employees
10 who worked in California as hourly, non-exempt employees, for civil penalties and other related
11 relief. These claims are based on Defendants’ (1) failure to provide all rest and meal periods; (2)
12 failure to indemnify for necessary work-related expenditures; (3) failure to pay all wages earned
13 for all hours worked at the correct rates of pay; (4) failure to provide signed and complete
14 commission agreements; (5) failure to provide accurate written wage statements; and (6) failure
15 to timely pay wages during and upon termination of employment. Accordingly, Plaintiff now
16 seeks to recover civil penalties and related relief through this representative action.

17 **II. THE PARTIES**

18 3. Plaintiff, an individual and resident of California, began working for Defendants
19 as an hourly, nonexempt massage therapist on or about August 1, 2016. Plaintiff continuously
20 worked for Defendants from that date until approximately March 14, 2020, when his employment
21 ended. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California
22 Code of Regulations Section 11050 and an “aggrieved employee” within the meaning of Labor
23 Code Section 2699(c).

24 4. Defendant IRVINE MANAGEMENT COMPANY is a corporation organized and
25 existing under the laws of Delaware and a citizen of California based on Plaintiff’s information
26 and belief.

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



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when ascertained.

A. THE AGGRIEVED EMPLOYEES

6. The “Aggrieved Employees” are all individuals currently and formerly employed by Defendants at The Resort at Pelican Hill’s spa (“the Spa”) located in Newport Beach, California, as non-exempt employees, including, but not limited to massage therapists and persons in comparable positions, at any time during the period of November 25, 2019 and entry of judgment (“the PAGA Period”).

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

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

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

IV. FACTUAL ALLEGATIONS

10. On or about August 1, 2016, Defendants first employed Plaintiff to work in California as a non-exempt massage therapist. They employed him continuously from that date until approximately March 14, 2020 when his employment ended.

11. At all relevant times, Defendants compensated Plaintiff and the Aggrieved Employees with an hourly rate of pay on a biweekly basis. Defendants also paid Plaintiff and the Aggrieved Employees non-discretionary commissions based on the services they provided to the guests. Defendants also paid Plaintiff and the Aggrieved Employees a portion of the mandatory service charge that they collected from the guests for the services they received at the Spa.

12. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved



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1 Employees with all timely rest and meal periods as provided under California law. Defendants
2 failed to provide Plaintiff and the Aggrieved Employees with a 30-minute meal period before
3 they worked more than five (5) hours in a workday. Plaintiff and the Aggrieved Employees'
4 managers often manipulated and edited their time records to show that they took timely meal
5 periods. Further, Defendants often required Plaintiff and the Aggrieved Employees to take meal
6 periods of less than 30 minutes and required them to return to work and attend to the guests before
7 they could take a full 30-minute meal period. On such occasions, Defendants did not allow
8 Plaintiff and the Aggrieved Employees to clock back in and had to wait at least 30 minutes and
9 work off-the-clock before they could clock back in. Defendants' system was programmed in a
10 way that it would not allow the Aggrieved Employees to clock back in before the 30-minute mark.
11 Further, due to their workload, Defendants failed to provide Plaintiff and the Aggrieved
12 Employees with all their paid rest breaks.

13 13. Additionally, Defendants required Plaintiff and the Aggrieved Employees to
14 monitor their cellphones at all times and to respond to their managers' communications even
15 during their off-the-clock meal periods or rest breaks. Defendants also prevented Plaintiff and the
16 Aggrieved Employees from leaving the resort during their meal and/or rest periods and required
17 them to eat their lunch at a resort cafeteria. Defendants failed to pay premium wages for days
18 which they failed to provide Plaintiff and the Aggrieved Employees with rest and/or meal periods
19 as provided by California law.

20 14. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
21 to work off-the-clock without compensation. Defendants required Plaintiff and the Aggrieved
22 Employees to pick up their uniforms from the resort's cleaners, change into their uniforms, check
23 their daily schedules, and attend a staff meeting off-the-clock before clocking in at the beginning
24 of their shifts.

25 15. Defendants also required Plaintiff and the Aggrieved Employees to change out of
26 their uniforms and return their uniforms to the cleaners after they had already clocked out at the
27 end of their shifts.

28 16. Defendants also scheduled Plaintiff and the Aggrieved Employees several days
per week for on-call shifts. During such on-call shifts, Plaintiff and the Aggrieved Employees
were restricted in the types of activities they could perform and had to stay available at all times.
Defendants, however, only compensated the employees if they reported to work during their on-



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1 call shifts and only for the periods they actually worked.

2 17. Defendants, further, failed to correctly account for all non-discretionary
3 commissions and the mandatory service charges when they calculated Plaintiff and the Aggrieved
4 Employees' regular rates of pay for purposes of overtime wages.

5 18. Defendants often required Plaintiff and the Aggrieved Employees to use their
6 personal cellphones to communicate with their supervisors regarding work-related matters.
7 Defendants also required Plaintiff and the Aggrieved Employees to purchase a \$300 annual
8 liability insurance policy. Defendants, however, failed to reimburse them for such expenses.

9 19. Defendants failed to provide Plaintiff and the Aggrieved Employees with an
10 agreement that described the conditions for payment of commissions. Defendants paid Plaintiff
11 and the Aggrieved Employees a commission. However, Defendants did not provide a commission
12 agreement to Plaintiff and the Aggrieved Employees to sign stating the terms and conditions of
13 the commission payments.

14 20. Finally, Defendants provided Plaintiff and the Aggrieved Employees with
15 inaccurate and incomplete wage statements. In addition to reporting incorrect total hours worked
16 and rates of pay (due to the violations discussed above), Defendants failed to state the overtime
17 ("O.T. Pay") rate of pay on Plaintiff and the Aggrieved Employees' wage statements. Defendants
18 included several pay codes and rates on Plaintiff and the Aggrieved Employees' wage statements
19 without providing them with an explanation as to each pay code or pay rate. As a result, Plaintiff
20 and the Aggrieved Employees were not able to determine if they were compensated accurately
21 for all hours worked.

22 21. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
23 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

- 24 A. Not provided with all off duty meal periods;
- 25 B. Not provided with all rest break periods as required by law;
- 26 C. Not paid one hour's pay for each workday in which Defendants failed to
27 provide them with one or more timely rest periods;
- 28 D. Not paid one hour's pay for each workday in which Defendants failed to
provide them with one or more timely meal periods;
- E. Not paid all wages earned, including, but not limited to, regular and
overtime wages for work performed while clocked out;



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1 F. Not indemnified for all necessary business expenditures incurred during
2 the discharge of their duties;

3 G. Not provided with accurate and complete wage statements; and

4 H. Not timely paid all earned and unpaid wages during their employment with
5 Defendants and at the time such employment ended.

6 **V. FIRST (AND ONLY) CAUSE OF ACTION**

7 **CIVIL PENALTIES**

8 **(Lab. Code §§ 2698, *et seq.*)**

9 **(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all
10 Defendants)**

11 22. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

12 23. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
13 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

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

15 24. In relevant part, California Labor Code § 1198 states:

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

21 25. In relevant part, California Labor Code § 512 states:

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

28 An employer shall 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.

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



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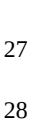
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(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards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

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

29. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Aggrieved Employees were entitled to uninterrupted meal periods of at least thirty (30) minutes for each day they worked five or more hours, and to a second uninterrupted 30-minute meal on days they worked more than ten hours.

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

31. Defendants intentionally and improperly failed to provide Plaintiff and the Aggrieved Employees with all required 30-minute duty free meal periods and 10-minute rest periods in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with all off-duty meal periods and rest breaks required by California law.

B. FAILURE TO INDEMNIFY

32. In pertinent part, California Labor Code section 2802(a) states, "An employer shall indemnify his or his employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or his duties."

33. On information and belief, Plaintiff alleges on behalf of himself and the Aggrieved Employees that Defendants required them to incur business expenses, including, but not limited to, the use of personal mobile telephones to communicate with Defendants, and the purchase of a



1 \$300 annual liability insurance policy. Defendants failed to indemnify Plaintiff and the Aggrieved
2 Employees for these expenses both during and after their employment ended.

3 **C. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
4 **THE CORRECT RATES OF PAY**

5 34. Section 2 of the Wage Order defines “hours worked” as “the time during which an
6 employee is subject to the control of an employer, and includes all the time the employee is
7 suffered or permitted to work, whether or not required to do so[.]”

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

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

15 37. In relevant part, California Labor Code § 510 states,

16 Any work in excess of eight hours in one workday and any work in excess of 40
17 hours in any one workweek and the first eight hours worked on the seventh day
18 of work in any one workweek shall be compensated at the rate of no less than one
19 and one-half times the regular rate of pay for an employee. Any work in excess of
20 12 hours in one day shall be compensated at the rate of no less than twice the
21 regular rate of pay for an employee. In addition, any work in excess of eight hours
22 on any seventh day of a workweek shall be compensated at the rate of no less than
23 twice the regular rate of pay of an employee.

24 38. Section 3 of the applicable Wage Order states:

25 (A) Daily Overtime - General Provisions

26 (1) The following overtime provisions are applicable to employees 18
27 years of age or over and to employees 16 or 17 years of age who
28 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 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:



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- 1 (a) One and one-half (1 1/2) times the employee's
2 regular rate of pay for all hours worked in excess of
3 eight (8) hours up to and including 12 hours in any
4 workday, and for the first eight (8) hours worked on
5 the seventh (7th) consecutive day of work in a
6 workweek; and
7
8 (b) Double the employee's regular rate of pay for all
9 hours worked in excess of 12 hours in any workday
10 and for all hours worked in excess of eight (8) hours
11 on the seventh (7th) consecutive day of work in a
12 workweek.
13
14 (c) The overtime rate of compensation required to be
15 paid to a nonexempt full-time salaried employee
16 shall be computed by using the employee's regular
17 hourly salary as one-fortieth (1/40) of the
18 employee's weekly salary.

19 39. California Labor Code § 510(a) and the Wage Order require employers to
20 compensate employees at one and one-half times their regular rates of pay for:

- 21 A. All hours worked in excess of eight hours in one workday;
22 B. All hours worked in excess of forty hours in one workweek; and,
23 C. The first eight hours worked on a seventh consecutive workday during a
24 workweek.

25 40. Labor Code § 1194 invalidates any agreement between an employer and an
26 employee to work for less than the minimum or overtime wage required under the applicable
27 Wage Order.

28 41. Under 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."

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

43. Plaintiff is informed and believes that, at all relevant times, Defendants have
applied centrally devised policies and practices to him and the Aggrieved Employees with respect
to working conditions and compensation arrangements.

44. At all relevant times during the applicable limitations period, Defendants failed to



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1 compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of
2 pay, including, but not limited to, regular and overtimes wages for all regular and overtime hours
3 they worked while clocked-out, as well as all wages for work they performed during off-duty
4 meal and rest periods. Further, Defendants failed to correctly account for all non-discretionary
5 commissions and the mandatory service charges in their calculations of the regular rates of pay
6 for purposes of overtime wages.

7 45. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
8 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
9 failure to compensate the Aggrieved Employees for all hours worked, including but not limited
10 to, regular and overtime hours at the correct rates of pay as required by California law.

11 **D. FAILURE TO PROVIDE SIGNED AND COMPLETE COMMISSION**
12 **AGREEMENTS**

13 46. Labor Code § 2751 states:

- 14 (a) Whenever an employer enters into a contract of employment with an
15 employee for services to be rendered within this state and the
16 contemplated method of payment of the employee involves commissions,
17 the contract shall be in writing and shall set forth the method by which
18 the commissions shall be computed and paid.
- 19 (b) The employer shall give a signed copy of the contract to every employee
20 who is a party thereto and shall obtain a signed receipt for the contract from
21 each employee. In the case of a contract that expires and where the parties
22 nevertheless continue to work under the terms of the expired contract, the
23 contract terms are presumed to remain in full force and effect until
24 the contract is superseded or employment is terminated by either party.
- 25 (c) As used in this section, "commissions" has the meaning set forth in Section
26 204.1. For purposes of this section only, "commission" does not include any
27 of the following:
- 28 (1) Short-term productivity bonuses such as are paid to retail clerks.
- (2) Temporary, variable incentive payments that increase, but do not
decrease, payments under the written contract.
- (3) Bonus and profit-sharing plans, unless there has been an offer by
the employer to pay a fixed percentage of sales or profits as
compensation for work to be performed.

47. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved



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1 Employees with signed commission agreements. As a result, Defendants have violated California
2 Labor Code § 2751.

3 48. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
4 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
5 failure to provide signed commission agreements to Plaintiff and the Aggrieved Employees
6 during the course of performing their duties.

7 **E. FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

8 49. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
9 Employees were entitled to receive, semi-monthly or at the time of each payment of wages, an
10 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
11 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
12 each hourly rate by the employee.

13 50. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
14 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
15 the employer fails to provide accurate and complete information as required by California Labor
16 Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement
17 alone one or more of the following:

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

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

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

26 D. The name of the employee and only the last four digits of his or his social
27 security number or an employee identification number other than a social security number; and

28 E. The number of piece-rate units earned and the piece rate.

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



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1 52. As alleged herein, Defendants failed to provide Plaintiff and the Aggrieved
2 Employees all wages owed, including, but not limited to, all regular and overtime wages owed at
3 the correct rates for work performed off-the-clock. As a result, Defendants have failed to properly
4 and accurately itemize each employee's gross wages earned, net wages earned, the total hour
5 worked, the corresponding number of hours worked by employees, and other requirements of
6 California Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.
7 In addition, Defendants failed to state the overtime ("O.T. Pay") rate of pay on Plaintiff and the
8 Aggrieved Employees' wage statements. Defendants included several pay codes and rates on
9 Plaintiff and the Aggrieved Employees' wage statements without providing them with an
10 explanation as to each pay code or pay rate.

11 53. Defendants' failure to provide Plaintiff and the Aggrieved Employees with
12 accurate wage statements was knowing and intentional. Defendants had the ability to provide
13 Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided
14 wage statements that Defendants knew were not accurate.

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

26 **F. UNTIMELY WAGES DURING EMPLOYMENT**

27 55. Labor Code § 204 states

- 28 (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



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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.

56. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked including, but not limited to, all premium wages for all rest breaks and/or off-duty meal periods that were not provided, and all regular and overtime wages for work performed off-the-clock. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

G. UNTIMELY FINAL WAGES

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

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



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1 59. By failing to pay Plaintiff and the Aggrieved Employees 1) all earned regular and
2 overtime wages at the correct rates and 2) premium wages for all late or missed rest breaks and/or
3 meal periods, Defendants failed to timely pay them all earned and unpaid wages in violation of
4 Labor Code § 201 or § 202.

5 60. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
6 and the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at
7 all relevant times, Defendants have deliberately maintained policies and practices that violate the
8 requirements of the Labor Code and the Wage Order, even though at all relevant times, they have
9 had the ability to comply with those legal requirements.

10 **H. CIVIL PENALTIES SOUGHT**

11 61. Labor Code § 204 states

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

20 (b) (1) Notwithstanding any other provision of this section, all wages
21 earned for labor in excess of the normal work period shall be paid no later than the
22 payday for the next regular payroll period.

23 (2) An employer is in compliance with the requirements of subdivision (a) of
24 Section 226 relating to total hours worked by the employee, if hours worked in
25 excess of the normal work period during the current pay period are itemized as
26 corrections on the paystub for the next regular pay period. Any corrections set out
27 in a subsequently issued paystub shall state the inclusive dates of the pay period
28 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. Defendants paid wages to employees on regular intervals. Defendants failed to pay



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1 Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,
2 Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for
3 all wages earned and all hours worked.

4 63. During the applicable time period, Defendants violated California Labor Code §§
5 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, 2751, and 2802.

6 64. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
7 behalf of themselves and other current or former employees, to bring a civil action to recover civil
8 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

9 65. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
10 Employees are entitled to recover civil penalties for each of the Defendants' violations of
11 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, 2751, and
12 2802 during the applicable limitations period in the following amounts:

13 A. For violations of California Labor Code § 204, one hundred dollars
14 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
15 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
16 (penalty amounts established by California Labor Code § 210).

17 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
18 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
19 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

20 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
23 each pay period for which the employee was underpaid (penalty amounts established by
24 California Labor Code § 558).

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

E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
1198, 2751, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period



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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)).

I. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

66. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated November 25, 2020, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA dated November 25, 2020 is attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiff’s letter.

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

VI. PRAYER FOR RELIEF

68. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

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

VII. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: January 29, 2021

By: _____



DAVID SPIVAK
CAROLINE TAHMASSIAN
MAYA CHEATANI
Attorneys for Plaintiff,
JUAN CARLOS MARTINEZ



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

November 25, 2020

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

RE: *Juan Carlos Martinez / Pelican Hill*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Juan Carlos Martinez (hereafter “Martinez”) provides notice on behalf of himself and of all individuals currently and formerly employed at The Resort at Pelican Hill’s spa (“the Spa”) located in Newport Beach, California, as non-exempt employees, including but not limited to the message therapists, and similar positions, paid on an hourly and/or commission basis (hereafter referred to as “Aggrieved Employees,”) by Irvine Management Company, a Delaware corporation, and The Resort At Pelican Hill LLC, a Delaware limited liability company (hereafter collectively referred to as “Pelican Hill”) of violations of California Labor Code §§ 201, 202, 203, 204, 226, 510, 512, 1194, 1197, 1198, 2751, and 2802.

At all relevant times, Pelican Hill has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Martinez and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), paragraph 2.F, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

On or about August 1, 2016, Pelican Hill first employed Martinez to work in California as a non-exempt message therapist. It employed him continuously from that date until approximately March 14, 2020 when his employment ended.

At all relevant times, Pelican Hill compensated Martinez and the Aggrieved Employees with an hourly rate of pay on a biweekly basis. Pelican Hill also paid Martinez and the Aggrieved Employees non-discretionary commissions based on the services they provided to the guests. Pelican Hill also paid Martinez and the Aggrieved Employees a portion of the mandatory service charge that it collected from the guests for the services they received at the Spa.

At all relevant times, Pelican Hill failed to provide Martinez and the Aggrieved Employees with all timely rest and meal periods as provided under California law. Pelican Hill failed to provide Martinez and the Aggrieved Employees with a 30-minute meal period before they worked more than five (5) hours in a workday. Martinez and the Aggrieved Employees' managers often manipulated and edited their time records to show that they took timely meal periods. Further, Pelican Hill often required Martinez and the Aggrieved Employees to take meal periods of less 30 minutes and required them to return to work and attend to the guests before they could take a full 30-minute meal period. On such occasions, Martinez and the Aggrieved Employees were not allowed to clock back in and had to wait at least 30 minutes and work off-the-clock before they could clock back in. Pelican Hill's system was programmed in a way that it would not allow the employees to clock back in before the 30-minute mark. Further, due to their workload, Pelican Hill failed to provide Martinez and other Aggrieved Employees with all their rest breaks. Additionally, Pelican Hill required Martinez and the Aggrieved Employees to keep their cellphones on at all times and to respond to their managers' communications even during their off-the-clock meal periods or rest breaks. Pelican Hill also prevented Martinez and the Aggrieved Employees from leaving the resort during their meal and/or

rest periods and required them to eat their lunch at a resort cafeteria. Pelican Hill failed to pay premium wages for days on which it failed to provide Martinez and the Aggrieved Employees with rest and/or meal periods as provided by California Law.

At all relevant times, Pelican Hill required Martinez and the Aggrieved Employees to work off-the-clock without compensation. Pelican Hill required Martinez and other Aggrieved Employees to pick up their uniforms from the resort's cleaners, change into their uniforms, check their daily schedules, and attend a staff meeting off-the-clock before clocking in at the beginning of their shifts. Pelican Hill also required Martinez and other Aggrieved Employees to change out of their uniforms and return their uniforms to the cleaners after they had already clocked out at the end of their shifts. Pelican Hill also scheduled Martinez and the Aggrieved Employees several days per week for on-call shifts. During such on-call shifts, Martinez and the Aggrieved Employees were restricted in the types of activities they could perform and had to stay available at all times. Pelican Hill, however, compensated the employees only if they reported to work during their on-call shifts and only for the period they actually worked. Pelican Hill, further, failed to correctly account for all non-discretionary commissions and the mandatory service charges when it calculated Martinez and the Aggrieved Employees' regular rate of pay for purposes of overtime wages.

Pelican Hill often required Martinez and the Aggrieved Employees to use their personal cellphones to communicate with their supervisors regarding work related matters. Pelican Hill also required Martinez and the Aggrieved Employees to purchase a \$300 annual liability insurance policy. Pelican Hill, however, failed to reimburse them for such expenses.

Pelican Hill failed to provide Martinez and the Aggrieved Employees with an agreement that describes the conditions for payment of commissions. Pelican Hill paid Martinez and the Aggrieved Employees a commission. However, Pelican Hill did not provide a commission agreement to Martinez and the Aggrieved Employees to sign stating the terms and conditions of the commission payments.

Finally, Pelican Hill provided Martinez and the Aggrieved Employees with inaccurate and insufficient wage statements. In addition to reporting incorrect total hours worked and rates of pay (due to the violations discussed above), Pelican Hill failed to state the overtime (“O.T. Pay”) rate of pay on Martinez and the Aggrieved Employees’ wage statements. Pelican Hill included several pay codes and rates on Martinez and the Aggrieved Employees’ wage statements without providing them with an explanation as to each pay code or pay rate. As a result, Martinez and the Aggrieved Employees were not able to determine if they were compensated accurately for all hours worked.

For the reasons herein, Martinez alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and Aggrieved Employees:

- a) Pelican Hill failed to provide Martinez and other Aggrieved Employees with all rest breaks and meal periods;
- b) Pelican Hill failed to compensate Martinez and other Aggrieved Employees at one hour’s pay for each day in which they were not provided the rest breaks required by law;
- c) Pelican Hill failed to compensate Martinez and other Aggrieved Employees at one hour’s pay for each day in which they were not provided the meal periods required by law;
- d) Pelican Hill failed to compensate Martinez and other Aggrieved Employees for all hours worked at the correct rates of pay;
- e) Pelican Hill failed to indemnify Martinez and other Aggrieved Employees for all business expenses;
- f) Pelican Hill failed to provide Martinez and other Aggrieved Employees with accurate wage statements; and

- g) Pelican Hill failed to timely pay Martinez and other Aggrieved Employees all earned and unpaid wages during their employment at Pelican Hill and at the time such employment ended.

Accordingly, Martinez now seeks civil penalties on behalf of himself and other Aggrieved Employees based on Pelican Hill's alleged violations of the California Labor Code and the Wage Order.

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 phrase "public housekeeping industry" includes hotels. *Id.*, § 2(P)(3). Accordingly, Martinez and the Aggrieved Employees are entitled to the protections of 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, 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 no 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...

(B) 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.

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 often (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 work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or recovery period is not provided.

Regarding timing of the rest breaks, "in the context of an eight-hour shift, '[a]s a general matter,' one rest break should fall on either side of the meal break." *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1031-1032.

Pelican Hill intentionally and improperly failed to provide all timely rest breaks and/or meal periods to Martinez and other Aggrieved Employees as required by law. In failing to do so, Pelican Hill violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Martinez seeks civil penalties on behalf of himself and other 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 Earned For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

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

Section 4 of Wage Order states,

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2 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 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

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

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 ½) 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 ½) 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.

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.

At all relevant times during the applicable limitations period, Pelican Hill failed to compensate Martinez and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay.

Accordingly, Martinez seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, 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);

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));
3. \$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
4. \$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 (penalties set by California Labor Code § 1197.1).

Failure to Reimburse for Expenses
(Lab. Code §§ 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

As describe above, during the applicable limitations period, Pelican Hill required Martinez and other Aggrieved Employees to incur certain business expenses which it failed to indemnify them for both during and after their employment ended. Accordingly, Martinez seeks civil penalties on behalf of himself and other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, and \$200

for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

California Labor Code § 226 require 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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 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, Pelican Hill violated California Labor Code § 226, in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total

hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226.

Accordingly, Martinez seeks civil penalties on behalf of himself and 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 Pelican Hill's failures to pay Martinez and the Aggrieved Employees within the time periods set by California Labor Code § 204, Pelican Hill failed to timely pay all wages due during employment.

Accordingly, Martinez seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, for each subsequent violations (penalties set by Labor Code § 210).

Failures to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under 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 § 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 72 hours thereafter, unless the employee has given 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 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 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 thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay wages to Martinez and other Aggrieved Employees as set forth above, Pelican Hill is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and other Aggrieved Employees, Martinez seeks civil penalties from Pelican Hill as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period

in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Signed and Complete Commission Agreements
(Lab. Code § 2751)

Labor Code § 2751 states:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.
- (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.
- (c) As used in this section, “commissions” has the meaning set forth in Section 204.1. For purposes of this section only, “commission” does not include any of the following:
 - (1) Short-term productivity bonuses such as are paid to retail clerks.

- (2) (Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.
- (3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

At all relevant times, Pelican Hill has failed to provide Martinez and the Aggrieved Employees with signed commission agreements. As a result, Pelican Hill has violated California Labor Code § 2751. Accordingly, Martinez seeks civil penalties on behalf of himself and the Aggrieved Employees for violations of Labor Code § 2751 at \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 2751 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 2751 occurred (penalties set by 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 section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

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Caroline Tahmassian, Esq.

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cc: Walter Haines, Esq.

Juan Carlos Martinez

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