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Kern County Superior Court
By Sophia Munoz Alvarez, Deputy

7 Attorneys for Plaintiffs Jorge Desales and Nestor Gomez

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF KERN**

11 JORGE DESALES and NESTOR GOMEZ,
12 as aggrieved employees pursuant to the
13 Private Attorneys General Act ("PAGA"),
on behalf of the State of California and
14 other aggrieved employees,

15 Plaintiffs,

16 vs.

17 WINN MANAGEMENT GROUP LLC, a
California limited liability company;
18 WINNCOMPANIES LLC, a
Massachusetts limited liability company;
19 WINNRESIDENTIAL CALIFORNIA,
INC., a California corporation;
20 WINNRESIDENTIAL CALIFORNIA,
L.P., a California limited partnership; and
21 DOES 1 through 10, inclusive,

22 Defendants.
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Case No.: BCV-21-100708

COMPLAINT – PAGA ENFORCEMENT ACTION

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

Jury Trial Demanded

1 Plaintiffs Jorge Desales and Nestor Gomez, as aggrieved employees and on behalf of
2 the State of California and all other aggrieved employees, allege as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiffs, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notices to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on January 22, 2021, until judgment (“non-party Aggrieved
14 Employees”). Plaintiffs’ share of civil penalties sought in this action does not exceed
15 \$75,000.

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

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

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court because Defendants employ persons in this
3 county, and employed Plaintiff Gomez in this county, and thus a substantial portion of the
4 transactions, occurrences, and/or violations related to this action occurred in this county.

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

9 THE PARTIES

10 6. Plaintiff JORGE DESALES is a resident of Hanford, in Kings County,
11 California. Defendants employed Plaintiff Desales as an hourly paid, non-exempt employee
12 from approximately November 2016 to June 2020. Plaintiff Desales worked for Defendants
13 as a Maintenance Technician at their residential property in San Diego, California. During his
14 employment, Plaintiff Desales typically worked eight (8) hours or more per day, and five (5)
15 to six (6) days per week. Plaintiff Desales’s primary job duties included, without limitation,
16 performing electrical and plumbing work, preparing and “flipping” vacant units for new
17 tenants, executing work orders submitted by tenants, and maintaining and repairing the
18 property as needed.

19 7. Plaintiff NESTOR GOMEZ is a resident of Rosamond, in Kern County,
20 California. Defendants employed Plaintiff Gomez as an hourly paid, non-exempt employee
21 from approximately February 2020 to May 2020. Plaintiff Gomez worked for Defendants as a
22 Maintenance Supervisor at their residential property in Rosamond, California. During his
23 employment, Plaintiff Gomez typically worked eight (8) hours or more per day, and five (5)
24 days per week. Plaintiff Gomez’s primary job duties included, without limitation, preparing
25 and “flipping” vacant units for new tenants, reviewing work orders from the front office,
26 planning and preparing for repair work, purchasing supplies, documenting progress of work
27 orders, and maintaining and repairing the property as needed.

28 8. On information and belief, Defendants required some employees, including

1 Plaintiff Desales, to execute a dispute resolution policy and/or arbitration agreement at the
2 time of their hire or during their employment. On further information and belief, Defendants'
3 dispute resolution policy and/or arbitration agreement was and is both procedurally and
4 substantively unconscionable. Specifically, Defendants presented new or recent hires with a
5 document titled "Employee Acknowledgement and Agreement" ("Arbitration Agreement")
6 during the onboarding process, which had to be reviewed and signed immediately. In fact,
7 upon information and belief, this Arbitration Agreement was one of several documents
8 presented to new or recent employees for signature during the orientation process, including
9 the Employee Handbook, among other documents. Also, employees did not have a
10 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was
11 provided to Defendants' employees for them to sign on a take-it or leave-it basis at the time
12 they were hired or along with other on-boarding documents. Furthermore, Defendants did not
13 set forth in the agreement or otherwise provide employees with the rules which will govern
14 the arbitration, instead forcing employees to seek this information out on their own.

15 9. WINN MANAGEMENT GROUP LLC was and is, upon information and
16 belief, a California limited liability company, and at all times hereinafter mentioned, an
17 employer whose employees are engaged throughout this county, the State of California, or the
18 various states of the United States of America.

19 10. WINNCOMPANIES LLC was and is, upon information and belief, a
20 Massachussetts limited liability company, and at all times hereinafter mentioned, an employer
21 whose employees are engaged throughout this county, the State of California, or the various
22 states of the United States of America.

23 11. WINNRESIDENTIAL CALIFORNIA, INC. was and is, upon information and
24 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
25 employees are engaged throughout this county, the State of California, or the various states of
26 the United States of America.

27 12. WINNRESIDENTIAL CALIFORNIA, L.P. was and is, upon information and
28 belief, a California limited partnership, and at all times hereinafter mentioned, an employer

1 whose employees are engaged throughout this county, the State of California, or the various
2 states of the United States of America.

3 13. Plaintiffs are unaware of the true names or capacities of the Defendants sued
4 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
5 amend the complaint and serve such fictitiously named Defendants once their names and
6 capacities become known.

7 14. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
8 were the partners, agents, owners, or managers of WINN MANAGEMENT GROUP LLC;
9 WINNCOMPANIES LLC; WINNRESIDENTIAL CALIFORNIA, INC.; and
10 WINNRESIDENTIAL CALIFORNIA, L.P. at all relevant times.

11 15. Plaintiffs are informed and believe, and thereon allege, that each and all of the
12 acts and omissions alleged herein was performed by, or is attributable to, WINN
13 MANAGEMENT GROUP LLC; WINNCOMPANIES LLC; WINNRESIDENTIAL
14 CALIFORNIA, INC.; WINNRESIDENTIAL CALIFORNIA, L.P.; and/or DOES 1 through 10
15 (collectively, "Defendants" or "WINN"), each acting as the agent, employee, alter ego, and/or
16 joint venturer of, or working in concert with, each of the other co-Defendants and was acting
17 within the course and scope of such agency, employment, joint venture, or concerted activity
18 with legal authority to act on the others' behalf. The acts of any and all Defendants were in
19 accordance with, and represent, the official policy of Defendants.

20 16. At all relevant times, Defendants, and each of them, ratified each and every act
21 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
22 and abetted the acts and omissions of each and all the other Defendants in proximately causing
23 the damages herein alleged.

24 17. Plaintiffs are informed and believe, and thereon allege, that each of said
25 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
26 omissions, occurrences, and transactions alleged herein.

27 18. Under California law, Defendants are jointly and severally liable as employers
28 for the violations alleged herein because they have each exercised sufficient control over the

1 wages, hours, working conditions, and employment status of Plaintiffs and other non-party
2 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiffs and other
3 non-party Aggrieved Employees, supervised and controlled their work schedule and/or
4 conditions of employment, determined their rate of pay, and maintained their employment
5 records. Defendants suffered or permitted Plaintiffs and other non-party Aggrieved
6 Employees to work and/or “engaged” Plaintiffs and other non-party Aggrieved Employees so
7 as to create a common-law employment relationship. As joint employers of Plaintiffs and
8 other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil
9 penalties and all other relief available to Plaintiffs and other non-party Aggrieved Employees
10 under the law.

11 19. Plaintiffs are informed and believe, and thereon allege, that at all relevant
12 times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs
13 and other non-party Aggrieved Employees because Defendants have:

- 14 (a) jointly exercised meaningful control over the work performed by
15 Plaintiffs and other non-party Aggrieved Employees;
- 16 (b) jointly exercised meaningful control over Plaintiffs’ and other non-party
17 Aggrieved Employees’ wages, hours, and working conditions, including
18 the quantity, quality standards, speed, scheduling, and operative details
19 of the tasks performed by Plaintiffs and other non-party Aggrieved
20 Employees;
- 21 (c) jointly required that Plaintiffs and other non-party Aggrieved
22 Employees perform work which is an integral part of Defendants’
23 businesses; and
- 24 (d) jointly exercised control over Plaintiffs and other non-party Aggrieved
25 Employees as a matter of economic reality in that Plaintiffs and other
26 non-party Aggrieved Employees were dependent on Defendants, who
27 shared the power to set the wages of Plaintiffs and other non-party
28 Aggrieved Employees and determined their working conditions, and

1 who jointly reaped the benefits from the underpayment of their wages
2 and noncompliance with other statutory provisions governing their
3 employment.

4 20. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
5 there has existed a unity of interest and ownership between Defendants such that any
6 individuality and separateness between the entities has ceased.

7 21. WINN MANAGEMENT GROUP LLC; WINNCOMPANIES LLC;
8 WINNRESIDENTIAL CALIFORNIA, INC.; WINNRESIDENTIAL CALIFORNIA, L.P.;
9 and DOES 1 through 10 are therefore alter egos of each other.

10 22. Adherence to the fiction of the separate existence of Defendants would permit
11 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
12 from liability for the wrongful acts committed by them under the name WINN.

13 23. Plaintiffs further allege, upon information and belief, that Defendants WINN
14 MANAGEMENT GROUP LLC; WINNCOMPANIES LLC; WINNRESIDENTIAL
15 CALIFORNIA, INC.; and WINNRESIDENTIAL CALIFORNIA, L.P. are alter egos of each
16 other for the following reasons:

17 (e) On the California Secretary of State's website
18 (<https://businesssearch.sos.ca.gov/>), WINN MANAGEMENT GROUP
19 LLC and WINNRESIDENTIAL CALIFORNIA, INC. share the same
20 entity address and mailing address, "ONE WASHINGTON MALL,
21 BOSTON, MA 02109";

22 (f) According to Defendants' most recent "Statement of Information" forms
23 filed with the California Secretary of State, WINNRESIDENTIAL
24 CALIFORNIA, INC. and WINNRESIDENTIAL CALIFORNIA L.P.
25 share the same officers, directors, and/or managers, including, but not
26 limited to, Michael Putziger, who serves as Secretary of
27 WINNRESIDENTIAL CALIFORNIA INC. and as Secretary of
28 WINNRESIDENTIAL CALIFORNIA L.P.'s General Partner, LLAM

1 Realty Management, Inc.;

2 (g) According to Defendants' most recent "Statement of Information" forms
3 filed with the California Secretary of State, WINNRESIDENTIAL
4 CALIFORNIA, INC. and WINNRESIDENTIAL CALIFORNIA L.P.
5 share the same Principal Business Office address in California on
6 "WEST SHAW AVENUE, FRESNO, CA 93711";

7 (h) According to Defendants' most recent "Statement of Information" forms
8 filed with the California Secretary of State, WINN MANAGEMENT
9 GROUP LLC; WINNRESIDENTIAL CALIFORNIA, INC.; and
10 WINNRESIDENTIAL CALIFORNIA L.P. share the same agent for
11 service of process, "Cogency Global Inc."; and

12 (i) On information and belief, WINN MANAGEMENT GROUP LLC;
13 WINNCOMPANIES LLC; WINNRESIDENTIAL CALIFORNIA,
14 INC.; and WINNRESIDENTIAL CALIFORNIA, L.P. utilize the same
15 standardized employment forms and issue the same employment
16 policies.

17 **PAGA REPRESENTATIVE ALLEGATIONS**

18 24. Defendants are the largest manager of affordable housing in the United States
19 and one of the largest managers of private housing for the United States Armed Forces. Upon
20 information and belief, Defendants maintain a single, centralized Human Resources ("HR")
21 department at their corporate headquarters in Boston, Massachusetts, or Fresno, California,
22 which is responsible for the recruiting and hiring of new employees, and communicating and
23 implementing Defendants' company-wide policies, including timekeeping policies and meal
24 and rest period policies, to employees throughout California.

25 25. In particular, Plaintiffs and other non-party Aggrieved Employees, on
26 information and belief, received the same standardized documents and/or written policies.
27 Upon information and belief, the usage of standardized documents and/or written policies,
28 including new-hire documents, indicate that Defendants dictated policies at the corporate level

1 and implemented them company-wide, regardless of their employees' assigned locations or
2 positions. Upon information and belief, Defendants set forth uniform policies and procedures
3 in several documents provided at an employee's time of hire.

4 26. Upon information and belief, Defendants maintain a centralized Payroll
5 department at their corporate headquarters in Boston, Massachusetts, or Fresno, California,
6 which processes payroll for all non-exempt, hourly paid employees working for Defendants at
7 their various locations and jobsites in California, including Plaintiffs and other non-party
8 Aggrieved Employees. Based upon information and belief, Defendants issue the same
9 formatted wage statements to all non-exempt, hourly paid employees in California,
10 irrespective of their work locations. Upon information and belief, Defendants process payroll
11 for departing employees in the same manner throughout the State of California, regardless of
12 the manner in which each employee's employment ends.

13 27. Defendants continue to employ non-exempt or hourly paid employees in
14 California.

15 28. Plaintiffs are informed and believe, and thereon allege, that at all times herein
16 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
17 and advisors knowledgeable about California labor and wage law, employment and personnel
18 practices, and about the requirements of California law.

19 29. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other
20 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
21 were not recorded.

22 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
24 receive certain wages for overtime compensation and that they were not receiving certain
25 wages for overtime compensation.

26 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that other non-party Aggrieved Employees were entitled to be paid at a
28 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income

1 all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
2 compensation.

3 32. Plaintiffs are informed and believes, and thereon allege, that Defendants knew
4 or should have known that Plaintiffs and other non-party Aggrieved Employees were entitled
5 to receive at least minimum wages for compensation and that they were not receiving at least
6 minimum wages for work that was required to be done off-the-clock. In violation of the
7 California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not paid at
8 least minimum wages for work done off-the-clock.

9 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
11 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
12 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
13 (30) minute meal periods and that Plaintiffs and other non-party Aggrieved Employees were
14 not provided with all meal periods or payment of one (1) additional hour of pay at their
15 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
16 period.

17 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
18 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
19 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
20 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
21 and permitted to take a compliant rest period. In violation of the California Labor Code,
22 Plaintiffs and other non-party Aggrieved Employees were not authorized and permitted to take
23 compliant rest periods, nor did Defendants provide Plaintiffs and other non-party Aggrieved
24 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
25 they were not authorized and permitted to take a compliant rest period.

26 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
28 receive complete and accurate wage statements in accordance with California law. In

1 violation of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees
2 were not provided complete and accurate wage statements.

3 36. Plaintiffs are informed and believes, and thereon allege, that Defendants knew
4 or should have known that they had a duty to maintain accurate and complete payroll records
5 in accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
6 and intentionally failed to do so.

7 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
8 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
9 timely payment of all wages earned upon termination of employment. In violation of the
10 California Labor Code, Plaintiffs and other non-party Aggrieved Employees did not receive
11 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
12 meal and rest period premiums, and/or reporting time pay, within permissible time periods.

13 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
15 timely payment of wages during their employment. In violation of the California Labor Code,
16 Plaintiffs and other non-party Aggrieved Employees did not receive payment of all wages,
17 including, but not limited to, overtime wages, minimum wages, meal and rest period
18 premiums, and/or reporting time pay, within permissible time periods.

19 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
20 should have known that they had a duty to cover the costs and expenses Plaintiff Gomez and
21 other non-party Aggrieved Employees incurred obtaining mandatory examinations and/or
22 drug tests, but willfully, knowingly, and intentionally failed to do so.

23 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
25 be paid reporting time pay when they reported to work for their scheduled shift but were put to
26 work for less than half of the regular schedule. In violation of the California Labor Code,
27 Defendants did not pay Plaintiffs and other non-party Aggrieved Employees all reporting time
28 pay due.

1 41. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
3 receive reimbursement for all business-related expenses and costs they incurred during the
4 course and scope of their employment and that they did not receive reimbursement of
5 applicable business-related expenses and costs incurred.

6 42. Plaintiffs are informed and believe, and thereon allege, that at all times herein
7 mentioned, Defendants knew or should have known that Defendants had a duty to provide
8 Plaintiffs and other non-party Aggrieved Employees with written notice of the material terms
9 of their employment with Defendants as required by the California Wage Theft Prevention
10 Act, but willfully, knowingly, and intentionally failed to do so.

11 43. Plaintiffs are informed and believes and thereon allege, that at all times herein
12 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
13 Gomez and other non-party Aggrieved Employees with safety devices and safeguards to
14 protect their life, safety, and health in the workplace, but willfully, knowingly, and
15 intentionally failed to do so.

16 44. Plaintiffs are informed and believe, and thereon allege, that at all times herein
17 mentioned, Defendants knew or should have known that they had a duty to compensate
18 Plaintiffs and other non-party Aggrieved Employees for all hours worked, and that Defendants
19 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
20 failed to do so, and falsely represented to Plaintiffs and other non-party Aggrieved Employees
21 that they were properly denied wages, all in order to increase Defendants' profits.

22 45. At all times herein set forth, PAGA provides that any provision of law under
23 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
24 assessed and collected by the LWDA for violations of the California Labor Code and
25 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
26 civil action brought on behalf of themselves and other current or former employees pursuant
27 to procedures outlined in California Labor Code section 2699.3.

28 46. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any

1 person who was employed by the alleged violator and against whom one or more of the
2 alleged violations was committed.”

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

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

- 9 (a) The aggrieved employee shall give written notice by online filing
10 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
11 to the employer of the specific provisions of the California Labor Code
12 alleged to have been violated, including the facts and theories to support
13 the alleged violations.
- 14 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
15 2699.3(a) and any employer response to that notice shall be
16 accompanied by a filing fee of seventy-five dollars (\$75).
- 17 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
18 employer and the aggrieved employee by certified mail that it does not
19 intend to investigate the alleged violation within sixty (60) calendar
20 days of the postmark date of the Employee’s Notice. Upon receipt of
21 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
22 five (65) calendar days of the postmark date of the Employee’s Notice,
23 the aggrieved employee may commence a civil action pursuant to
24 California Labor Code section 2699 to recover civil penalties in addition
25 to any other penalties to which the employee may be entitled.

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

met:

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

50. On January 22, 2021, Plaintiff Desales provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Desales's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff Desales's written notice and assigned Plaintiff Desales PAGA Case Number LWDA-CM-819429-21. A true and correct copy of Plaintiff Desales's written notice to the LWDA and Defendants dated January 22, 2021, is attached hereto as "Exhibit 1."

51. On January 22, 2021, Plaintiff Gomez provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California

1 Labor Code alleged to have been violated, including facts and theories to support the alleged
2 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
3 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
4 LWDA PAGA Administrator has confirmed receipt of Plaintiff Gomez's written notice and
5 assigned Plaintiff Gomez PAGA Case Number LWDA-CM-819456-21. A true and correct
6 copy of Plaintiff Gomez's written notice to the LWDA and Defendants dated January 22,
7 2021, is attached hereto as "Exhibit 2."

8 52. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
9 sent the LWDA Notices described above, and the LWDA has not responded that it intends to
10 investigate Plaintiffs' claims, and Defendants have not cured the violations.

11 53. Thus, Plaintiffs have satisfied the administrative prerequisites under California
12 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
13 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
14 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403.

15 54. Labor Code section 558(a) provides "[a]ny employer or other person acting on
16 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
17 provision regulating hours and days of work in any order of the Industrial Welfare
18 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
19 dollars (\$50) for each underpaid employee for each pay period for which the employee was
20 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
21 underpaid employee for each pay period for which the employee was underpaid" Labor
22 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
23 to any other civil or criminal penalty provided by law." Plaintiffs, acting in the public interest
24 as private attorneys general, seek assessment and collection of civil penalties under Labor
25 Code section 558 for themselves, all other non-party Aggrieved Employees, and the State of
26 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
27 and the applicable IWC Wage Order. Plaintiffs, acting in the public interest as private
28 attorneys general, do not seek the recovery of unpaid wages under Labor Code section 558

1 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
2 applicable IWC Wage Order.

3 55. Defendants, at all times relevant to this complaint, were employers or persons
4 acting on behalf of an employer(s) who violated Plaintiffs' and other non-party Aggrieved
5 Employees' rights by violating various sections of the California Labor Code as set forth
6 above.

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

10 57. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
11 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as a
12 private attorneys general, seek assessment and collection of civil penalties for themselves, all
13 other non-party Aggrieved Employees, and the State of California against Defendants for
14 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
15 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403.

16 **FIRST CAUSE OF ACTION**

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

18 **(Against all Defendants)**

19 58. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
20 and every allegation set forth above.

21 59. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover
22 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
23 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
24 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802. Labor Code
25 section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties
26 for violations of those Labor Code sections not found in section 2699.5, including sections
27 516, 1182.12, 2810.5, 6401, and 6403.

28 60. Defendants' conduct, as alleged herein, violates numerous sections of the

1 California Labor Code, including, but not limited to, the following:

- 2 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
3 Wage Order for Defendants' failure to compensate Plaintiffs and other
4 non-party Aggrieved Employees with all required overtime pay and
5 failure to properly calculate the overtime rates paid to other non-party
6 Aggrieved Employees, as set forth below;
- 7 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
8 applicable IWC Wage Order for Defendants' failure to compensate
9 Plaintiffs and other non-party Aggrieved Employees with at least
10 minimum wages for all hours worked, as set forth below;
- 11 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
12 applicable IWC Wage Order for Defendants' failure to provide
13 Plaintiffs and other non-party Aggrieved Employees with meal periods,
14 as set forth below;
- 15 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
16 IWC Wage Order for Defendants' failure to authorize and permit
17 Plaintiffs and other non-party Aggrieved Employees to take rest periods,
18 as set forth below;
- 19 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
20 Wage Order for failure to provide accurate and complete wage
21 statements to Plaintiffs and other non-party Aggrieved Employees, as
22 set forth below;
- 23 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
24 IWC Wage Order for failure to maintain payroll records as set forth
25 below;
- 26 (g) Violation of Labor Code section 204 for failure to pay all earned wages
27 during employment as set forth below;
- 28 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all

1 earned wages upon termination as set forth below;

- 2 (i) Violation of Labor Code section 222.5 for failure to compensate
3 Plaintiff Gomez and other non-party Aggrieved Employees for
4 mandatory physical examinations and/or drug testing, as set forth
5 below;
- 6 (j) Violation of Labor Code section 1198 and the applicable IWC Wage
7 Order for failure to pay reporting time pay when Plaintiffs and other
8 non-party Aggrieved Employees were put to work for less than half of
9 their regular scheduled shifts, as set forth below;
- 10 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
11 and other non-party Aggrieved Employees for all business expenses
12 necessarily incurred, as set forth below;
- 13 (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
14 provide written notice of information material to Plaintiffs' and other
15 non-party Aggrieved Employees' employment with Defendants, as set
16 forth below; and
- 17 (m) Violation of Labor Code sections 6401 and 6403 for failure to provide
18 safety devices and safeguards, such as personal protective equipment, to
19 Plaintiff Gomez and other non-party Aggrieved Employees, as set forth
20 below.

21 **FAILURE TO PAY OVERTIME**

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

23 61. Labor Code section 1198 makes it illegal to employ an employee under
24 conditions of labor that are prohibited by the applicable wage order. California Labor Code
25 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
26 be the . . . standard conditions of labor for employees. The employment of any employee . . .
27 under conditions of labor prohibited by the order is unlawful.”

28 62. California Labor Code section 1198 and the applicable IWC Wage Order

1 provide that it is unlawful to employ persons without compensating them at a rate of pay
2 either time-and-one-half or two-times that person's regular rate of pay, depending on the
3 number of hours worked by the person on a daily or weekly basis.

4 63. Specifically, the applicable IWC Wage Order provides that Defendants are and
5 were required to pay Plaintiffs and other non-party Aggrieved Employees working more than
6 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
7 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
8 hours in a workweek.

9 64. The applicable IWC Wage Order further provides that Defendants are and were
10 required to pay Plaintiffs and other non-party Aggrieved Employees working more than
11 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate
12 of pay. An employee's regular rate of pay includes all remuneration for employment paid to,
13 or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

14 65. California Labor Code section 510 codifies the right to overtime compensation
15 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
16 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
17 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
18 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
19 in a day on the seventh (7th) day of work.

20 66. First, during the relevant period, Defendants had a policy and/or practice of
21 discouraging and impeding Plaintiffs and other non-party Aggrieved Employees from
22 recording hours worked that were outside of their scheduled shifts, in order to limit the
23 amount of overtime employees could accrue. On information and belief, this policy of
24 limiting overtime, coupled with Defendants' use of labor budgets and assignment of heavy
25 workloads and stringent deadlines (*see infra*), led Plaintiffs and other non-party Aggrieved
26 Employees to work off-the-clock before and/or after their scheduled shift times in order to
27 complete their assigned tasks. Defendants discouraged and impeded Plaintiffs and other non-
28 party Aggrieved Employees from recording hours worked that were outside of their scheduled

1 shifts, upon threat of discipline for incurring unapproved overtime hours. For example, before
2 clocking in for each shift, Plaintiff Gomez spent 10-15 minutes collecting litter and trash on
3 the property, but was expressly discouraged from clocking in before his scheduled shift time.
4 After clocking out at the end of his shift, Plaintiff Gomez was pressured to continue
5 performing maintenance requests from residents, such as repairing plumbing, or other
6 property maintenance, such as putting away dumpsters. He was also required to continue
7 executing assigned work orders and meeting deadlines for flipping vacant rental units after
8 clocking out at the end of his shifts. As a further example, after clocking out at the end of his
9 shift, Plaintiff Desales was pressured to continue performing maintenance requests from
10 residents, such as repairing plumbing. Alternatively, when Plaintiff Gomez and other non-
11 party Aggrieved Employees did not clock out at their designated shift end-times, on
12 information and belief, Plaintiff Gomez and other non-party Aggrieved Employees were
13 subject to Defendants' supervisors falsifying their time records in order to prevent employees
14 from accruing overtime.

15 67. As a result of this restriction on overtime accrual, Defendants also forced
16 Plaintiffs and other non-party Aggrieved Employees to continue to perform work-related tasks
17 while off-the-clock, on their days off and outside of their scheduled shifts, in order to respond
18 to all residents' and management's requests and complete their assigned tasks. For example,
19 Defendants' management would call and text Plaintiffs on their days off or outside of their
20 scheduled shifts about work-related issues, including questions about residents and the property.
21 Plaintiff Desales spent time off-the-clock responding to calls and text messages from his
22 managers to his personal cellular phone and was required to check his email off-the-clock
23 multiple times during his employment. Plaintiff Gomez was also required to respond to emails
24 from management about work-related issues while off-the-clock at least 10 minutes per day.
25 Additionally, when Plaintiff Gomez drove to mandatory off-site property maintenance and
26 renovation assignments, such as to Pasadena, which took more than four (4) hours round trip, he
27 was not compensated for his travel time. At all times, Plaintiffs and other non-party Aggrieved
28 Employees remained under Defendants' control. This off-the-clock work could have been

1 recorded by Defendants, but they refused to do so to avoid payment of additional wages to
2 Plaintiffs and other non-party Aggrieved Employees.

3 68. Second, during the relevant time period, Defendants had a company-wide “on-
4 call” policy, whereby they scheduled Plaintiffs and other non-party Aggrieved Employees to
5 work “on-call,” or on standby. During an “on-call” shift, Plaintiffs and other non-party
6 Aggrieved Employees had to be available and report to work upon receiving a call from
7 Defendants notifying them that they needed to come in and work. When scheduled to be “on-
8 call,” Plaintiffs and other non-party Aggrieved Employees were, in essence, on controlled
9 standby for Defendants because they could not use that time freely for their own purposes and
10 were forced to put their lives on hold. For example, Plaintiffs refrained from making plans
11 altogether while “on-call” for standby shifts because they knew that they had to drop whatever
12 they were doing at a moment’s notice if they received a call from Defendants to report to
13 work. However, Defendants did not pay Plaintiffs and other non-party Aggrieved Employees
14 for the time during which they were waiting to receive a call from Defendants and unable to
15 use their time for their own purposes.

16 69. Third, as stated above, on information and belief, Defendants had, and continue
17 to have, a company-wide policy and/or practice of strictly staffing their locations based on the
18 labor hours allocated by corporate. Defendants’ uniform use of labor budgets, combined with
19 heavy workloads and stringent deadlines, resulted in chronic understaffing and a failure to
20 provide Plaintiffs and other non-party Aggrieved Employees with adequate meal period
21 coverage, because there were too few employees on duty to handle the workload.
22 Additionally, Defendants have, on a company-wide basis, failed to adhere to a schedule of
23 meal periods, which further impeded Plaintiffs and other non-party Aggrieved Employees
24 from taking timely, compliant meal periods. Accordingly, Plaintiffs and other non-party
25 Aggrieved Employees missed meal periods and/or had meal periods cut short or interrupted in
26 order to handle their workloads.

27 70. For example, at least 1-2 times per month, Plaintiff Desales was pressured to
28 clock out within the first five (5) hours of his shift and work through his meal periods,

1 continuing to perform tasks, such as flipping vacant units within the 2- to 3-day deadlines set
2 by management. In addition, at least 2-3 times per week, Plaintiff Gomez was similarly
3 pressured to clock out within the first five (5) hours of his shift and work through his meal
4 periods, continuing to perform tasks, such as flipping vacant units within the 5- to 7-day
5 deadlines set by management. Further, at times, Plaintiff Desales's unpaid meal periods were
6 interrupted or cut short daily for about 5-10 minutes per instance, due to Defendants'
7 management requesting progress reports on work orders and repairs to vacant units.
8 Additionally, at times, Plaintiff Gomez's unpaid meal periods were similarly interrupted or cut
9 short to less than 30 minutes, when Defendants' management would request progress reports
10 on work orders and repairs to vacant units or assigning him tasks to complete during his meal
11 periods.

12 71. Moreover, because Defendants frowned upon employees accruing meal period
13 penalties, Defendants required Plaintiffs and other non-party Aggrieved Employees to clock
14 out for meal periods and/or adjusted employee time records to reflect compliant meal periods,
15 regardless of whether they had received a compliant meal period or not, in order to strictly
16 limit meal penalties that Defendants would otherwise owe. Thus, Plaintiffs and other non-
17 party Aggrieved Employees performed work during meal periods for which they were not
18 paid.

19 72. Because Plaintiffs and other non-party Aggrieved Employees regularly worked
20 shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-
21 the-clock work qualified for overtime premium pay. Therefore, Plaintiffs and other non-party
22 Aggrieved Employees were not paid overtime wages for all of the overtime hours they
23 actually worked. Defendants' failure to pay Plaintiffs and other non-party Aggrieved
24 Employees the balance of overtime compensation, as required by California law, violates the
25 provisions of California Labor Code sections 510 and 1198.

26 73. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
27 correct overtime rate for the recorded overtime hours that they generated. In addition to an
28 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,

1 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
2 California Labor Code, Defendants failed to incorporate all compensation, including incentive
3 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
4 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
5 times when other non-party Aggrieved Employees worked overtime and received these other
6 forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate
7 than required.

8 74. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
9 the balance of overtime compensation as required by California law, violates the provisions of
10 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
11 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
12 2699(a), (f), and (g).

13 **FAILURE TO PAY MINIMUM WAGES**

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

15 75. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
16 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
17 to be paid to employees, and the payment of a wage less than the minimum so fixed is
18 unlawful. Compensable work time is defined by the applicable wage order as "the time
19 during which an employee is subject to the control of an employer, and includes all the time
20 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
21 Regs. tit. 8, § 11050(2)(G) (defining "Hours Worked").

22 76. As stated, Defendants discouraged and impeded Plaintiffs and other non-party
23 Aggrieved Employees from recording hours worked that were outside of their scheduled
24 shifts, upon threat of discipline. Thus, Defendants required Plaintiffs and other non-party
25 Aggrieved Employees to perform work off-the-clock, answering phone calls from
26 management, reviewing and responding to emails, and responding to and completing
27 maintenance and repair requests from residents and management, but did not compensate
28 them for this time. Additionally, as stated, Defendants systematically, and on a company-

1 wide basis, required Plaintiffs and other non-party Aggrieved Employees to work “on-call”
2 shifts during which they had to put their lives on hold and were restricted from using that time
3 freely for their own purposes. Even though Plaintiffs and other non-party Aggrieved
4 Employees were subject to Defendants’ control during an “on-call” shift, Defendants did not
5 pay Plaintiffs and other non-party Aggrieved Employees at least minimum wages for all hours
6 that they were suffered or permitted to work.

7 77. Moreover, as set forth above, due to Defendants’ company-wide practice of
8 utilizing labor budgets, assigning heavy workloads and deadlines, failing to adhere to a
9 schedule of meal periods, and subsequent lack of meal period coverage, Plaintiffs and other
10 non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to
11 which they were entitled and were required to work off-the-clock. Additionally, as set forth
12 above, on information and belief, Defendants systematically failed to pay Plaintiffs and other
13 non-party Aggrieved Employees for actual hours worked during unpaid meal periods, because
14 these hours were not always correctly recorded.

15 78. Furthermore, on information and belief, Defendants maintained and
16 implemented a company-wide policy of requiring employees to travel to a medical facility on
17 their own time and using their own personal vehicles to undergo mandatory drug testing
18 and/or physical examinations. At all times, Defendants were in control of scheduling the time
19 period for the testing and/or physical examinations, selecting the provider or facility where the
20 testing and/or physical examinations were to take place, and determining the scope of the
21 testing and/or physical examinations. On information and belief, Defendants gave Plaintiff
22 Gomez and other non-party Aggrieved Employees strict instructions to obtain drug testing
23 and/or physical examinations, and Plaintiff Gomez and other non-party Aggrieved Employees
24 underwent the testing and/or examinations for the sole benefit of Defendants. Plaintiff Gomez
25 and other non-party Aggrieved Employees were required to travel in their personal vehicles or
26 obtain alternate transportation and spend time undergoing the requisite testing and/or
27 examinations. For example, Plaintiff Gomez followed Defendants’ instructions, traveled
28 approximately 20 miles roundtrip (for approximately 30-40 minutes total), in his personal

1 vehicle to and from a designated medical facility in Palmdale, and spent 15-20 minutes
2 waiting at the medical facility and undergoing the requisite testing. However, Defendants did
3 not compensate Plaintiff Gomez and other non-party Aggrieved Employees for the time they
4 spent traveling to and from the medical facilities and for the time they spent undergoing the
5 mandatory drug testing and/or physical examinations.

6 79. Thus, Defendants did not pay at least minimum wages for all hours worked by
7 Plaintiffs and other non-party Aggrieved Employees. Also, to the extent that these off-the-
8 clock hours did not qualify for overtime premium payment, Defendants did not pay at least
9 minimum wages for those hours worked off-the-clock in violation of California Labor Code
10 sections 1182.12, 1194, 1197, and 1198.

11 80. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
12 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
13 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
14 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

15 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
16 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

17 81. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
18 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiffs' and
19 other non-party Aggrieved Employees' employment by Defendants.

20 82. At all relevant times herein set forth, California Labor Code section 512(a)
21 provides that an employer may not require, cause, or permit an employee to work for a period
22 of more than five (5) hours per day without providing the employee with a meal period of not
23 less than thirty (30) minutes, except that if the total work period per day of the employee is
24 not more than six (6) hours, the meal period may be waived by mutual consent of both the
25 employer and the employee. Under California law, first meal periods must start after no more
26 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
27 2012).

28 83. At all relevant times herein set forth, California Labor Code sections 226.7,

1 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
2 meal period mandated by an applicable order of the IWC.

3 84. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
4 and the applicable IWC Wage Order also require employers to provide a second meal period
5 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
6 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
7 total hours worked is no more than twelve (12) hours, the second meal period may be waived
8 by mutual consent of the employer and the employee only if the first meal period was not
9 waived.

10 85. As stated, Defendants have, and continue to have, a company-wide policy
11 and/or practice of understaffing pursuant to their labor budget practices, while simultaneously
12 assigning heavy workloads and deadlines for flipping vacant units, which resulted in a lack of
13 meal period coverage and prevented Plaintiffs and other non-party Aggrieved Employees from
14 taking all timely, uninterrupted meal periods to which they were entitled. Additionally,
15 Defendants failed to adhere to a schedule of meal periods, resulting in Plaintiffs and other
16 non-party Aggrieved Employees having their meal periods interrupted to return to work or
17 waiting extended periods of time before taking meal periods, due to the workload and pressure
18 to meet deadlines to flip vacant units. Further, as stated, because Defendants frowned upon
19 employees accruing meal period penalties, on information and belief, Defendants required
20 Plaintiffs and other non-party Aggrieved Employees to clock out for meal periods and/or
21 adjusted employee time records to reflect compliant meal periods, regardless of whether they
22 had received a compliant meal period or not, in order to strictly limit meal penalties that
23 Defendants would otherwise owe.

24 86. Furthermore, during the relevant time period, Defendants maintained a
25 company-wide, unlawful written meal period policy insofar as it fails to state the timing of
26 when meal periods must occur. Under California law, first meal periods must start after no
27 more than five hours of work, and second meal periods must start after no more than ten hours
28 of work. *Brinker*, 53 Cal. 4th at 1041-1042. However, Defendants' written meal period

1 policy states, in part:

2 Employee also agrees that to the extent any one period of work
3 exceeds five (5) hours, Employee is released of all duty and must
4 take a meal period of not less than 30 minutes. Employer and
5 Employee agree that the meal period may be waived if the
6 Employee works more than five (5) hours but less than or equal to
7 six (6) hours. A second 30-minute meal break is required for
8 employees who work more than ten (10) hours in a day. The
9 second meal period may be waived by mutual consent if the total
10 hours worked that day are no more than twelve (12) and the first
11 meal period was not waived.

12 Defendants' written policy fails to state the correct timing of when the first meal period must
13 take place (i.e., within the first five (5) hours of work) and the timing of the second meal period
14 must take place (i.e., within the first ten (10) hours of work) under California law, and is
15 therefore facially invalid.

16 87. As a result of Defendants' company-wide practices and/or policies, Plaintiffs
17 and other non-party Aggrieved Employees would be forced to work in excess of five (5) hours
18 before taking a meal period and, at times, had their meal periods interrupted, and/or had to
19 forgo their meal periods altogether. For example, Plaintiff Desales missed meal periods
20 approximately 1-2 times per month because he had to work through meal periods to meet his
21 deadlines. Plaintiff Desales also worked in excess of five (5) hours before taking a meal
22 period on several occasions, due to urgent repairs and/or deadlines. As a further example, at
23 least 2-3 times per week, Plaintiff Gomez was similarly pressured to clock out within the first
24 five (5) hours of his shift and work through his meal periods, continuing to perform tasks,
25 such as flipping vacant units within 5- to 7-day deadlines set by management. In addition,
26 Plaintiff Desales's unpaid meal periods were interrupted or cut short daily over a period of
27 two (2) weeks, for about 5-10 minutes per instance, due to Defendants' management
28 requesting progress reports on work orders and repairs to vacant units. Additionally, Plaintiff
Gomez's unpaid meal periods were similarly interrupted or cut short to less than 30 minutes
on at least five (5) occasions, due to Defendants' management requesting progress reports on
work orders and repairs to vacant units or assigning him tasks to complete during his meal

1 period.

2 88. Moreover, Defendants did not provide Plaintiffs and other non-party Aggrieved
3 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
4 hours in one day. Plaintiffs and other non-party Aggrieved Employees worked shifts in excess
5 of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Plaintiffs
6 and other non-party Aggrieved Employees did not sign valid meal period waivers on days that
7 they were entitled to meal periods and were not relieved of all duties.

8 89. Defendants knew or should have known that as a result of their company-wide
9 policies and/or practices, that Plaintiffs and other non-party Aggrieved Employees were not
10 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
11 knew or should have known that they did not pay Plaintiffs and other non-party Aggrieved
12 Employees meal period premiums when meal periods were missed, late, short, and/or
13 interrupted.

14 90. Furthermore, Defendants engaged in a company-wide practice and/or policy of
15 not paying all meal period premiums owed when compliant meal periods are not provided.
16 Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved Employees
17 have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to
18 the extent that Defendants did pay other non-party Aggrieved Employees premium pay for
19 missed, late, and interrupted meal periods, Defendants did not pay other non-party Aggrieved
20 Employees at the correct rate of pay for premiums because Defendants systematically failed to
21 include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or
22 other forms of remuneration, in the regular rate of pay.

23 91. Thus, Defendants failed to provide Plaintiffs and other non-party Aggrieved
24 Employees compliant meal periods and failed to pay the full meal period premiums due.
25 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
26 sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved Employees
27 are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f),
28 and (g).

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

92. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and other non-party Aggrieved Employees' employment by Defendants.

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

94. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

95. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7, Plaintiffs and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

96. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' policies and/or practices of utilizing labor budgets, resultant understaffing, assigning of heavy workloads, and pressure to meet deadlines, prevented Plaintiffs and other

1 non-party Aggrieved Employees from being relieved of all duty in order to take compliant rest
2 periods. Defendants also failed to schedule rest periods, which, coupled with Defendants'
3 failure to provide adequate rest period coverage, further led to Plaintiffs and other non-party
4 Aggrieved Employees not being authorized and permitted to take rest periods. Defendants
5 also had a policy or practice of failing to authorize and permit Plaintiffs and other non-party
6 Aggrieved Employees to take third rest periods when they worked in excess of 10 hours in
7 one day.

8 97. Additionally, during the relevant time period, upon information and belief,
9 Defendants maintained a company-wide on-premises rest period policy, which mandated that
10 Plaintiffs and other non-party Aggrieved Employees remain on Defendants' premises during
11 their rest periods. Because Plaintiffs and other non-party Aggrieved Employees were
12 restricted from leaving the work premises during rest periods, they were denied the ability to
13 use their rest periods freely for their own purposes, such as running personal errands. Thus,
14 Defendants effectively maintained control over Plaintiffs and other non-party Aggrieved
15 Employees during rest periods, and, as a result of this rest period policy, Defendants did not
16 relinquish control over Plaintiffs and other non-party Aggrieved Employees during rest
17 periods.

18 98. As a result of Defendants' practices and policies, Plaintiffs and other non-party
19 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
20 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
21 were entitled. For example, during their employment, both Plaintiffs respectively missed 5-6
22 rest periods per week due to the heavy workload and the lack of coverage for rest periods.

23 99. Defendants also have engaged in a company-wide practice and/or policy of not
24 paying all rest period premiums owed when compliant rest periods are not authorized and
25 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
26 Employees have not received premium pay for all missed rest periods. Alternatively, to the
27 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
28 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved

1 Employees at the correct rate of pay for premiums because Defendants failed to include all
2 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
3 of remuneration, in the regular rate of pay.

4 100. Defendants' conduct violates the applicable IWC Wage Order and California
5 Labor Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved
6 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
7 558 and/or 2699(a), (f), and (g).

8 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
9 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

15 102. During the relevant time period, Defendants have knowingly and intentionally
16 provided Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and
17 inaccurate wage statements. For example, Defendants issued uniform wage statements to
18 Plaintiffs and other non-party Aggrieved Employees that fail to correctly list: gross wages
19 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
20 the pay period, including overtime rates of pay, and the corresponding number of hours
21 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
22 226(a)(5), and 226(a)(9).

23 103. Because Defendants did not record the time Plaintiffs and other non-party
24 Aggrieved Employees spent working off-the-clock and deducted time from their records for
25 meal periods that were interrupted and/or missed (and therefore time for which they should
26 have been paid), Defendants did not list the correct amount of gross wages and net wages
27 earned by Plaintiffs and other non-party Aggrieved Employees in compliance with section
28 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to

1 accurately list the total number of hours worked by Plaintiffs and other non-party Aggrieved
2 Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of
3 pay in effect during the pay period and the corresponding accurate number of hours worked at
4 each hourly rate, in violation of section 226(a)(9).

5 104. Additionally, because Defendants did not calculate other non-party Aggrieved
6 Employees' regular rate of pay correctly for purposes of paying overtime wages, Defendants
7 did not list the correct amount of gross wages earned by other non-party Aggrieved
8 Employees in compliance with section 226(a)(1) and did not list the correct amount of net
9 wages earned by other non-party Aggrieved Employees in violation of section 226(a)(5).
10 Defendants also failed to correctly list all applicable hourly rates in effect during the pay
11 period, namely, correct overtime rates of pay and correct rates of pay for premiums, in
12 violation of section 226(a)(9).

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

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

1 and meal period start and stop times for Plaintiffs and other non-party Aggrieved Employees,
2 in violation of section 1198. As stated, Defendants engaged in a company-wide practice
3 and/or policy of falsifying Plaintiffs' and other non-party Aggrieved Employees' time records
4 by recording that compliant meal periods were taken regardless of if or when meal periods
5 were actually taken, and thereby failed to keep accurate records of meal start and end times for
6 Plaintiffs and other non-party Aggrieved Employees. Furthermore, in light of Defendants'
7 failure to provide Plaintiffs and other non-party Aggrieved Employees with second 30-minute
8 meal periods to which they were entitled, Defendants kept no records of meal start and end
9 times for second meal periods.

10 107. California Labor Code section 1174(d) provides that "[e]very person employing
11 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
12 employed and the ages of all minors" and "[keep, at a central location in the state or at the
13 plants or establishments at which employees are employed, payroll records showing the hours
14 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
15 applicable piece rate paid to, employees employed at the respective plants or
16 establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500
17 civil penalty if they fail to maintain accurate and complete records as required by section
18 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
19 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-
20 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
21 as a result of failing to record the off-the-clock hours that they worked.

22 108. Defendants' conduct violates California Labor Code sections 226(a), 1174(d),
23 and 1198. Plaintiffs and other non-party Aggrieved Employees are entitled to recover civil
24 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

25 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

26 **VIOLATION OF LABOR CODE SECTION 204**

27 109. At all relevant times herein set forth, California Labor Code section 204
28 requires that all wages earned by any person in any employment between the 1st and the 15th

1 days, inclusive, of any calendar month, other than those wages due upon termination of an
2 employee, are due and payable between the 16th and the 26th day of the month during which
3 the labor was performed. Labor Code section 204 further provides that all wages earned by
4 any person in any employment between the 16th and the last day, inclusive, of any calendar
5 month, other than those wages due upon termination of an employee, are due and payable
6 between the 1st and the 10th day of the following month.

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

13 111. During the relevant time period, Defendants willfully failed to pay Plaintiffs
14 and other non-party Aggrieved Employees all wages due to them within any time period
15 specified by California Labor Code section 204 including, but not limited to, overtime wages,
16 minimum wages, meal and rest period premiums, and/or reporting time pay.

17 112. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
18 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

19 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

28 114. On information and belief, Defendants have a company-wide practice or policy

1 of paying departing employees their final wages on the next regular pay cycle, instead of
2 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
3 Plaintiff Gomez was terminated on or around May 19, 2020, but was not paid the remainder of
4 his wages until more than 14 days after termination, on or around June 5, 2020. Thus,
5 Defendants failed to pay Plaintiff Gomez his final wages immediately, in violation of Labor
6 Code section 201.

7 115. Additionally, Defendants willfully failed to pay Plaintiffs and other non-party
8 Aggrieved Employees who are no longer employed by Defendants the earned and unpaid
9 wages set forth above, including but not limited to, overtime wages, minimum wages, meal
10 and rest period premiums, and/or reporting time pay either at the time of discharge, or within
11 seventy-two (72) hours of their leaving Defendants' employ.

12 116. Defendants' failure to pay Plaintiffs and those non-party Aggrieved Employees
13 who are no longer employed by Defendants their wages earned and unpaid at the time of
14 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
15 California Labor Code sections 201 and 202. Plaintiffs and other non-party Aggrieved
16 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
17 256 and/or 2699(a), (f), and (g).

18 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATIONS**
19 **VIOLATION OF LABOR CODE SECTION 222.5**

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

23 118. During the relevant time period, Defendants implemented, on a company-wide
24 basis, an employer-imposed requirement that Plaintiff Gomez and other non-party Aggrieved
25 Employees undergo a mandatory physical examination and/or drug test, but required them to
26 do so at their own expense. As stated, upon information and belief, Defendants had a
27 company-wide policy requiring that all employees travel to a specified medical facility using
28 their own personal vehicles to undergo physical examinations and/or drug testing. At all

1 times, Defendants were in control of scheduling the date and time for the examination and/or
2 testing, selecting the provider/facility where the examination and/or testing was to take place,
3 and determining the scope of the examination and/or testing.

4 119. Plaintiff Gomez and other non-party Aggrieved Employees were required to
5 travel in their own personal vehicles to designated medical facilities and spend time
6 undergoing Defendants' mandatory drug test and/or physical examination. For example,
7 Plaintiff Gomez followed Defendants' instructions, traveled approximately 20 miles roundtrip
8 (for approximately 30-40 minutes total) in his personal vehicle to and from a designated
9 medical facility in Palmdale, and spent 15-20 minutes waiting at the medical facility and
10 undergoing the requisite testing. However, Defendants did not compensate Plaintiff Gomez
11 and other non-party Aggrieved Employees for the time they spent traveling to and from their
12 drug tests and/or physical examinations, or for the time they spent undergoing the testing
13 and/or examinations, or reimburse them for the travel expenses they incurred getting to and
14 from the medical facilities. Defendants' policy and/or practice of not paying for all costs
15 Plaintiff Gomez and other non-party Aggrieved Employees incurred obtaining mandatory
16 physical examinations and/or drug testing is in violation of California Labor Code section
17 222.5.

18 120. Plaintiff Gomez and other non-party Aggrieved Employees are therefore
19 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

20 **FAILURE TO PAY REPORTING TIME PAY**

21 **VIOLATION OF LABOR CODE SECTION 1198**

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

27 122. California Code of Regulations, Title 8, section 11050(5)(A) provides that
28 "[e]ach workday an employee is required to report for work and does report, but is not put to

1 work or is furnished less than half said employee's usual or scheduled day's work, the employee
2 shall be paid for half the usual or scheduled day's work, but in no event for less than two (2)
3 hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less
4 than the minimum wage." The "primary purpose of the reporting time regulation" is "to
5 guarantee at least partial compensation for employees who report to work expecting to work a
6 specified number of hours, and who are deprived of that amount because of inadequate
7 scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal.
8 App. 4th 556 (2012).

9 123. Defendants violated California Labor Code section 1198 and California Code of
10 Regulations, Title 8, section 11050(5), because Defendants failed to pay Plaintiffs and other
11 non-party Aggrieved Employees reporting time pay when they reported to work for their
12 scheduled shift but were put to work for less than half of the regular schedule.

13 124. As stated above, Defendants failed to pay Plaintiffs and other non-party
14 Aggrieved Employees reporting time pay when they presented themselves ready for work by
15 waiting "on-call" and awaiting instructions on whether to they needed to show up, but
16 ultimately were not called. Defendants did not pay Plaintiffs and other non-party Aggrieved
17 Employees for at least half of their scheduled day's work when they were subject to
18 Defendants' on-call policy and were not called or told not to come into work. For example,
19 Plaintiffs waited at their respective homes during their scheduled "on-call" shifts as required
20 by Defendants' on-call policy, but were sometimes not called or told that Defendants did not
21 need them to work. When this occurred, Defendants did not pay them for at least half of their
22 scheduled standby time or the required minimum reporting time pay. Accordingly, Plaintiffs
23 and other non-party Aggrieved Employees were not properly compensated with reporting time
24 pay in violation of California Labor Code section 1198.

25 125. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
26 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

27 ///

28 ///

1 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

2 **VIOLATION OF LABOR CODE SECTION 2802**

3 126. At all times herein set forth, California Labor Code section 2802 provides that
4 an employer must reimburse employees for all necessary expenditures and losses incurred by
5 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
6 to prevent employers from passing off their cost of doing business and operating expenses on
7 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
8 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen the
9 employer requires the use of tools or equipment or they are necessary to the performance of a
10 job, such tools and equipment shall be provided and maintained by the employer, except that
11 an employee whose wages are at least two (2) times the minimum wage may provide and
12 maintain hand tools and equipment customarily required by the particular trade or craft."

13 127. First, during the relevant time period, Defendants, on a company-wide basis,
14 required that Plaintiffs and other non-party Aggrieved Employees use their own personal
15 cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them
16 for the costs of their work-related cellular phone expenses. For example, Plaintiffs and other
17 non-party Aggrieved Employees received work-related calls and were required to discuss their
18 assignments with Defendants' managers during their shifts and off-the-clock. Defendants also
19 required Plaintiffs and other non-party Aggrieved Employees to download applications onto
20 their personal cellular phones to conduct company business. For example, Plaintiff Desales
21 was required to download a mobile application called Dayforce to clock in and out and to
22 review and respond to work-related emails. In addition, Plaintiff Gomez was required to
23 download mobile applications, including Microsoft Outlook, SharePoint, One Note, Excel,
24 and Mobile Facilities, in order to respond to and document progress on work orders.
25 Although Defendants required Plaintiffs and other non-party Aggrieved Employees to utilize
26 their personal cellular phones to carry out their work-related responsibilities, Defendants
27 failed to fully reimburse them for this cost.

28 128. Second, during the relevant time period, Defendants, on a company-wide basis,

1 forced Plaintiffs and other non-party Aggrieved Employees to purchase their own supplies and
2 tools that were necessary for completion of their work-related duties. For example, Plaintiff
3 Gomez was required to spend \$500.00 on a spray gun machine and parts, and another
4 \$100.00-\$200.00 on shields, gloves, rags, tarps, and other basic tools and equipment when the
5 company-provided tools and equipment were lost or broken on the job. Moreover, Plaintiff
6 Desales was required to spend \$1,200.00 on a pressure washer, \$300.00 on a paint spray gun,
7 \$300.00 on an impact drill, \$200.00 on saw blades, and \$150.00 on a shop vacuum. He was
8 required to spend another \$80.00 per month on sandpaper, plastic rolls, masking paper, and
9 tape in order to carry out his work-related duties. When Plaintiff Desales raised these issues
10 with management, the manager would promise to provide the necessary supplies and tools, but
11 none of the supplies or equipment were ever provided to Plaintiff Desales. Although
12 Defendants required Plaintiffs and other non-party Aggrieved Employees to purchase their
13 own supplies and tools for use on the job, Defendants did not fully reimburse them for these
14 expenses.

15 129. Third, Defendants had a company-wide policy of requiring Plaintiffs and other
16 non-party Aggrieved Employees to utilize their own personal vehicles for work purposes, but
17 failed to reimburse them for all costs of travel, including mileage. For example,
18 approximately 1-2 times per month, Plaintiff Desales drove 30 miles roundtrip from the
19 property to Home Depot and Ace Hardware in order to obtain supplies and equipment in
20 Visalia, California. Similarly, Plaintiff Gomez sometimes drove up to 30 miles roundtrip from
21 the property to Home Depot, Sherwin Williams, and other hardware stores in order to obtain
22 supplies and paint. Plaintiff Gomez was also required to drive up to 72 miles total back and
23 forth from the property to haul materials and trash to the dump on at least two (2) occasions.
24 Additionally, when Plaintiff Gomez was required to drive to mandatory off-site property
25 maintenance and renovation assignments, such as to Pasadena, which was approximately 75
26 miles away, he was not compensated for their travel expenses or mileage.

27 130. Further, as stated, Defendants had a company-wide policy of requiring Plaintiff
28 Gomez and other non-party Aggrieved Employees to travel in their own personal vehicles to

1 obtain mandatory drug testing and/or physical examinations, but did not reimburse them for
2 their travel expenses, including mileage. At all times, Defendants were in control of
3 scheduling the date and time for the testing and/or physical examinations, selecting the
4 provider or facility where the testing and/or physical examinations were to take place, and
5 determining the scope of the testing and/or physical examinations. Defendants gave Plaintiff
6 Gomez and other non-party Aggrieved Employees strict instructions to obtain drug testing
7 and/or physical examinations, and Plaintiff Gomez and other non-party Aggrieved Employees
8 underwent the testing and/or physical examinations for the sole benefit of Defendants. As
9 described above, Plaintiff Gomez followed Defendants' instructions, traveled approximately
10 20 miles roundtrip in his personal vehicle to a designated medical facility in Palmdale and
11 underwent the requisite testing, but was not reimbursed for his mileage to and from the
12 medical facility. Although Defendants required Plaintiff Gomez and other non-party
13 Aggrieved Employees to use their own vehicles or obtain alternate transportation to carry out
14 their work-related responsibilities, Defendants never reimbursed them for their travel
15 expenses.

16 131. Fourth, Defendants required Plaintiff Desales and other non-party Aggrieved
17 Employees to wear uniform shirts bearing the company logo on a daily basis, but failed to
18 provide Plaintiff Desales and other non-party Aggrieved Employees with uniform cleaning
19 services or reimburse them for cleaning expenses incurred. For example, due to the nature of
20 his work, Plaintiff Desales's uniform shirts would become dirty with grime such that he was
21 unable to mix these clothes in with his other laundry. As a result, Plaintiff Desales and other
22 non-party Aggrieved Employees were forced to wash their uniform items separately from any
23 other items, thus incurring additional utility and laundry expenses.

24 132. Fifth, Defendants, on a company-wide basis, mandated that Plaintiff Gomez
25 and other non-party Aggrieved Employees purchase special safety shoes such as steel-toed
26 boots, which they were required to wear while at work. Plaintiff Gomez purchased steel-toed
27 boots, at a cost of approximately \$120.00 a pair, to wear during the performance of his duties,
28 but was not reimbursed for these costs.

1 133. Defendants could have provided Plaintiffs and other non-party Aggrieved
2 Employees with the actual tools for use on the job, such as company phones, company
3 vehicles, supplies and tools, and steel-toed boots. Or, Defendants could have reimbursed
4 employees for the costs of their cellular phone usage, travel expenses, mileage, supply and
5 tool expenses, laundering expenses, and boot expenses. Instead, Defendants passed these
6 operating costs off onto Plaintiffs and other non-party Aggrieved Employees. At all relevant
7 times, Plaintiffs and other non-party Aggrieved Employees did not earn at least two (2) times
8 the minimum wage.

9 134. Defendants' company-wide policy and/or practice of passing on their operating
10 costs to Plaintiffs and other non-party Aggrieved Employees violates California Labor Code
11 section 2802. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
12 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

13 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
14 **EMPLOYMENT - VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

15 135. California's Wage Theft Prevention Act was enacted to ensure that employers
16 provide employees with basic information material to their employment relationship at the
17 time of hiring, and to ensure that employees are given written and timely notice of any
18 changes to basic information material to their employment. Codified at California Labor
19 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
20 employer must provide written notice to employees containing basic and material payroll
21 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
22 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
23 overtime, the regular payday designated by the employer, and any allowances claims as part
24 of the minimum wage, including meal or lodging allowances. Labor Code section
25 2810.5(a)(1)(A)-(C).

26 136. Defendants failed to provide Plaintiffs and other non-party Aggrieved
27 Employees written notice that lists all the requisite information set forth in Labor Code section
28 2810.5(a)(1)(A)-(C) on a company-wide basis. Specifically, Defendants failed to provide

1 Plaintiff Gomez and other non-party Aggrieved Employees with all hourly rate(s) of pay,
2 including the overtime rate(s) of pay; additionally, Defendants failed to provide Plaintiff
3 Desales any written notice at all, in violation of section 2810.5(a)(1)(A). Defendants' failure
4 to provide Plaintiffs and other non-party Aggrieved Employees with written notice of basic
5 information regarding their employment with Defendants is in violation of Labor Code section
6 2810.5.

7 137. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
8 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

9 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

10 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

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

19 139. Defendants, on a company-wide basis, failed to provide Plaintiff Gomez and
20 other non-party Aggrieved Employees with personal protective equipment, such as steel-toed
21 boots, to keep them safe in the workplace. Despite the fact that Defendants required
22 employees to wear certain personal protective equipment, including steel-toed boots,
23 Defendants failed to provide such reasonably necessary equipment to Plaintiff Gomez and
24 other non-party Aggrieved Employees to keep them safe.

25 140. Defendants' failure to provide Plaintiff Gomez and other non-party Aggrieved
26 Employees with safety devices and safeguards for the workplace violates California Labor
27 Code sections 6401 and 6403. Plaintiff Gomez and other non-party Aggrieved Employees are
28 therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and

1 (g).

2 **REQUEST FOR JURY TRIAL**

3 Plaintiffs request a trial by jury.

4 **PRAYER FOR RELIEF**

5 Plaintiffs, on behalf of all other non-party Aggrieved Employees, pray for relief and
6 judgment against Defendants, jointly and severally, as follows:

7 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
8 (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different
9 amount.

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

11 2. That the Court declare, adjudge and decree that Defendants violated the
12 following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved
13 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
14 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
15 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
16 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
17 statements and maintain accurate payroll records); 201, 202, and 203 (by failing to timely pay
18 all earned wages upon termination); 204 (by failing to timely pay all earned wages during
19 employment); 222.5 (by failing to pay the costs of mandatory physical examinations and/or
20 drug testing); 1198 (by failing to provide reporting time pay); 2802 (by failing to reimburse
21 business expenses); 2810.5 (by failing to provide written notice of information material to
22 employment); and 6401 and 6403 (by failing to provide safety devices and safeguards);

23 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
24 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
25 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802,
26 2810.5, 6401, and 6403;

27 4. For attorneys' fees and costs pursuant to California Labor Code section
28 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California

1 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
2 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403;

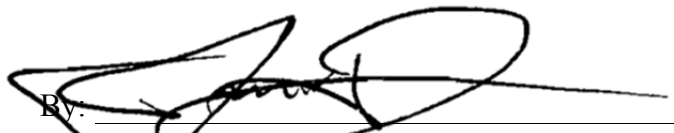
3 5. For pre-judgment and post-judgment interest as provided by law; and

4 6. For such other and further relief as the Court may deem equitable and
5 appropriate.

6
7
8 Dated: March 29, 2021

Respectfully submitted,

9 Capstone Law APC

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11 
12 By: Robert Drexler
13 Molly DeSario
14 Jonathan Lee
15 Helga Hakimi

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Attorneys for Plaintiffs Jorge Desales
and Nestor Gomez

Exhibit 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MICHELLE KENNEDY
310.712.8146 Direct
Michelle.Kennedy@capstonelawyers.com

January 22, 2021

VIA ONLINE SUBMISSION

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

Subject: *Jorge Desales v. Winn Management Group LLC, et al.*

Dear PAGA Administrator:

This office represents Jorge Desales in connection with his claims under the California Labor Code. Mr. Desales was an employee of WINN MANAGEMENT GROUP LLC; WINNCOMPANIES LLC; WINNRESIDENTIAL CALIFORNIA, INC.; and/or WINNRESIDENTIAL CALIFORNIA L.P. For the purpose of this letter, Mr. Desales collectively refers to these entities as "WINN."

The employers may be contacted directly at the addresses below:

WINN MANAGEMENT GROUP LLC
ONE WASHINGTON MALL, SUITE 500
BOSTON MA 02108

WINNCOMPANIES LLC
ONE WASHINGTON MALL, SUITE 500
BOSTON MA 02108

WINNRESIDENTIAL CALIFORNIA, INC.
ONE WASHINGTON MALL
BOSTON MA 02109

WINNRESIDENTIAL CALIFORNIA L.P.
2499 W SHAW AVE STE 103
FRESNO CA 93711

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

WINN employed Mr. Desales as an hourly paid, non-exempt employee from approximately November 2016 to June 2020. Mr. Desales worked for WINN as a Maintenance Technician at its residential property in San Diego, California. During his employment, Mr. Desales typically worked eight (8) to ten (10) hours or more per day, five (5) to six (6) days per week, from 8:00 a.m. to 5:00 p.m. At the time his employment ended, Mr. Desales was compensated approximately \$15.30 per

hour. His job duties included, without limitation, painting units, performing electrical and plumbing work, preparing and “flipping” vacant units for new tenants, executing work orders submitted by tenants, and maintaining and repairing the property as needed.

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

WINN’s Company-Wide and Uniform Payroll and HR Practices

WINN MANAGEMENT GROUP LLC; WINNRESIDENTIAL CALIFORNIA, INC.; and WINNRESIDENTIAL CALIFORNIA L.P are a California limited liability company, corporation, and limited partnership, respectively, while WINNCOMPANIES LLC is a Massachusetts limited liability company. WINN is the largest manager of affordable housing in the United States and one of the largest managers of private housing for the United States Armed Forces. Upon information and belief, WINN maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Boston, Massachusetts or Fresno, California, for all non-exempt, hourly paid employees working for WINN in California, including Mr. Desales and other aggrieved employees. At all relevant times, WINN issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Desales and other aggrieved employees, regardless of its location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration

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

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

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

First, during the relevant period, WINN had a policy and/or practice of discouraging and impeding Mr. Desales and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with WINN's use of labor budgets and assignment of heavy workloads and stringent deadlines (*see infra*), led Mr. Desales and other aggrieved employees to work off-the-clock before and/or after their scheduled shift times in order to complete their assigned tasks. WINN discouraged and impeded Mr. Desales and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, upon threat of discipline for incurring unapproved overtime hours. For example, after clocking out at the end of his shift, Mr. Desales was pressured to continue performing maintenance requests from residents, such as repairing plumbing. On information and belief, other aggrieved employees were also required to continue executing assigned work orders and meeting deadlines for flipping vacant rental units after clocking out at the end of their shifts. Alternatively, when other aggrieved employees did not clock out at their designated shift end-times, on information and belief, other aggrieved employees were subject to WINN's supervisors falsifying their time records in order to prevent employees from accruing overtime.

As a result of this restriction on overtime accrual, WINN also forced Mr. Desales and other aggrieved employees to continue to perform work-related tasks while off-the-clock, on their days off and outside of their scheduled shifts, in order to respond to all residents' and management's requests and complete their assigned tasks. For example, WINN's management would call and text Mr. Desales on his days off or outside of his scheduled shifts about work-related issues, including questions about residents and the property. Mr. Desales spent time off-the-clock responding to calls and texts from his managers to his personal cellular phone and was required to check his email off-the-clock multiple times during his employment. Additionally, when other aggrieved employees drove to mandatory off-site property maintenance and renovation assignments, they were not compensated for their travel time. At all times, Mr. Desales and other aggrieved employees remained under WINN's control. This off-the-clock work could have been recorded by WINN, but it refused to do so to avoid payment of additional wages to Mr. Desales and other aggrieved employees.

Second, during the relevant time period, WINN had a company-wide "on-call" policy, whereby it scheduled Mr. Desales and other aggrieved employees to work "on-call," or on standby. During an "on-call" shift, Mr. Desales and other aggrieved employees had to be available and report to work upon receiving a call from WINN notifying them that they needed to come in and work. When scheduled to be "on-call," Mr. Desales and other aggrieved employees were, in essence, on controlled standby for WINN because they could not use that time freely for their own purposes and were forced to put their lives on hold. For example, Mr. Desales refrained from making plans altogether while "on-call" for a standby shift because he knew that he had to drop whatever he was doing at a moment's notice if he received a call from WINN to report to work. However, WINN did

not pay Mr. Desales and other aggrieved employees for the time during which they were waiting to receive a call from WINN and unable to use their time for their own purposes.

Third, as stated above, on information and belief, WINN had, and continues to have, a company-wide policy and/or practice of strictly staffing its locations based on the labor hours allocated by corporate. WINN's uniform use of labor budgets, combined with heavy workloads and stringent deadlines, resulted in chronic understaffing and a failure to provide Mr. Desales and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload. Additionally, WINN has, on a company-wide basis, failed to adhere to a schedule of meal periods, which further impeded Mr. Desales and other aggrieved employees from taking timely, compliant meal periods. Accordingly, Mr. Desales and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads. For example, at least 1-2 times per month, Mr. Desales was pressured to clock out within the first five (5) hours of his shift and work through his meal periods, continuing to perform tasks, such as flipping vacant units within 2- to 3-day deadlines set by management. As a further example, Mr. Desales's unpaid meal periods were interrupted or cut short daily over a period of two (2) weeks, for about 5-10 minutes per instance, due to WINN's management requesting progress reports on work orders and repairs to vacant units. In addition, because WINN frowned upon employees accruing meal period penalties, WINN required Mr. Desales and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that WINN would otherwise owe. Thus, Mr. Desales and other aggrieved employees performed work during meal periods for which they were not paid.

Because Mr. Desales and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Desales and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. WINN's failure to pay Mr. Desales and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

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

Mr. Desales and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during

which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(G) (defining “Hours Worked”).

As stated, WINN discouraged and impeded Mr. Desales and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, upon threat of discipline. Thus, WINN required Mr. Desales and other aggrieved employees to perform work off-the-clock, answering phone calls from management, reviewing and responding to emails, and responding to and completing maintenance and repair requests from residents and management, but did not compensate them for this time. Additionally, WINN systematically, and on a company-wide basis, required Mr. Desales and other aggrieved employees to work “on-call” shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Desales and other aggrieved employees were subject to WINN’s control during an “on-call” shift, WINN did not pay Mr. Desales and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work.

Moreover, as set forth above, due to WINN’s company-wide practice of utilizing labor budgets, assigning heavy workloads and deadlines, failing to adhere to a schedule of meal periods, and subsequent lack of meal period coverage, Mr. Desales and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Additionally, as set forth above, on information and belief, WINN systematically failed to pay Mr. Desales and other aggrieved employees for actual hours worked during unpaid meal periods, because these hours were not always correctly recorded.

Furthermore, on information and belief, WINN maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, WINN was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. On information and belief, WINN gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of WINN. Other aggrieved employees were required to travel in their personal vehicles or obtain alternate transportation and spend time undergoing the requisite testing and/or examinations. However, WINN did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the mandatory drug testing and/or physical examinations.

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

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

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

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

As stated, WINN has, and continues to have, a company-wide policy and/or practice of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads and deadlines for flipping vacant units, which resulted in a lack of meal period coverage and prevented Mr. Desales and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, WINN failed to adhere to a schedule of meal periods, resulting in Mr. Desales and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods, due to the workload and pressure to meet deadlines to flip vacant units. Further, as stated, because WINN frowned upon employees accruing meal period penalties, on information and belief, WINN required Mr. Desales and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that WINN would otherwise owe.

Furthermore, during the relevant time period, WINN maintained a company-wide, unlawful written meal period policy insofar as it fails to state the timing of when meal periods must occur. Under California law, first meal periods must start after no more than five hours of work, and second meal periods must start after no more than ten hours of work. *Brinker*, 53 Cal. 4th at 1041-1042. However, WINN's written meal period policy states, in part:

Employee also agrees that to the extent any one period of work exceeds five (5) hours, Employee is released of all duty and must take a meal period of not less than 30 minutes. Employer and Employee agree that the meal period may be waived if the Employee works more than five (5) hours but less than or equal to six (6) hours. A second 30-minute meal break is required for employees who work more than ten (10) hours in a day. The second meal period may be waived by mutual consent if the total hours worked that day are no more than twelve (12) and the first meal period was not waived.

WINN's written policy fails to state the correct timing of when the first meal period must take place (i.e., within the first five (5) hours of work) and the timing of the second meal period must take place (i.e., within the first ten (10) hours of work) under California law, and is therefore facially invalid.

As a result of WINN's company-wide practices and/or policies, Mr. Desales and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, Mr. Desales missed meal periods approximately 1-2 times per month because he had to work through meal periods to meet his deadlines. Mr. Desales also worked in excess of five (5) hours before taking a meal period on several occasions, due to urgent repairs and/or deadlines.

Moreover, WINN did not provide Mr. Desales and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Desales and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Desales and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

WINN knew or should have known that as a result of its company-wide policies and/or practices, that Mr. Desales and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. WINN further knew or should have known that it did not pay Mr. Desales and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

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

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

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

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

hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

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

During the relevant time period, WINN regularly failed to authorize and permit Mr. Desales and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, WINN’s policies and/or practices of utilizing labor budgets, resultant understaffing, assigning of heavy workloads, and pressure to meet deadlines, prevented Mr. Desales and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. WINN also failed to schedule rest periods, which, coupled with WINN’s failure to provide adequate rest period coverage, further led to Mr. Desales and other aggrieved employees not being authorized and permitted to take rest periods. WINN also had a policy or practice of failing to authorize and permit Mr. Desales and other aggrieved employees to take third rest periods when they worked in excess of 10 hours in one day.

Additionally, during the relevant time period, WINN maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Desales and/or other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, WINN’s company-wide on-premises rest period policy prevented Mr. Desales and/or other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result of WINN’s practices and policies, Mr. Desales and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during his employment, Mr. Desales missed 5-6 rest periods per week due to the heavy workload and the lack of coverage for rest periods.

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

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. WINN has not provided Mr. Desales and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, WINN has knowingly and intentionally provided Mr. Desales and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, WINN issued uniform wage statements to Mr. Desales and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, WINN violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

Second, because WINN did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, WINN did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). WINN also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, WINN issued uniform wage statements to Mr. Desales and other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, WINN systematically, and on a company-wide basis, issued wage statements to Mr. Desales and other aggrieved employees that fail to list the employing entity's name and address. *See example paystub below.*

Employee Information				Tax Type		Tax Jurisdiction		Status		Alt Code 01	
Jorge Desales ID# [REDACTED] SSN# [REDACTED] Pay Type: Hourly Base Rate: 15.3000 Dept: Maintenance				Federal State		CA		[REDACTED]		[REDACTED]	
Earnings								Pre-Tax Deductions Withheld			
Pd Start	Pd End	Description	PayRate	Hrs/Units	Earnings	YTD Hrs	YTD Earnings	Description	Sch/Amt	Curr Amt	YTD Amount
		Regular	15.3000	21.80	333.54	754.17	11538.75				
		Holiday				40.00	612.00				
		Overtime				25.70	589.84				
		Early Close				2.00	30.60				
		ATO	15.3000	2.11	32.28	93.11	1424.58				
		On Call Non Wkd				1.53	23.46				
		On Call				4.47	102.51				
		CA Meal Penalty				1.00	15.30				
		Sick				48.00	734.40				
		*401K ER Match			7.32		301.46				
		*GTL			0.65		7.80				
		*LTD			4.55		54.60				
Total Hours and Earnings								23.91 365.82 969.97 15071.44			
Other Payroll Information											
Job Title: OPS Maintenance Technician II Pay Group: Biweekly											
Messages from your Employer											
*Indicates Taxable Benefit or Memo, not included in Totals											
Gross To Net Recap								Net-Pay Distribution			
	Paid	Pre-Tax	Taxes	Deductions	Total Net Pay	Description	Account Number	Amount			
Current	365.82	[REDACTED]	32.09	0.00	319.10	Check		319.10			
YTD	15071.44	[REDACTED]	1975.37	0.00	12493.21	Total Current Net Pay			319.10		
Taxes Withheld											
Description	Tx Wages	Curr Amt	YTD Amount								
Fed W/H	356.39		491.64								
FICA EE	371.02	73.01	938.90								
Fed MWT EE	371.02	5.38	219.44								
CA W/H	356.39		174.73								
CA OT EE	370.37	3.70	151.26								
Total Taxes								32.09		1975.37	
Post-Tax Deductions Withheld											
Description	Sch/Amt	Curr Amt	YTD Amount								
								0.00		0.00	

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

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

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

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

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

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

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

During the relevant time period, WINN failed to pay Mr. Desales and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, within any time period specified by California Labor Code section 204.

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

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

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

On information and belief, WINN has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, other aggrieved employees were paid the remainder of their wages more than 14 days after termination. Thus, WINN failed to pay other aggrieved employees their final wages immediately, in violation of Labor Code section 201.

Additionally, WINN willfully failed to pay Mr. Desales and other aggrieved employees who are no longer employed by WINN all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving WINN's employ in violation of California Labor Code sections 201, 202, and 203.

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

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

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

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

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

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

WINN violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because WINN failed to pay Mr. Desales and other aggrieved employees reporting time pay when they reported to work for their scheduled shifts, but were put to work for less than half of the regular schedule.

As stated above, WINN failed to pay Mr. Desales and other aggrieved employees reporting time pay when they presented themselves ready for work by waiting “on-call” and awaiting instructions on whether to they needed to show up, but ultimately were not called. WINN did not pay Mr. Desales and other aggrieved employees for at least half of their scheduled day’s work when they were subject to WINN’s on-call policy and were not called or told not to come into work. For example, Mr. Desales waited at his home during his scheduled “on-call” shifts as required by WINN’s on-call policy, but was sometimes not called or told that WINN did not need him to work. When this occurred, WINN did not pay him for at least half of his scheduled standby time or the required minimum reporting time pay.

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages

are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, WINN, on a company-wide basis, required that Mr. Desales and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Mr. Desales and other aggrieved employees received work-related calls and were required to discuss their assignments with WINN’s managers during shifts and off-the-clock. WINN also required Mr. Desales and other aggrieved employees to download applications onto their personal cell phones to conduct company business. For example, Mr. Desales was required to download a mobile application called Dayforce to clock in and out and to review and respond to work-related emails. Although WINN required Mr. Desales and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, WINN failed to fully reimburse them for this cost.

Second, during the relevant time period, WINN, on a company-wide basis, forced Mr. Desales and other aggrieved employees to purchase their own supplies and tools that were necessary for completion of their work-related duties. For example, Mr. Desales was required to spend \$1,200.00 on a pressure washer, \$300.00 on a paint spray gun, \$300.00 on an impact drill, \$200.00 on saw blades, and \$150.00 on a shop vacuum. He was required to spend another \$80.00 per month on sandpaper, plastic rolls, masking paper, and tape in order to carry out his work-related duties. When Mr. Desales raised these issues with management, the manager would promise to provide the necessary supplies and tools, but none of the supplies or equipment were ever provided to Mr. Desales. Other aggrieved employees were also required to purchase spray gun machines, shields, gloves, rags, tarps, and other basic tools and equipment when the company-provided tools and equipment were lost or broken on the job. Although WINN required Mr. Desales and other aggrieved employees to purchase their own supplies and tools for use on the job, WINN did not fully reimburse them for these expenses.

Third, WINN had a company-wide policy of requiring Mr. Desales and other aggrieved employees to utilize their own personal vehicles for work purposes, but failed to reimburse them for all costs of travel, including mileage. For example, approximately 1-2 times per month, Mr. Desales drove 30 miles roundtrip from the property to Home Depot and Ace Hardware in order to obtain supplies and equipment in Visalia, California. Further, as stated, WINN had a company-wide policy of requiring other aggrieved employees to travel in their own personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, WINN was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. WINN gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of WINN. Although WINN required Mr. Desales and other aggrieved employees to use their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, WINN never reimbursed them for their travel expenses.

Fourth, WINN required Mr. Desales and other aggrieved employees to wear uniform shirts bearing the company logo on a daily basis, but failed to provide Mr. Desales and other aggrieved employees with uniform cleaning services or reimburse them for cleaning expenses incurred. For example, due to the nature of his work, Mr. Desales’s uniform shirts would become dirty with grime such that he

was unable to mix these clothes in with his other laundry. As a result, he was forced to wash his uniform items separately from any other items, thus incurring additional utility and laundry expenses.

Fifth, WINN, on a company-wide basis, mandated that other aggrieved employees purchase special safety shoes such as steel-toed boots, which they were required to wear while at work. Other aggrieved employees purchased steel-toed boots, at a cost of approximately \$120.00 a pair, to wear during the performance of their duties, but were not reimbursed for these costs.

WINN could have provided Mr. Desales and other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, supplies and tools, and steel-toed boots. Or, WINN could have reimbursed employees for the costs of their cellular phone usage, travel expenses, mileage, supply and tool expenses, laundering expenses, and boot expenses. Instead, WINN passed these operating costs off onto Mr. Desales and other aggrieved employees. At all relevant times, Mr. Desales and other aggrieved employees did not earn at least two (2) times the minimum wage.

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

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

WINN failed to provide Mr. Desales and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C) on a company-wide basis. Specifically, WINN failed to provide Mr. Desales any written notice at all; alternatively, WINN failed to provide other aggrieved employees with the hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). WINN's failure to provide Mr. Desales and other aggrieved employees with written notice of basic information regarding their employment with WINN is in violation of Labor Code section 2810.5.

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

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

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

WINN, on a company-wide basis, failed to provide other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. For example, other aggrieved employees spent approximately \$120.00 on the required steel-toed boots. Despite the fact that WINN required employees to wear certain personal protective equipment, including steel-toed boots, WINN failed to provide such reasonably necessary equipment to other aggrieved employees to keep them safe.

WINN's failure to provide other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." WINN, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Desales's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Desales seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Desales, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against WINN for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

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

Pre-Litigation Demand

This notice shall further serve as Mr. Desales's reasonable attempt to settle his dispute with WINN prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform WINN of Mr. Desales's aforementioned grievances and the proposed remedies as detailed below, while affording WINN a reasonable opportunity to satisfy Mr. Desales's demands.

Demand is hereby made that WINN shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. WINN shall pay Mr. Desales and all other aggrieved employees employed by WINN at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. WINN shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid all reporting time pay.
3. WINN shall conduct a survey or interview all current and former aggrieved employees in California who worked for WINN in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for cellular phone expenses, travel, mandatory medical examinations, supply and tool expenses, laundering expenses, boot expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. WINN shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. WINN also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. WINN shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for WINN's benefit, including, but not limited to, cellular phone expenses, travel, mandatory medical examinations, supply and tool expenses, laundering expenses, boot expenses, or other expenditures, as required by Labor Code sections 222.5 and 2802.
6. WINN shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. WINN shall provide Mr. Desales and all aggrieved employees employed by WINN at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. WINN shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

9. WINN shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe, pursuant to Labor Code sections 6401 and 6403.
10. WINN shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
11. WINN shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

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

Michelle Kennedy
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 712-8146

Best Regards,



Michelle Kennedy

Copy: WINN MANAGEMENT COMPANY LLC (via U.S. Certified Mail); WINNCOMPANIES LLC (via U.S. Certified Mail); WINNRESIDENTIAL CALIFORNIA, INC. (via U.S. Certified Mail); WINNRESIDENTIAL CALIFORNIA L.P. (via U.S. Certified Mail)

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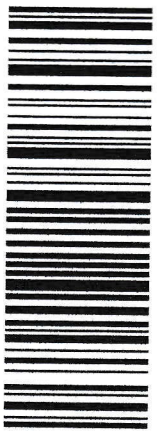
Desales v. Winn
Management Group
LLC

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CA 90067



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WINNCOMPANIES LLC
ONE WASHINGTON MALL, SUITE 500
BOSTON MA 02108



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Park East, Ste 1000
San Francisco, CA 94106

WINNRESIDENTIAL CALIFORNIA, INC.
ONE WASHINGTON MALL
BOSTON MA 02109



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ONE WASHINGTON MALL
BOSTON MA 02109



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Desales v.
Winn Residential
California, Inc.



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s, CA 90067

WINNRESIDENTIAL CALIFORNIA L.P.
2499 W SHAW AVE STE 103
FRESNO CA 93711



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2499 W SHAW AVE STE 103
FRESNO CA 93711



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Total Postage and Fees

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Winnresidential
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1. Article Addressed to:

WINNRESIDENTIAL CALIFORNIA, INC.
ONE WASHINGTON MALL
BOSTON MA 02109



9590 9402 1512 5362 2723 67

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0640

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Covid

☐ Agent☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

1/25/21

D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

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

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

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1. Article Addressed to:

WINN MANAGEMENT GROUP LLC
ONE WASHINGTON MALL, SUITE 500
BOSTON MA 02108



9590 9402 1512 5362 2723 81

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0664

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

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☐ Agent☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

1/25/21

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

3. Service Type

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

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

Domestic Return Receipt

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

1. Article Addressed to:

WINNRESIDENTIAL CALIFORNIA L.P.
2499 W SHAW AVE STE 103
FRESNO CA 93711



9590 9402 1512 5362 2723 74

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0657

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Betty Lopez

☐ Agent☐ Addressee

B. Received by (Printed Name)

CORP 120 100

C. Date of Delivery

1/25/21

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

3. Service Type

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

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

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

WINNCOMPANIES LLC
ONE WASHINGTON MALL, SUITE 500
BOSTON MA 02108



9590 9402 1512 5362 2723 50

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0633

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x Covid

☐ Agent☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

11/26/21

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

3. Service Type

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

Domestic Return Receipt

Exhibit 2

MICHELLE KENNEDY
310.712.8146 Direct
Michelle.Kennedy@capstonelawyers.com

January 22, 2021

VIA ONLINE SUBMISSION

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

Subject: *Nestor Gomez v. Winn Management Group LLC, et al.*

Dear PAGA Administrator:

This office represents Nestor Gomez in connection with his claims under the California Labor Code. Mr. Gomez was an employee of WINN MANAGEMENT GROUP LLC; WINNCOMPANIES LLC; WINNRESIDENTIAL CALIFORNIA, INC.; and/or WINNRESIDENTIAL CALIFORNIA L.P. For the purpose of this letter, Mr. Gomez collectively refers to these entities as “WINN.”

The employers may be contacted directly at the addresses below:

WINN MANAGEMENT GROUP LLC
ONE WASHINGTON MALL, SUITE 500
BOSTON MA 02108

WINNCOMPANIES LLC
ONE WASHINGTON MALL, SUITE 500
BOSTON MA 02108

WINNRESIDENTIAL CALIFORNIA, INC.
ONE WASHINGTON MALL
BOSTON MA 02109

WINNRESIDENTIAL CALIFORNIA L.P.
2499 W SHAW AVE STE 103
FRESNO CA 93711

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

WINN employed Mr. Gomez as an hourly paid, non-exempt employee from approximately February 2020 to May 2020. Mr. Gomez worked for WINN as a Maintenance Supervisor at its residential property in Rosamond, California. During his employment, Mr. Gomez typically worked eight (8) hours or more per day, five (5) days per week, from 7:00 a.m. to 4:00 p.m. At the time his employment ended, Mr. Gomez was compensated approximately \$17.22 per hour. His job duties

included, without limitation, preparing and “flipping” vacant units for new tenants, reviewing work orders from the front office, planning and preparing for repair work, purchasing supplies, documenting progress of work orders, and maintaining and repairing the property as needed.

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

WINN’s Company-Wide and Uniform Payroll and HR Practices

WINN MANAGEMENT GROUP LLC; WINNRESIDENTIAL CALIFORNIA, INC.; and WINNRESIDENTIAL CALIFORNIA L.P are a California limited liability company, corporation, and limited partnership, respectively, while WINNCOMPANIES LLC is a Massachusetts limited liability company. WINN is the largest manager of affordable housing in the United States and one of the largest managers of private housing for the United States Armed Forces. Upon information and belief, WINN maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Boston, Massachusetts or Fresno, California, for all non-exempt, hourly paid employees working for WINN in California, including Mr. Gomez and other aggrieved employees. At all relevant times, WINN issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Gomez and other aggrieved employees, regardless of its location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration

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

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

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

First, during the relevant period, WINN had a policy and/or practice of discouraging and impeding Mr. Gomez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with WINN's use of labor budgets and assignment of heavy workloads and stringent deadlines (*see infra*), led Mr. Gomez and other aggrieved employees to work off-the-clock before and/or after their scheduled shift times in order to complete their assigned tasks. WINN discouraged and impeded Mr. Gomez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, upon threat of discipline for incurring unapproved overtime hours. For example, before clocking in for each shift, Mr. Gomez spent 10-15 minutes collecting litter and trash on the property, but was expressly discouraged from clocking in before his scheduled shift time. After clocking out at the end of his shift, Mr. Gomez was pressured to continue performing maintenance requests from residents, such as repairing plumbing, or other property maintenance, such as putting away dumpsters. He was also required to continue executing assigned work orders and meeting deadlines for flipping vacant rental units after clocking out at the end of his shifts. Alternatively, when Mr. Gomez and other aggrieved employees did not clock out at their designated shift end-times, on information and belief, Mr. Gomez and other aggrieved employees were subject to WINN's supervisors falsifying their time records in order to prevent employees from accruing overtime.

As a result of this restriction on overtime accrual, WINN also forced Mr. Gomez and other aggrieved employees to continue to perform work-related tasks while off-the-clock, on their days off and outside of their scheduled shifts, in order to respond to all residents' and management's requests and complete their assigned tasks. For example, WINN's management would call and text Mr. Gomez on his days off or outside of his scheduled shifts about work-related issues, including questions about residents and the property. Mr. Gomez was required to respond to emails from management about work-related issues while off-the-clock at least 10 minutes per day. Additionally, when Mr. Gomez drove to mandatory off-site property maintenance and renovation assignments, such as to Pasadena, which took more than 4 hours round trip, he was not compensated for his travel time. At all times, Mr. Gomez and other aggrieved employees remained under WINN's control. This off-the-clock work could have been recorded by WINN, but it refused to do so to avoid payment of additional wages to Mr. Gomez and other aggrieved employees.

Second, during the relevant time period, WINN had a company-wide "on-call" policy, whereby it scheduled Mr. Gomez and other aggrieved employees to work "on-call," or on standby. During an "on-call" shift, Mr. Gomez and other aggrieved employees had to be available and report to work upon receiving a call from WINN notifying them that they needed to come in and work. When scheduled to be "on-call," Mr. Gomez and other aggrieved employees were, in essence, on controlled standby for WINN because they could not use that time freely for their own purposes and were forced to put their lives on hold. For example, Mr. Gomez refrained from making plans altogether while "on-call" for a standby shift because he knew that he had to drop whatever he was doing at a

moment's notice if he received a call from WINN to report to work. However, WINN did not pay Mr. Gomez and other aggrieved employees for the time during which they were waiting to receive a call from WINN and unable to use their time for their own purposes.

Third, as stated above, on information and belief, WINN had, and continues to have, a company-wide policy and/or practice of strictly staffing its locations based on the labor hours allocated by corporate. WINN's uniform use of labor budgets, combined with heavy workloads and stringent deadlines, resulted in chronic understaffing and a failure to provide Mr. Gomez and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload. Additionally, WINN has, on a company-wide basis, failed to adhere to a schedule of meal periods, which further impeded Mr. Gomez and other aggrieved employees from taking timely, compliant meal periods. Accordingly, Mr. Gomez and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads. For example, at least 2-3 times per week, Mr. Gomez was pressured to clock out within the first five (5) hours of his shift and work through his meal periods, continuing to perform tasks, such as flipping vacant units within 5- to 7-day deadlines set by management. As a further example, Mr. Gomez's unpaid meal periods were interrupted or cut short by at least 30 minutes or more on at least five (5) occasions, when WINN's management would request progress reports on work orders and repairs to vacant units or assigning him tasks to complete during his meal period. In addition, because WINN frowned upon employees accruing meal period penalties, WINN required Mr. Gomez and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that WINN would otherwise owe. Thus, Mr. Gomez and other aggrieved employees performed work during meal periods for which they were not paid.

Because Mr. Gomez and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Gomez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. WINN's failure to pay Mr. Gomez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

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

Mr. Gomez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum

so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(G) (defining “Hours Worked”).

As stated, WINN discouraged and impeded Mr. Gomez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, upon threat of discipline. Thus, WINN required Mr. Gomez and other aggrieved employees to perform work off-the-clock, such as collecting litter, putting away dumpsters, answering phone calls from management, reviewing and responding to emails, and responding to and completing maintenance and repair requests from residents and management, but did not compensate them for this time. Additionally, WINN systematically, and on a company-wide basis, required Mr. Gomez and other aggrieved employees to work “on-call” shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Gomez and other aggrieved employees were subject to WINN’s control during an “on-call” shift, WINN did not pay Mr. Gomez and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work.

Moreover, as set forth above, due to WINN’s company-wide practice of utilizing labor budgets, assigning heavy workloads and deadlines, failing to adhere to a schedule of meal periods, and subsequent lack of meal period coverage, Mr. Gomez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Additionally, as set forth above, on information and belief, WINN systematically failed to pay Mr. Gomez and other aggrieved employees for actual hours worked during unpaid meal periods, because these hours were not always correctly recorded.

Furthermore, on information and belief, WINN maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, WINN was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. On information and belief, WINN gave Mr. Gomez and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of WINN. Mr. Gomez and other aggrieved employees were required to travel in their personal vehicles or obtain alternate transportation and spend time undergoing the requisite testing and/or examinations. For example, Mr. Gomez followed WINN’s instructions, traveled approximately 20 miles roundtrip (for approximately 30-40 minutes total), in his personal vehicle to and from a designated medical facility in Palmdale, and spent 15-20 minutes waiting at the medical facility and undergoing the requisite testing. However, WINN did not compensate Mr. Gomez and other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the mandatory drug testing and/or physical examinations.

Thus, WINN did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, WINN did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, WINN regularly failed to pay at least minimum wages to Mr. Gomez and other aggrieved employees

for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

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

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

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

As stated, WINN has, and continues to have, a company-wide policy and/or practice of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads and deadlines for flipping vacant units, which resulted in a lack of meal period coverage and prevented Mr. Gomez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, WINN failed to adhere to a schedule of meal periods, resulting in Mr. Gomez and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods, due to the workload and pressure to meet deadlines to flip vacant units. Further, as stated, because WINN frowned upon employees accruing meal period penalties, on information and belief, WINN required Mr. Gomez and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that WINN would otherwise owe.

Furthermore, during the relevant time period, WINN maintained a company-wide, unlawful written meal period policy insofar as it fails to state the timing of when meal periods must occur. Under California law, first meal periods must start after no more than five hours of work, and second meal periods must start after no more than ten hours of work. *Brinker*, 53 Cal. 4th at 1041-1042. However, WINN's written meal period policy states, in part:

Employee also agrees that to the extent any one period of work exceeds five (5) hours, Employee is released of all duty and must take a meal period of not less than 30 minutes. Employer and Employee agree that the meal period may be waived if the Employee works more than five (5) hours but less than or equal to six (6) hours. A second 30-minute

meal break is required for employees who work more than ten (10) hours in a day. The second meal period may be waived by mutual consent if the total hours worked that day are no more than twelve (12) and the first meal period was not waived.

WINN's written policy fails to state the correct timing of when the first meal period must take place (i.e., within the first five (5) hours of work) and the timing of the second meal period must take place (i.e., within the first ten (10) hours of work) under California law, and is therefore facially invalid.

As a result of WINN's company-wide practices and/or policies, Mr. Gomez and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, at least 2-3 times per week, Mr. Gomez was pressured to clock out within the first five (5) hours of his shift and work through his meal periods, continuing to perform tasks, such as flipping vacant units within 5- to 7-day deadlines set by management. As a further example, Mr. Gomez's unpaid meal periods were interrupted or cut short by at least 30 minutes or more on at least five (5) occasions, due to WINN's management requesting progress reports on work orders and repairs to vacant units or assigning him tasks to complete during his meal period.

Moreover, WINN did not provide Mr. Gomez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Gomez and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Gomez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

WINN knew or should have known that as a result of its company-wide policies and/or practices, that Mr. Gomez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. WINN further knew or should have known that it did not pay Mr. Gomez and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

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

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

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

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

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

During the relevant time period, WINN regularly failed to authorize and permit Mr. Gomez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, WINN's policies and/or practices of utilizing labor budgets, resultant understaffing, assigning of heavy workloads, and pressure to meet deadlines, prevented Mr. Gomez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. WINN also failed to schedule rest periods, which, coupled with WINN's failure to provide adequate rest period coverage, further led to Mr. Gomez and other aggrieved employees not being authorized and permitted to take rest periods. WINN also had a policy or practice of failing to authorize and permit Mr. Gomez and other aggrieved employees to take third rest periods when they worked in excess of 10 hours in one day.

Additionally, during the relevant time period, WINN maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Gomez and other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, WINN's company-wide on-premises rest period policy prevented Mr. Gomez and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result of WINN's practices and policies, Mr. Gomez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during his employment, Mr. Gomez missed 5-6 rest periods per week due to the heavy workload and the lack of coverage for rest periods.

WINN also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Gomez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that WINN did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, WINN did not pay other

aggrieved employees at the correct rate of pay for premium wages because WINN failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. WINN has not provided Mr. Gomez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, WINN has knowingly and intentionally provided Mr. Gomez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, WINN issued uniform wage statements to Mr. Gomez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, WINN violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

Second, because WINN did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, WINN did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). WINN also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, WINN issued uniform wage statements to other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, WINN systematically, and on a company-wide basis, issued wage statements to other aggrieved employees that fail to list the employing entity's name and address. See example paystub below.

Example paystub below.

Employee Information			Tax Type		Tax Jurisdiction		Status	Rate	Alt Code		
ID# [REDACTED] SSN# [REDACTED] Pay Type: Hourly Base Rate: 15.3000 Dept: Maintenance			Federal State		CA		[REDACTED]	\$0.00	Alt Code 01		
Earnings								Pre-Tax Deductions Withheld			
Pd Start	Pd End	Description	PayRate	Hrs/Units	Earnings	YTD Hrs	YTD Earnings	Description	Sch/Amt	Curr Amt	YTD Amount
		Regular	15.3000	21.80	333.54	754.17	11538.75				
		Holiday				40.00	812.00				
		Overtime				25.70	589.84				
		Early Close				2.00	30.60				
		ATO	15.3000	2.11	32.28	93.11	1424.58				
		On Call Non Wkd				1.53	23.46				
		On Call				4.47	102.51				
		CA Meal Penalty				1.00	15.30				
		Sick				48.00	734.40				
		*401K ER Match			7.32		301.46				
		*GTL			0.65		7.80				
		*LTD			4.55		54.60				
Total Hours and Earnings								Total Pre-Tax			
								Taxes Withheld			
								Description	Tx Wages	Curr Amt	YTD Amount
								Fed W/H	356.39		491.64
								FICA EE	371.02	73.01	938.30
								Fed MWT EE	371.02	5.38	219.44
								CA W/H	356.39		174.73
								CA OT EE	370.37	3.70	151.26
								Total Taxes		32.09	1975.37
								Post-Tax Deductions Withheld			
								Description	Sch/Amt	Curr Amt	YTD Amount

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

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

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

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

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

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

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

During the relevant time period, WINN failed to pay Mr. Gomez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, within any time period specified by California Labor Code section 204.

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

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

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

On information and belief, WINN has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, other aggrieved employees were paid the remainder of their wages more than 14 days after termination. Thus, WINN failed to pay other aggrieved employees their final wages immediately, in violation of Labor Code section 201.

Additionally, WINN willfully failed to pay Mr. Gomez and other aggrieved employees who are no longer employed by WINN all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving WINN's employ in violation of California Labor Code sections 201, 202, and 203.

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

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

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

During the relevant time period, WINN implemented, on a company-wide basis, an employer-imposed requirement that Mr. Gomez and other aggrieved employees undergo a mandatory physical examination and/or drug test, but required them to do so at their own expense. As stated, upon information and belief, WINN had a company-wide policy requiring that all employees travel to a specified medical facility using their own personal vehicles to undergo physical examinations and/or drug testing. At all times, WINN was in control of scheduling the date and time for the examination and/or testing, selecting the provider/facility where the examination and/or testing was to take place, and determining the scope of the examination and/or testing.

Mr. Gomez and other aggrieved employees were required to travel in their own personal vehicles to designated medical facilities and spend time undergoing WINN's mandatory drug test and/or physical examination. For example, Mr. Gomez followed WINN's instructions, traveled approximately 20 miles roundtrip (for approximately 30-40 minutes total), in his personal vehicle to and from a designated medical facility in Palmdale, and spent 15-20 minutes waiting at the medical facility and undergoing the requisite testing. However, WINN did not compensate Mr. Gomez and other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. WINN's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory physical examinations and/or drug testing is in violation of California Labor Code section 222.5.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

WINN violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because WINN failed to pay Mr. Gomez and other aggrieved employees reporting time pay when they reported to work for their scheduled shifts, but were put to work for less than half of the regular schedule.

As stated above, WINN failed to pay Mr. Gomez and other aggrieved employees reporting time pay when they presented themselves ready for work by waiting “on-call” and awaiting instructions on whether to they needed to show up, but ultimately were not called. WINN did not pay Mr. Gomez and other aggrieved employees for at least half of their scheduled day's work when they were subject to WINN's on-call policy and were not called or told not to come into work. For example, Mr. Gomez waited at his home during his scheduled “on-call” shifts as required by WINN's on-call policy, but was sometimes not called or told that WINN did not need him to work. When this occurred, WINN did not pay him for at least half of his scheduled standby time or the required minimum reporting time pay.

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, WINN, on a company-wide basis, required that Mr. Gomez and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Mr. Gomez and other aggrieved employees received work-related calls and were required to discuss their assignments with WINN's managers during shifts and off-the-clock. WINN also required Mr. Gomez and other aggrieved employees to download applications onto their personal cell phones to conduct company business. For example, Mr. Gomez was required to download mobile applications, including Microsoft Outlook, SharePoint, One Note, Excel, and Mobile Facilities, in order to respond to and document progress on work orders. Although WINN required Mr. Gomez and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, WINN failed to fully reimburse them for this cost.

Second, during the relevant time period, WINN, on a company-wide basis, forced Mr. Gomez and other aggrieved employees to purchase their own supplies and tools that were necessary for completion of their work-related duties. For example, Mr. Gomez was spend \$500.00 on a spray gun machine and parts, and another \$100-\$200 on shields, gloves, rags, tarps, and other basic tools and equipment when the company-provided tools and equipment were lost or broken on the job. Other aggrieved employees were also required to purchase pressure washers, paint spray guns, impact drills, saw blades, shop vacuums, sandpaper, plastic rolls, masking paper, and tape in order to carry out their work-related duties. Although WINN required Mr. Gomez and other aggrieved employees to purchase their own supplies and tools for use on the job, WINN did not fully reimburse them for these expenses.

Third, WINN had a company-wide policy of requiring Mr. Gomez and other aggrieved employees to utilize their own personal vehicles for work purposes, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Gomez sometimes drove up to 30 miles roundtrip from the property to Home Depot, Sherwin Williams, and other hardware stores in order to obtain supplies and paint. Mr. Gomez was also required to drive up to 72 miles total back and forth from the property to haul materials and trash to the dump on at least two (2) occasions. Additionally, when Mr. Gomez was required to drive to mandatory off-site property maintenance and renovation assignments, such as to Pasadena, which was approximately 75 miles away, he was not compensated for their travel expenses or mileage. Further, as stated, WINN had a company-wide policy of requiring Mr. Gomez and other aggrieved employees to travel in their own personal vehicles to

obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, WINN was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. WINN gave Mr. Gomez and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of WINN. Although WINN required Mr. Gomez and other aggrieved employees to use their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, WINN never reimbursed them for their travel expenses.

Fourth, WINN required other aggrieved employees to wear uniform shirts bearing the company logo on a daily basis, but failed to provide other aggrieved employees with uniform cleaning services or reimburse them for cleaning expenses incurred. For example, due to the nature of their work, other aggrieved employees' uniform shirts would become dirty with grime such that they were unable to mix these clothes in with their other laundry. As a result, other aggrieved employees were forced to wash their uniform items separately from any other items, thus incurring additional utility and laundry expenses.

Fifth, WINN, on a company-wide basis, mandated that Mr. Gomez and other aggrieved employees purchase special safety shoes such as steel-toed boots, which they were required to wear while at work. Mr. Gomez purchased steel-toed boots, at a cost of approximately \$120.00 a pair, to wear during the performance of his duties, but was not reimbursed for these costs.

WINN could have provided Mr. Gomez and other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, supplies and tools, and steel-toed boots. Or, WINN could have reimbursed employees for the costs of their cellular phone usage, travel expenses, mileage, supply and tool expenses, laundering expenses, and boot expenses. Instead, WINN passed these operating costs off onto Mr. Gomez and other aggrieved employees. At all relevant times, Mr. Gomez and other aggrieved employees did not earn at least two (2) times the minimum wage.

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

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the

use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

WINN failed to provide Mr. Gomez and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C) on a company-wide basis. Specifically, WINN failed to provide Mr. Gomez and other aggrieved employees with the hourly rate(s) of pay, including the overtime rate(s) of pay; alternatively, WINN failed to provide Mr. Gomez any written notice at all, in violation of section 2810.5(a)(1)(A). WINN's failure to provide Mr. Gomez and other aggrieved employees with written notice of basic information regarding their employment with WINN is in violation of Labor Code section 2810.5.

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

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

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

WINN, on a company-wide basis, failed to provide Mr. Gomez and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. For example, Mr. Gomez spent approximately \$120.00 on the required steel-toed boots. Despite the fact that WINN required employees to wear certain personal protective equipment, including steel-toed boots, WINN failed to provide such reasonably necessary equipment to Mr. Gomez and other aggrieved employees to keep them safe.

WINN's failure to provide Mr. Gomez and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Gomez and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

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

violated Mr. Gomez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Gomez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Gomez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against WINN for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

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

Pre-Litigation Demand

This notice shall further serve as Mr. Gomez's reasonable attempt to settle his dispute with WINN prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform WINN of Mr. Gomez's aforementioned grievances and the proposed remedies as detailed below, while affording WINN a reasonable opportunity to satisfy Mr. Gomez's demands.

Demand is hereby made that WINN shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. WINN shall pay Mr. Gomez and all other aggrieved employees employed by WINN at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. WINN shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid all reporting time pay.
3. WINN shall conduct a survey or interview all current and former aggrieved employees in California who worked for WINN in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for cellular phone expenses, travel, mandatory medical examinations, supply and tool expenses, laundering expenses, boot expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. WINN shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. WINN also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.

5. WINN shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for WINN's benefit, including, but not limited to, cellular phone expenses, travel, mandatory medical examinations, supply and tool expenses, laundering expenses, boot expenses, or other expenditures, as required by Labor Code sections 222.5 and 2802.
6. WINN shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. WINN shall provide Mr. Gomez and all aggrieved employees employed by WINN at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. WINN shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
9. WINN shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe, pursuant to Labor Code sections 6401 and 6403.
10. WINN shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
11. WINN shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

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

Michelle Kennedy
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 712-8146

Best Regards,



Michelle Kennedy

Copy: WINN MANAGEMENT COMPANY LLC (via U.S. Certified Mail); WINNCOMPANIES LLC (via U.S. Certified Mail); WINNRESIDENTIAL CALIFORNIA, INC. (via U.S. Certified Mail); WINNRESIDENTIAL CALIFORNIA L.P. (via U.S. Certified Mail)

CERTIFIED MAIL®



7020 1290 0001 8879 0671

one

LAW APC

1000 Park East, Ste 1000
San Jose, CA 95067



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

WINN MANAGEMENT GROUP LLC
ONE WASHINGTON MALL, SUITE 500
BOSTON MA 02108



9590 9402 1512 5362 2723 12

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0671

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
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- ☐ Collect on Delivery
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- ☐ Insured Mail
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- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

WINN MANAGEMENT GROUP LLC
ONE WASHINGTON MALL, SUITE 500
BOSTON MA 02108

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.50
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

WINN MANAGEMENT GROUP LLC

Street and Apt. No., or PO Box No.

ONE WASHINGTON MALL, SUITE 500

City, State, ZIP+4®

BOSTON MA 02108

Postmark
Here

Gomez v. Winn
Management Group
LLC

CERTIFIED MAIL



7020 1290 0001 8879 0688

tone

LAW APC

ury Park East, Ste 1000
s, CA 90067

WINNCOMPANIES LLC
ONE WASHINGTON MALL, SUITE 500
BOSTON MA 02108



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

WINNCOMPANIES LLC
ONE WASHINGTON MALL, SUITE 500
BOSTON MA 02108



9590 9402 1512 5362 2723 29

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0688

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

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\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

WINNCOMPANIES LLC
ONE WASHINGTON MALL, SUITE 500
BOSTON MA 02108

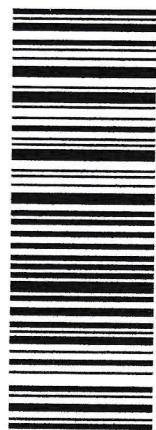
Postmark
Here

Gomez v.
Winn Companies
LLC

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

CERTIFIED MAIL



7020 1290 0001 8879 0695

Stone
LAW APC
1000
Park East, Ste 1000
San Francisco, CA 90067

WINNRESIDENTIAL CALIFORNIA, INC.
ONE WASHINGTON MALL
BOSTON MA 02109



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WINNRESIDENTIAL CALIFORNIA, INC.
ONE WASHINGTON MALL
BOSTON MA 02109



9590 9402 1512 5362 2723 36

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0695

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

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

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

WINNRESIDENTIAL CALIFORNIA, INC.

Street and Apt. No., ONE WASHINGTON MALL

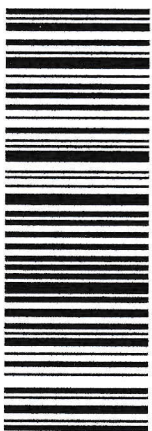
City, State, ZIP+4® BOSTON MA 02109

Postmark
Here

Gomez v.
Winnresidential
California, Inc.

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions



7020 1290 0001 8879 0701

Stone
LAW APC
1000
Park East, Ste 1000
Fresno, CA 93711

WINNRESIDENTIAL CALIFORNIA L.P.
2499 W SHAW AVE STE 103
FRESNO CA 93711



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

WINNRESIDENTIAL CALIFORNIA L.P.
2499 W SHAW AVE STE 103
FRESNO CA 93711



9590 9402 1512 5362 2723 43

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0701

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

Domestic Return Receipt

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OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- | | |
|---|---------|
| ☒ Return Receipt (hardcopy) | \$ 2.80 |
| ☐ Return Receipt (electronic) | \$ |
| ☐ Certified Mail Restricted Delivery | \$ |
| ☐ Adult Signature Required | \$ |
| ☐ Adult Signature Restricted Delivery | \$ |

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

WINNRESIDENTIAL CALIFORNIA L.P.

Street and Apt. No., 2499 W SHAW AVE STE 103

City, State, ZIP+4® FRESNO CA 93711

Postmark
Here

Gomez v.
Winnresidential
California L.P.

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

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1. Article Addressed to:

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2499 W SHAW AVE STE 103
FRESNO CA 93711



9590 9402 1512 5362 2723 43

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0701

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Betty Lopez*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

019/20

C. Date of Delivery

1/5/21

D. Is delivery address different from item 1? If YES, enter delivery address below:

☐ Yes

☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery

(over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted

Delivery

☐ Return Receipt for

Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation

Restricted Delivery

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

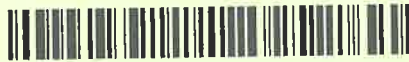
Domestic Return Receipt

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1. Article Addressed to:

WINNCOMPANIES LLC
ONE WASHINGTON MALL, SUITE 500
BOSTON MA 02108



9590 9402 1512 5362 2723 29

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0688

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Covid

☐ Agent☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

1/26/21

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

3. Service Type

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

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

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

Domestic Return Receipt

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1. Article Addressed to:

WINN MANAGEMENT GROUP LLC
ONE WASHINGTON MALL, SUITE 500
BOSTON MA 02108



9590 9402 1512 5362 2723 12

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0671

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Covid

☐ Agent☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

1/26/21

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

3. Service Type

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

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

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

Domestic Return Receipt

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1. Article Addressed to:

WINNRESIDENTIAL CALIFORNIA, INC.
ONE WASHINGTON MALL
BOSTON MA 02109



9590 9402 1512 5362 2723 36

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0695

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Covid

☐ Agent

☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

1/25/21

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Registered Mail®
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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

Domestic Return Receipt