

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan (SBN 287811)
david@tomorrowlaw.com
Vedang J. Patel (SBN 328647)
vedang@tomorrowlaw.com
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705

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County of San Diego
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By Regina Chanez, Deputy Clerk

Attorneys for Plaintiffs, on behalf of themselves and
all others aggrieved

Additional Counsel Listed on Next Page

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

LUIS CRUZ, individually, and on behalf of all
others similarly situated; JAMES
CARAMAZZA, individually, and on behalf of
all others similarly situated; MICHAEL LEON,
individually, and on behalf of all others similarly
situated

Plaintiffs,

v.

GREYSTAR MANAGEMENT SERVICES, LP,
a Delaware limited partnership; GREYSTAR
REAL ESTATE PARTNERS, LLC, a Delaware
limited liability company; SUNRISE
RIVERSIDE, LLC, a Delaware limited liability
company, BRADLEY JOHNSON, an individual;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 37-2020-00009672-CU-OE-CTL
[Assigned to the Hon. Carolyn Caiette in Dept.
C-70]

PAGA REPRESENTATIVE ACTION

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR
APPROVAL OF REPRESENTATIVE
ACTION SETTLEMENT**

HEARING INFORMATION

DATE: July 15, 2022
TIME: 10:30 a.m.
DEPT: C-70

Action Filed: May 26, 2020
Trial Date: None Set

1 Justin F. Marquez, Esq. (SBN 262417)

justin@wilshirelawfirm.com

2 Nicol E. Hajjar, Esq. (SBN 303102)

nicol@wilshirelawfirm.com

3 **WILSHIRE LAW FIRM**

3055 Wilshire Blvd., 12th Floor

4 Los Angeles, California 90010

Telephone: (213) 381-9988

5 Facsimile: (213) 381-9989

6 Attorneys for Plaintiffs on behalf of themselves and
all others aggrieved

7
8 Joseph Lavi, Esq. (SBN 209776)

jlavi@lelawfirm.com

9 Vincent C. Granberry, Esq. (SBN 276483)

vgranberry@lelawfirm.com

10 Anwar D. Burton, Esq. (SBN 253504)

11 aburton@lelawfirm.com

LAVI & EBRAHIMIAN, LLP

12 8889 W. Olympic Blvd., Suite 200

Beverly Hills, California 90211

13 Telephone: (310) 432-0000

14 Facsimile: (310) 432-0001

Attorneys for Plaintiffs, on behalf of themselves and
all others aggrieved

I, Justin F. Marquez, declare as follows:

CASE BACKGROUND

3. Plaintiff Cruz was employed by Defendants as a maintenance worker from approximately December 2014 through approximately November of 2020. Plaintiff Leon was employed by Defendants from approximately March 24, 2020 through March 24, 2021. Plaintiff Caramazza was employed by Defendants from approximately March of 2015 through November of 2019, with duties that included picking up and taking out garbage, cleaning swimming pools, and making repairs in apartment properties.

4. On December 30, 2019, Ana Herrera (“Herrera”) filed with the LWDA a notice under Labor Code section 2699.3 stating she intended to serve as a proxy of the LWDA to recover civil penalties for various Labor Code violations (“Herrera PAGA Notice”). On February 21, 2020, Herrera filed a PAGA representative action in the Superior Court of California for the County of San Diego, Case Number 37-2020-00009672-CU-OE-CTL, seeking civil penalties on behalf of herself and Aggrieved Employees against among others, Defendants, or some of them, for civil penalties under PAGA alleged in the Herrera PAGA Notice (the “Herrera Action”). A true and

1 correct copy of Herrera’s PAGA Notice is attached to my declaration as **Exhibit A**.

2 5. During the pendency of the litigation, Herrera passed away. On March 24, 2021,
3 Plaintiff Cruz filed with the LWDA a notice under Labor Code section 2699.3 stating he intended
4 to serve as a proxy of the LWDA to recover civil penalties for various Labor Code violations
5 (“Cruz PAGA Notice”). Plaintiff Cruz submitted an Amended PAGA Notice on March 16, 2022.
6 Plaintiff Cruz was later substituted into the Herrera Action in the place of Herrera (hereinafter, the
7 “Cruz Action”). A true and correct copy of Cruz’s PAGA Notice and Amended PAGA Notice is
8 attached to my declaration as **Exhibit B**.

9 6. On February 24, 2020, Plaintiff Caramazza filed with the LWDA a notice under
10 Labor Code section 2699.3 stating he intended to serve as a proxy of the LWDA to recover civil
11 penalties for various Labor Code violations (“Caramazza PAGA Notice”) . After sixty-five (65)
12 days had passed from the filing of the PAGA Notice without any action by the LWDA, on May 6,
13 2020, Plaintiff Caramazza filed a PAGA representative action in the Superior Court of California
14 for the County of San Francisco, Case Number CGC-20-594345 (the “Caramazza Action”) seeking
15 civil penalties on behalf of himself and Aggrieved Employees against among others, Defendants,
16 or some of them, for civil penalties under PAGA alleged in the Caramazza PAGA Notice.

17 7. On March 25, 2020, Plaintiff Leon filed with the LWDA a notice under Labor Code
18 section 2699.3 stating he intended to serve as a proxy of the LWDA to recover civil penalties for
19 various Labor Code violations (“Leon PAGA Notice”). After sixty-five (65) days had passed from
20 the filing of the PAGA Notice without any action by the LWDA, on June 1, 2020, Plaintiff Leon
21 filed a PAGA representative action in the Superior Court of California for the County of Los
22 Angeles, Case Number 20STCV20588 (the “Leon Action”), seeking civil penalties on behalf of
23 himself and Aggrieved Employees against among others, Defendants, or some of them, for civil
24 penalties under PAGA alleged in the Leon PAGA Notice.

25 8. Plaintiffs and Defendants (collectively, the “Parties”) engaged in informal discovery
26 and agreed to attend an early mediation. Prior to mediation, Plaintiffs were provided with, among
27 other things: (1) a 10% sampling of time and payroll records for all Aggrieved Employees; (2) hire
28 dates, termination dates, and final rates of pay for all Aggrieved Employees; (3) a 10% sampling

1 of contact information for all Aggrieved Employees; (4) Greystar Management’s employee
2 handbook dated January 2015; (5) a California addendum to Greystar Management’s 2015
3 employee handbook; (6) Greystar Management’s reimbursement policy dated May 2019; (7)
4 Greystar Management’s maintenance emergency policy dated September 2020; (8) Greystar
5 Management’s California addendum to their employee handbook dated May 2020; (9) Greystar
6 Management’s employee handbook dated 2020; Greystar Management’s “California Meal Break
7 Law- Frequently Asked Questions;” (10) Greystar Management’s “California On Call Time Law”
8 policy; (11) Greystar Management’s standalone policy on Maintenance Emergencies; and Greystar
9 Management’s standalone policy on Travel and Expense Reimbursement; and (12) Greystar
10 Management’s standalone policy on the use of cell phones.

11 9. On July 7, 2021, the Parties attended a full day mediation with Paul Grossman,
12 Esquire to determine if the matter could be resolved. The Parties were unable to reach a resolution
13 on the day of mediation. Defendants thereafter obtained new counsel and the Parties, by and
14 through their respective counsel in place after mediation, with the aid of the mediator, continued
15 to negotiate terms that would be mutually acceptable to the Parties for settlement of the Cruz
16 Action, the Caramazza Action, and the Leon Action (collectively, the “Action”). After months of
17 negotiations through the mediator, the aid of the mediator’s evaluation, and months of further
18 negotiations surrounding the terms of the settlement, the Parties reached the Settlement Agreement
19 to resolve the Action. As part and parcel to the Settlement, the Parties agreed that Plaintiff
20 Caramazza and Plaintiff Leon would dismiss the Caramazza Action and the Leon Action, without
21 prejudice, and the Plaintiffs would file an amended complaint in the Cruz Action, including all
22 Plaintiffs and their respective allegations, thereby consolidating the three actions into one. On
23 April 7, 2022, Plaintiffs filed a Second Amended Complaint in the Cruz Action. Thereafter,
24 Plaintiff Caramazza and Plaintiff Leon filed their respective dismissals, without prejudice, of the
25 Caramazza Action and Leon Action, thereby completing consolidation.

26 DISCOVERY AND INVESTIGATION

27 10. In the leadup to mediation, Plaintiff’s Counsel investigated Plaintiffs’ claims,
28 performed legal research regarding Defendants’ defenses, and engaged in informal discovery.

1 During that time, Defendants produced: (1) a 10% sampling of time and payroll records for all
2 Aggrieved Employees; (2) hire dates, termination dates, and final rates of pay for all Aggrieved
3 Employees; (3) a 10% sampling of contact information for all Aggrieved Employees; (4) Greystar
4 Management's employee handbook dated January 2015; (5) a California addendum to Greystar
5 Management's 2015 employee handbook; (6) Greystar Management's reimbursement policy dated
6 May 2019; (7) Greystar Management's maintenance emergency policy dated September 2020; (8)
7 Greystar Management's California addendum to their employee handbook dated May 2020; (9)
8 Greystar Management's employee handbook dated 2020; Greystar Management's "California
9 Meal Break Law- Frequently Asked Questions;" (10) Greystar Management's "California On Call
10 Time Law" policy; (11) Greystar Management's standalone policy on Maintenance Emergencies;
11 and Greystar Management's standalone policy on Travel and Expense Reimbursement; and (12)
12 Greystar Management's standalone policy on the use of cell phones.

13 11. This yielded sufficient information to determine, for the Settlement Period, the total
14 number of Aggrieved Employees, the total number of shifts and PAGA pay periods, the length of
15 shifts for all Aggrieved Employees, average rates of pay, detailed analysis of meal period
16 violations, and the policies and practices in play during the Settlement Period. The documents and
17 information produced enabled Plaintiffs' Counsel to analyze the law and facts relating to Plaintiffs'
18 claims. Plaintiffs' Counsel also retained an expert to review and analyze the time and payroll
19 records and prepare a model setting forth Defendants' potential exposure for civil penalties for use
20 in the mediation. The documents and information shared also enabled Plaintiffs to evaluate the
21 potential hurdles to recovery, including in connection with the merits of the claims and
22 manageability. Based on this investigation and discovery, Plaintiffs

23 SETTLEMENT NEGOTIATIONS

24 12. On July 7, 2021, the Parties attended a full day mediation session before Paul
25 Grossman, Esquire – a well-regarded mediator experienced in mediating complex labor and
26 employment matters. At the conclusion of the mediation session the Parties were unable to reach
27 a resolution on the day of mediation. However, the Parties continued to negotiate in the months
28 following, which eventually culminated in a long form settlement agreement.

1 13. The Settlement negotiations were at arm's length and, although conducted in a
2 professional manner, were adversarial. The Parties went into mediation willing to explore the
3 potential for a settlement of the Action, but each side was also prepared to litigate its position
4 through trial and appeal if a settlement had not been reached. After several exchanges of draft
5 settlement agreements and various telephone calls to discuss the same, over the course of the
6 following months, the Parties fully executed the Settlement Agreement.

7 14. Based on Plaintiffs' investigation, informal discovery, and evaluation of Plaintiffs'
8 claims, Defendants' defenses regarding the merits of the claims and the manageability of a trial
9 thereon, Defendants' potential exposure, the expense and time necessary to pursue this action
10 through trial, the risks and costs of further prosecution of this action, the uncertainties of complex
11 litigation and developing law, and the benefits that will accrue to the LWDA and the Aggrieved
12 Employees, the Parties and their counsel believe that a settlement on the terms set forth herein is
13 fair, reasonable, adequate, and in the best interests of Plaintiffs, Aggrieved Employees, the LWDA,
14 and Defendants.

15 THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

16 15. Plaintiffs' Counsel has conducted a thorough investigation into the facts of this case.
17 Based on the foregoing discovery and their own independent investigation and evaluation,
18 Plaintiffs' Plaintiffs' Counsel is of the opinion that the Settlement is fair, reasonable, and adequate
19 and is in the best interests of the State of California and Aggrieved Employees in light of all known
20 facts and circumstances, the risk of significant delay, the defenses that could be asserted by
21 Defendants on the merits, trial risk, and appellate risk.

22 16. I have reviewed the declaration of David Bibiyan and agree with his analysis of
23 Defendants' potential liability.

24 ENHANCEMENT AWARDS FOR PLAINTIFFS ARE REASONABLE

25 17. Plaintiffs' Counsel represent that Plaintiffs devoted a great deal of time and work
26 assisting counsel in the case, communicated with counsel very frequently for litigation and to
27 prepare for mediation, and was frequently in contact with Plaintiffs' Counsel during the mediation.
28 Plaintiffs' requested enhancement award is reasonable particularly in light of the substantial

benefits Plaintiff generated for the State of California and the Aggrieved Employees.

18. Throughout this litigation, Plaintiffs, who are former employees of Defendant, have cooperated immensely with my office and have taken many actions to protect the interests of the class. Plaintiffs provided valuable information regarding unpaid overtime, meal period, and rest period claims. Plaintiffs also informed Plaintiffs' Counsel of developments and information relevant to this action, participated in decisions concerning this action, made himself available to answer questions during the mediation, and provided my office with the names and contact information of potential witnesses in this action. Before we filed this case, Plaintiffs provided Plaintiffs' Counsel with several documents, including policy documents, and communications from Defendant regarding the claims alleged in this action. The information and documentation provided by Plaintiffs was instrumental in establishing the wage and hour violations alleged in this action, and the recovery provided for in the Settlement Agreement would have been impossible to obtain without Plaintiffs' participation.

19. At the same time, Plaintiffs faced many risks in adding themselves as the class and PAGA representatives in this matter. Plaintiffs faced actual risks with their future employment, as putting themselves on public record in an employment lawsuit could also very well affect their likelihood for future employment. Furthermore, as part of this settlement, Plaintiffs are executing a general release of all claims against Defendant.

20. In turn, the State of California will now have the opportunity to participate in a settlement and recover civil for alleged wage violations they may have never known about on their own or been willing to pursue on their own.

21. In the final analysis, this representative action would not have been possible without the aid of Plaintiffs, who put their own time and effort into this litigation, sacrificed the value of their own individual claims, and placed themselves at risk for the sake of the State of California and Aggrieved Employees. The requested enhancement award for Plaintiffs for their service as the class representatives and for his general release of all individual claims is a relatively small amount of money when the time and effort put into the litigation are considered and in comparison to enhancements granted in other class actions. The requested incentive award is therefore

reasonable to compensate Plaintiffs for their active participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation*, et al., No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were misclassified as exempt outside salespersons, I was co-lead Plaintiffs' Counsel and helped negotiate a \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000.00 class representative incentive award for each named plaintiff.

THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

22. The Settlement provides for attorney's fees payable to Plaintiffs' Counsel in an amount up to 35% of the Settlement Amount, for a maximum fees award of \$665,000.00, plus actual costs and expenses not to exceed \$60,000.00. The proposed award of attorneys' fees to Plaintiffs' Counsel in this case can be justified under either method – lodestar or percentage recovery. Plaintiffs' Counsel, however, intend to base the proposed award of fees, costs and expenses on the percentage method as many of the entries in the time records will have to be redacted to preserve attorney-client and attorney work product privileges.

23. The total current lodestar for Wilshire Law Firm, PLC is not less than the following:
Justin F. Marquez (Senior Partner)

Work Performed	Hours	Lodestar (\$850/hr)
Prelawsuit investigation and analyzing legal and factual issues.	17.75	\$15,088
Research, drafting and review of Plaintiffs' Initial Complaint	3	\$2,550
Communication and coordination with plaintiff's counsel in related case, including analyzing the pleadings of the related case and impact of the related case.	20.75	\$17,638
Research regarding impact of death of Plaintiff Herrera on viability of PAGA action.	17.5	\$14,875
Additional investigation into finding replacement for Ana Herrera.	20.8	\$17,680
Preparation for and attendance of mediation with Paul Grossman	30.6	\$26,010

1	Communication and strategizing with plaintiff's counsel in related case regarding litigation after mediation.	5.5	\$4,675
2	Negotiation, drafting, and review of Settlement Agreement and related documents.	2	\$1,700
3	Meetings with client to go over Settlement Agreement.	4	\$3,400
4	Research, drafting, and review of Amended Complaint and Amended PAGA letter	3	\$2,550
5	Drafting and review of Plaintiffs' Motion for Approval.	3.5	\$2,975
6	Total	128.4	\$109,140.00

8

9 24. There are additional hours devoted by me (and by my colleagues) to this litigation

10 that are not reflected in Class Counsel's request for attorney's fees.

11 25. We can provide complete, detailed billing records in the event the Court requests

12 them, but would request the opportunity to redact attorney-client privileged information and any

13 other privileged information.

14 26. I am informed and believe that the fee and costs provision is reasonable. The fee

15 percentage requested is less than that charged by my office for most employment cases. My office

16 invested significant time and resources into the case, with payment deferred to the end of the case,

17 and then, of course, contingent on the outcome.

18 27. The risk to my office has been very significant, particularly if we would not be

19 successful in pursuing this class action. In that case, we would have been left with no compensation

20 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases

21 that have resulted in thousands of attorney hours being expended and ultimately having

22 certification denied or the defendant company going bankrupt. The contingent risk in these types

23 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing

24 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

25 28. Because most individuals cannot afford to pay for representation in litigation on an

26 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a

27 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless

28 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is

1 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
2 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
3 end of our representation, all we are to receive is our regular hourly rate for services. It is essential
4 that we recover more than our regular hourly rate when we win if we are to remain in practice so
5 as to be able to continue representing other individuals in civil rights employment disputes.

6 29. As of the drafting of Plaintiffs' Motion for Approval of Representative Action
7 Settlement, my office has incurred around \$2,764.39 in expenses litigating this action. These
8 expenses were reasonably necessary to the litigation and were actually incurred by my office. They
9 should be reimbursed in full, up to the maximum amount allowed in the Settlement Agreement. A
10 true and correct copy of Wilshire Law Firm's costs to date is attached to my declaration as **Exhibit**
11 **C**.

12 MY EXPERIENCE AND QUALIFICATIONS

13 30. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World
14 Report as one of the nation's Best Law Firms in 2022 and is comprised of over 50 attorneys and
15 over 250 employees. Wilshire Law Firm, PLC is actively and continuously practicing in
16 employment litigation, representing employees in both individual and class actions in both state
17 and federal courts throughout California.

18 31. Wilshire Law Firm, PLC is qualified to handle this litigation because its attorneys
19 are experienced in litigating Labor Code violations in both individual, class action, and
20 representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling,
21 numerous wage and hour class action lawsuits, as well as class actions involving consumer rights
22 and data privacy litigation.

23 32. I graduated from the University of California, Los Angeles's College Honors
24 Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi*
25 *Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at
26 Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in
27 2008.

28 33. My practice is focused on advocating for the rights of consumers and employees in

1 class action litigation and appellate litigation. I am currently the primary attorney in charge of
2 litigating several class action cases in state and federal courts across the United States.

3 34. I have received numerous awards for my legal work. From 2017 to 2020, Super
4 Lawyers selected me as a “Southern California Rising Star,” and in 2022 I was selected as a
5 “Southern California Super Lawyer.” In 2016 and 2017, the National Trial Lawyers selected me
6 as a “Top 40 Under 40” attorney. I am also rated 10.0 (“Superb”) by Avvo.com.

7 35. I am on the California Employment Lawyers Association (CELA)’s Wage and Hour
8 Committee and Mentor Committee, and I was selected to speak at CELA’s 2019 Advanced Wage
9 & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively
10 mentored young attorneys through CELA’s mentorship program.

11 36. I am also an active member of the Consumer Attorneys of California (CAOC). In
12 2020, I was selected for a position on CAOC’s Board of Directors. I am also a member of CAOC’s
13 Diversity Committee, and I help assist the CAOC in defeating bills that harm employees. Indeed,
14 I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC, in defeating AB
15 443, which proposed legislation that sought to limit the enforceability of California Labor Code §
16 226.

17 37. As the attorney responsible for day-to-day management of this matter at the
18 Wilshire Law Firm, PLC, I have over eleven years of experience with litigating wage and hour
19 class actions. Over the last ten years, I have managed and assisted with the litigation and settlement
20 of several wage and hour class actions. In those class actions, I performed similar tasks as those
21 performed in the course of prosecuting this action. My litigation experience includes:

- 22 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
23 million in gross recovery to class members for each year during 2020 and 2021.
- 24 b. To my knowledge, I am the only attorney to appear on each of the following *Top*
25 *Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20
26 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- 27 c. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by
28 winning class certification on behalf of hundreds of thousands of consumers for

misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct. C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).

d. As lead counsel, I prevailed against Bank of America by: winning class certification on behalf of thousands of employees for California Labor Code violations; defeating appellate review of the court’s order certifying the class; defeating summary judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.* (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2, 2018).). The decision certifying the class in *Frausto* is also discussed in *Class Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed. 3d Art. 8.

e. I was the primary author of the class certification and expert briefs in *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action for over 40,000 class members for off-the-clock, meal period, split shift, and reimbursement claims. *ABM Industries Overtime Cases* is the first published California appellate authority to hold that an employer’s “auto-deduct policy for meal breaks in light of the recordkeeping requirements for California employers is also an issue amenable to classwide resolution.” (*Id.* at p. 310.)¹ Notably, the Court of Appeal also held that expert analysis of timekeeping records can also support the predominance requirement for class certification. (*Id.* at p. 310-311.) In 2021, the case settled for \$140 million, making it one of the largest ever wage and hour class action settlements for hourly-paid employees in California.

f. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims

¹ As a California district court observed before the *ABM Industries Overtime* decision, “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

1 under California’s Private Attorney Generals Act (“PAGA”) cannot be used to
2 calculate the amount in controversy under the Class Action Fairness Act (“CAFA”).
3 This case is cited in several leading treatises such as *Wright & Miller’s Federal*
4 *Practice & Procedure*, and *Newberg on Class Actions*. In October 2016, the U.S.
5 Supreme Court denied review of a case that primarily concerned *Yocupicio*. That
6 effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus
7 support from a brief authored by Andrew J. Pincus.² Considering that leading
8 Supreme Court practitioners from the class action defense bar were very motivated
9 in undermining *Yocupicio* case, but failed, this demonstrates the national importance
10 of the *Yocupicio* decision.

- 11 g. On December 13, 2018, the United States District Court granted final approval of
12 the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services,*
13 *LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in
14 which I served as lead counsel. In doing so, the Court found: “Plaintiffs’ Counsel’s
15 declarations show that the attorneys are experienced and successful litigators.” (*Id.*
16 at p. *10.)
- 17 h. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a
18 reported decision permitting class-wide discovery even though the employer has a
19 lawful policy because “[t]he fact that a company has a policy of not violating the
20 law does not mean that the employees follow it, which is the issue here.” The court
21 also ordered defendant to pay for the cost of *Belaire-West* notice.
- 22 i. In 2013, I represented a whistleblower that reported that his former employer was
23 defrauding the State of California with the help of bribes to public employees. The
24 case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution
25 of State of California employees by the California Attorney General’s Office.
- 26 j. In 2013, I was part of a team of attorneys that obtained conditional certification for
27 over 2,000,000 class members in a federal labor law case for misclassification of

28 ² <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

1 independent contractors that did crowdsourced work on the Internet, *Otey v.*
2 *CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the
3 following pro-plaintiff reported decisions:

- 4 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding
5 that an unaccepted Rule 68 offer doesn't moot plaintiff's claims, and
6 granting plaintiff's motion to strike defendant's affirmative defenses
7 based on *Twombly/Iqbal*).
- 8 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order
9 granting conditional collective certification).
- 10 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the
11 magistrate judge's discovery ruling which held that "evidence of
12 other sources of income is irrelevant to the question of whether a
13 plaintiff is an employee within the meaning of the FLSA").
- 14 4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting
15 broad discovery because "an FLSA plaintiff is entitled to discovery
16 from locations where he never worked if he can provide some
17 evidence to indicate company-wide violations").

- 18 j. From 2012 to 2013, I was part of a team of attorneys that obtained class certification
19 for over 60,000 class members for off-the-clock claims, *Linares v. Securitas*
20 *Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also
21 successfully opposed subsequent appeals to the California Court of Appeal and
22 California Supreme Court.

23 38. My current contingent billing rate of \$850 per hour is consistent with my practice
24 area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,
25 legal market and accepted hourly rates:

- 26 a. In the December 8, 2008 article "Billable Hours Aren't the Only Game in Town
27 Anymore," *NATIONAL LAW JOURNAL*, the following hourly billing rates were
28 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of

1 wage-and-hour class actions that I opposed when litigating wage-and-hour class
2 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd
3 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
4 8th Year - \$455. I am an 12th year attorney and Senior Partner, with most of my
5 experience in class action litigation as a primary practice area. Having successfully
6 briefed and argued a published appeal in the Ninth Circuit Court of Appeals
7 involving CAFA and PAGA, having experience certifying large class actions
8 (including *ABM Industries Overtime Cases*, which was decided on appeal), and
9 having received numerous awards for my legal work, my hourly rate should be
10 adjusted upward.

- 11 b. On May 6, 2022 the Hon. Jay A. Garcia-Gregory of the United States District Court
12 in Puerto Rico approved my \$850 hourly rate when he granted final approval of the
13 class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-01811-JAG, Dkt.
14 57 (U.S. Dist. Ct. P.R. May 6, 2022).
- 15 c. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
16 approved my previous \$800 hourly rate when he granted final approval of the class
17 action settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-
18 2019-01066522-CU-OE-CXC.
- 19 d. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District
20 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*
21 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-
22 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the
23 Court approved my previous \$750 hourly rate after finding it was “reasonable, given
24 the qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)
- 25 e. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
26 Court approved my previous \$750 hourly rate when he granted final approval of the
27 class action settlement in *Faye Zhang v. Richemont North America, Inc.*, No.
28 19STCV32396.

1 f. On December 13, 2018, the United States District Court granted final approval of
2 the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services,*
3 *LLC, supra*, 2018 WL 6616659 in which I served as lead counsel. In doing so, the
4 Court approved my previous \$600 hourly rate and found: “Plaintiffs’ Counsel’s
5 declarations show that the attorneys are experienced and successful litigators.” (*Id.*
6 at p. *10.)

7 I declare under penalty of perjury under the laws of the State of California and the United
8 States that the foregoing is true and correct.

9 Executed on June 20, 2022, at Los Angeles, California.

10 
11 Justin F. Marquez

Exhibit A

WILSHIRE LAW FIRM, PLC

3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010
Tel: (213) 381-9988
Fax: (213) 381-9989
wilshirelawfirm.com



Bobby Saadian, Esq. JD/MBA

Colin M. Jones, Esq.	Nicol Hajjar, Esq.
Justin F. Marquez, Esq.	Vy Nguyen, Esq.
Robert Dart, Esq.	Tae Kim, Esq.
Jon Teller, Esq.	Thiago Coelho, Esq.
Sutton A. Shapiro, Esq.	Megan Lazar, Esq.
Daniel B. Miller, Esq.	Carlos Montoya, Esq.
Hazel Chang, Esq.	Ryan Medler, Esq.
Erik Harper, Esq.	

December 30, 2019

Greystar Management Services, LP
11 State Street
Charleston, South Carolina 29401
(Via Certified Mail, Return Receipt Requested)
7019 0140 0000 8158 7364

Greystar Management Services, LP
600 East Las Colinas Boulevard, Suite 2100
Irving, TX 75039
(Via Certified Mail, Return Receipt Requested)
7019 0140 0000 8158 7449

Amanda Garcia
CT Corporation
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
(Via Certified Mail, Return Receipt Requested)
7019 0140 0000 81558 7456

Re: ***Ana Herrera v. Greystar Management Services, LP;***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Ana Herrera ("Plaintiff") to pursue a Labor Code Private Attorney General Act ("PAGA") representative action (Cal. Lab. Code §§ 2699, *et seq.*) against her former employer, Greystar Management Services, LP. ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's Aggrieved Employees. This letter also serves as formal notice under the catalyst theory and California Code of Civil Procedure Section 1021.5 to resolve this matter before litigation.

Plaintiff wishes to pursue this action on behalf of the State of California for violations committed against all persons who worked for any Defendant in California as a hourly, non-exempt employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees"). Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Plaintiff's Employment with Defendant

Defendant owns/owned and operates/operated an industry, business, and establishment within the State of California, including San Diego County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant in San Diego, California (San Diego County) as a housekeeper/service porter from approximately June 2018 to September 2019. During Plaintiff's employment with Defendant, Defendant paid Plaintiff an hourly wage and classified Plaintiff as non-exempt from overtime. Defendant typically scheduled Plaintiff to work at least 5 days in a workweek and at least 8 hours per day, but Plaintiff often worked more than 8 hours in a workday and more than 40 hours in a workweek.

Throughout Plaintiff's employment, Defendant failed to pay Plaintiff for all hours worked (including minimum wage, straight time, and overtime wages), failed to provide Plaintiff with meal periods, failed to pay timely pay all final wages to Plaintiff when Defendant terminated her employment, and failed to furnish accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Defendant Failed to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendant maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum wages, straight time wages, and overtime wages. Defendant regularly used a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiffs and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute.

Defendant further maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work during meal periods. Plaintiff and the Aggrieved Employees were given tasks of a volume which frequently required Plaintiff and the Aggrieved Employees to continue working while clocked out for a meal period. Accordingly, Defendant frequently paid Plaintiff and the Aggrieved

Employees less than all their work time. Some of this unpaid work should have been paid at the overtime rate.

Lastly, Defendant maintained a policy and practice of failing to include all non-discretionary forms of remuneration in the base rate of pay when calculating the overtime wages of Plaintiff and the Aggrieved Employees. In failing to correctly calculate the overtime rate for Plaintiff and the Aggrieved Employees, Defendant failed to pay Plaintiff and the Aggrieved employees the correct overtime wages in compliance with California law.

In failing to pay for all hours worked, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Throughout the statutory period, Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Plaintiff and the Aggrieved Employees were given tasks of a volume which frequently required Plaintiff and the Aggrieved Employees to take their meal periods late, cut meal periods short, or perform some work tasks while clocked out for a meal period. The job requirements imposed by Defendant had the effect of requiring, pressuring, or encouraging Plaintiff and the Aggrieved Employees to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by taking impermissibly short meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on Defendant's failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 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.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203. Moreover, Defendant is liable to Plaintiff and the

Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Throughout the statutory period, Defendant failed to furnish Plaintiff and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Because Defendant violated Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee. Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Labor Code § 1174 requires employers to maintain accurate and complete records. Pursuant to the applicable IWC Order § 7(A)(3) (“Wage Order §7(A)(3)”), every employer shall keep time records showing when the employee begins and ends each work period. An employer must maintain an accurate record of the meal periods taken or missed and total hours worked daily.

Meal periods and total hours worked daily shall also be recorded. Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5.

Throughout the statutory period, Defendant failed to maintain accurate and complete records. Defendant failed to maintain accurate records of the hours Plaintiffs and the Aggrieved Employees worked because Defendant did not pay Plaintiff and the Aggrieved Employees for actual hours worked and required them to work off the clock in lieu of taking mandatory meal and rest periods. As a result, Defendant owes Plaintiff and Aggrieved Employees the legally required wages for unpaid wages, and Plaintiffs and the Aggrieved Employees suffered damages in those amounts.

Defendant's failure to provide and maintain records required by Wage Order §7(A)(3) also deprived Plaintiff and the Aggrieved Employees the ability to know, understand, and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 204 by failing to pay all earned wages two times per month;
4. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination; and
5. Labor Code § 226 by failing to provide accurate itemized wage statements.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 558, 226.3, 1174.5, 1197.1, and 2699(f)(2).

//

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LWDA

Notice of Labor Code Violations and PAGA

December 30, 2019

Page 7 of 7

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM

A handwritten signature in blue ink, appearing to be "Nicol Hajjar", written over the printed name.

Nicol Hajjar, Esq.

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:

Greystar Management Services, LP
11 State Street
Charleston, South Carolina 29401



9590 9402 5053 9092 5853 84

2. Article Number (Transfer from service label)

7019 0140 0000 8158 7364

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

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

USPS TRACKING #



9590 9402 5053 9092 5853 84



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

**United States
Postal Service**

• Sender: Please print your name, address, and ZIP+4® in this box•



Wilshire Law Firm
3055 Wilshire Bl, FL 12
Los Angeles, CA 90010

(ATTN: Min Jee Kim, Gray Star Mgmt)

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:

Greystar Management Services, LP
600 East Las Colinas Blvd, Suite 2100
Irving, TX 75039



9590 9402 5053 9092 5853 91

2. Article Number (Transfer from service label)

7019 0140 0000 8158 7449

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) | |

USPS TRACKING #



9590 9402 5053 9092 5853 91



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

**United States
Postal Service**

• Sender: Please print your name, address, and ZIP+4® in this box •



Wilshire Law Firm
3055 Wilshire Bl, FL 12
Los Angeles, CA 90010

(ATTN: Minjee Kim, GreyStar Mgmt)

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:

Amanda Garcia
 GT Corporation
 818 West Seventh Street, Suite 930
 Los Angeles, CA 90017



9590 9402 5053 9092 5854 07

2. Article Number (Transfer from service label)

7019 0140 0000 8158 7456

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? ☐ YesIf 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

USPS TRACKING #



9590 9402 5053 9092 5854 07



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

**United States
Postal Service**

• Sender: Please print your name, address, and ZIP+4® in this box•



Wilshire Law Firm
3055 Wilshire Bl, FL 12
Los Angeles, CA 90010

LATTN: Min Jee Kim, Greystar Mgmt)

Exhibit B

WILSHIRE LAW FIRM, PLC

3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010
Tel: (213) 381-9988
Fax: (213) 381-9989
www.wilshirelawfirm.com



Bobby Saadian, Esq. JD/MBA

Colin M. Jones, Esq.
A. Ilyas Akbari, Esq.
Gail Richardson, Esq.
Justin F. Marquez, Esq.
Robert Dart, Esq.
Jon Teller, Esq.
Sutton A. Shapiro, Esq.
Daniel B. Miller, Esq.
Hazel Chang, Esq.

Daniel DeSantis, Esq.
Tae Kim, Esq.
Peter Cho, Esq.
Gregory Stuck, Esq.
Nicol Hajjar, Esq.
Thiago Coelho, Esq.
Erik Harper, Esq.
Johnny Ogata, Esq.

March 24, 2021

LWDA

Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(Via Online Submission)

Greystar Management Services, LP
11 State Street
Charleston, SC 29401
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6272 9765 99

CT Corporation System
Agent for Service of Process for
Greystar Management Services, LP
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6272 9766 05

Damien P. Delaney, Esq.
damien.delaney@akerman.com
Ashley N. Bobo, Esq.
ashley.bobo@akerman.com
AKERMAN LLP
Attorneys for Greystar Management Services, LP
601 West Fifth Street, Suite 300
Los Angeles, CA 90071
(Via Email and Certified Mail, Return Receipt Requested)
#9489 0090 0027 6272 9766 12

Re: ***Luis Cruz v. Greystar Management Services, LP;***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Luis Cruz (Plaintiff) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Greystar Management Services, LP ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California

Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's Aggrieved Employees.

Plaintiff wishes to pursue this action on behalf of himself as an aggrieved employee, on behalf of the State of California, as well as on behalf of all other persons who worked for Defendant in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees suffered the Labor Code violations described below.

Plaintiff's Employment with Defendant

Defendant own/owned and operate/operated an industry, business, and establishment within the State of California, including San Diego County. As such, and based upon all the facts and circumstances incident to Defendant's business in California, Defendant is subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Plaintiff worked for Defendant in San Pedro, California as a maintenance worker from approximately December 2014 to December 2020. During Plaintiff's employment with Defendant, Defendant paid Plaintiff an hourly wage and classified Plaintiff as non-exempt from overtime. Defendant typically scheduled Plaintiff to work at least 5 days in a workweek and at least 8 hours per day, but Plaintiff often worked more than 8 hours in a workday and more than 40 hours in a workweek.

Throughout Plaintiff's employment, Defendant failed to pay for all hours worked (including minimum wage, straight time, and overtime wages), failed to provide Plaintiff with legally compliant meal periods, failed to authorize and permit Plaintiff to take rest periods, failed to timely pay all final wages to Plaintiff when Defendant terminated Plaintiff's employment, and failed to furnish accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Defendant Failed to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed

more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendant maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum wages, straight time wages, and overtime wages. Defendant regularly used a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiffs and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Defendant further maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work during meal periods. Plaintiff and the Aggrieved Employees were given tasks of a volume which frequently required Plaintiff and the Aggrieved Employees to continue working while clocked out for a meal period. Accordingly, Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work should have been paid at the overtime rate. Lastly, Defendant maintained a policy and practice of failing to include all non-discretionary forms of remuneration in the base rate of pay when calculating the overtime wages of Plaintiff and the Aggrieved Employees. In failing to correctly calculate the overtime rate for Plaintiff and the Aggrieved Employees, Defendant failed to pay Plaintiff and the Aggrieved employees the correct overtime wages in compliance with California law. Much of this unpaid work should have been paid at the overtime rate.

In failing to pay for all hours worked, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Throughout the statutory period, Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five

consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Plaintiff and the Aggrieved Employees were given tasks of a volume which frequently required Plaintiff and the Aggrieved Employees to take their meal periods late, cut meal periods short, or perform some work tasks while clocked out for a meal period. The job requirements imposed by Defendant had the effect of requiring, pressuring, or encouraging Plaintiff and the Aggrieved Employees to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by taking impermissibly short meal periods. Accordingly, Defendant's policy and practice was not to provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Defendant have wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Defendant continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Plaintiff and the Aggrieved Employees permission to take a rest period. Accordingly, Defendant's policy and practice was to not authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages

for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the California Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to

dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 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.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendant failed, and continue to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an

accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Throughout the statutory period, Defendant failed to furnish Plaintiff and the Aggrieved Employee with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Because Defendant violated Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;

LWDA

Notice of Labor Code Violations and PAGA

March 24, 2021

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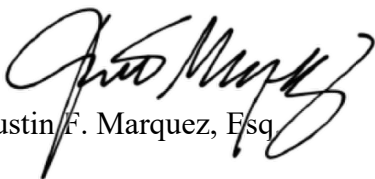
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 204 by failing to pay all earned wages two times per month;
5. California Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination; and
7. Labor Code § 226 by failing to provide accurate itemized wage statements.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM



Justin F. Marquez, Esq

WILSHIRE LAW FIRM, PLC

3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010
Tel: (213) 381-9988
Fax: (213) 381-9989
www.wilshirelawfirm.com



Bobby Saadian, Esq. JD/MBA

Colin M. Jones, Esq.
A. Ilyas Akbari, Esq.
Justin F. Marquez, Esq.
Jon Teller, Esq.
Johnny Ogata, Esq.
Gail Richardson, Esq.
Christina Le, Esq.
Robert Dart, Esq.
Daniel B. Miller, Esq.

Tae Kim, Esq.
Hazel Chang, Esq.
Daniel DeSantis, Esq.
Nicol Hajar, Esq.
Thiago Coelho, Esq.
Benjamin Haber, Esq.
Rachel Vinson, Esq.
Ronghua Guan, Esq.
Arrash Fattahi, Esq.

March 16, 2022

LWDA

Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(Via Online Submission)

Brian S. Fong, Esq.

bfong@sheppardmullin.com

Jennifer G. Redmond, Esq.

jredmond@sheppardmullin.com

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Four Embarcadero Center, 17th Floor
San Francisco, CA 94111

Attorneys for Greystar Management Services, LP, Greystar Real Estate Partners, LLC, Sunrise Riverside, LLC, and Bradley Johnson

(Via Email and Certified Mail, Return Receipt Requested)

#9489 0090 0027 6372 2059 95

Re: **Luis Cruz, et. al. v. Greystar Management Services, LP, et. al.**
Amended Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Luis Cruz, James Caramazza, and Michael Leon (Plaintiffs) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against their former employers, Greystar Management Services, LP, Greystar Real Estate Partners, LLC, Sunrise Riverside, LLC, and Bradley Johnson ("Defendants"). I am writing to amend the letters sent by Plaintiff Luis Cruz on March 24, 2021 (LWDA-CM-826925-21), Plaintiff James Caramazza on February 24, 2020 (LWDA-CM-774322-20), and Plaintiff Michael Leon on March 25, 2020 (LWDA-CM-780326-20). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiffs and all of Defendants' Aggrieved Employees.

Plaintiffs wish to pursue this action on behalf of themselves as aggrieved employees, on behalf of the State of California, as well as on behalf of all other persons who worked for Defendants in

California as a non-exempt or hourly-paid employee at any time from February 21, 2019 through December 31, 2021 (the “Relevant Time Period”) (hereafter, collectively referred to as the “Aggrieved Employees”).

Plaintiffs and the Aggrieved Employees suffered the Labor Code violations described below, and as described in the above-referenced LWDA letters previously filed by Plaintiffs, which are expressly incorporated herein.

Plaintiffs’ Employment with Defendants

Defendants Greystar Real Estate Partners, LLC, Sunrise Riverside, LLC, each own/owned and operate/operated an industry, business, and establishment within the State of California, including San Diego County. Defendant Bradley Johnson is an individual residing in the San Francisco County, California, and the Senior Managing Director of Real Estate Services for Greystar Management Services, LP, with responsibility for overseeing the company’s real estate operations for all of California. As such, and based upon all the facts and circumstances incident to Defendants’ business in California, Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission (“IWC”), and the California Business & Professions Code.

Plaintiff Luis Cruz is a California resident who worked for Defendant in San Pedro, California as a maintenance worker from approximately December 2014 to December 2020. Plaintiff Michael Leon is a California resident who worked for Defendants in California as a non-exempt, hourly employee within the one year prior to March 25, 2020. Plaintiff James Caramazza is a California resident who worked for Defendants as a non-exempt employee, with duties that included, without limitation, picking up and taking out garbage, cleaning swimming pools, and making repairs in apartment properties, within the State of California from approximately March of 2015 through approximately November of 2019. During Plaintiffs’ employment with Defendants, Defendants paid Plaintiffs an hourly wage and classified Plaintiffs as non-exempt from overtime. Defendants typically scheduled Plaintiffs to work at least 5 days in a workweek and at least 8 hours per day, but Plaintiffs often worked more than 8 hours in a workday and more than 40 hours in a workweek.

Throughout Plaintiffs’ employment, Defendants failed to pay Plaintiffs for all hours worked (including minimum wage, straight time, reporting time wages, and overtime wages), failed to include all remuneration when calculating the overtime rate of pay; failed to provide paid sick leave at the proper rate and to provide notice of available paid sick leave and accrual in compliance with the California Labor Code; failed to provide Plaintiffs with legally compliant meal periods, failed to authorize and permit Plaintiffs to take rest periods, failed to timely pay all final wages to Plaintiffs when Defendants terminated Plaintiffs’ employment, failed to adequately indemnify Plaintiffs for employment-related losses or expenditures; failed to keep accurate time records and employee payroll records; failed to provide lawful, written

commission agreements to Plaintiffs, failed to pay all earned wages twice per month, failed to comply with the notice requirements of Labor Code section 2810.5, failed to provide employment records to Plaintiffs, and failed to furnish accurate wage statements to Plaintiffs. As discussed below, Plaintiffs' experience working for Defendants was typical and illustrative.

Defendant Failed to Pay for All Hours Worked, Including Minimum, Straight Time, Reporting Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful. Labor Code § 1197 also states that it is unlawful to pay an employee less than the minimum wage.

Throughout the Relevant Time Period, Defendants maintained a policy and practice of not paying Plaintiffs and the Aggrieved Employees for all hours worked, including minimum wages, reporting time wages, straight time wages, and overtime wages. Defendants regularly used a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiffs and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendants' operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Defendants maintained a companywide policy, practice, and/or procedure whereby they required Plaintiffs and the Aggrieved Employees to be "on-call," but did not pay them wages for "on-call" time. During "on-call" time, Plaintiffs' and the Aggrieved Employees' activities were so restricted that being "on-call" prevented them from engaging in personal activities. Yet, Defendants did not compensate Plaintiffs and the Aggrieved Employees for their "on-call time." The foregoing resulted in time during each workday which Plaintiffs and the Aggrieved Employees were under control of Defendants, but were not compensated at their overtime rate of pay when they worked more than eight hours in a day or 40 hours in a week. Defendants also maintained a policy and practice of failing to pay Plaintiffs and the Aggrieved Employees reporting time wages at the regular rate of pay. Defendants sometimes, but not always, required Plaintiffs and the Aggrieved Employees to report to work but, Plaintiffs and the Aggrieved Employees were either not put to work or were

furnished less than half of their usual scheduled day's work. Defendants also sometimes, but not always, required Plaintiffs and the Aggrieved Employees to work a second time in a workday but furnish them less than two hours of work on the second reporting. Defendants maintained a policy and practice of failing to pay Plaintiffs and the Aggrieved Employees the correct amount of overtime pay in compliance with California law. Plaintiffs and the Aggrieved Employees worked more than 8 hours in a workday or forty hours in a workweek; Plaintiffs and the Aggrieved Employees also sometimes over twelve hours in a workday, and/or seven consecutive workdays in a workweek. Plaintiffs and the Aggrieved Employees worked excessive hours without being properly compensated for all hours worked in excess of eight in a workday or forty hours in a workweek and without being properly compensated for all hours worked in excess of twelve hours in a workday and/or for all hours worked on the seventh consecutive workday in a workweek. Plaintiffs and the Aggrieved Employees earned non-discretionary bonuses. However, Defendants did not include these bonuses when paying Plaintiffs and the Aggrieved Employees overtime. In failing to include all non-discretionary forms of remuneration in the calculation of Plaintiffs' and the Aggrieved Employees' overtime rate, Defendants failed to pay Plaintiffs and the Aggrieved Employees the correct amount of overtime pay in accordance with California law. Lastly, Defendants further maintained a policy and practice of requiring Plaintiffs and the Aggrieved Employees to perform work during meal periods. Plaintiffs and the Aggrieved Employees were given tasks of a volume which frequently required Plaintiffs and the Aggrieved Employees to continue working while clocked out for a meal period. Accordingly, Defendants frequently paid Plaintiffs and the Aggrieved Employees less than all their work time. Some of this unpaid work should have been paid at the overtime rate or double time rate.

In failing to pay for all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiffs and the Aggrieved Employees worked and accurate employee payroll records.

As a result, Defendants are liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, reporting time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages at the employees' regular rate of pay for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendants wrongfully failed to provide Plaintiffs and the Aggrieved Employees with legally compliant meal periods. Throughout the Relevant Time Period, Defendants regularly required Plaintiffs and the Aggrieved Employees to work in excess

of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work, or without compensating Plaintiffs and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Plaintiffs and the Aggrieved Employees were given tasks of a volume which frequently required Plaintiffs and the Aggrieved Employees to take their meal periods late, cut meal periods short, or perform some work tasks while clocked out for a meal period. The job requirements imposed by Defendants had the effect of requiring, pressuring, or encouraging Plaintiffs and the Aggrieved Employees to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by taking impermissibly short meal periods. Accordingly, Defendants' policy and practice was not to provide meal periods to Plaintiffs and the Aggrieved Employees in compliance with California law.

Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages at the employees' regular rate of pay for each workday he or she was not provided with all required meal period(s). Defendants, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendants are liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the Relevant Time Period, Defendants have wrongfully failed to authorize and permit Plaintiffs and the Aggrieved Employees to take legally compliant rest periods. Defendants regularly required Plaintiffs and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiffs and the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Defendants continued to assert control over Plaintiffs and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Plaintiffs and the Aggrieved Employees permission to take a rest period. Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiffs and the Aggrieved Employees to take rest periods in compliance with California law.

Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages at the employees' regular rate of pay for each workday he or she was not authorized and permitted to take all required rest period(s). Defendants, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendants are liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiffs and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Defendants systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe employees the legally required wages for unpaid wages, and Plaintiffs and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendants are liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210, 558, and 2699 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiffs seek penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendants, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiffs and the Aggrieved Employees.

Defendants' failure to provide and maintain records required by the California Labor Code IWC Wage Orders deprived Plaintiffs and the Aggrieved Employees the ability to know, understand

and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiffs and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiffs and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiffs and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Provide Employment Records

Throughout the Relevant Time Period, Defendants failed to provide Plaintiffs and the Aggrieved Employees with, or permit them inspection of, records pertaining to their employment, including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, to the detriment of Plaintiffs and the Aggrieved Employees.

Defendants' failure to provide employment records required by the California Labor Code deprived Plaintiffs and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiffs and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiffs and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the California Labor Code, Plaintiffs and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendants are liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 558 and 2699(f)(2) for failing to comply with the notice requirements of Labor Code section 2810.5.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 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.

Within the applicable statute of limitations, the employment of Plaintiffs and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the Relevant Time Period, Defendants failed, and continue to fail to pay Plaintiffs and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiffs and the Aggrieved Employees are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendants are liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 558 and 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Provide Commission Contracts

Throughout the Relevant Time Period, Defendants failed to provide commission contracts to Plaintiffs and the Aggrieved Employees. California Labor Code § 2751(a) provides that, when an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid. Cal. Lab. Code § 2751(a). Further, California Labor Code § 2751(b) provides that, the "employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party."

Cal. Labor Code § 2751(a). Throughout the Relevant Time Period, Defendants failed to provide a lawful, written commission agreements to Plaintiffs and the Aggrieved Employees who earned commissions as part of their employment with Defendants. Defendants also failed to provide such employees a signed copy of such a contract to those employees. As a result of these violations, Defendants are in violation of California Labor Code requirements which entitle Plaintiffs and the Aggrieved Employees statutory penalties under PAGA.

Failure to Indemnify for Business Expenses

Labor Code § 2802(a) provides that employers shall indemnify his or her employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties. Throughout the statute of limitations period applicable to this cause of action, Defendants wrongfully required Plaintiffs and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants. Plaintiffs and the Aggrieved Employees regularly paid out-of-pocket for necessary employment-related expenses, including, but not limited to, work gloves, gas and/or mileage, and the separate laundering of uniforms necessitated maintenance tasks known by Defendants. Plaintiffs and the Aggrieved Employees were required to utilize their private cell phones for employment-related purposes during the discharge of their duties. Additionally, Plaintiffs and the Aggrieved Employees were required to purchase and use their own tools for employment-related purposes during the discharge of their duties. Plaintiffs' and the Aggrieved Employees' tools and cell phone costs were significant as the result of employment with Defendants. Plaintiffs and the Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Defendants, but Defendants failed to indemnify Plaintiffs and the Aggrieved Employees for these employment-related expenses.

As a result, Defendants are liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 558, 2802 and 2699(f)(2) for failing to indemnify Plaintiffs and the Aggrieved Employees for necessary business expenditures.

Failure to Provide Sick Leave Pay

Labor Code § 246 provides that employers shall provide employees with paid sick leave of at least 24 hours per calendar year or 12-month period and shall provide employees with written notice setting forth the amount of paid sick leave available (or paid time off in lieu thereof) for use on either itemized wage statements (as described in Labor Code section 226) or in a separate writing accompanying such wage statements.. Plaintiffs and the Aggrieved Employees occasionally were required to miss work due to illness, but were not provided sick leave of up to 24 hours per 12-month period. Throughout the Relevant Time Period, Defendants failed to provide Plaintiffs and the Aggrieved Employees with sick leave pay at the proper rate in compliance Labor Code § 246. Defendants also did not permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and the Aggrieved Employees.

Defendants also failed to provide Plaintiffs and the Aggrieved Employees with written notice setting forth the amount of sick leave available (or paid time off in lieu thereof) for use in their itemized wage statements or in a separate writing accompanying such statements.

As a result, Defendants are liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 248.5 and 2699(f) for failing to provide paid sick leave to Plaintiffs and the Aggrieved Employees.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Throughout the Relevant Time Period, Defendants failed to furnish Plaintiffs and the Aggrieved Employee with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Because Defendants violated Labor Code § 226, Plaintiffs and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiffs and similarly Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendants are liable to Plaintiffs and the Aggrieved Employees for the civil penalties

provided for in Labor Code § 226.3, 558, and 2699 for failing to furnish accurate itemized wage statements.

Failure to Provide Sufficient Notice

Throughout the Relevant Time Period, Defendants maintained a policy or practice of failing to comply with the notice requirements of Labor Code section 2810.5 (i.e., the Wage Theft Protection Act of 2011) by, among other things, failing to provide Plaintiffs and the Aggrieved Employees with the rates of pay and overtime rates of pay applicable to their employment; allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the name, address, and telephone number of the worker's compensation insurance carrier; information regarding paid sick leave; and other pertinent information required to be disclosed by Defendants under Labor Code section 2810.5. As such, Plaintiffs are informed and believe, and based thereon allege that the failure to provide such information, including rates of pay that are in effect, has permitted Defendants to pay employees at rates of pay that were not agreed upon, in violation of overtime wage and minimum wage laws in California. As a result of these violations, Defendants are liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiffs allege that Defendants violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, reporting time wages, and overtime wages;
2. Labor Code §§ 226.7 and 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 204 by failing to pay all earned wages two times per month;
5. California Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
6. Labor Code §§ 226, 432, 1174, and 1198.5 by failing to provide employment records;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code §§ 2751(a) and (b) by failing to provide a commission contract to employees who earned commissions and failing to provide a signed copy of such a

contract to those employees;

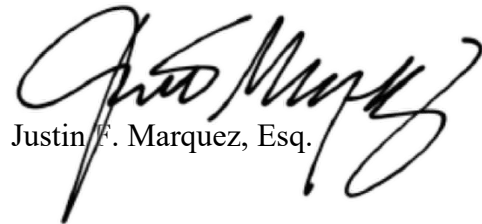
9. Labor Code § 2802 by failing to indemnify for necessary expenditures;
10. Labor Code §§ 246 and 248.5 by failing to provide paid sick leave;
11. Labor Code § 2810.5 by failing to provide sufficient notice; and
12. Labor Code § 226 by failing to provide accurate itemized wage statements.

Therefore, on behalf of all Aggrieved Employees, Plaintiffs seek applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(f)(2).

Plaintiffs have placed Defendants on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM

A handwritten signature in black ink, appearing to read "Justin Marquez", written over the printed name.

Justin F. Marquez, Esq.



WILSHIRE LAW FIRM, PLC

3055 WILSHIRE BLVD., 12TH FLOOR

LOS ANGELES, CA 90010

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& HAMPTON LLP

Four Embarcadero Center, 17th Floor

San Francisco, CA 94111

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