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Assigned for all Purposes

Judge Glenda Sanders

CX-101

Attorneys for Plaintiffs Jose Hernandez
and Abimael Rodriguez Marrero

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JOSE HERNANDEZ and ABIMAE
L RODRIGUEZ MARRERO, as aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiffs,

vs.

HISTORIC MISSION INN
CORPORATION, a California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 30-2021-01221100-CU-OE-CXC

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

1 Plaintiffs Jose Hernandez and Abimael Rodriguez Marrero, as aggrieved employees and
2 on behalf of the State of California and all other non-party Aggrieved Employees, allege as
3 follows:

4 JURISDICTION AND VENUE

5 1. This is an enforcement action under the Labor Code Private Attorneys General
6 Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) to recover civil penalties
7 and any other available relief on behalf of Plaintiffs, the State of California, and other current
8 and former employees who worked for Defendants in California as non-exempt, hourly paid
9 employees and against whom one or more violations of any provision in Division 2 Part 2
10 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the
11 applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth
12 in this complaint, at any time between one year prior to the filing of the pre-filing written notices
13 to the Labor and Workforce Development Agency (“LWDA”) in this case on July 7, 2021¹,
14 until judgment (“non-party Aggrieved Employees”). Plaintiffs’ share of civil penalties sought
15 in this action does not exceed \$75,000.

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

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

28 ¹ As properly tolled by California Rule of Court App I. R.R. Emergency Rule 9.

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

3 4. Venue is proper in this Court, because Defendants filed a Statement of
4 Information form with the California Secretary of State designating a principal place of business
5 in Newport Beach, County of Orange, in accordance with California Corporations Code section
6 2105(a)(3). Cal. Code Civ. P. § 395.5.

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

11 **THE PARTIES**

12 6. Plaintiff Jose Hernandez is a resident of Riverside, in Riverside County,
13 California. Defendants employed Plaintiff Hernandez as an hourly paid, non-exempt employee
14 from approximately February 16, 2016, to August 31, 2020. Plaintiff Hernandez worked for
15 Defendants as an Engineer on Duty at The Mission Inn Hotel & Spa located in Riverside,
16 California. During his employment, Plaintiff Hernandez typically eight (8) hours or more per
17 day, five (5) days per week, from 7:00 a.m. to 3:30 p.m. Plaintiff Hernandez's primary job
18 duties included, without limitation, maintaining and repairing interior and exterior of buildings
19 and rooms; addressing any issues dealing with lighting, heating, HVAC, and plumbing; treating
20 and cleaning the swimming pools; and remodeling and construction projects.

21 7. Plaintiff Abimael Rodriguez Marrero is a resident of Moreno Valley, in Riverside
22 County, California. Defendants have employed Plaintiff Rodriguez Marrero as an hourly paid,
23 non-exempt employee since approximately October 2018, to the present. Plaintiff Rodriguez
24 Marrero has worked for Defendants as a FOL Installer I, Maintenance Engineer I, and Engineer
25 on Duty at The Mission Inn Hotel & Spa located in Riverside, California. Plaintiff Rodriguez
26 Marrero typically works eight (8) hours or more per day, five (5) days per week, from 7:00 a.m.
27 to 3:30 p.m. Plaintiff Rodriguez Marrero's primary job duties include, without limitation,
28 maintaining and repairing interior and exterior of buildings, including hotel rooms and contents;

1 addressing any issues dealing with lighting, heating, air conditioning, ventilation, and plumbing;
2 treating and cleaning the swimming pool; remodeling and construction projects; and completing
3 inspection checklists for hotel rooms prior to guest check-in.

4 8. On information and belief, Defendants required some employees, including
5 Plaintiffs, to execute a dispute resolution policy and/or arbitration agreement at the time of their
6 hire or during their employment. On further information and belief, Defendants' dispute
7 resolution policy and/or arbitration agreement was and is both procedurally and substantively
8 unconscionable. Specifically, Defendants presented employees with a Mutual Agreement to
9 Arbitrate Claims and/or Mutual Agreement to Arbitrate Disputes (collectively referred to as,
10 "Arbitration Agreement"), which had to be reviewed and acknowledged immediately. Also,
11 employees did not have a meaningful opportunity to negotiate the terms of the Arbitration
12 Agreement. Rather, it was provided to Defendants' employees for them to sign on a take-it or
13 leave-it basis. Furthermore, Defendants did not set forth in the agreement or otherwise provide
14 employees with the rules which will govern the arbitration, instead forcing employees to seek
15 this information out on their own.

16 9. HISTORIC MISSION INN CORPORATION was and is, upon information and
17 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
18 employees are engaged throughout this county, the State of California, or the various states of
19 the United States of America.

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

24 11. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
25 were the partners, agents, owners, or managers of HISTORIC MISSION INN CORPORATION
26 at all relevant times.

27 12. Plaintiffs are informed and believe, and thereon allege, that each and all of the
28 acts and omissions alleged herein was performed by, or is attributable to, HISTORIC MISSION

1 INN CORPORATION; and/or DOES 1 through 10 (collectively, “Defendants” or “MISSION
2 INN”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in
3 concert with, each of the other co-Defendants and was acting within the course and scope of
4 such agency, employment, joint venture, or concerted activity with legal authority to act on the
5 others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the
6 official policy of Defendants.

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

11 14. Plaintiffs are informed and believe, and thereon allege, that each of said
12 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
13 omissions, occurrences, and transactions alleged herein.

14 **PAGA REPRESENTATIVE ALLEGATIONS**

15 15. Defendants own and operate The Mission Inn Hotel & Spa, a luxury hotel in
16 Riverside, California. Upon information and belief, Defendants maintain a single, centralized
17 Human Resources (“HR”) department at their company headquarters in Newport Beach,
18 California, which is responsible for the recruiting and hiring of new employees, and
19 communicating and implementing Defendants’ company-wide policies, including timekeeping
20 policies and meal and rest period policies, to employees throughout California.

21 16. In particular, Plaintiffs and other non-party Aggrieved Employees, on
22 information and belief, received the same standardized documents and/or written policies.
23 Upon information and belief, the usage of standardized documents and/or written policies,
24 including new-hire documents, indicate that Defendants dictated policies at the corporate level
25 and implemented them company-wide, regardless of their employees’ assigned locations or
26 positions. Upon information and belief, Defendants set forth uniform policies and procedures
27 in several documents provided at an employee’s time of hire.

28 17. Upon information and belief, Defendants maintain a centralized Payroll

1 department at their company headquarters in Newport Beach, California, which processes
2 payroll for all non-exempt, hourly paid employees working for Defendants at their various
3 locations and jobsites in California, including Plaintiffs and other non-party Aggrieved
4 Employees. Based upon information and belief, Defendants issue the same formatted wage
5 statements to all non-exempt, hourly paid employees in California, irrespective of their work
6 locations. Upon information and belief, Defendants process payroll for departing employees in
7 the same manner throughout the State of California, regardless of the manner in which each
8 employee's employment ends.

9 18. Defendants continue to employ non-exempt or hourly paid employees in
10 California.

11 19. Plaintiffs are informed and believe, and thereon allege, that at all times herein
12 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
13 advisors knowledgeable about California labor and wage law, employment and personnel
14 practices, and about the requirements of California law.

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

18 21. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
20 receive certain wages for overtime compensation and that they were not receiving certain wages
21 for overtime compensation.

22 22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that other non-party Aggrieved Employees were entitled to be paid at a
24 regular rate of pay, and corresponding overtime rate of pay, that included as eligible income all
25 remuneration required by law, including but not limited to, all income derived from incentive
26 pay, nondiscretionary bonuses, and/or other forms of compensation, but failed to incorporate all
27 forms of remuneration in calculating the regular rate of pay for other non-party Aggrieved
28 Employees.

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

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

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

24 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
26 receive complete and accurate wage statements in accordance with California law. In violation
27 of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not
28 provided complete and accurate wage statements.

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

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

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

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

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

28 32. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew or

1 should have known that other non-party Aggrieved Employees were entitled to suitable seating
2 and/or were entitled to sit when it did not interfere with the performance of their duties and also
3 have seats nearby to use during a lull in tasks that do require moving about or standing.

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

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

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

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

24 37. Plaintiffs and other current and former employees of Defendants are "aggrieved
25 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
26 or former employees and one or more of the alleged violations were committed against them.

27 38. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
28 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the

1 following requirements have been met:

- 2 (a) The aggrieved employee shall give written notice by online filing
3 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to
4 the employer of the specific provisions of the California Labor Code
5 alleged to have been violated, including the facts and theories to support
6 the alleged violations.
- 7 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
8 2699.3(a) and any employer response to that notice shall be accompanied
9 by a filing fee of seventy-five dollars (\$75).
- 10 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
11 employer and the aggrieved employee by certified mail that it does not
12 intend to investigate the alleged violation within sixty (60) calendar days
13 of the postmark date of the Employee’s Notice. Upon receipt of the
14 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
15 (65) calendar days of the postmark date of the Employee’s Notice, the
16 aggrieved employee may commence a civil action pursuant to California
17 Labor Code section 2699 to recover civil penalties in addition to any other
18 penalties to which the employee may be entitled.

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

- 22 (a) The aggrieved employee or representative shall give written notice by
23 online filing to the LWDA and by certified mail to the employer of the
24 specific provisions of the California Labor Code alleged to have been
25 violated (other than those listed in Section 2699.5), including the facts
26 and theories to support the alleged violation.
- 27 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
28 2699.3(c) and any employer response to that notice shall be accompanied

1 by a filing fee of seventy-five dollars (\$75).

2 (c) The employer may cure the alleged violation within thirty-three (33)
3 calendar days of the postmark date of the notice. The employer shall give
4 written notice by certified mail within that period of time to the aggrieved
5 employee or representative and the agency if the alleged violation is
6 cured, including a description of actions taken, and no civil action
7 pursuant to Section 2699 may commence. If the alleged violation is not
8 cured within the 33-day period, the employee may commence a civil
9 action pursuant to Section 2699.

10 40. On July 7, 2021, Plaintiff Hernandez provided written notice by online filing to
11 the LWDA and by certified mail to Defendants of the specific provisions of the California Labor
12 Code alleged to have been violated, including facts and theories to support the alleged
13 violations, in accordance with California Labor Code section 2699.3. Plaintiff Hernandez's
14 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
15 LWDA PAGA Administrator has confirmed receipt of Plaintiff Hernandez's written notice and
16 assigned Plaintiff Hernandez PAGA Case Number LWDA-CM-837123-21. A true and correct
17 copy of Plaintiff Hernandez's written notice to the LWDA and Defendants dated July 7, 2021,
18 is attached hereto as "Exhibit 1."

19 41. On July 8, 2021, Plaintiff Rodriguez Marrero provided written notice by online
20 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
21 California Labor Code alleged to have been violated, including facts and theories to support the
22 alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
23 Rodriguez Marrero's written notice was accompanied with the applicable filing fee of seventy-
24 five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff
25 Rodriguez Marrero's written notice and assigned Plaintiff Rodriguez Marrero PAGA Case
26 Number LWDA-CM-837251-21. A true and correct copy of Plaintiff Rodriguez Marrero's
27 written notice to the LWDA and Defendants dated July 8, 2021, is attached hereto as "Exhibit
28 2."

1 42. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
2 sent the initial LWDA Notices described above, and the LWDA has not responded that it intends
3 to investigate Plaintiffs' claims, and Defendants have not cured the violations.

4 43. Thus, Plaintiffs have satisfied the administrative prerequisites under California
5 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
6 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
7 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

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

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

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

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

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

49. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

50. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs and other non-party Aggrieved Employees with all required overtime pay and failure to properly calculate the overtime rates paid to other non-party Aggrieved Employees, as set forth below;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs and other non-party Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;

- 1 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
2 applicable IWC Wage Order for Defendants' failure to provide Plaintiffs
3 and other non-party Aggrieved Employees with meal periods, as set forth
4 below;
- 5 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
6 IWC Wage Order for Defendants' failure to authorize and permit
7 Plaintiffs and other non-party Aggrieved Employees to take rest periods,
8 as set forth below;
- 9 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
10 IWC Wage Order for failure to provide accurate and complete wage
11 statements to Plaintiffs and other non-party Aggrieved Employees, as set
12 forth below;
- 13 (f) Violation of Labor Code section 204 for failure to pay all earned wages
14 during employment, as set forth below;
- 15 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
16 earned wages upon termination, as set forth below;
- 17 (h) Violation of Labor Code section 222.5 for failure to compensate other
18 non-party Aggrieved Employees for mandatory physical examinations
19 and/or drug testing as set forth below;
- 20 (i) Violation of Labor Code section 1198 and the applicable IWC Wage
21 Order for failure to pay reporting time pay when other non-party
22 Aggrieved Employees were put to work for less than half of their regular
23 scheduled shifts, as set forth below;
- 24 (j) Violation of Labor Code section 1198 for failing to provide suitable
25 seating to other non-party Aggrieved Employees, as set forth below; and
- 26 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
27 and other non-party Aggrieved Employees for all business expenses
28 necessarily incurred, as set forth below.

1 **FAILURE TO PAY OVERTIME**

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

3 51. Labor Code section 1198 makes it illegal to employ an employee under
4 conditions of labor that are prohibited by the applicable wage order. California Labor Code
5 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
6 be the . . . standard conditions of labor for employees. The employment of any employee . . .
7 under conditions of labor prohibited by the order is unlawful.”

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

12 53. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiffs and other non-party Aggrieved Employees working more than
14 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
15 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
16 hours in a workweek.

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

22 55. California Labor Code section 510 codifies the right to overtime compensation
23 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
24 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
25 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
26 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
27 the seventh (7th) day of work.

28 56. During the relevant time period, Defendants willfully failed to pay all overtime

1 wages owed to Plaintiffs and other non-party Aggrieved Employees. During the relevant time
2 period, Plaintiffs and other non-party Aggrieved Employees were not paid overtime premiums
3 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
4 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
5 not recorded.

6 57. First, during the relevant time period, Defendants had a company-wide policy
7 and/or practice of discouraging and impeding Plaintiffs and other non-party Aggrieved
8 Employees from recording hours worked that were outside of their scheduled shifts, in order to
9 limit the amount of overtime employees could accrue. On information and belief, this limitation
10 on overtime accrual was based on a company-wide policy of staffing their hotel operations
11 strictly based on the labor hours or labor budget set by corporate. This policy of limiting
12 overtime, coupled with Defendants' understaffing policy and assignment of heavy workloads,
13 led Plaintiffs and other non-party Aggrieved Employees to work off-the-clock before their
14 scheduled shift times in order to complete their assigned tasks. For example, Defendants'
15 management would require Plaintiff Hernandez to report to work at least five (5) minutes early
16 and gather his equipment, such as his company-issued radio and keys, before he was permitted
17 to clock in at his scheduled shift start-time, because he was expected to begin his daily tasks
18 immediately upon clocking in. Similarly, when Plaintiff Rodriguez Marrero arrived to work
19 early, Defendants' management required him to work on maintenance requests for 20 minutes
20 or more, but he would not be permitted to clock in before his scheduled shift start-time. As
21 another example, approximately once per week, Plaintiff Hernandez was instructed to clock out
22 at his scheduled shift end-time and would continue working for 30 minutes to complete
23 outstanding maintenance requests. Defendants did not compensate Plaintiffs and other non-
24 party Aggrieved Employees for the time they worked before and after their scheduled shifts
25 even though they remained under the control of Defendants. Defendants could have recorded
26 this off-the-clock work, but refused to do so to avoid paying Plaintiffs and other non-party
27 Aggrieved Employees overtime wages.

28 58. Second, Defendants had, and continue to have, a loss prevention policy requiring

1 employees to undergo mandatory security checks by a security guard when entering or leaving
2 the premises. As a result of Defendants' policy, Plaintiffs and other non-party Aggrieved
3 Employees were required to undergo security screenings before clocking in or after clocking
4 out at the end of a shift prior to entering or exiting the premises. For example, Plaintiffs and
5 other non-party Aggrieved Employees were required to wait 1-2 minutes per instance for the
6 security guard to check their bags before clocking in at the beginning of their shifts or after
7 clocking out at the end of their shifts. Although Defendants' requirement that Plaintiffs and
8 other non-party Aggrieved Employees undergo security checks was mandatory, Defendants did
9 not compensate them for the time it took them to wait in line and undergo these checks.

10 59. Third, as stated, Defendants had a company-wide policy and/or practice of
11 understaffing their hotel operations, which, coupled with hotel maintenance demands and heavy
12 workloads, resulted in a failure to provide Plaintiffs and other non-party Aggrieved Employees
13 with adequate meal period coverage. Also, Defendants have systematically, and on a company-
14 wide basis, adopted a single-staffing model for some of their positions, thereby failing to
15 provide adequate meal period coverage to permit those employees to take compliant meal
16 periods. Moreover, Defendants had a practice of failing to schedule meal periods, which further
17 caused Plaintiffs and other non-party Aggrieved Employees to not be relieved of their duties for
18 compliant meal periods. Plaintiffs and other non-party Aggrieved Employees worked through
19 meal periods or had their meal periods interrupted because there were not enough employees
20 on duty to handle the workload and attend to hotel maintenance requests, especially during peak
21 hotel seasons. As a result, Plaintiffs and other non-party Aggrieved Employees were not
22 afforded thirty (30) minute meal periods during shifts in which they were entitled to receive
23 meal periods and were not paid for the time they spent working during meal periods. Defendants
24 knew or should have known that Plaintiffs and other non-party Aggrieved Employees were
25 being made to work during unpaid meal periods but failed to compensate them for this off-the-
26 clock work.

27 60. Fourth, Defendants had, and continue to have, a policy and/or practice of
28 requiring that Plaintiffs and other non-party Aggrieved Employees carry a company-issued

1 radio and to respond to maintenance requests at all times, upon threat of discipline. Defendants
2 contacted Plaintiffs and other non-party Aggrieved Employees on their radios during unpaid
3 meal periods to instruct them to attend to guest calls. For example, Plaintiffs received requests
4 on their company-issued radios and would have their meal periods cut short to work off-the-
5 clock approximately 3-5 times per week. Defendants knew or should have known that Plaintiffs
6 and other non-party Aggrieved Employees were being made to respond to radio calls and
7 complete tasks while off-the-clock in order to meet Defendants' expectations, but failed to
8 compensate them for this off-the-clock work.

9 61. Additionally, during the relevant time period, Defendants maintained and
10 implemented a company-wide on-premises meal period policy, which mandated that other non-
11 party Aggrieved Employees remain on the work premises during their meal periods. Because
12 other non-party Aggrieved Employees were restricted from leaving the premises during meal
13 periods, they were denied the ability to use their meal periods freely for their own purposes,
14 such as running personal errands. Thus, Defendants effectively maintained control over other
15 non-party Aggrieved Employees during meal periods.

16 62. Fifth, because Defendants frowned upon employees accruing meal period
17 penalties, Defendants pressured Plaintiffs and other non-party Aggrieved Employees to clock
18 out for meal periods and/or adjusted employee time records to reflect compliant meal periods,
19 regardless of whether they had received a compliant meal period, in order to strictly limit meal
20 penalties that Defendants would otherwise owe. For example, Defendants' management
21 instructed Plaintiffs and other non-party Aggrieved Employees to clock out and record
22 compliant meal periods even when they were interrupted and tasked with performing work
23 during their unpaid meal periods.

24 63. Sixth, Defendants' company-wide timekeeping system further prevented
25 Plaintiffs and other non-party Aggrieved Employees from recording all hours worked when
26 their meal periods were shortened or interrupted, because the system prevented employees from
27 clocking back in from a meal period until 30 minutes elapsed. Specifically, Defendants'
28 timekeeping procedure states, "when attempting to clock in early, clock will provide message

1 showing time remaining and will not allow [associate] to clock in. If associate took a full 30
2 minutes lunch, clock will read 'ACCEPTED.'" Thus, Defendants' timekeeping system
3 prevented Plaintiffs and other non-party Aggrieved Employees from recording all hours worked
4 when meal periods were missed, short, and/or interrupted.

5 64. Defendants knew or should have known that as a result of these company-wide
6 practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were performing
7 assigned duties off-the-clock during meal periods and/or before and after their shifts, and were
8 suffered or permitted to perform work for which they were not paid. Because Plaintiffs and
9 other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more or forty
10 (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.
11 Therefore, Plaintiffs and other non-party Aggrieved Employees were not paid overtime wages
12 for all of the overtime hours they actually worked.

13 65. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
14 correct overtime rate for the recorded overtime hours that they generated. In addition to an
15 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
16 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
17 California Labor Code, Defendants failed to incorporate all compensation, including incentive
18 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
19 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times
20 when other non-party Aggrieved Employees worked overtime and received these other forms
21 of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
22 required.

23 66. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
24 the balance of overtime compensation as required by California law, violates the provisions of
25 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
26 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558
27 and/or 2699(a), (f), and (g).

28 ///

1 **FAILURE TO PAY MINIMUM WAGES**

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

3 67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
4 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
5 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
6 Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which
7 an employee is subject to the control of an employer, and includes all the time the employee is
8 suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8,
9 § 11050(2)(K) (defining “Hours Worked”).

10 68. As stated above, Defendants had a company-wide practice and/or policy of
11 utilizing labor budgets and limiting overtime accrual, leading to the failure to compensate
12 Plaintiffs and other non-party Aggrieved Employees for their time spent working off-the-clock,
13 including performing work duties before and after scheduled shifts, and undergoing security
14 searches. In addition, due to Defendants’ uniform practices of understaffing and/or single-
15 staffing, assignment of heavy workloads, failure to schedule meal periods, requiring employees
16 to respond to radio calls at all times, requiring employees to stay on the work premises during
17 meal periods, and subsequent lack of meal period coverage, Plaintiffs and other non-party
18 Aggrieved Employees were forced to forego meal periods, have their meal periods interrupted
19 or shortened, and/or were otherwise not relieved of all duties during meal periods. Moreover,
20 as stated, in order to prevent employees from accruing meal period penalties, Defendants’
21 management pressured employees to clock out for meal periods and/or adjusted employee time
22 records to reflect compliant meal periods, but required them to continue working, time for which
23 they were not paid. And, as described above, Defendants’ timekeeping system did not permit
24 Plaintiffs and other non-party Aggrieved Employees to clock back in early when their meal
25 periods were interrupted or cut short.

26 69. Moreover, Defendants maintained and implemented a company-wide policy of
27 requiring employees to travel to a medical facility on their own time to undergo mandatory drug
28 testing and/or physical examinations, upon hiring and periodically thereafter. At all times,

1 Defendants were in control of scheduling the date and time for the testing and/or physical
2 examinations, selecting the provider or facility where the testing and/or physical examinations
3 were to take place, and determining the scope of the testing and/or physical examinations.
4 Defendants gave other non-party Aggrieved Employees strict instructions to obtain drug testing
5 and/or physical examinations, and other non-party Aggrieved Employees underwent the testing
6 and/or examinations for the sole benefit of Defendants. For example, other non-party Aggrieved
7 Employees followed Defendants' instructions, traveled in their personal vehicles to and from a
8 designated U.S. HealthWorks medical facility in Riverside, California, and spent time waiting
9 for and undergoing the requisite drug testing and physical examinations. However, Defendants
10 did not compensate other non-party Aggrieved Employees for the time they spent traveling to
11 and from the medical facilities and undergoing the mandatory drug testing and/or physical
12 examinations.

13 70. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiffs
14 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
15 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
16 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
17 1197, and 1198.

18 71. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
19 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
20 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
21 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

23 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

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

27 73. At all relevant times herein set forth, California Labor Code section 512(a)
28 provides that an employer may not require, cause, or permit an employee to work for a period

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

6 74. At all relevant times herein set forth, California Labor Code sections 226.7,
7 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
8 meal period mandated by an applicable order of the IWC.

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

15 76. As stated, Defendants had, and continue to have, company-wide policies and/or
16 practices of single-staffing and understaffing pursuant to their labor budgeting practices,
17 assigning heavy workloads, and failing to schedule meal periods, which has resulted in a failure
18 to provide Plaintiffs and other non-party Aggrieved Employees with adequate meal period
19 coverage and prevented Plaintiffs and other non-party Aggrieved Employees from taking all
20 timely, uninterrupted meal periods to which they were entitled. For example, approximately 1-
21 2 times per week, Plaintiffs were required to take their meal periods late after having worked in
22 excess of five (5) hours or more into their shifts, in order to attend to maintenance and repair
23 requests. Plaintiff Rodriguez Marrero has also been forced to miss his meal periods entirely on
24 at least five (5) occasions because he was the only Engineer on Duty staffed during the day.

25 77. During the relevant time period, as set forth above, Defendants also had, and
26 continue to have, a policy and/or practice of requiring that Plaintiffs and other non-party
27 Aggrieved Employees carry a company-issued radio on their person to respond to maintenance
28 requests at all times, including during meal periods, upon threat of discipline. For example,

1 Plaintiff Hernandez's meal periods were interrupted approximately three (3) times per week by
2 radio calls directing him to attend to maintenance requests, while Plaintiff Rodriguez Marrero's
3 meal periods have been interrupted on a daily basis by radio calls. Moreover, because other
4 non-party Aggrieved Employees were restricted from leaving the premises during meal periods,
5 other non-party Aggrieved Employees were denied the ability to use meal periods freely for
6 their own purposes, such as running personal errands. Thus, Defendants effectively maintained
7 control over Plaintiffs and/or other non-party Aggrieved Employees during meal periods

8 78. Additionally, as stated, because Defendants frowned upon employees accruing
9 meal period penalties, Defendants' management pressured employees to clock out for meal
10 periods and/or would adjust Plaintiffs' and other non-party Aggrieved Employees' time records
11 to reflect compliant meal periods, regardless of whether they had received a compliant meal
12 period or not, in order to strictly limit meal penalties that would need to be paid by Defendants.
13 Furthermore, as stated, Defendants' company-wide timekeeping system prevented Plaintiffs
14 and other non-party Aggrieved Employees from recording all hours worked when their meal
15 periods were shortened or interrupted, because the system locked out Plaintiffs and other non-
16 party Aggrieved Employees once they clocked out for a meal period and would not permit them
17 to clock back in until 30 minutes had elapsed.

18 79. Defendants also did not provide Plaintiffs and other non-party Aggrieved
19 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
20 hours in one day. For example, Plaintiffs would work shifts in excess of ten (10) hours without
21 receiving an uninterrupted second 30-minute meal period. Plaintiffs and other non-party
22 Aggrieved Employees did not sign valid meal period waivers on days that they were entitled to
23 meal periods and were not relieved of all duties.

24 80. Moreover, Defendants had a company-wide policy of requiring all employees to
25 sign blanket meal period waivers at or near their time of hire. Defendants took the position that
26 non-exempt, hourly paid employees had waived their rights to first and/or second meal periods
27 for the entirety of their employment and, on that basis, did not provide them with all meal
28 periods to which they were entitled. Defendants' company-wide use of blanket meal period

1 waivers, signed at or near the time of hire, and imposition on employees to revoke the waivers
2 in writing, discouraged and impeded Plaintiffs and other non-party Aggrieved Employees from
3 taking all meal periods to which they were entitled. And, Defendants' presumption that meal
4 periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours
5 and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal
6 period waivers, discouraged Plaintiffs and other non-party Aggrieved Employees from taking
7 all meal periods.

8 81. Furthermore, an employer's obligation to provide a meal period is only
9 "triggered" when the employer "employs an employee for a work period of more than five hours
10 per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to
11 work for a full five hours, its meal break obligation is triggered.").

12 [A]fter the meal break obligation is triggered . . . an employer is put to a
13 choice: it must (1) afford an off-duty meal period; (2) consent to a
14 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
15 obtain written agreement to an on-duty meal period if circumstances
permit. Failure to do one of these will render the employer liable for
premium pay.

16 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). The fact that
17 Defendants requires aggrieved employees to sign meal waivers simultaneously at or near their
18 time of hire (as opposed to on a specific work day) renders them invalid and unenforceable,
19 because Defendants' obligation to provide Plaintiffs and other non-party Aggrieved Employees
20 with meal periods did not arise until it had employed them for a full five (5) hours.

21 82. Defendants knew or should have known that as a result of its policies and/or
22 practices, that Plaintiffs and other non-party Aggrieved Employees were not actually relieved
23 of all duties to take timely, uninterrupted meal periods. Defendants further knew or should have
24 known that it did not pay Plaintiffs and other non-party Aggrieved Employees meal period
25 premiums when meal periods were missed, late, short, and/or interrupted.

26 83. Furthermore, Defendants engaged in a company-wide practice and/or policy of
27 not paying all meal period premiums owed when compliant meal periods are not provided.
28 Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved Employees

1 have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to
2 the extent that Defendants did pay other non-party Aggrieved Employees premium pay for
3 missed, late, and interrupted meal periods, Defendants did not pay other non-party Aggrieved
4 Employees at the correct rate of pay for premiums because Defendants systematically failed to
5 include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or
6 other forms of remuneration, in the regular rate of pay.

7 84. Thus, Defendants failed to provide Plaintiffs and other non-party Aggrieved
8 Employees compliant meal periods and failed to pay the full meal period premiums due.
9 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
10 sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved Employees are
11 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a),
12 (f), and (g).

13 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

14 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

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

18 86. At all relevant times, the applicable IWC Wage Order provides that "[e]very
19 employer shall authorize and permit all employees to take rest periods, which insofar as
20 practicable shall be in the middle of each work period" and that the "rest period time shall be
21 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
22 hours or major fraction thereof" unless the total daily work time is less than three and one-half
23 (3 ½) hours.

24 87. At all relevant times, California Labor Code section 226.7 provides that no
25 employer shall require an employee to work during any rest period mandated by an applicable
26 order of the California IWC. To comply with its obligation to authorize and permit rest periods
27 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
28 must "relinquish any control over how employees spend their break time, and relieve their

employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

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

89. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ policies and/or practices of understaffing and/or single-staffing while assigning heavy workloads prevented Plaintiffs and other non-party Aggrieved Employees from being relieved of all duty in order to take compliant rest periods. Defendants also failed to schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest period coverage, further led to Plaintiffs and other non-party Aggrieved Employees not being authorized and permitted to take rest periods. Moreover, as stated, Defendants had, and continues to have, a policy and/or practice of requiring that Plaintiffs and other non-party Aggrieved Employees carry a company-issued radio to respond to maintenance and repair requests at all times, including during rest periods. For example, Plaintiffs had their rest periods cut short and interrupted to respond to requests from Defendants on their company-issued radios.

90. Furthermore, Defendants maintained and implemented a company-wide practice and/or policy requiring that Plaintiffs and other non-party Aggrieved Employees remain on the work premises during their rest periods. Because Plaintiffs and other non-party Aggrieved Employees were restricted from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, Defendants effectively maintained control over Plaintiffs and other non-party Aggrieved Employees during rest periods, and, as a result of this rest period policy, Defendants did not relinquish control over Plaintiffs and other non-party Aggrieved Employees during rest

1 periods.

2 91. As a result of Defendants' practices and policies, Plaintiffs and other non-party
3 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
4 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
5 entitled. For example, Plaintiff Hernandez would miss his one of his rest periods entirely once
6 per day and have his rest periods interrupted four (4) times per week to respond to maintenance
7 requests due to the lack of rest period coverage. For the same reasons, Plaintiff Rodriguez
8 Marrero has often only been able to take one (1) rest period per week, and the rest periods he
9 has been able to take are frequently interrupted to respond to maintenance requests.

10 92. Defendants also have engaged in a company-wide practice and/or policy of not
11 paying all rest period premiums owed when compliant rest periods are not authorized and
12 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
13 Employees have not received premium pay for all missed rest periods. Alternatively, to the
14 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
15 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
16 Employees at the correct rate of pay for premiums because Defendants failed to include all
17 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
18 remuneration, in the regular rate of pay.

19 93. Defendants' conduct violates the applicable IWC Wage Order and California
20 Labor Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved Employees
21 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
22 2699(a), (f), and (g).

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

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

25 94. At all relevant times herein set forth, California Labor Code section 226(a)
26 provides that every employer shall furnish each of his or her employees an accurate and
27 complete itemized wage statement in writing, including, but not limited to, the name and address
28 of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked,

1 and all applicable rates of pay.

2 95. At all relevant times, Defendants have knowingly and intentionally provided
3 Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate
4 wage statements. For example, Defendants issued uniform wage statements to Plaintiffs and
5 other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours
6 worked; net wages earned; the address of the legal entity that is the employer; and all applicable
7 hourly rates in effect during the pay period, including rates of pay for overtime wages and/or
8 meal and rest period premiums, and the corresponding number of hours worked at each hourly
9 rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and
10 226(a)(9).

11 96. First, because Defendants did not record the time Plaintiffs and other non-party
12 Aggrieved Employees spent working off-the-clock and deducted time from their records for
13 meal periods that were interrupted and/or missed (and therefore time for which they should have
14 been paid), Defendants did not list the correct amount of gross wages and net wages earned by
15 Plaintiffs and other non-party Aggrieved Employees in compliance with section 226(a)(1) and
16 section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the
17 total number of hours worked by Plaintiffs and other non-party Aggrieved Employees, in
18 violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during
19 the pay period and the corresponding accurate number of hours worked at each hourly rate, in
20 violation of section 226(a)(9).

21 97. Second, because Defendants did not calculate other non-party Aggrieved
22 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
23 and rest period premiums, Defendants did not list the correct amount of gross wages in
24 compliance with section 226(a)(1). For the same reason, Defendants also failed to list the
25 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to
26 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of
27 pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

28 98. Third, and separate from these violations, Defendants issued uniform wage

1 statements to Plaintiffs and other non-party Aggrieved Employees that failed to correctly list
2 the correct address of the legal entity of the actual employer in violation of 226(a)(8). The
3 purpose of section 226(a)(8) is to provide California employees with transparency as to the true
4 identity of their employer, to allow the employee to contact their employer during employment
5 in the future for various reasons, including filing an administrative claim, judicial claim, or
6 other action to seek relief against their employer, to obtain unemployment benefits, etc.
7 Plaintiffs' wage statements list the entity "HISTORIC MISSION INN CORPORATION" at the
8 address "3649 MISSION INN AVE, RIVERSIDE CA 92501," but, according to the California
9 Secretary of State's website, there is no such entity by that name at that address. Instead, the
10 entity "HISTORIC MISSION INN CORPORATION" is listed on the California Secretary of
11 State's website with a different address, "4100 NEWPORT PLACE DR. SUITE 400,
12 NEWPORT BEACH CA 92660."

13 99. The wage statement deficiencies also include, without limitation, failing to list
14 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
15 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for
16 which aggrieved employees were paid; failing to list the name of the employee and only the last
17 four digits of his or her social security number or an employee identification number other than
18 a social security number; failing to list the name of the legal entity that is the employer; and/or
19 failing to state all hours worked as a result of not recording or stating hours worked off-the-
20 clock.

21 100. California Labor Code section 1174(d) provides that "[e]very person employing
22 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
23 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
24 plants or establishments at which employees are employed, payroll records showing the hours
25 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
26 applicable piece rate paid to, employees employed at the respective plants or
27 establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500
28 civil penalty if they fail to maintain accurate and complete records as required by section

1 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
2 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-
3 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto as
4 a result of failing to record the off-the-clock hours that they worked.

5 101. California Labor Code section 1198 provides that the maximum hours of work
6 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
7 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
8 of any employees for longer hours than those fixed by the order or under conditions of labor
9 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
10 are required to keep accurate time records showing when the employee begins and ends each
11 work period and meal period. During the relevant time period, Defendants failed, on a
12 company-wide basis, to keep accurate records of work and meal period start and stop times for
13 Plaintiffs and other non-party Aggrieved Employees, in violation of section 1198. As stated,
14 Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiffs’ and other
15 non-party Aggrieved Employees’ time records by recording that compliant meal periods were
16 taken regardless of if or when meal periods were actually taken, and thereby failed to keep
17 accurate records of meal start and end times for Plaintiffs and other non-party Aggrieved
18 Employees. Furthermore, in light of Defendants’ failure to provide Plaintiffs and other non-
19 party Aggrieved Employees with second 30-minute meal periods to which they were entitled,
20 Defendants kept no records of meal start and end times for second meal periods.

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

24 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

25 **VIOLATION OF LABOR CODE SECTION 204**

26 103. At all relevant times herein set forth, California Labor Code section 204 requires
27 that all wages earned by any person in any employment between the 1st and the 15th days,
28 inclusive, of any calendar month, other than those wages due upon termination of an employee,

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

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

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

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

18 **FAILURE TO PAY WAGES UPON TERMINATION**

19 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

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

27 108. Defendants willfully failed to pay Plaintiff Hernandez and other non-party
28 Aggrieved Employees who are no longer employed by Defendants the earned and unpaid wages

1 set forth above, including but not limited to, overtime wages, minimum wages, meal and rest
2 period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-
3 two (72) hours of their leaving Defendants' employ.

4 109. Defendants' failure to pay Plaintiff Hernandez and those non-party Aggrieved
5 Employees who are no longer employed by Defendants their wages earned and unpaid at the
6 time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ,
7 violates California Labor Code sections 201 and 202. Plaintiff Hernandez and other non-party
8 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
9 sections 256 and/or 2699(a), (f), and (g).

10 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION**

11 **VIOLATION OF LABOR CODE SECTION 222.5**

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

15 111. During the relevant time period, Defendants implemented, on a company-wide
16 basis, an employer-imposed requirement that other non-party Aggrieved Employees undergo
17 mandatory drug testing and/or physical examinations, but required them to do so at their own
18 expense. Defendants had a company-wide policy requiring that other non-party Aggrieved
19 Employees travel to a specified medical facility on their own time and use their own means of
20 transportation to undergo drug testing and/or physical examinations upon hiring and
21 periodically thereafter. At all times, Defendants were in control of scheduling the date and time
22 for the testing and/or examinations, selecting the provider/facility where the testing and/or
23 examinations were to take place, and determining the scope of the testing and/or examinations.

24 112. For example, as stated, other non-party Aggrieved Employees were instructed by
25 Defendants to travel to a designated U.S. HealthWorks medical facility in Riverside, California,
26 and obtain a drug test. Other aggrieved employees followed Defendants' instructions, traveled
27 to the medical facility Defendants selected, and underwent the testing. However, Defendants
28 did not compensate other non-party Aggrieved Employees for the time they spent traveling to

1 and from the medical facility, for the time they spent undergoing the drug testing and/or physical
2 examinations, or reimburse them for the travel expenses they incurred getting to and from the
3 medical facility.

4 113. Defendants' policy and/or practice of not paying for all costs other non-party
5 Aggrieved Employees incurred obtaining mandatory drug testing and/or physical examinations
6 is in violation of California Labor Code section 222.5. Other non-party Aggrieved Employees
7 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
8 (g).

9 **FAILURE TO PAY REPORTING TIME PAY**

10 **VIOLATION OF LABOR CODE SECTION 1198**

11 114. California Labor Code section 1198 makes it illegal to employ an employee
12 under conditions of labor that are prohibited by the applicable wage order. California Labor
13 Code section 1198 requires that ". . . the standard conditions of labor fixed by the commission
14 shall be the . . . standard conditions of labor for employees. The employment of any employee
15 . . . under conditions of labor prohibited by the order is unlawful."

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

26 116. Upon information and belief, Defendants violated California Labor Code section
27 1198 and California Code of Regulations, Title 8, section 11050(5), because Defendants failed
28 to pay other non-party Aggrieved Employees reporting time pay when they reported to work for

1 their scheduled shift but were put to work for less than half of the regular schedule.

2 117. Defendants had a company-wide practice of sending other non-party Aggrieved
3 Employees home early from their shifts, including before they had worked at least half of their
4 regular shift, but would not pay other non-party Aggrieved Employees for half of their
5 scheduled shift. Although other non-party Aggrieved Employees reported to work based on the
6 schedule that Defendants provided to them, Defendants would send them home before they had
7 worked at least half of their scheduled shifts without giving them reporting time pay.
8 Accordingly, other non-party Aggrieved Employees were not properly compensated with
9 reporting time pay in violation of California Labor Code section 1198 and California Code of
10 Regulations, Title 8, section 11050(5).

11 118. Other non-party Aggrieved Employees are therefore entitled to recover civil
12 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

13 **FAILURE TO PROVIDE SUITABLE SEATING**
14 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
15 **REGULATIONS, TITLE 8, SECTION 11050(14)(A)**

16 119. At all relevant times herein, California Labor Code section 1198 makes it illegal
17 to employ an employee under conditions of labor that are prohibited by the applicable wage
18 order. California Labor Code section 1198 requires that “. . . the standard conditions of labor
19 fixed by the commission shall be the . . . standard conditions of labor for employees. The
20 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

21 120. California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll
22 working employees shall be provided with suitable seats when the nature of the work reasonably
23 permits the use of seats.”

24 121. Plaintiffs allege that there was, and continues to be, space behind Defendants’
25 front desk, registration desk, and concierge desk areas to allow for the presence and use of a
26 seat or stool by other non-party Aggrieved Employees (with reasonable or no modification to
27 these work areas) during the performance of their work duties. Defendants could provide other
28 non-party Aggrieved Employees with a seat or stool at the front desks, registration desks, and

1 concierge desks, but instead denied them seating and forced other non-party Aggrieved
2 Employees to stand throughout the day.

3 122. Other non-party Aggrieved Employees spent a substantial portion of their day
4 behind the front desk(s), registration desk(s), and concierge desk(s). The nature of the work of
5 an employee performing front desk, registration desk, and concierge duties can reasonably be
6 accomplished from a seated position. However, Defendants systematically, and on a company-
7 wide basis, do not provide seats or stools at or near front desks, registration desks, or concierge
8 desks, forcing other non-party Aggrieved Employees to stand throughout their work shifts.

9 123. During the relevant time period, Defendants violated California Labor Code
10 section 1198 and California Code of Regulations, Title 8, section 11050(14)(A), because other
11 non-party Aggrieved Employees were not allowed to sit, even when it would not have interfered
12 with the performance of their duties, nor were they provided with suitable seats. Defendants'
13 management did not inform other non-party Aggrieved Employees that they were allowed to sit
14 down, provide any means for them to sit down, or mention any policy regarding sitting.

15 124. As a result of Defendants' company-wide policy and/or practice of prohibiting
16 employees from sitting during their shifts and company-wide failure to provide suitable seating,
17 other non-party Aggrieved Employees were forced to stand during shifts and denied seats.
18 Defendants' failure to provide suitable seating to other non-party Aggrieved Employees
19 violated and continues to violate California Labor Code section 1198 and IWC Wage Order 5-
20 2001, subdivision 14(A).

21 125. Other non-party Aggrieved Employees are therefore entitled to recover civil
22 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

23 **FAILURE TO PROVIDE SUITABLE SEATING**

24 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
25 **REGULATIONS, TITLE 8, SECTION 11050(14)(B)**

26 126. At all relevant times herein, California Labor Code section 1198 makes it illegal
27 to employ an employee under conditions of labor that are prohibited by the applicable wage
28 order. California Labor Code section 1198 requires that "... the standard conditions of labor

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

3 127. California Code of Regulations, Title 8, section 11050(14)(B) provides that
4 “[w]hen employees are not engaged in the active duties of their employment and the nature of
5 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
6 proximity to the work area and employees shall be permitted to use such seats when it does not
7 interfere with the performance of their duties.”

8 128. During the relevant time period, Defendants violated California Labor Code
9 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because other
10 non-party Aggrieved Employees were not allowed to sit, even during lulls in their work duties,
11 nor were they provided with suitable seats in reasonable proximity to their work areas.

12 129. As stated, there was, and continues to be, space near Defendants’ work areas
13 (with reasonable or no modification to these work areas) to allow for the presence and use of a
14 seat or stool by other non-party Aggrieved Employees during lulls in operation. Defendants
15 could have provided other non-party Aggrieved Employees with a seat or stool in their work
16 areas, but instead denied employees seating and forced other non-party Aggrieved Employees
17 to stand throughout the day.

18 130. Defendants did not provide other non-party Aggrieved Employees with seats or
19 stools in reasonable proximity to their work areas to allow them to use seats when it would not
20 interfere with the performance of their duties for times when they were not engaged in active
21 duties that require standing. In other words, to the extent other non-party Aggrieved Employees
22 engaged in duties in which the nature of the work required standing, Defendants denied them
23 the use of suitable seats nearby during lulls in their work duties. Moreover, Defendants did not
24 inform other non-party Aggrieved Employees of their rights to a seat or stool under California
25 law.

26 131. As a result of Defendants’ company-wide policy and/or practice prohibiting
27 employees from sitting at any time, even when they were not engaged in active duties requiring
28 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,

1 other non-party Aggrieved Employees were forced to stand during shifts and denied seats.
2 Defendants' failure to provide suitable seating to other non-party Aggrieved Employees
3 violated and continues to violate California Labor Code section 1198 and IWC Wage Order 5-
4 2001, subdivision 14(B).

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

7 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

8 **VIOLATION OF LABOR CODE SECTION 2802**

9 133. At all times herein set forth, California Labor Code section 2802 provides that
10 an employer must reimburse employees for all necessary expenditures and losses incurred by
11 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
12 to prevent employers from passing off their cost of doing business and operating expenses on
13 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
14 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools
15 or equipment are required by the employer or are necessary to the performance of a job, such
16 tools and equipment shall be provided and maintained by the employer, except that an employee
17 whose wages are at least two (2) times the minimum wage provided herein may be required to
18 provide and maintain hand tools and equipment customarily required by the trade or craft."

19 134. First, during the relevant time period, Defendants, on a company-wide basis,
20 required that Plaintiffs and other non-party Aggrieved Employees use their own personal mobile
21 phones and personal mobile data to carry out their job duties, but failed to reimburse them for
22 the costs of their work-related mobile phone expenses. Plaintiffs and other non-party Aggrieved
23 Employees were required to use their personal mobile phones to complete their work-related
24 tasks, such as communicating with supervisors about work-related matters when the company-
25 provided radios were inoperable or unusable, and receiving pictures from Defendants'
26 management regarding special projects. Although Defendants required Plaintiffs and other non-
27 party Aggrieved Employees to utilize their personal mobile phones to carry out their work-
28 related responsibilities, Defendants failed to reimburse them for this cost.

1 135. Second, during the relevant time period, Defendants had a company-wide policy
2 of requiring other non-party Aggrieved Employees to travel to medical facilities on their own
3 time and using their personal vehicles to obtain mandatory drug testing and/or physical
4 examinations, but did not reimburse them for their travel expenses, including mileage. At all
5 times, Defendants were in control of scheduling the date and time for the testing and/or physical
6 examinations, selecting the provider or facility where the testing and/or physical examinations
7 were to take place, and determining the scope of the testing and/or physical examinations.
8 Defendants gave other non-party Aggrieved Employees strict instructions to obtain drug testing
9 and/or physical examinations, and other non-party Aggrieved Employees underwent the testing
10 and/or physical examinations for the sole benefit of Defendants. For example, other non-party
11 Aggrieved Employees followed Defendants' instructions and traveled in their personal vehicles
12 to and from a designated U.S. HealthWorks medical facility in Riverside, California to obtain
13 their drug testing and/or physical examinations, but were not reimbursed for their mileage to
14 and from the facility. Although Defendants required other non-party Aggrieved Employees to
15 use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical
16 examinations, Defendants never reimbursed them for their travel expenses.

17 136. Third, during the relevant time period, Defendants, on a company-wide basis,
18 required Plaintiffs and other non-party Aggrieved Employees to purchase supplies, tools, and/or
19 equipment, such as drills and drill bits, screwdrivers, wrenches, and torches, that were necessary
20 for the completion of their work-related duties. Thus, Defendants failed to provide supplies,
21 tools, and/or equipment to Plaintiffs and other non-party Aggrieved Employees, forcing them
22 to procure their own, and failed to reimburse Plaintiffs and other non-party Aggrieved
23 Employees for these costs.

24 137. Defendants could have provided Plaintiffs and other non-party Aggrieved
25 Employees with the actual tools for use on the job, such as company phones and vehicles; and
26 supplies, tools, and/or equipment. Or, Defendants could have reimbursed employees for the
27 costs of their mobile phone usage; mileage and travel costs; and supplies, tools, and/or
28 equipment. Instead, Defendants passed these operating costs off onto Plaintiffs and other non-

1 party Aggrieved Employees. At all relevant times, Plaintiffs did not earn at least two (2) times
2 the minimum wage.

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

7 **REQUEST FOR JURY TRIAL**

8 Plaintiffs request a trial by jury.

9 **PRAYER FOR RELIEF**

10 Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment against
11 Defendants, jointly and severally, as follows:

12 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
13 (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different amount.

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

15 2. That the Court declare, adjudge and decree that Defendants violated the
16 following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved
17 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
18 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
19 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
20 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
21 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages
22 during employment); 201 and 202 (by failing to timely pay all earned wages upon termination);
23 222.5 (by failing to compensate for mandatory physical examinations and/or drug testing); 1198
24 and the applicable IWC Wage Order (by failing to provide reporting time pay); 1198 and the
25 applicable IWC Wage Order (by failing to provide suitable seating); and 2802 (by failing to
26 reimburse business expenses);

27 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
28 558, 1174.5, and 2699(a), (f), and (g), for violations of California Labor Code sections 201,

1 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516 1174(d), 1182.12, 1194, 1197, 1198, and
2 2802;

3 4. For attorneys' fees and costs pursuant to California Labor Code section
4 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
5 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
6 1182.12, 1194, 1197, 1198, and 2802;

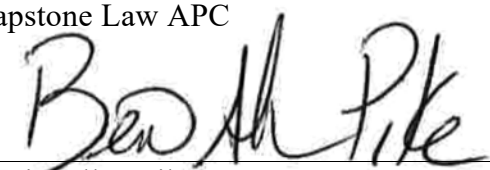
7 5. For pre-judgment and post-judgment interest as provided by law; and

8 6. For such other and further relief as the Court may deem equitable and
9 appropriate.

10
11 Dated: September 13, 2021

Respectfully submitted,

Capstone Law APC

12
13
14 By: 

Bevin Allen Pike
Daniel Jonathan
Trisha K. Monesi

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17 Attorneys for Plaintiffs Jose Hernandez and
18 Abimael Rodriguez Marrero
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Exhibit 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

July 7, 2021

VIA ONLINE SUBMISSION

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

Subject: *Jose Hernandez v. Historic Mission Inn Corporation*

Dear PAGA Administrator:

This office represents Jose Hernandez in connection with his claims under the California Labor Code. Mr. Hernandez was an employee of HISTORIC MISSION INN CORPORATION (“MISSION INN”).

The employer may be contacted directly at the address below:

HISTORIC MISSION INN CORPORATION
4100 NEWPORT PLACE DR. SUITE 400
NEWPORT BEACH CA 92660

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

MISSION INN employed Mr. Hernandez as a non-exempt, hourly paid employee from February 16, 2016, to August 31, 2020. Mr. Hernandez worked for MISSION INN as an Engineer on Duty at The Mission Inn Hotel & Spa located in Riverside, California. He typically worked eight (8) hours or more per day, five (5) days per week, from 7:00 a.m. to 3:30 p.m. At the time his employment ended, Mr. Hernandez was compensated approximately \$17.00 per hour. His job duties included, without limitation, maintaining and repairing interior and exterior of buildings and rooms; addressing any issues dealing with lighting, heating, HVAC, and plumbing; treating and cleaning the swimming pools; and remodeling and construction projects.

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

MISSION INN’s Company-Wide and Uniform Payroll and HR Practices

HISTORIC MISSION INN CORPORATION is a California corporation, and owns and operates The Mission Inn Hotel & Spa, a luxury hotel in Riverside, California. Upon information and belief, MISSION INN maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Newport Beach, California, for all non-exempt, hourly paid employees working for MISSION INN in California, including Mr. Hernandez and other aggrieved employees. At all relevant times, MISSION INN issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Hernandez and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

First, during the relevant time period, MISSION INN had a company-wide policy and/or practice of discouraging and impeding Mr. Hernandez and other aggrieved employees from recording hours worked

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

that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing its hotel operations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with MISSION INN's understaffing policy and assignment of heavy workloads, led Mr. Hernandez and other aggrieved employees to work off-the-clock before their scheduled shift times in order to complete their assigned tasks. For example, MISSION INN's management would require Mr. Hernandez to report to work at least five (5) minutes early and gather his equipment, such as his company-issued radio and keys, before he was permitted to clock in at his scheduled shift start-time, because he was expected to begin his daily tasks immediately upon clocking in. Similarly, other aggrieved employees who arrived to work early were required to work on maintenance requests, but were not permitted to clock in before their scheduled shift start-time. As another example, approximately once per week, Mr. Hernandez was instructed to clock out at his scheduled shift end-time and would continue working for 30 minutes to complete outstanding maintenance requests. MISSION INN did not compensate Mr. Hernandez and other aggrieved employees for the time they worked before and after their scheduled shifts. At all times, Mr. Hernandez and other aggrieved employees remained under the control of MISSION INN. MISSION INN could have recorded this off-the-clock work, but refused to do so to avoid paying Mr. Hernandez and other aggrieved employees overtime wages.

Second, MISSION INN had, and continues to have, a loss prevention policy requiring employees to undergo mandatory security checks by a security guard when entering or leaving the premises. As a result of MISSION INN's policy, Mr. Hernandez and other aggrieved employees were required to undergo security screenings before clocking in or after clocking out at the end of a shift prior to entering or exiting the premises. For example, Mr. Hernandez and other aggrieved employees were required to wait 1-2 minutes per instance for the security guard to check their bags before clocking in at the beginning of their shifts or after clocking out at the end of their shifts. Although MISSION INN's requirement that Mr. Hernandez and other aggrieved employees undergo security checks was mandatory, MISSION INN did not compensate them for the time it took them to wait in line and undergo these checks.

Third, as stated, MISSION INN had a company-wide policy and/or practice of understaffing its hotel operations, which, coupled with hotel maintenance demands and heavy workloads, resulted in a failure to provide Mr. Hernandez and other aggrieved employees with adequate meal period coverage. Also, MISSION INN has systematically, and on a company-wide basis, adopted a single-staffing model for some of its positions, thereby failing to provide adequate meal period coverage to permit those employees to take compliant meal periods. Moreover, MISSION INN had a practice of failing to schedule meal periods, which further caused Mr. Hernandez and other aggrieved employees to not be relieved of their duties for compliant meal periods. Mr. Hernandez and other aggrieved employees worked through meal periods or had their meal periods interrupted because there were not enough employees on duty to handle the workload and attend to hotel maintenance requests, especially during peak hotel seasons. As a result, Mr. Hernandez and other aggrieved employees were not afforded thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods and were not paid for the time they spent working during meal periods. MISSION INN knew or should have known that Mr. Hernandez and other aggrieved employees were being made to work during unpaid meal periods but failed to compensate them for this off-the-clock work.

Fourth, MISSION INN had, and continues to have, a policy and/or practice of requiring that Mr. Hernandez and other aggrieved employees carry a company-issued radio and to respond to maintenance requests at all times, upon threat of discipline. MISSION INN contacted Mr. Hernandez and other aggrieved employees on their radios during unpaid meal periods to instruct them to attend to guest calls. For example, three (3) times per week, Mr. Hernandez received requests on his company-issued radio and would have his meal periods cut short to work off-the-clock. MISSION INN knew or should have known

that Mr. Hernandez and other aggrieved employees were being made to respond to radio calls and complete tasks while off-the-clock in order to meet MISSION INN's expectations, but failed to compensate them for this off-the-clock work.

Additionally, during the relevant time period, MISSION INN maintained and implemented a company-wide on-premises meal period policy, which mandated that other aggrieved employees remain on the work premises during their meal periods. Because other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, MISSION INN effectively maintained control over other aggrieved employees during meal periods.

Fifth, because MISSION INN frowned upon employees accruing meal period penalties, MISSION INN pressured Mr. Hernandez and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that MISSION INN would otherwise owe. For example, MISSION INN's management instructed Mr. Hernandez and other aggrieved employees to clock out and record compliant meal periods even when they were interrupted and tasked with performing work during their unpaid meal periods.

Sixth, MISSION INN's company-wide timekeeping system further prevented Mr. Hernandez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system prevented employees from clocking back in from a meal period until 30 minutes elapsed. Specifically, MISSION INN's timekeeping procedure states, "when attempting to clock in early, clock will provide message showing time remaining and will not allow [associate] to clock in. If associate took a full 30 minutes lunch, clock will read 'ACCEPTED.'" Thus, MISSION INN's timekeeping system prevented Mr. Hernandez and other aggrieved employees from recording all hours worked when meal periods were missed, short, and/or interrupted.

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

MISSION INN's failure to pay Mr. Hernandez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As stated above, MISSION INN had a company-wide practice and/or policy of utilizing labor budgets and limiting overtime accrual, leading to the failure to compensate Mr. Hernandez and other aggrieved employees for their time spent working off-the-clock, including performing work duties before and after scheduled shifts, and undergoing security searches. In addition, due to MISSION INN's uniform practices of understaffing and/or single-staffing, assignment of heavy workloads, failure to schedule meal periods, requiring employees to respond to radio calls at all times, requiring employees to stay on the work premises during meal periods, and subsequent lack of meal period coverage, Mr. Hernandez and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted or shortened, and/or were otherwise not relieved of all duties during meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, MISSION INN's management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. And, as described above, MISSION INN's timekeeping system did not permit Mr. Hernandez and other aggrieved employees to clock back in early when their meal periods were interrupted or cut short.

Moreover, MISSION INN maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time to undergo mandatory drug testing and/or physical examinations, upon hiring and periodically thereafter. At all times, MISSION INN was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. MISSION INN gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of MISSION INN. For example, other aggrieved employees followed MISSION INN's instructions, traveled in their personal vehicles to and from a designated U.S. HealthWorks medical facility in Riverside, California, and spent time waiting for and undergoing the requisite drug testing and physical examinations. However, MISSION INN did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, MISSION INN did not pay minimum wages for all hours worked by Mr. Hernandez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, MISSION INN did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, MISSION INN regularly failed to pay at least minimum wages to Mr. Hernandez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by

mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, MISSION INN had, and continues to have, company-wide policies and/or practices of single-staffing and understaffing pursuant to its labor budgeting practices, assigning heavy workloads, and failing to schedule meal periods, which has resulted in a failure to provide Mr. Hernandez and other aggrieved employees with adequate meal period coverage and prevented Mr. Hernandez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. For example, approximately twice per week, Mr. Hernandez was required to take his meal periods late after having worked in excess of five (5) hours or more into his shift, in order to attend to maintenance and repair requests.

During the relevant time period, as set forth above, MISSION INN also had, and continues to have, a policy and/or practice of requiring that Mr. Hernandez and other aggrieved employees carry a company-issued radio on their person to respond to maintenance requests at all times, including during meal periods, upon threat of discipline. For example, Mr. Hernandez's meal periods were interrupted approximately three (3) times per week by radio calls directing him to attend to maintenance requests. Moreover, because other aggrieved employees were restricted from leaving the premises during meal periods, other aggrieved employees were denied the ability to use meal periods freely for their own purposes, such as running personal errands. Thus, MISSION INN effectively maintained control over Mr. Hernandez and/or other aggrieved employees during meal periods.

Additionally, as stated, on information and belief, because MISSION INN frowned upon employees accruing meal period penalties, MISSION INN's management pressured employees to clock out for meal periods and/or would adjust Mr. Hernandez's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by MISSION INN. Furthermore, as stated, MISSION INN's company-wide timekeeping system prevented Mr. Hernandez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Hernandez and other aggrieved employees once they clocked out for a meal period and would not permit them to clock back in until 30 minutes had elapsed.

In addition, MISSION INN did not provide Mr. Hernandez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Mr. Hernandez would work shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Hernandez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, MISSION INN had a company-wide policy of requiring all employees to sign blanket meal period waivers at or near their time of hire. MISSION INN took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. MISSION INN's company-wide use of blanket meal period waivers, signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Hernandez and other aggrieved employees from taking all meal periods to which they were entitled. And, MISSION

INN's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers, discouraged Mr. Hernandez and other aggrieved employees from taking all meal periods.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). The fact that MISSION INN requires aggrieved employees to sign meal waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because MISSION INN's obligation to provide Mr. Hernandez and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

At all times mentioned herein, MISSION INN knew or should have known that as a result of its policies, Mr. Hernandez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. MISSION INN further knew or should have known that it did not pay Mr. Hernandez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

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

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

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

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

practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

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

During the relevant time period, MISSION INN regularly failed to authorize and permit Mr. Hernandez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, MISSION INN’s policies and/or practices of understaffing and/or single-staffing while assigning heavy workloads prevented Mr. Hernandez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. MISSION INN also failed to schedule rest periods, which, coupled with MISSION INN’s failure to provide adequate rest period coverage, further led to Mr. Hernandez and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, as stated, MISSION INN had, and continues to have, a policy and/or practice of requiring that Mr. Hernandez and other aggrieved employees carry a company-issued radio to respond to maintenance and repair requests at all times, including during rest periods. For example, Mr. Hernandez had his rest periods cut short and interrupted to respond to requests from MISSION INN on his company-issued radio.

Furthermore, MISSION INN maintained and implemented a company-wide practice and/or policy requiring that Mr. Hernandez and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Hernandez and other aggrieved employees were restricted from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, MISSION INN effectively maintained control over Mr. Hernandez and other aggrieved employees during rest periods, and, as a result of this rest period policy, MISSION INN did not relinquish control over Mr. Hernandez and other aggrieved employees during rest periods.

As a result of MISSION INN’s practices and policies, Mr. Hernandez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Hernandez would miss his one of his rest periods entirely once per day and have his rest periods interrupted four (4) times per week to respond to maintenance requests due to the lack of rest period coverage.

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

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. MISSION INN has not provided Mr. Hernandez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

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

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

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

Third, MISSION INN issued uniform wage statements to Mr. Hernandez and other aggrieved employees that fail to list all applicable hourly rates in effect during the pay period, in violation of section 226(a)(9). For example, MISSION INN systematically, and on a company-wide basis, failed to list any hourly rate of pay when it paid out Mr. Hernandez's vacation balance on his wage statement dated August 31, 2020. *See example wage statement below.*

Fourth, and separate from these violations, MISSION INN issued uniform wage statements to Mr. Hernandez and other aggrieved employees that failed to correctly list the correct address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an

administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Hernandez’s wage statements list the entity “HISTORIC MISSION INN CORPORATION” at the address “3649 MISSION INN AVE, RIVERSIDE CA 92501,” but, according to the California Secretary of State’s website, there is no such entity by that name at that address. Instead, the entity “HISTORIC MISSION INN CORPORATION” is listed on the California Secretary of State’s website with a different address, 4100 NEWPORT PLACE DR. SUITE 400, NEWPORT BEACH CA 92660. *See example wage statement below.*

Earnings Statement

Period Beginning Date: 08/17/2020
 Period Ending: 08/30/2020
 Pay Date: 08/31/2020

HISTORIC MISSION INN
 3649 MISSION INN AVE.
 RIVERSIDE, CA 92501

SSN: [REDACTED]
 Filing Status: [REDACTED]

JOSE HERNANDEZ
 [REDACTED]

Gross Pay	Deductions	Net Pay/Net Check
\$859.18	\$81.39	\$777.79

Hours and Earnings

Description	Hours	This Period
Vacation	50.54	859.18

Basis of Pay: Hourly

Taxes

Description	This Period
Federal Income Tax	7.07
Social Security Tax	53.27
Medicare Tax	19.46

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when

the employee begins and ends each work period and meal period. At all relevant times, as stated, MISSION INN engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Hernandez and other aggrieved employees in violation of section 1198. As stated, MISSION INN engaged in a company-wide practice and/or policy of falsifying Mr. Hernandez's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Hernandez and other aggrieved employees. Furthermore, in light of MISSION INN's failure to provide Mr. Hernandez and other aggrieved employees with second 30-minute meal periods to which they were entitled, MISSION INN kept no records of meal start and end times for second meal periods.

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

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

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

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

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

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

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

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

previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

MISSION INN willfully failed to pay Mr. Hernandez and other aggrieved employees who are no longer employed by MISSION INN all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving MISSION INN's employ.

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

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

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

During the relevant time period, MISSION INN implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. MISSION INN had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations upon hiring and periodically thereafter. At all times, MISSION INN was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

For example, as stated, other aggrieved employees were instructed by MISSION INN to travel to a designated U.S. HealthWorks medical facility in Riverside, California, and obtain a drug test. Other aggrieved employees followed MISSION INN's instructions, traveled to the medical facility MISSION INN selected, and underwent the testing. However, MISSION INN did not compensate other aggrieved employees for the time they spent traveling to and from the medical facility, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facility. MISSION INN's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

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

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

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

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled

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

MISSION INN violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because MISSION INN failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shifts, but were put to work for less than half of the regular schedule. MISSION INN had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay other aggrieved employees for half of their scheduled shift. Although other aggrieved employees reported to work based on the schedule that MISSION INN provided to them, MISSION INN would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11050(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." *See id.*

At all relevant times there was, and continues to be, space behind MISSION INN's front desk, registration desk, and concierge desk areas to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. MISSION INN could provide other aggrieved employees with a seat or stool at the front desks, registration desks, and concierge desks, but instead denies them seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind the front desk(s), registration desk(s), and concierge desk(s), regardless of their actual job title or description. The nature of the work of an employee performing front desk, registration desk, and concierge duties can reasonably be accomplished from a seated position. However, MISSION INN systematically, and on a company-wide basis, does not provide seats or stools at or near front desks, registration desks, or concierge desks, forcing other aggrieved employees to stand throughout their work shifts.

MISSION INN violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. MISSION INN's management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of MISSION INN's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. MISSION INN's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring MISSION INN into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

As stated, there was, and continues to be, space near MISSION INN's work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. MISSION INN could provide other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

MISSION INN did not provide other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent other aggrieved employees engaged in duties in which the nature of the work required standing, MISSION INN denied them the use of seats nearby during lulls in their work duties. Moreover, MISSION INN did not inform other aggrieved employees of their rights to a seat or stool under California law.

As a result of MISSION INN's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, and other aggrieved employees were forced to stand during shifts and denied seats. MISSION INN's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring MISSION INN into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, MISSION INN, on a company-wide basis, required that Mr. Hernandez and other aggrieved employees use their own personal mobile phones and personal mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile phone expenses. Mr. Hernandez and other aggrieved employees were required to use their personal mobile phones to complete their work-related tasks, such as communicating with supervisors about work-related matters when the company-provided radios were inoperable or unusable, and receiving pictures from MISSION INN's management regarding special projects. Although MISSION INN required Mr. Hernandez and other aggrieved employees to utilize their personal mobile phones to carry out their work-related responsibilities, MISSION INN failed to reimburse them for this cost.

Second, during the relevant time period, MISSION INN had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, MISSION INN was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. MISSION INN gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of MISSION INN. For example, other aggrieved employees followed MISSION INN's instructions and traveled in their personal vehicles to and from a designated U.S.

HealthWorks medical facility in Riverside, California to obtain their drug testing and/or physical examinations, but were not reimbursed for their mileage to and from the facility. Although MISSION INN required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, MISSION INN never reimbursed them for their travel expenses.

Third, during the relevant time period, MISSION INN, on a company-wide basis, required Mr. Hernandez and other aggrieved employees to purchase supplies, tools, and/or equipment, such as drills and drill bits, screwdrivers, wrenches, and torches, that were necessary for the completion of their work-related duties. Thus, MISSION INN failed to provide supplies, tools, and/or equipment to Mr. Hernandez and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Hernandez and other aggrieved employees for these costs.

MISSION INN could have provided Mr. Hernandez and other aggrieved employees with the actual tools for use on the job, such as company phones and vehicles; and supplies, tools, and/or equipment. Or, MISSION INN could have reimbursed employees for the costs of their mobile phone usage; mileage and travel costs; and supplies, tools, and/or equipment. Instead, MISSION INN passed these operating costs off onto Mr. Hernandez and other aggrieved employees. At all relevant times, Mr. Hernandez did not earn at least two (2) times the minimum wage.

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

California Labor Code § 558(a)

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

Accordingly, Mr. Hernandez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5 and 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Hernandez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against MISSION INN for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

Pre-Litigation Demand

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

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

1. MISSION INN shall pay Mr. Hernandez and all other aggrieved employees employed by MISSION INN at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. MISSION INN shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid all reporting time pay.
3. MISSION INN shall conduct a survey or interview all current and former aggrieved employees in California who worked for MISSION INN in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mandatory medical examinations, mobile phone expenses, travel, mileage, tools/supplies, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. MISSION INN shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. MISSION INN also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. MISSION INN shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for MISSION INN's benefit, including, but not limited to, costs of mandatory medical examinations, mobile phone expenses, travel expenses, mileage, tools/supplies, or other expenditures, as required by Labor Code sections 222.5 and 2802.
6. MISSION INN shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. MISSION INN shall provide Mr. Hernandez and all aggrieved employees employed by MISSION INN at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. MISSION INN shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
9. MISSION INN shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work,

with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.

10. MISSION INN shall implement and provide suitable seating to all aggrieved employees.
11. MISSION INN shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 5-2001, section 20.

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

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Anthony Castillo

Copy: HISTORIC MISSION INN CORPORATION (via U.S. Certified Mail)



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:

HISTORIC MISSION INN CORPORATION
4100 NEWPORT PLACE DR. SUITE 400
NEWPORT BEACH CA 92660



9590 9402 5816 0034 8452 22

2. Article Number (Transfer from service label)

7020 1290 0001 8879 4679

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

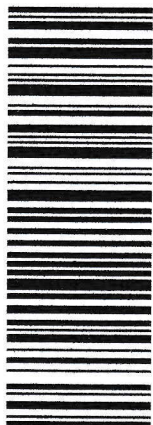
- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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

Domestic Return Receipt

CERTIFIED MAIL®



7020 1290 0001 8879 4679

HISTORIC MISSION INN CORPORATION
4100 NEWPORT PLACE DR. SUITE 400
NEWPORT BEACH CA 92660

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

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

OFFICIAL USE

Certified Mail Fee

\$ 3.60

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

- ☒ Return Receipt (hardcopy) \$ 2.85
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

HISTORIC MISSION INN CORPORATION
4100 NEWPORT PLACE DR. SUITE 400
NEWPORT BEACH CA 92660

Postmark
Here

Hernandez v. Historic
Mission Inn
Corporation

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

See Reverse for Instructions

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:

HISTORIC MISSION INN CORPORATION
4100 NEWPORT PLACE DR. SUITE 400
NEWPORT BEACH CA 92660



9590 9402 5816 0034 8452 22

2. Article Number (Transfer from service label)

7020 1290 0001 8879 4679

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X COVID-19

☐ Agent☐ Addressee**B. Received by (Printed Name)**

SP 602

C. Date of Delivery**D. Is delivery address different from item 1?**☐ Yes

If YES, enter delivery address below:

☐ No**3. Service Type**☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery (over \$500)☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

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

Domestic Return Receipt

Exhibit 2

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

July 8, 2021

VIA ONLINE SUBMISSION

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

Subject: *Abimael Rodriguez Marrero v. Historic Mission Inn Corporation*

Dear PAGA Administrator:

This office represents Abimael Rodriguez Marrero in connection with his claims under the California Labor Code. Mr. Rodriguez Marrero is an employee of HISTORIC MISSION INN CORPORATION (“MISSION INN”).

The employer may be contacted directly at the address below:

HISTORIC MISSION INN CORPORATION
4100 NEWPORT PLACE DR. SUITE 400
NEWPORT BEACH CA 92660

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

MISSION INN has employed Mr. Rodriguez Marrero as a non-exempt, hourly paid employee since approximately October 2018, to the present. Mr. Rodriguez Marrero has worked for MISSION INN as a FOL Installer I, Maintenance Engineer I, and Engineer on Duty at The Mission Inn Hotel & Spa located in Riverside, California. He typically works eight (8) hours or more per day, five (5) days per week, from 7:00 a.m. to 3:30 p.m. Mr. Rodriguez Marrero is compensated approximately \$16.00 per hour. His job duties include, without limitation, maintaining and repairing interior and exterior of buildings, including hotel rooms and contents; addressing any issues dealing with lighting, heating, air conditioning, ventilation, and plumbing; treating and cleaning the swimming pool; remodeling and construction projects; and completing inspection checklists for hotel rooms prior to guest check-in.

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

MISSION INN’s Company-Wide and Uniform Payroll and HR Practices

HISTORIC MISSION INN CORPORATION is a California corporation, and owns and operates The Mission Inn Hotel & Spa, a luxury hotel in Riverside, California. Upon information and belief, MISSION INN maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Newport Beach, California, for all non-exempt, hourly paid employees working for MISSION INN in California, including Mr. Rodriguez Marrero and other aggrieved employees. At all relevant times, MISSION INN issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Rodriguez Marrero and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

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

First, during the relevant time period, MISSION INN had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Rodriguez Marrero and other aggrieved employees from recording hours worked that are outside of their scheduled shifts, in order to limit the amount of overtime employees can accrue. On information and belief, this limitation on overtime accrual is based on a company-wide policy of staffing its hotel operations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with MISSION INN's understaffing policy and assignment of heavy workloads, has led Mr. Rodriguez Marrero and other aggrieved employees to work off-the-clock before their scheduled shift times in order to complete their assigned tasks. For example, when Mr. Rodriguez Marrero would arrive early to work, MISSION INN's management would require him to work on maintenance requests for 20 minutes or more, but he would not be permitted to clock in before his scheduled shift start-time. Similarly, other aggrieved employees were required to report to work at least five (5) minutes early and gather their equipment, such as company-issued radios and keys, before they were permitted to clock in at their scheduled shift start-time, because they were expected to begin their daily tasks immediately upon clocking in. As another example, approximately once per week, Mr. Rodriguez Marrero has been instructed to clock out at his scheduled shift end-time and continue working to complete outstanding maintenance requests or to take out the trash. MISSION INN has not compensated Mr. Rodriguez Marrero and other aggrieved employees for the time they worked before and after their scheduled shifts. At all times, Mr. Rodriguez Marrero and other aggrieved employees have remained under the control of MISSION INN. MISSION INN could have recorded this off-the-clock work, but has refused to do so to avoid paying Mr. Rodriguez Marrero and other aggrieved employees overtime wages.

Second, MISSION INN had, and continues to have, a loss prevention policy requiring employees to undergo mandatory security checks by a security guard when entering or leaving the premises. As a result of MISSION INN's policy, Mr. Rodriguez Marrero and other aggrieved employees were required to undergo security screenings before clocking in or after clocking out at the end of a shift prior to entering or exiting the premises. For example, Mr. Rodriguez Marrero and other aggrieved employees are required to wait 1-2 minutes per instance for the security guard to check their bags before clocking in at the beginning of their shifts or after clocking out at the end of their shifts. Although MISSION INN's requirement that Mr. Rodriguez Marrero and other aggrieved employees undergo security checks is mandatory, MISSION INN has not compensated them for the time it took them to wait in line and undergo these checks.

Third, as stated, MISSION INN had a company-wide policy and/or practice of understaffing its hotel operations, which, coupled with hotel maintenance demands and heavy workloads, has resulted in a failure to provide Mr. Rodriguez Marrero and other aggrieved employees with adequate meal period coverage. Also, MISSION INN has systematically, and on a company-wide basis, adopted a single-staffing model for some of its positions, thereby failing to provide adequate meal period coverage to permit those employees to take compliant meal periods. Moreover, MISSION INN has had a practice of failing to schedule meal periods, which further caused Mr. Rodriguez Marrero and other aggrieved employees to not be relieved of their duties for compliant meal periods. Mr. Rodriguez Marrero and other aggrieved employees have worked through meal periods or had their meal periods interrupted because there were not enough employees on duty to handle the workload and attend to hotel maintenance requests, especially during peak hotel seasons. As a result, Mr. Rodriguez Marrero and other aggrieved employees have not been afforded thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods and were not paid for the time they spent working during meal periods. MISSION INN knew or should have known that Mr. Rodriguez Marrero and other aggrieved employees were being made to work during unpaid meal periods but has failed to compensate them for this off-the-clock work.

Fourth, MISSION INN had, and continues to have, a policy and/or practice of requiring that Mr. Rodriguez Marrero and other aggrieved employees carry a company-issued radio and to respond to maintenance requests at all times, upon threat of discipline. MISSION INN would contact Mr. Rodriguez Marrero and other aggrieved employees on their radios during unpaid meal periods to instruct them to attend to guest calls. For example, on a daily basis, Mr. Rodriguez Marrero would receive requests on his company-issued radio and have his meal periods cut short to work off-the-clock. MISSION INN knew or should have known that Mr. Rodriguez Marrero and other aggrieved employees were being made to respond to radio calls and complete tasks while off-the-clock in order to meet MISSION INN's expectations, but has failed to compensate them for this off-the-clock work.

Additionally, during the relevant time period, MISSION INN has maintained and implemented a company-wide on-premises meal period policy, which mandated that other aggrieved employees remain on the work premises during their meal periods. Because other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, MISSION INN has effectively maintained control over other aggrieved employees during meal periods.

Fifth, because MISSION INN frowns upon employees accruing meal period penalties, MISSION INN has pressured Mr. Rodriguez Marrero and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that MISSION INN would otherwise owe. For example, MISSION INN's management has instructed Mr. Rodriguez Marrero and other aggrieved employees to clock out and record compliant meal periods even when they were interrupted and tasked with performing work during their unpaid meal periods.

Sixth, MISSION INN's company-wide timekeeping system has further prevented Mr. Rodriguez Marrero and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system prevents employees from clocking back in from a meal period until 30 minutes have elapsed. Specifically, MISSION INN's timekeeping procedure states, "when attempting to clock in early, clock will provide message showing time remaining and will not allow [associate] to clock in. If associate took a full 30 minutes lunch, clock will read 'ACCEPTED.'" Thus, MISSION INN's timekeeping system has prevented Mr. Rodriguez Marrero and other aggrieved employees from recording all hours worked when meal periods were missed, short, and/or interrupted.

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

MISSION INN's failure to pay Mr. Rodriguez Marrero and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Rodriguez Marrero and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

As stated above, MISSION INN has a company-wide practice and/or policy of utilizing labor budgets and limiting overtime accrual, leading to the failure to compensate Mr. Rodriguez Marrero and other aggrieved employees for their time spent working off-the-clock, including performing work duties before and after scheduled shifts, and undergoing security searches. In addition, due to MISSION INN’s uniform practices of understaffing and/or single-staffing, assignment of heavy workloads, failure to schedule meal periods, requiring employees to respond to radio calls at all times, requiring employees to stay on the work premises during meal periods, and subsequent lack of meal period coverage, Mr. Rodriguez Marrero and other aggrieved employees have been forced to forego meal periods, have their meal periods interrupted or shortened, and/or are otherwise not relieved of all duties during meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, MISSION INN’s management has pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but has required them to continue working, time for which they were not paid. And, as described above, MISSION INN’s timekeeping system does not permit Mr. Rodriguez Marrero and other aggrieved employees to clock back in early when their meal periods are interrupted or cut short.

Moreover, MISSION INN has maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time to undergo mandatory drug testing and/or physical examinations, upon hiring and periodically thereafter. At all times, MISSION INN was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. MISSION INN gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of MISSION INN. For example, other aggrieved employees followed MISSION INN’s instructions, traveled in their personal vehicles to and from a designated U.S. HealthWorks medical facility in Riverside, California, and spent time waiting for and undergoing the requisite drug testing and physical examinations. However, MISSION INN did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, MISSION INN did not pay minimum wages for all hours worked by Mr. Rodriguez Marrero and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, MISSION INN did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, MISSION INN regularly failed to pay at least minimum wages to Mr. Rodriguez Marrero and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Rodriguez Marrero and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

As stated, MISSION INN had, and continues to have, company-wide policies and/or practices of single-staffing and understaffing pursuant to its labor budgeting practices, assigning heavy workloads, and failing to schedule meal periods, which has resulted in a failure to provide Mr. Rodriguez Marrero and other aggrieved employees with adequate meal period coverage and has prevented Mr. Rodriguez Marrero and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. For example, approximately 1-2 times per week, Mr. Rodriguez Marrero has been required to take his meal periods late after having worked in excess of five (5) hours or more into his shift, in order to attend to maintenance and repair requests. Mr. Rodriguez Marrero has also been forced to miss his meal periods entirely on at least five (5) occasions because he was the only Engineer on Duty staffed during the day.

During the relevant time period, as set forth above, MISSION INN also had, and continues to have, a policy and/or practice of requiring that Mr. Rodriguez Marrero and other aggrieved employees carry a company-issued radio on their person to respond to maintenance requests at all times, including during meal periods, upon threat of discipline. For example, Mr. Rodriguez Marrero's meal periods have been interrupted on a daily basis by radio calls directing him to attend to maintenance requests. Moreover, because other aggrieved employees were restricted from leaving the premises during meal periods, other aggrieved employees were denied the ability to use meal periods freely for their own purposes, such as running personal errands. Thus, MISSION INN has effectively maintained control over Mr. Rodriguez Marrero and/or other aggrieved employees during meal periods.

Additionally, as stated, on information and belief, because MISSION INN frowns upon employees accruing meal period penalties, MISSION INN's management has pressured employees to clock out for meal periods and/or adjusted Mr. Rodriguez Marrero's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by MISSION INN. Furthermore, as stated, MISSION INN's company-wide timekeeping system has prevented Mr. Rodriguez Marrero and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locks out Mr. Rodriguez Marrero and other aggrieved employees once they clock out for a meal period and does not permit them to clock back in until 30 minutes have elapsed.

In addition, MISSION INN has not provided Mr. Rodriguez Marrero and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Mr. Rodriguez Marrero has worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Rodriguez Marrero and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, MISSION INN had a company-wide policy of requiring all employees to sign blanket meal period waivers at or near their time of hire. MISSION INN has taken the position that non-exempt, hourly paid employees have waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, has not provided them with all meal periods to which they were entitled. MISSION INN's company-wide use of blanket meal period waivers, signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, has discouraged and impeded Mr. Rodriguez Marrero and other aggrieved employees from taking all meal periods to which they were entitled. And, MISSION INN's presumption that meal periods will not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers, has discouraged Mr. Rodriguez Marrero and other aggrieved employees from taking all meal periods.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). The fact that MISSION INN requires aggrieved employees to sign meal waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because MISSION INN's obligation to provide Mr. Rodriguez Marrero and other aggrieved employees with meal periods has not arisen until it has employed them for a full five (5) hours.

At all times mentioned herein, MISSION INN knew or should have known that as a result of its policies, Mr. Rodriguez Marrero and other aggrieved employees have not been actually relieved of all duties to take timely, uninterrupted meal periods. MISSION INN further knew or should have known that it has not paid Mr. Rodriguez Marrero and other aggrieved employees meal period premiums when meal periods are late, interrupted, shortened, and/or missed.

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

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

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

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

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

During the relevant time period, MISSION INN has regularly failed to authorize and permit Mr. Rodriguez Marrero and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, MISSION INN's policies and/or practices of understaffing and/or single-staffing while assigning heavy workloads have prevented Mr. Rodriguez Marrero and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. MISSION INN also has failed to schedule rest periods, which, coupled with MISSION INN's failure to provide adequate rest period coverage, has further led to Mr. Rodriguez Marrero and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, as stated, MISSION INN had, and continues to have, a policy and/or practice of requiring that Mr. Rodriguez Marrero and other aggrieved employees carry a company-issued radio to respond to maintenance and repair requests at all times, including during rest periods. For example, Mr. Rodriguez Marrero has had his rest periods cut short and interrupted to respond to requests from MISSION INN on his company-issued radio.

Furthermore, MISSION INN has maintained and implemented a company-wide practice and/or policy requiring that Mr. Rodriguez Marrero and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Rodriguez Marrero and other aggrieved employees have been restricted from leaving the work premises during rest periods, they have been denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, MISSION INN has effectively maintained control over Mr. Rodriguez Marrero and other aggrieved employees during rest periods, and, as a result of this rest period policy, MISSION INN has not relinquished control over Mr. Rodriguez Marrero and other aggrieved employees during rest periods.

As a result of MISSION INN's practices and policies, Mr. Rodriguez Marrero and other aggrieved employees have worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Rodriguez Marrero is often only able to take one (1) rest period per week, and the rest periods he is able

to take are frequently interrupted to respond to maintenance requests due to the lack of rest period coverage.

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

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. MISSION INN has not provided Mr. Rodriguez Marrero and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

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

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

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

Third, MISSION INN issued uniform wage statements to other aggrieved employees that fail to list all applicable hourly rates in effect during the pay period, in violation of section 226(a)(9). For example, MISSION INN systematically, and on a company-wide basis, has failed to list any hourly rate of pay when it paid out other aggrieved employees' vacation balance on their final wage statements. *See example wage statement below.*

Fourth, and separate from these violations, MISSION INN issued uniform wage statements to Mr. Rodriguez Marrero and other aggrieved employees that failed to list the correct address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Rodriguez Marrero's wage statements list the entity "HISTORIC MISSION INN CORPORATION" at the address "3649 MISSION INN AVE, RIVERSIDE CA 92501," but, according to the California Secretary of State's website, there is no such entity by that name at that address. Instead, the entity "HISTORIC MISSION INN CORPORATION" is listed on the California Secretary of State's website with a different address, 4100 NEWPORT PLACE DR. SUITE 400, NEWPORT BEACH CA 92660. *See example wage statement below.*

The image shows a wage statement from "HISTORIC MISSION INN" at "3649 MISSION INN AVE, RIVERSIDE, CA 92501". The statement is titled "Earnings Statement" and includes the following information:

- Period Beginning Date: 08/17/2020
- Period Ending: 08/30/2020
- Pay Date: 08/31/2020

Below this information, there are fields for "SSN:" and "Filing Status:", both of which are redacted with black boxes. To the right of these fields is another large redacted area.

Gross Pay	Deductions	Net Pay/Net Check
\$859.18	\$81.39	\$777.79

At the bottom of the form, there are two sections: "Hours and Earnings" and "Taxes".

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), MISSION INN has willfully failed to maintain accurate payroll records for Mr. Rodriguez Marrero and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

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

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

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

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of

wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

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

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

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

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

During the relevant time period, MISSION INN willfully failed to pay other aggrieved employees who are no longer employed by MISSION INN all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving MISSION INN's employ.

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

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

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

During the relevant time period, MISSION INN has implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. MISSION INN has a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations upon hiring and periodically thereafter. At all times, MISSION INN was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

For example, as stated, other aggrieved employees were instructed by MISSION INN to travel to a designated U.S. HealthWorks medical facility in Riverside, California, and obtain a drug test. Other aggrieved employees followed MISSION INN's instructions, traveled to the medical facility MISSION INN selected, and underwent the testing. However, MISSION INN did not compensate other aggrieved employees for the time they spent traveling to and from the medical facility, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facility. MISSION INN's policy and/or practice of not paying

for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

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

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

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

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

MISSION INN has violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because MISSION INN failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shifts, but were put to work for less than half of the regular schedule. MISSION INN has had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay other aggrieved employees for half of their scheduled shift. Although other aggrieved employees reported to work based on the schedule that MISSION INN provided to them, MISSION INN would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5).

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

At all relevant times there was, and continues to be, space behind MISSION INN’s front desk, registration desk, and concierge desk areas to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. MISSION INN could provide other aggrieved employees with a seat or stool at the front desks, registration desks, and concierge desks, but instead denies them seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spend a substantial portion of their day behind the front desk(s), registration desk(s), and concierge desk(s), regardless of their actual job title or description. The nature of the work of an employee performing front desk, registration desk, and concierge duties can reasonably be accomplished from a seated position. However, MISSION INN systematically, and on a company-wide basis, does not provide seats or stools at or near front desks, registration desks, or concierge desks, forcing other aggrieved employees to stand throughout their work shifts.

MISSION INN has violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. MISSION INN’s management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of MISSION INN’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. MISSION INN’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring MISSION INN into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires

standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

As stated, there was, and continues to be, space near MISSION INN’s work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. MISSION INN could provide other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

MISSION INN has not provided other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent other aggrieved employees engaged in duties in which the nature of the work required standing, MISSION INN denied them the use of seats nearby during lulls in their work duties. Moreover, MISSION INN did not inform other aggrieved employees of their rights to a seat or stool under California law.

As a result of MISSION INN’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, and other aggrieved employees were forced to stand during shifts and denied seats. MISSION INN’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring MISSION INN into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, MISSION INN, on a company-wide basis, has required that Mr. Rodriguez Marrero and other aggrieved employees use their own personal mobile phones and personal

mobile data to carry out their job duties, but has failed to reimburse them for the costs of their work-related mobile phone expenses. Mr. Rodriguez Marrero and other aggrieved employees have been required to use their personal mobile phones to complete their work-related tasks, such as communicating with supervisors about work-related matters when the company-provided radios were inoperable or unusable or when supervisors were off-site, and receiving pictures from MISSION INN's management regarding special projects. Although MISSION INN has required Mr. Rodriguez Marrero and other aggrieved employees to utilize their personal mobile phones to carry out their work-related responsibilities, MISSION INN has failed to reimburse them for this cost.

Second, during the relevant time period, MISSION INN has had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles to obtain mandatory drug testing and/or physical examinations, but has not reimbursed them for their travel expenses, including mileage. At all times, MISSION INN was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. MISSION INN gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of MISSION INN. For example, other aggrieved employees followed MISSION INN's instructions and traveled in their personal vehicles to and from a designated U.S. HealthWorks medical facility in Riverside, California to obtain their drug testing and/or physical examinations, but were not reimbursed for their mileage to and from the facility. Although MISSION INN has required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, MISSION INN has never reimbursed them for their travel expenses.

Third, during the relevant time period, MISSION INN, on a company-wide basis, has required Mr. Rodriguez Marrero and other aggrieved employees to purchase supplies, tools, and/or equipment, such as drills and drill bits, screwdrivers, wrenches, and torches, that were necessary for the completion of their work-related duties. Thus, MISSION INN has failed to provide supplies, tools, and/or equipment to Mr. Rodriguez Marrero and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Rodriguez Marrero and other aggrieved employees for these costs.

MISSION INN could have provided Mr. Rodriguez Marrero and other aggrieved employees with the actual tools for use on the job, such as company phones and vehicles; and supplies, tools, and/or equipment. Or, MISSION INN could have reimbursed employees for the costs of their mobile phone usage; mileage and travel costs; and supplies, tools, and/or equipment. Instead, MISSION INN has passed these operating costs off onto Mr. Rodriguez Marrero and other aggrieved employees. At all relevant times, Mr. Rodriguez Marrero has not earned at least two (2) times the minimum wage.

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

California Labor Code § 558(a)

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

dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” MISSION INN, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Rodriguez Marrero’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Rodriguez Marrero seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Rodriguez Marrero, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against MISSION INN for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

Pre-Litigation Demand

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

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

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

5. MISSION INN shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for MISSION INN's benefit, including, but not limited to, costs of mandatory medical examinations, mobile phone expenses, travel expenses, mileage, tools/supplies, or other expenditures, as required by Labor Code sections 222.5 and 2802.
6. MISSION INN shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. MISSION INN shall provide Mr. Rodriguez Marrero and all aggrieved employees employed by MISSION INN at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. MISSION INN shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
9. MISSION INN shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
10. MISSION INN shall implement and provide suitable seating to all aggrieved employees.
11. MISSION INN shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 5-2001, section 20.

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

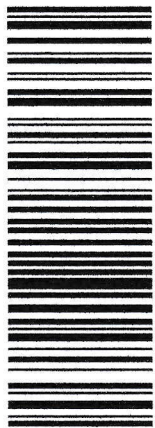
Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: HISTORIC MISSION INN CORPORATION (via U.S. Certified Mail)

CERTIFIED MAIL®



7020 1290 0000 3958 7658

one

LAW APC

1000 Park East, Ste 1000
CA 90067



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- Complete items 1, 2, and 3.
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NEWPORT BEACH CA 92660



9590 9402 6743 1060 2730 81

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7658

PS Form 3811, July 2020 PSN 7530-02-000-9053

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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

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- ☐ Adult Signature Required \$
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Postage

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Total Postage and Fees

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HISTORIC MISSION INN CORPORATION

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City, State, ZIP+4® NEWPORT BEACH CA 92660

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

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Rodriguez V.
Historic Mission
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- 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:

HISTORIC MISSION INN CORPORATION
4100 NEWPORT PLACE DR. SUITE 400
NEWPORT BEACH CA 92660



9590 9402 6743 1060 2730 81

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7658

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X COVID-19

☐ Agent

☐ Addressee

B. Received by (Printed Name)

JP 6812

C. Date of Delivery

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

If YES, enter delivery address below:

☐ No

3. Service Type

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☐ Adult Signature Restricted Delivery

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☐ Collect on Delivery Restricted Delivery

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