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Assigned for all Purposes

Judge Glenda Sanders

CX-101

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

JILL GARDNER, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

vs.

VACATION RESORTS
INTERNATIONAL, a California
Corporation; SAN CLEMENTE INN
VACATION PLAN OWNERS
ASSOCIATION, a California Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2021-01229216-CU-OE-CXC

ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 *ET*
SEQ.

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATIONS OF CALIFORNIA
LABOR CODE, PURSUANT TO PAGA, §§
2698, ET SEQ.**

Jury Trial Demanded

1 Plaintiff Jill Gardner (“Plaintiff”), as an aggrieved employee and on behalf of all other
2 non-party aggrieved employees and the State of California, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a law enforcement action under the Labor Code Private Attorneys
5 General Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil
6 penalties and any other available relief against Defendant Vacation Resorts International, a
7 California corporation, Defendant San Clemente Inn Vacation Plan Owners Association, a
8 California corporation, and DOES 1 through 50, inclusive (collectively “Defendants”).

9 2. This case is on behalf of Plaintiff, the State of California, and other persons
10 who are or were employed in California as non-exempt, hourly-paid employees and who
11 worked one or more shifts in a pay period at a Defendant Vacation Resort International
12 managed resort, vacation rental, and/or similar establishment in California against whom one
13 or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
14 provision regulating hours and days of work in the applicable Industrial Welfare Commission
15 (“IWC”) Wage Order were committed, as set forth in this complaint (“Aggrieved
16 Employees”), at any time between August 27, 2020 until judgment. The civil penalties and
17 other relief sought by Plaintiff exceed the minimum jurisdiction limits of the Superior Court
18 and will be established according to proof at trial. Plaintiff’s share of civil penalties sought in
19 this action does not exceed \$75,000.

20 3. This Court has jurisdiction over this action pursuant to the California
21 Constitution, Article VI, section 10. The statute under which this action is brought does not
22 specify any other basis for jurisdiction.

23 4. This Court has jurisdiction over all Defendants because Defendants are either
24 citizens of California, have sufficient minimum contacts in California, or otherwise
25 intentionally avail themselves of the California market so as to render the exercise of
26 jurisdiction over them by the California courts consistent with traditional notions of fair play
27 and substantial justice. There is no basis for federal diversity jurisdiction in this action given
28 that the State of California, the real party in interest, is not a “citizen” for purposes of

1 satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir.
2 Cal. 2013) (holding when the real party in interest is a state, it cannot be a “citizen” for
3 purposes of diversity jurisdiction). *Urbino* also holds that civil penalties cannot be aggregated
4 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this
5 action. *Id.* at 1122.

6 5. Venue is proper in this Court because Defendants employ Aggrieved
7 Employees in this county and Labor Code violations occurred throughout California,
8 including in this county. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda*
9 *County*, 60 Cal.App.5th 1069, 1075 (2021) (“Venue is proper in any county in which an
10 aggrieved employee worked and Labor Code violations allegedly occurred.”)

11 6. PAGA authorizes aggrieved employees to sue as private attorneys general their
12 current or former employers for civil penalties for violations of various provisions in the
13 California Labor Code.

14 **THE PARTIES**

15 7. Plaintiff is a resident of San Clemente, California. Defendants employed
16 Plaintiff from approximately July 24, 2018, until approximately October 14, 2020, as an
17 hourly-paid Front Desk Attendant at Vacation Resorts International’s resort in San Clemente,
18 California.

19 8. As a non-exempt, hourly-paid employee, Plaintiff typically worked
20 approximately eight to twelve hours or more per workday, five to seven days per week, and
21 up to forty hours or more per week. Her job duties included, but were not limited to, cleaning
22 the hotel lobby, linen closets, guests activity equipment and rooms properly and thoroughly,
23 as well as stocking the bathrooms, counting cash drawers at the beginning of her shifts,
24 checking empty rooms at the end of the night, and checking in and greeting guests.

25 9. Defendant Vacation Resorts International is a California corporation that is
26 doing business in the state of California. Plaintiff is informed and believes, and thereon
27 alleges that at all times hereinafter mentioned, Defendant Vacation Resorts International is an
28 employer whose employees are engaged throughout the State of California.

1 10. Defendant San Clemente Inn Vacation Plan Owners Association is a California
2 corporation that is doing business in the state of California. Plaintiff is informed and believes,
3 and thereon alleges that at all times hereinafter mentioned, Defendant San Clemente Inn
4 Vacation Plan Owners Association is an employer whose employees are engaged throughout
5 the State of California.

6 11. Plaintiff is informed and believes, and thereon alleges that Defendant Vacation
7 Resorts International oversees, directs, commands, controls, and jointly employs persons
8 working for the entities San Clemente Inn Vacation Plan Owners Association (“San Clemente
9 Inn”) as well as Mountain Retreat Homeowners Association (“Mountain Retreat”), Lake
10 Arrowhead Chalets Timeshare Owners Association (“Lake Arrowhead Chalets”), Multi
11 Resorts at Aquamarine Villas, Pacific Grove Plaza Vacation Resort Association (“Pacific
12 Grove Plaza”), Desert Breezes Resort Timeshare Owners Association (“Desert Breezes”),
13 Desert Isle of Palm Springs Association (“Desert Isle Resort”), Desert Vacation Villas Owners
14 Association (“Desert Vacation Villas”), Palm Springs Tennis Club Owners Association
15 (“Palm Springs Tennis Club Owners Association”), Four Seasons Pacifica, San Clemente Inn,
16 Capri By The Sea, Gaslamp Plaza Suites Owners Association, Inc. (“Gaslamp Plaza Suites”),
17 Multi Resorts at See the Sea, Nob Hill Inn City Plan Owners Association (“Nob Hill Inn”),
18 Winners Circle Beach and Tennis Resort Time Share Condominium Owners Association
19 (“Winners Circle Resort”), the Lodge at Lake Tahoe (referred to collectively herein as
20 “Vacation Resorts International”). Likewise, Plaintiff and the Aggrieved Employees have not
21 been free from the control and direction of Defendant Vacation Resorts International in
22 connection with the performance of the work, both under the contract for the performance of
23 such work and in fact. Plaintiff and the Aggrieved Employees have not performed work that is
24 outside the usual course of Defendant Vacation Resorts International’s business; and, Plaintiff
25 and the Aggrieved Employees are not customarily engaged in an independently established
26 trade, occupation, or business of the same nature as the work performed for Defendant
27 Vacation Resorts International.

28 12. While Plaintiff and the Aggrieved Employees have been employed by Vacation

1 Resort International-managed resorts, vacation rentals, and/or similar establishments,
2 Defendant Vacation Resort International is liable for one or more of the following Labor Code
3 violations against Plaintiff and the Aggrieved Employees as a joint employer.

4 13. Plaintiff is unaware of the true names or capacities of the Defendants sued
5 herein under the fictitious names DOES 1 through 50 and will seek leave of this Court to
6 amend the complaint and serve such fictitiously named defendants once their names and
7 capacities become known. Plaintiff is informed and believes, and thereon alleges, that DOES
8 1 through 50 are the partners, agents, owners, shareholders, managers, or employees of the
9 other named Defendants, and that each and all of the acts and omissions alleged herein were
10 performed by, or are attributable to, Defendants each acting as the agent, employee, alter ego,
11 joint employer, and/or joint venturer of, or working in concert with, each of the other co-
12 Defendants and was acting within the course and scope of such agency, employment, joint
13 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any
14 and all Defendants were in accordance with, and represent, the official policy of Defendants.

15 14. At all relevant times, Defendants, and each of them, ratified each and every act
16 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
17 and abetted the acts and omissions of each and all the other Defendants in proximately causing
18 the harm and violations herein alleged.

19 15. Plaintiff is informed and believes, and thereon alleges, that each of the
20 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
21 omissions, occurrences, and transactions alleged herein.

22 **PAGA REPRESENTATIVE ALLEGATIONS**

23 16. Plaintiff is informed and believes, and thereon alleges, that Defendants are
24 limited liability companies, corporations and/or general partnerships that manage and oversee
25 establishments that provide lodging services throughout California in California.

26 17. Upon information and belief, Defendants maintain a centralized Human
27 Resources department in California, for all Aggrieved Employees, including Plaintiff. At all
28 relevant times, Defendants issued and maintained uniform, standardized practices and

1 procedures for all non-exempt, hourly-paid employees, including Plaintiff and Aggrieved
2 Employees, regardless of their location or position.

3 18. Upon information and belief, Defendants process payroll for all Aggrieved
4 Employees working for Defendants in California. Further, Defendants issue the same uniform
5 and formatted wage statements to all non-exempt, hourly-paid employees in California,
6 irrespective of their work location, position, or manner in which each employee's employment
7 ended. In other words, Defendants utilized the same methods and formulas when calculating
8 wages and any other remunerations due to Plaintiff and Aggrieved Employees in California.

9 19. Defendants continue to employ non-exempt, hourly-paid employees.

10 20. Plaintiff is informed and believes, and thereon alleges, that at all times herein
11 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
12 and advisors knowledgeable about California labor and wage law, employment and personnel
13 practices, and about the requirements of California law.

14 21. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and
15 Aggrieved Employees were not fully compensated because, among other reasons, all hours
16 worked may not have been recorded and because Defendants did not always pay for all hours
17 worked.

18 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and Aggrieved Employees were entitled to receive certain
20 wages for overtime compensation and that they were not receiving overtime wages at the
21 correct overtime rate and/or for work that was required to be performed.

22 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and Aggrieved Employees were entitled to receive at least
24 minimum wages for all hours worked. In violation of the California Labor Code and
25 applicable IWC Wage Order, Plaintiff and Aggrieved Employees were not paid at least
26 minimum wages for all work performed.

27 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and Aggrieved Employees were entitled to meal periods in

1 accordance with the Labor Code and applicable IWC Wage Order, that Plaintiff and
2 Aggrieved Employees were entitled to payment of one additional hour of pay at their regular
3 rates of compensation when they were not provided with timely, uninterrupted, control-free,
4 thirty-minute meal periods, and that Plaintiff and Aggrieved Employees were not provided
5 with all meal periods nor payment of one additional hour of pay at their regular rates of
6 compensation when they were not provided a timely, uninterrupted, control-free, thirty-minute
7 meal period.

8 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and Aggrieved Employees were entitled to rest periods in
10 accordance with the Labor Code and applicable IWC Wage Order, that Defendants knew or
11 should have known that Plaintiff and Aggrieved Employees were entitled to payment of one
12 additional hour of pay at their regular rates of compensation when they were not provided
13 with a compliant rest period, and that Plaintiff and Aggrieved Employees were not provided
14 compliant rest periods nor payment of one additional hour of pay at their regular rates of
15 compensation when they were not provided a compliant rest period.

16 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and Aggrieved Employees were entitled to receive complete
18 and accurate wage statements in accordance with California law. In violation of the California
19 Labor Code, Plaintiff and Aggrieved Employees were not provided complete and accurate
20 wage statements.

21 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that they had a duty to maintain accurate and complete payroll records in
23 accordance with the Labor Code and applicable IWC Wage Order, but did not do so.

24 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment
26 of wages during their employment. In violation of the California Labor Code, Plaintiff and
27 Aggrieved Employees did not receive payment of all wages, including, but not limited to,
28 overtime wages, minimum wages, and meal period and rest period premium wages within

1 permissible time periods.

2 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment
4 of all wages earned upon termination of employment. In violation of the California Labor
5 Code, Plaintiff and Aggrieved Employees did not receive payment of all wages due,
6 including, but not limited to, overtime wages, minimum wages, and meal period and rest
7 period premium wages within permissible time periods.

8 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and Aggrieved Employees were entitled to reporting time
10 pay. In violation of the California Labor Code, Plaintiff and Aggrieved Employees did not
11 receive reporting time pay.

12 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that they had a duty to provide Plaintiff and Aggrieved Employees with
14 written notice of the material terms of their employment with Defendants as required by the
15 California Wage Theft Prevention Act but failed to do so.

16 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
17 mentioned, Defendants knew or should have known that they had a duty to compensate
18 Plaintiff and Aggrieved Employees for all hours worked, and that Defendants had the
19 financial ability to pay such compensation, but failed to do so, and falsely represented to
20 Plaintiff and Aggrieved Employees that they were properly denied wages, all in order to
21 increase Defendants' profits.

22 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that it is in violation of the California Labor Code to require Plaintiff and
24 the Aggrieved Employees to agree to unlawful contract terms. Nevertheless, Defendants have
25 required Plaintiff and the Aggrieved Employees to agree to unlawful contract terms.

26 34. At all times herein set forth, PAGA provides that any provision of law under
27 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
28 assessed and collected by the Labor and Workforce Development Agency ("LWDA") for

violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

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

36. Plaintiff and other current and former non-exempt, hourly-paid employees of Defendants are “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former employees and one or more of the alleged violations were committed against them.

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.
- (b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation (“LWDA Notice”) within sixty (60) calendar days of the postmark date of the aggrieved employee’s notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee’s

notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

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

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

39. On August 27, 2021, Plaintiff provided written notice by online filing to the LWDA and by Certified Mail to Defendants Vacation Resorts International and San Clemente Inn of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with the applicable filing fee of seventy-five dollars (\$75). A true and correct copy of Plaintiff's

written notice to the LWDA and Defendants Vacation Resorts International and San Clemente Inn dated August 27, 2021, is attached as Exhibit 1.

40. As of the filing of this complaint, over sixty-five days have passed since Plaintiff sent the written notice described above to the LWDA, and the LWDA has not responded that it intends to investigate Plaintiff's claims and Defendants have not cured the violations.

41. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 432.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5(a), as well as all applicable IWC Wage Orders.

42. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff's and Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth above.

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

44. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all Aggrieved Employees, and the State of California against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 432.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5(a), as well as all applicable IWC Wage Orders.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

45. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 46. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover various
3 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
4 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 223,
5 226(a), 226.7, 432.5, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section
6 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
7 violations of those Labor Code sections not found in section 2699.5, including sections
8 1182.12 and 2810.5(a)(1).

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

- 11 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
12 Wage Order for Defendants' failure to compensate Plaintiff and
13 Aggrieved Employees with all required overtime pay, as set forth
14 below;
- 15 (b) Violations of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1,
16 and 1198, and the applicable IWC Wage Order for Defendants' failure
17 to compensate Plaintiff and Aggrieved Employees with at least
18 minimum wages for all hours worked, as set forth below;
- 19 (c) Violation of Labor Code sections 226.7, 512(a), and 1198, and the
20 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
21 and Aggrieved Employees with meal periods, as set forth below;
- 22 (d) Violation of Labor Code sections 226.7 and 1198, and the applicable
23 IWC Wage Order for Defendants' failure to provide Plaintiff and
24 Aggrieved Employees with rest periods, as set forth below;
- 25 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
26 IWC Wage Order for failure to furnish accurate and complete wage
27 statements to Plaintiff and Aggrieved Employees, as set forth below;
- 28 (f) Violations of Labor Code sections 1174(d) and 1198, and the applicable

IWC Wage Order for failure to maintain accurate payroll records, as set forth below;

(g) Violations of Labor Code section 1198 and the applicable IWC Wage Order for failure to maintain accurate time records, as set forth below;

(h) Violation of Labor Code section 204 for failure to timely pay all earned wages during employment, as set forth below;

(i) Violation of Labor Code sections 201, 202, and 203 for failure to timely pay all earned wages upon termination, as set forth below;

(j) Violations of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide reporting time pay, as set forth below;

(k) Violation of Labor Code section 432.5 for requiring agreement to terms and/or conditions prohibited by law, as set forth below; and

(l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and Aggrieved Employees' employment with Defendants, as set forth more fully below.

FAILURE TO PAY OVERTIME WAGES IN

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198 AND

CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 3

48. 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."

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

1 50. Specifically, the applicable IWC Wage Order provides that Defendants are and
2 were required to pay Plaintiff and Aggrieved Employees working more than eight hours in a
3 day or more than forty hours in a workweek, at the rate of time and one-half for all hours
4 worked in excess of eight hours in a day or more than forty hours in a workweek.

5 51. The applicable IWC Wage Order further provides that Defendants are and were
6 required to pay Plaintiff and Aggrieved Employees working more than twelve hours in a day,
7 overtime compensation at a rate of two times their regular rate of pay, and required to pay
8 Plaintiff and Aggrieved Employees at a rate of two times their regular rate of pay for hours
9 worked in excess of eight hours on the seventh consecutive day of a work in a workweek.

10 52. An employee's regular rate of pay includes all remuneration for employment
11 paid to, or on behalf of, the employee.

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

18 54. Defendants failed to pay all overtime wages owed to Plaintiff and non-exempt,
19 hourly-paid Aggrieved Employees. During the relevant time period, Plaintiff and other
20 Aggrieved Employees were not paid overtime premiums for all of the hours they worked in
21 excess of eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a
22 week, and/or for the seventh consecutive day of work, sometimes because all hours that they
23 worked were not recorded, and other times because they were simply not paid for all hours
24 that were recorded and/or worked. Plaintiff and Aggrieved Employees have been subject to
25 Defendants' control during pre-shift and post-shift times, as well as during unpaid meal
26 periods resulting in unpaid overtime. As a result, Plaintiff believes the hours she and other
27 Aggrieved Employees worked have not been properly recorded and/or paid, and therefore,
28 Plaintiff and other Aggrieved Employees have not been properly compensated for all hours

1 that were recorded and/or worked.

2 55. During the relevant time period, Defendants knew or should have known that,
3 as a result of Defendants' policies, practices and/or procedures, Plaintiff and Aggrieved
4 Employees were at times performing their assigned duties off-the-clock (and/or unrecorded),
5 were subject to control of Defendants, and/or were suffered or permitted to perform work for
6 which they were not paid. Defendants also knew, or should have known, that Defendants did
7 not compensate Plaintiff and Aggrieved Employees for off-the-clock work or all hours
8 worked. Because Plaintiff and Aggrieved Employees sometimes worked shifts longer than
9 eight hours a day, more than forty hours a week, and/or seven consecutive days, some of the
10 unrecorded work qualified for overtime premium pay. At other times, Defendants simply did
11 not pay for all the hours that were recorded. Therefore, Plaintiff and Aggrieved Employees
12 were not paid overtime wages for all of the overtime hours they actually worked. Furthermore,
13 on information and belief, Defendants' regular rate of pay for calculating overtime wages has
14 not included all required shift differential payments or the correct calculation. Therefore,
15 during times when Aggrieved Employees have worked overtime and received shift differential
16 pay, Defendants have not paid all overtime wages due to paying a lower overtime rate than
17 required by California law.

18 56. Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime
19 compensation owed, as required by California law, violates the provisions of California Labor
20 Code sections 510, 1198, and the applicable wage order. Plaintiff and Aggrieved Employees
21 are entitled to recover civil penalties, attorneys' fees, costs, and interest pursuant to Labor
22 Code sections 558, 1194 and/or 2699(a), (f), and (g).

23 **FAILURE TO PAY MINIMUM WAGES IN**
24 **VIOLATION OF LABOR CODE SECTIONS 223, 1182.12, 1194, 1197, 1197.1, AND**
25 **1198 AND CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050**
26 **SUBD. 4**

27 57. At all relevant times, California Labor Code sections 223, 1182.12, 1194, 1197,
28 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the

1 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
2 fixed is unlawful. Compensable work time defined in Wage Order No. 5 as “the time during
3 which an employee is subject to the control of an employer, and includes all the time the
4 employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs.
5 tit. 8, § 11050(2)(K) (defining “Hours Worked”).

6 58. During the relevant time period, Plaintiff and Aggrieved Employees worked
7 throughout the day including time spent working through meal periods and/or any other time
8 in the day when the employees were performing work tasks subject to the control of
9 Defendants and/or otherwise had work duties to perform. Plaintiff and Aggrieved Employees
10 have been subjected to Defendants’ control pre-shift, post-shift, and throughout the workday,
11 even during unpaid periods. By way of example, Defendants have forced Plaintiff and
12 Aggrieved Employees to follow health protocols and procedures pre-shift, have required
13 Plaintiff and Aggrieved Employees to perform work-related tasks necessary to accommodate
14 guests post-shift, and have required Plaintiff and Aggrieved Employees to remain attentive
15 and at the ready with communication devices and to provide work-related communications
16 during meal periods.

17 59. Defendants systematically have not paid Plaintiff and Aggrieved Employees all
18 hours worked. To the extent that these unpaid hours did not qualify for overtime premium
19 payment, Defendants did not pay at least minimum wages for those hours worked in violation of
20 California Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly,
21 Plaintiff and Aggrieved Employees are entitled to recover from Defendants civil penalties,
22 attorneys’ fees, costs, and interest, pursuant to Labor Code sections 1194, 1197.1, and/or
23 2699(a), (f), and (g).

24 **FAILURE TO PROVIDE MEAL PERIODS IN**
25 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), AND 1198 AND**
26 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 11**

27 60. At all relevant times herein set forth, California Labor Code sections 226.7,
28 512(a), and 1198, and the IWC Wage Order were applicable to Plaintiff’s and Aggrieved

1 Employees' employment by Defendants.

2 61. At all relevant times herein set forth, under California law, first meal periods
3 must start before the end of the fifth hour of work. *See Brinker Rest. Corp. v. Super. Ct.*, 53
4 Cal. 4th 1004, 1041-1042 (2012); *see also* Cal. Code Regs. tit. 8, § 11050, subd. 11. Labor
5 Code sections 226.7 and 512(a) also require employers to provide a second meal period of not
6 less than thirty minutes if an employee works over ten hours per day, except that if the total
7 hours worked is no more than twelve hours, the second meal period may be waived by mutual
8 consent of the employer and the employee only if the first meal period was not waived.
9 Defendants' policies and practices, among other things, violate *Brinker's* mandate that
10 employees must be provided with meal periods before the end of their fifth hour of work and
11 must be provided with second meal periods before the end of their tenth hour of work, as
12 Defendants have failed to provide the timing for meal periods.

13 62. California Labor Code section 512(a) provides that an employer may not
14 require, cause, or permit an employee to work for a period of more than five hours per day
15 without providing the employee with an uninterrupted duty-free and control-free meal period
16 of not less than thirty minutes, except that if the total work period per day of the employee is
17 not more than six hours, the meal period may be waived by mutual consent of both the
18 employer and the employee. Under California law, first meal periods must start after no more
19 than five hours. *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th at 1041-1042.

20 63. At all relevant times herein set forth, California Labor Code sections 226.7,
21 512(a), and 1198 provide that no employer shall require an employee to work during any meal
22 period mandated by an applicable order of the IWC. The Wage Order's meal period
23 requirement is satisfied if "the employee (1) has at least 30 minutes uninterrupted, (2) is free
24 to leave the premises, and (3) is relieved of all duty for the entire period." *Brinker Rest. Corp.*
25 *v. Super. Ct.*, 53 Cal. 4th at 1036.

26 64. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
27 1198, and the applicable IWC Wage Order also require employers to provide a second meal
28 period of not less than thirty minutes if an employee works over ten hours per day, and if one

1 is not provided, pay an employee one additional hour of pay at the employee's regular rate of
2 compensation, except that if the total hours worked is no more than twelve hours, the second
3 meal period may be waived by mutual consent of the employer and the employee only if the
4 first meal period was not waived.

5 65. At all relevant times Defendants have failed to provide meal periods to Plaintiff
6 and Aggrieved Employees. As a matter of policy and practice, Defendants have not provided
7 Plaintiff and Aggrieved Employees with full 30-minute meal periods for each day worked
8 where they are free from Defendants' required duties and control. For example, Defendants
9 have required employees to remain attentive and at the ready with communication devices and
10 to provide work-related communications during meal periods which has resulted in
11 Defendants not providing meal periods for Plaintiff and Aggrieved Employees. Defendants
12 have subjected Plaintiff and Aggrieved Employees to control and demanding duties
13 throughout their workday, even during times which should constitute uninterrupted meal
14 periods. Defendants encourage employees to stay working and/or under employer control, as
15 opposed to encouraging the rest and nourishment meal periods are designed to provide.

16 66. Defendants knew or should have known that as a result of companywide
17 policies and/or practices, Plaintiff and Aggrieved Employees were prevented from being
18 relieved of all duties and employer control and required to perform some of their assigned
19 duties during meal periods and that they did not receive timely meal periods. As a result,
20 Plaintiff and Aggrieved Employees had to work through all or part of their meal periods, have
21 their meal periods interrupted, and/or wait extended periods of time before taking meal
22 periods.

23 67. Defendants also engaged in a systematic, company-wide policy and/or practice
24 of not properly training Plaintiff and Aggrieved Employees on their entitlement to meal period
25 premium payments resulting from meal period violations. Plaintiff and Aggrieved Employees
26 were unaware of when meal period premiums were owed to them. Based upon information
27 and belief, Plaintiff and other Aggrieved Employees did not receive all meal period premium
28 wages owed when compliant meal periods were not provided. To the extent that Defendants

1 did pay meal period premium wages to Plaintiff and Aggrieved Employees, such payments
2 were admissions of Defendants' failure to provide compliant meal periods. Furthermore,
3 based upon information and belief, to the extent employees have been paid shift differential
4 pay or similar remunerations, those payments have not been included in Defendants' regular
5 rate of compensation for calculating meal period premiums and has resulted in an
6 underpayment of meal period premium wages.

7 68. Additionally, for the same reason, Defendants did not provide Plaintiff and
8 Aggrieved Employees who worked in excess of ten hours but not longer than twelve hours
9 and who did not waive their legally mandated meal periods by mutual consent to take a
10 second uninterrupted meal period of not less than thirty minutes.

11 69. Defendants' conduct violates California Labor Code sections 226.7, 512(a), and
12 1198, and the applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore
13 entitled to recover civil penalties, attorneys' fees, costs, and interest pursuant to Sections
14 226.7, 558 and/or 2699(a), (f), and (g).

15 **FAILURE TO PROVIDE REST PERIODS IN**
16 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 1198 AND**
17 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 12**

18 70. At all relevant times herein set forth, California Labor Code sections 226.7 and
19 1198, and the IWC Wage Order were applicable to Plaintiff and Aggrieved Employees'
20 employment by Defendants.

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

27 72. At all relevant times, California Labor Code section 226.7 provides that no
28 employer shall require an employee to work during any rest period mandated by an applicable

1 order of the California IWC. To comply with its obligation to provide rest periods under
2 California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must
3 “relinquish any control over how employees spend their break time, and relieve their
4 employees of all duties — including the obligation that an employee remain on call. A rest
5 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
6 257, 269-270 (2016). Pursuant to Labor Code section 226.7(c) and the applicable IWC Wage
7 Order, Plaintiff and Aggrieved Employees are entitled to recover from Defendants one
8 additional hour of pay at their regular rates of compensation for each workday that a required
9 rest period was not provided. Defendants’ policies and practices, among other things, fail to
10 authorize and permit *duty-free* rest periods.

11 73. Plaintiff and Aggrieved Employees frequently worked shifts in excess of three
12 and one-half hours, in excess of six hours, and/or in excess of ten hours without receiving all
13 uninterrupted net ten-minute rest periods to which they were entitled. For instance, on
14 information and belief, Plaintiff and Aggrieved Employees were not able to take rest periods
15 due to the pressure Defendants placed on them to meet workload demands, as well as a lack of
16 break coverage.

17 74. During the relevant time period, Defendants have failed to authorize and permit
18 rest periods. As a matter of policy and practice, Defendants have not provided Plaintiff and
19 Aggrieved Employees with net 10-minute rest periods for each day worked where they are
20 free from Defendants’ required duties and control. For example, Defendants have required
21 employees to remain attentive and at the ready with communication devices and to provide
22 work-related communications during rest periods which has resulted in Defendants not
23 providing rest periods to Plaintiff and Aggrieved Employees. During rest periods, Defendants
24 have also not permitted Plaintiff and Aggrieved Employees to leave the work premises.
25 Defendants have subjected Plaintiff and other Aggrieved Employees to control and demanding
26 duties throughout their workday, even during times which should constitute uninterrupted rest
27 periods. Defendants encourage employees to stay working and/or under employer control, as
28 opposed to encouraging the rest and nourishment rest periods are designed to provide.

1 75. Upon information and belief, Defendants have also engaged in a systematic,
2 company-wide practice and/or policy of not paying rest period premiums owed when rest
3 periods are not provided. Thus, Defendants denied Plaintiff and Aggrieved Employees rest
4 periods and failed to pay them rest period premium wages due, in violation of Labor Code
5 section 226.7 and the applicable IWC Wage Order.

6 76. Defendants also engaged in a systematic, company-wide policy and/or practice
7 of not properly training Plaintiff and Aggrieved Employees on their entitlement to rest period
8 premium payments resulting from rest period violations. Plaintiff and Aggrieved Employees
9 were unaware of when rest period premiums were owed to them. Based upon information and
10 belief, Plaintiff and other Aggrieved Employees did not receive all rest period premium wages
11 owed when compliant rest periods were not provided. To the extent that Defendants did pay
12 rest period premium wages to Plaintiff and Aggrieved Employees, such payments were
13 admissions of Defendants' failure to provide compliant rest periods. Furthermore, based upon
14 information and belief, to the extent employees have been paid shift differential pay or similar
15 remunerations, those payments have not been included in Defendants' regular rate of
16 compensation for calculating rest period premiums and has resulted in an underpayment of
17 rest period premium wages.

18 77. Defendants' conduct violates Labor Code sections 226.7 and 1198 and the
19 applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore entitled to
20 recover civil penalties, attorneys' fees, costs, and interest, pursuant to Sections 226.7, 2699(a),
21 (f), and (g).

22 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS IN**
23 **VIOLATION OF LABOR CODE SECTIONS 226(a) AND 1198**

24 78. At all relevant times herein set forth, Labor Code sections 226(a) and 1198, and
25 the IWC Wage Order were applicable to Plaintiff and Aggrieved Employees' employment by
26 Defendants.

27 79. At all relevant times herein set forth, Labor Code section 226(a) provides that
28 every employer shall furnish each of his or her employees an accurate and complete itemized

1 wage statement in writing, including, but not limited to, the name and address of the legal
2 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
3 applicable rates of pay. For example, during the relevant time period, Defendant Vacation
4 Resorts International has also failed to itemize the name and address of the legal entity that is
5 the employer (i.e., Vacation Resorts International, 6649 Westwood Blvd., Orlando, Florida
6 32821) on Plaintiff's and the Aggrieved Employees' wage statements in violation of Labor
7 Code section 226(a)(8). In addition, the total regular, shift differential, and overtime hours
8 listed in Defendants' wage statements, when added together, do not sum up to the total hours
9 worked by the employee during the pertinent time period. Likewise, Defendants furnish wage
10 statements which do not properly itemize the total hours worked because Defendants itemize
11 the incorrect total number of hours worked. Without additional information regarding the
12 wage statement, an employee cannot simply arrive at the sum of hours worked. As such,
13 Defendants' wage statements do not comply with Labor Code section 226(a)(2).

14 80. Labor Code section 226(a) requires employers to make, keep and furnish true,
15 accurate, and complete employment records. Defendants have not provided Plaintiff and other
16 Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved
17 employee may seek civil penalties under Labor Code section 2699 for violations of wage
18 statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*,
19 15 Cal.App.5th 773, 788 (2017) ("a plaintiff seeking civil penalties under PAGA for a violation
20 of section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional'
21 requirements of section 226(e)(1).") Rather, Labor Code section 226.3 provides that any
22 employer who violates Section 226(a) shall be subject to a civil penalty in the amount of \$250
23 per employee per violation in an initial citation and \$1,000 per employee for each violation in a
24 subsequent citation, for which the employer fails to provide the employee a wage statement or
25 fails to keep the required records pursuant to Section 226(a).

26 81. During the relevant time period, Defendants have furnished Plaintiff and
27 Aggrieved Employees with incomplete and inaccurate wage statements. Defendants have
28 failed to provide accurate wage statements for Plaintiff and Aggrieved Employees showing,

1 among other things, gross wages earned, total hours worked, net wages earned, and all applicable
2 hourly rates in effect during the pay period and the corresponding number of hours worked at each
3 hourly rate, and/or failing to state all hours worked as a result of not recording or stating all the
4 hours that Plaintiff and Aggrieved Employees worked off-the-clock.

5 82. During the relevant time period, because Defendants failed to pay all meal
6 period and rest period premiums to Plaintiff and Aggrieved Employees, Defendants did not
7 list the correct amount of gross wages and net wages earned by Plaintiff and Aggrieved
8 Employees in compliance with Sections 226(a)(1) and (5). Because Defendants failed to
9 provide, among other things, the accurate number of total hours worked, gross wages earned,
10 net wages earned, and the applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked on wage statements, Plaintiff and Aggrieved
12 Employees have been prevented from verifying, solely from information on the wage
13 statements themselves, that they were paid correctly and in full and were given confusing
14 and/or incomplete information about their employer. Instead, Plaintiff and Aggrieved
15 Employees have had to look to sources outside of the wage statements themselves and
16 reconstruct time records to determine whether in fact they were paid correctly and the extent
17 of underpayment, thereby causing them injury.

18 83. Plaintiff and Aggrieved Employees are therefore entitled to recover civil
19 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 226.3 and/or
20 2699(a), (f), and (g).

21 **FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS IN**
22 **VIOLATION OF LABOR CODE SECTIONS 1174(d) AND 1198 AND CALIFORNIA**
23 **CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 7**

24 84. At all relevant times herein set forth, Labor Code sections 1174(d), 1198, and
25 the IWC Wage Order were applicable to Plaintiff's and Aggrieved Employees' employment
26 by Defendants.

27 85. At all times relevant herein set forth, Labor Code section 1174(d) provides that
28 "[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).

86. During the relevant time period, and in violation of Labor Code section 1174(d), Defendants failed to maintain accurate payroll records for Plaintiff and Aggrieved Employees showing the accurate daily hours worked and the wages paid as well as failing to correctly list the gross wages and net wages earned by them.

87. Defendants’ conduct violates Labor Code sections 1174(d) and 1198 and the applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Sections 1174.5 and/or 2699(a), (f), and (g).

**FAILURE TO MAINTAIN ACCURATE TIME RECORDS IN
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS TITLE 8, SECTION 11050 SUBDIVISION 7**

88. At all times relevant herein set forth, Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period, and total daily hours. Cal. Code Regs. Tit. 8, § 11050(7)(A).

89. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of hours worked for Plaintiff and Aggrieved Employees, in violation

of Section 1198 and the applicable IWC Wage Order.

90. Because Defendants failed to provide, among other things, the accurate number of total hours worked, gross wages earned, net wages earned, the applicable hourly rates in effect during the pay period and the corresponding number of hours worked on wage statements, Plaintiff 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 and were given confusing and/or incomplete information about their employer. Instead, Plaintiff 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.

91. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or 2699(a), (f), and (g).

**FAILURE TO PAY WAGES DURING EMPLOYMENT IN
VIOLATION OF LABOR CODE SECTION 204**

92. At all times relevant herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the first and the fifteenth days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth and the twenty-sixth day of the month during which the labor was performed.

93. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth 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 first and the tenth day of the following month.

94. At all times relevant herein, Labor Code section 204 provides 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, at all times relevant herein, 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 calendar days following the close of the payroll period.

95. At all relevant times herein, Defendants failed to pay Plaintiff and Aggrieved Employees all wages due including, but not limited to, overtime wages, minimum wages, shift differential pay, and/or meal period and rest period premium wages, within the time periods specified by Labor Code section 204.

96. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES UPON TERMINATION IN

VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 201, 202, AND 203

97. At all times relevant herein set forth, 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 hours thereafter, unless the employee has given seventy-two 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.

98. During the relevant time period, on information and belief, Defendants failed to pay Plaintiff and Aggrieved Employees who are no longer employed by Defendants all their earned wages at the time of discharge or within seventy-two hours of their leaving Defendants' employ, including but not limited to, overtime wages, minimum wages, reporting time pay, shift differential pay, and/or meal period and rest period premium wages, either at the time of discharge or within seventy-two hours of their leaving Defendants' employment.

99. Defendants' failure to pay Plaintiff and Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two hours of their leaving Defendants' employment, violates Labor Code sections 201, 202, and 203. Plaintiff and Aggrieved Employees are therefore entitled to

1 recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections
2 2699(a), (f), and (g).

3 **FAILURE TO PROVIDE REPORTING TIME PAY IN**
4 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
5 **REGULATIONS TITLE 8, SECTION 11050 SUBDIVISION 5(A)**

6 100. At all relevant times herein set forth, Labor Code section 1198 and the IWC
7 Wage Order were applicable to Plaintiff's and Aggrieved Employees' employment by
8 Defendants.

9 101. At all relevant times herein, pursuant to Wage Order No. 5: "Each workday an
10 employee is required to report for work and does report, but is not put to work or is furnished
11 less than half said employee's usual or scheduled day's work, the employee shall be paid for
12 half the usual or scheduled day's work, but in no event for less than two (2) hours nor more
13 than four (4) hours, at the employee's regular rate of pay, which shall not be less than the
14 minimum wage." Cal. Code Regs. tit. 8 § 11050, subd. 5(A).

15 102. During the relevant time period, upon information and belief, Defendants
16 violated Labor Code section 1198 and Wage Order No. 5, because Defendants failed to pay
17 Plaintiff and Aggrieved Employees reporting time pay when they reported to work for the
18 scheduled shift but were put to work for less than half of the scheduled hours. For instance,
19 Plaintiff has reported to work based on the schedule that Defendants provided to her only to
20 be sent home immediately or be sent home before having worked less than half of her
21 scheduled shift. When this occurred, Plaintiff did not receive the proper reporting time pay.

22 103. Defendants' failure to provide reporting time pay to Plaintiff and Aggrieved
23 Employees violates IWC Order No. 5-2001 section 5(A) in violation of Labor Code section
24 1198 and Wage Order No. 5. Plaintiff and Aggrieved Employees are therefore entitled to
25 recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections
26 2699(a), (f), and (g).

27 ///

28 **REQUIRING AGREEMENT TO TERMS AND/OR CONDITIONS PROHIBITED BY**

LAW IN VIOLATION OF LABOR CODE SECTION 432.5

104. At all times herein set forth, pursuant to California Civil Code section 1668, “[a]ll contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.” Additionally, under California Civil Code section 3513, “[a]nyone may waive the advantage of a law intended solely for his [her/their] benefit. But a law established for a public reason cannot be contravened by a private agreement.” These statutes, among others, when violated result in a violation of Labor Code section 432.5. Under Labor Code section 432.5, “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

105. In violation of Labor Code section 432.5, Defendants have required Plaintiff and Aggrieved Employees to agree to contract terms that they know or should know are unlawful. For example, Defendants have required Plaintiff and Aggrieved Employees to agree to a contract clause purporting to waive their right to bring a representative action under PAGA and prohibiting them from pursuing PAGA claims in any forum. In *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348 (2014), the California Supreme Court held that “an employee’s right to bring a PAGA action is unwaivable” and that “an employment agreement compel[ling] the waiver of representative claims under the PAGA ... is contrary to public policy and unenforceable as a matter of state law.” *Id.* at 383-384. Where an employment agreement compels the waiver of representative claims under PAGA, such an agreement contravenes two statutes undergirding the unwaivability of statutory rights, California Civil Code sections 1668 and 3513, which are themselves derived from public policy. *Id.* at 383-384. Because the Legislature’s purpose in enacting the PAGA was to empower employees to enforce the Labor Code as agency representatives, a PAGA waiver disables that mechanism, and thus has as its “object, ... indirectly, to exempt [the employer] from responsibility for [its] own ... violation of law....” *Id.* at 383. Such an agreement also violates Civil Code section

3513 in that “agreements requiring the waiver of PAGA rights ... harm the state’s interests in enforcing the Labor Code and in receiving the proceeds of civil penalties used to deter violations.” *Id.*

106. Defendants’ required agreement to terms and conditions prohibited by law violates Labor Code section 432.5. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

**FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF
EMPLOYMENT IN VIOLATION OF LABOR CODE SECTION 2810.5**

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

108. Effective January 1, 2015, an employer’s written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

109. During the relevant time period, Defendants failed to provide a written notice to Plaintiff and Aggrieved Employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C) on a company-wide basis.

110. On information and belief, Defendants failed to provide Plaintiff and Aggrieved

1 Employees written notice that lists all the requisite information set forth in Labor Code section
2 2810.5(a)(1). Absent from Plaintiff's personnel file and employment records was a Section
3 2810.5 notice containing all the requisite information. For example, Vacation Resorts
4 International has failed to provide Plaintiff and Aggrieved Employees written notice that lists
5 the name used by the employer (i.e., Vacation Resorts International) as set forth in Labor
6 Code section 2810.5(a)(1).

7 111. Defendants' failure to provide Plaintiff and Aggrieved Employees with written
8 notice of basic information regarding their employment with Defendants is in violation of
9 Labor Code section 2810.5.

10 112. Plaintiff and Aggrieved Employees are therefore entitled to recover civil
11 penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and
12 (g).

13 **REQUEST FOR JURY TRIAL**

14 Plaintiff requests a trial by jury.

15 **PRAYER FOR RELIEF**

16 Plaintiff, on behalf of the State of California and all Aggrieved Employees, prays for
17 relief and judgment against Defendants, jointly and severally, as follows:

18 1. For civil penalties and attorneys' fees and costs in excess of twenty-five
19 thousand dollars (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a
20 different amount.

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

22 2. That the Court declare, adjudge and decree that Defendants violated the
23 following California Labor Code provisions as to Plaintiff and/or Aggrieved Employees: 510
24 and 1198 (by failing to pay all overtime compensation); 223, 1182.12, 1194, 1197, 1197.1,
25 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a),
26 1198, and California Code of Regulations, Title 8, section 11050(11) (by failing to provide
27 all meal periods); 226.7, 1198 and California Code of Regulations, Title 8, section 11050(12)
28 (by failing to provide all rest periods); 226(a) and 1198 (by failing to provide accurate wage

statements); 1174(d), 1198 and California Code of Regulations, Title 8, section 11050(7) (by failing to maintain accurate and complete payroll records); 1198 and California Code of Regulations, Title 8, section 11050(7) (by failing to maintain accurate and complete time keeping records); 204 (by failing timely to pay all earned wages during employment); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 1198, and California Code of Regulations, Title 8, section 11050(5)(A) (by failing to provide reporting time pay); 432.5 (by failing to provide lawful contract terms or conditions); and 2810.5 (by failing timely to provide written notice of material terms of employment).

3. For civil penalties pursuant to California Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 432.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5 as well as all applicable IWC Wage Orders;

4. For attorneys' fees and costs pursuant to California Labor Code sections 1194(a), 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 432.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5 as well as all applicable IWC Wage Orders;

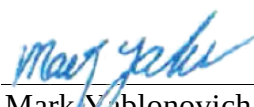
5. For pre-judgment and post-judgment interest as provided by law; and

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

Dated: November 1, 2021

Respectfully submitted,

LAW OFFICES OF MARK YABLONOVICH

By: 

Mark Yablonovich

Tony Roberts

Attorneys for Plaintiff Jill Gardner

Exhibit 1

LAW OFFICES OF
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August 27, 2021

VIA ONLINE SUBMISSION

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

Subject: *Jill Gardner v. Vacation Resorts International*

Dear PAGA Administrator:

This law firm represents Jill Gardner (“Ms. Gardner”) in connection with her claims under the California Labor Code against her former employers Vacation Resorts International and San Clemente Inn Vacation Plan Owners Association (“San Clemente Inn”). Vacation Resorts International oversees, directs, commands, controls, and jointly employs persons working at Vacation Resorts International, Mountain Retreat Homeowners Association (“Mountain Retreat”), Lake Arrowhead Chalets Timeshare Owners Association (“Lake Arrowhead Chalets”), Multi Resorts at Aquamarine Villas, Pacific Grove Plaza Vacation Resort Association (“Pacific Grove Plaza”), Desert Breezes Resort Timeshare Owners Association (“Desert Breezes”), Desert Isle of Palm Springs Association (“Desert Isle Resort”), Desert Vacation Villas Owners Association (“Desert Vacation Villas”), Palm Springs Tennis Club Owners Association (“Palm Springs Tennis Club Owners Association”), Four Seasons Pacifica, San Clemente Inn, Capri By The Sea, Gaslamp Plaza Suites Owners Association, Inc. (“Gaslamp Plaza Suites”), Multi Resorts at See the Sea, Nob Hill Inn City Plan Owners Association (“Nob Hill Inn”), Winners Circle Beach and Tennis Resort Time Share Condominium Owners Association (“Winners Circle Resort”), and the Lodge At Lake Tahoe (collectively referred to as “VRI”).

The employer may be contacted directly:

Vacation Resorts International
6649 Westwood Blvd.
Orlando, Florida 32821

San Clemente Inn Vacation Plan Owners Association
2600 Avenida Del Presidente
San Clemente, California 92672

Ms. Gardner intends to seek civil penalties, attorneys’ fees, costs, and all other available relief for VRI’s violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Gardner seeks relief on behalf of herself, the State of California, and other persons who are or were employed in California as non-exempt, hourly-paid employees and who worked one or more shifts in a pay

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period at a Vacation Resort International managed resort, vacation rental, and/or similar establishment in California at any time during the relevant statute of limitations (“Aggrieved Employees”).¹ Ms. Gardner sends this letter in compliance with the notice and reporting requirements of Labor Code section 2699.3.

Although Ms. Gardner and the Aggrieved Employees have been employed by Vacation Resort International managed resorts, vacation rentals, and/or similar establishments, Vacation Resort International is liable for one or more of the following Labor Code violations against Ms. Gardner and the Aggrieved Employees as a joint employer.

VRI employed Ms. Gardner from approximately July 24, 2018 to approximately October 14, 2021, as an hourly-paid Front Desk Attendant at VRI’s and San Clemente Inn’s resort in San Clemente, California. Ms. Gardner typically worked approximately 8 to 12 hours or more per workday, five to seven days per week, and up to forty hours or more per week. Her job duties included, but were not limited to, cleaning the hotel lobby, linen closets, guests activity equipment and rooms properly and thoroughly, as well as stocking the bathrooms, counting cash drawers at the beginning of her shifts, checking empty rooms at the end of the night, and checking in and greeting guests.

VRI committed one or more of the following Labor Code violations against Ms. Gardner and/or the Aggrieved Employees, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):²

VRI’s Company-Wide and Uniform Human Resources Practices

VRI is a corporation dedicated to managing and overseeing establishments providing lodging services throughout California. Upon information and belief, VRI maintains a centralized Human Resources department in California for all non-exempt, hourly-paid employees working for VRI

¹ By way of example, the Aggrieved Employees may have worked at least one or more shift in a pay period at any of the various establishments managed by Vacation Resorts International, including, but not limited to, Mountain Retreat, Lake Arrowhead Chalets, Multi Resorts at Aquamarine Villas, Pacific Grove Plaza, Desert Breezes, Desert Isle Resort, Desert Vacation Villas, Palm Springs Tennis Club Owners Association, Four Seasons Pacifica, San Clemente Inn, Capri By The Sea, Gaslamp Plaza Suites, Multi Resorts at See the Sea, Nob Hill Inn, Winners Circle Resort, and the Lodge At Lake Tahoe.

² These facts, theories, and claims are based on Ms. Gardner’s experience and counsel’s review of those records currently available relating to Ms. Gardner’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, typically because the aggrieved employee was not aware of the law’s requirements and/or the employer’s obligations, the employer misinformed its employee of the law’s requirements, or because the employer effectively concealed the existence of its violations. Thus, Ms. Gardner reserves the right to supplement this notice with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this notice.

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in California, including Ms. Gardner and other Aggrieved Employees. At all relevant times, VRI has issued and maintained uniform, standardized policies, practices and/or procedures for all non-exempt, hourly-paid employees in California, including Ms. Gardner and other Aggrieved Employees, regardless of their location or position. VRI has participated in, among other things, daily oversight, operations, training, management, and discipline of Ms. Gardner and other Aggrieved Employees. In fact, VRI controls the manner and means in which Ms. Gardner and other Aggrieved Employees perform their jobs at the various establishments throughout California.

Violation of California Labor Code Sections 510 and 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 3

California Labor Code sections 510 and 1198 and California Code of Regulations Title 8, section 11050 (“Wage Order No. 5”), require employers to pay employees working more than eight hours in a day, more than forty hours in a workweek, or for the first eight hours on the seventh consecutive day of work at the rate of time-and-one-half times the regular rate of pay for all hours worked in excess of eight hours in a day, in excess of forty hours in a workweek, and during the first eight hours on the seventh consecutive day of work. The applicable Wage Order further provides that employers are required to pay employees working more than twelve hours in a day or in excess of eight hours on the seventh consecutive day overtime compensation at a rate of two times their regular rate of pay.

VRI has failed to pay all overtime wages owed to Ms. Gardner and other Aggrieved Employees. During the relevant time period, Ms. Gardner and other Aggrieved Employees have not been paid overtime premiums for all of the hours they have worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a week, and/or for the seventh consecutive day of work, sometimes because all hours that they have worked have not been recorded, and other times because they simply have not been paid for all hours that have recorded and/or worked. Aggrieved Employees have been subject to VRI’s control during pre-shift and post-shift times, as well as during unpaid meal periods resulting in unpaid overtime where they are not getting paid, which, when working overtime eligible shifts results in underpaid overtime compensation. Based on information and belief, not all recorded work hours have been paid because of VRI’s inaccurate timekeeping policies and practices. As a result, Ms. Gardner believes the hours she and other Aggrieved Employees have worked may not have been properly recorded and/or paid, and therefore, Ms. Gardner and other Aggrieved Employees may not have been properly compensated for all hours recorded and/or worked.

VRI has known or should have known that, as a result of its policies, practices, and/or procedures, Ms. Gardner and other Aggrieved Employees have at times performed their assigned duties off-the-clock (and/or unrecorded), have been subject to control of VRI, and/or are suffered or permitted to perform work for which they have not been paid. VRI also has known or should have known, that it did not compensate Ms. Gardner and other Aggrieved Employees for off-the-clock work or for all hours worked. Because Ms. Gardner and other Aggrieved Employees sometimes worked shifts longer than eight hours a day, more than forty hours a week, and/or for seven consecutive days, some of the unrecorded work has qualified for overtime premium pay.

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At other times, VRI simply has not paid for all recorded hours. Therefore, Ms. Gardner and other Aggrieved Employees have not been paid overtime wages for all of the overtime hours actually worked. VRI's failure to pay Ms. Gardner 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 and the applicable Wage Order.

Furthermore, on information and belief, VRI's regular rate of pay for calculating overtime wages has not included all required shift differential payments or the correct calculation. Therefore, during times when Aggrieved Employees have worked overtime and received shift differential pay, VRI has not paid all overtime wages due to paying a lower overtime rate than required by California law.

Based on the foregoing, Ms. Gardner and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections 510 and 1198 and the applicable Wage Order, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and California Code of Regulations Title 8, Section 11050, Subdivision 4

Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable Wage Order require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission ("IWC"). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined by the applicable Wage Order 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, subd. 2(K) (defining "Hours Worked").

VRI has not paid for all the time Ms. Gardner and Aggrieved Employees have worked throughout the day including all time spent working through meal periods and/or any other time in the day when the employees have performed work tasks subject to VRI's control. Ms. Gardner and other Aggrieved Employees have been subjected to VRI's control pre-shift, post-shift, and throughout the workday, even during unpaid periods such as unpaid meal periods. By way of example, VRI has forced Ms. Gardner and Aggrieved Employees to follow health protocols and procedures pre-shift, has required Ms. Gardner and Aggrieved Employees to perform work-related tasks necessary to accommodate guests post-shift, and has required Ms. Gardner and Aggrieved Employees to remain attentive and at the ready with communication devices and to provide work-related communications during meal periods.

VRI also has had a continuous policy of not paying Ms. Gardner and Aggrieved Employees for all hours worked throughout the day, including, but not limited to, before shifts start, after shifts end, and/or any other time in the day when the employees have performed work tasks, subject to VRI's control.

To the extent that the off-the-clock work and/or recorded hours have not qualified for overtime

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premium payment, VRI has not paid at least minimum wages for those hours worked off-the-clock or that have been recorded but not paid in violation of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable Wage Order. Ms. Gardner and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 225.5, 1194, 1197.1 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 226.7, 512(a), and 1198 and California Code of Regulations Title 8, Section 11050 Subdivisions 11 and 12

Labor Code sections 226.7, 512(a) and 1198 and the applicable Wage Order require employers to provide meal periods and rest periods and to pay employees one additional hour of pay at the employee's regular rate for each workday that a meal period or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five hours per day without providing the employee with an uninterrupted duty-free and control-free meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six 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. *See Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012); *see also* Cal. Code Regs. tit. 8, § 11050, subd. 11. Labor Code sections 226.7 and 512(a) also require employers to provide a second meal period of not less than thirty minutes if an employee works over ten hours per day, except that if the total hours worked is no more than twelve 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. VRI's policies and practices, among other things, violate *Brinker's* mandate that employees must be provided with meal periods before the end of their fifth hour of work and must be provided with second meal periods before the end of their tenth hour of work, as VRI fails to provide the timing for meal periods.

Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable IWC Wage Order. The applicable Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours. Cal. Code Regs. tit. 8, § 11050, subd. 12. To comply with its obligation to provide rest periods under California Labor Code section 226.7 and the applicable 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). VRI's policies and practices, among other things, fail to authorize and permit *duty-free* rest periods.

VRI has failed to provide meal periods and authorize and permit rest periods to Ms. Gardner and

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other Aggrieved Employees. As a matter of policy and practice, VRI has not provided Ms. Gardner and other Aggrieved Employees with full 30-minute meal periods and net 10-minute rest periods for each day worked where they are free from VRI's required duties and control. For example, VRI has required employees to remain attentive and at the ready with communication devices and to provide work-related communications during meal periods and rest periods which has resulted in VRI not providing meal periods and rest periods for Ms. Gardner and Aggrieved Employees. During rest periods, VRI has also not permitted Ms. Gardner and Aggrieved Employees to leave the work premises. VRI has subjected Ms. Gardner and other Aggrieved Employees to control throughout their workday, even during times which should constitute uninterrupted duty-free rest periods and meal periods. VRI encourages employees to stay working and/or under employer control, as opposed to encouraging the rest and nourishment meal periods and rest periods are designed to provide.

VRI has known or should have known that as a result of its policies and/or practices, Ms. Gardner and other Aggrieved Employees were prevented from being relieved of all duties and employer control and required to perform some of their assigned duties during meal periods and rest periods and that they did not receive compliant meal periods and rest periods. As a result, Ms. Gardner and other Aggrieved Employees have had to work through all or part of their meal periods and rest periods, have their meal periods and rest periods interrupted, and/or have waited extended periods of time before taking meal periods and rest periods.

VRI has also engaged in a systematic, company-wide policy and/or practice of not properly training Ms. Gardner and other Aggrieved Employees on their entitlement to meal period and rest period premium payments resulting from meal period and rest period violations. Ms. Gardner and other Aggrieved Employees have been unaware of when meal period and/or rest period premiums were owed to them. Based upon information and belief, Ms. Gardner and other Aggrieved Employees have not received all meal period and/or rest period premium wages owed when compliant meal periods and rest periods have not been provided. To the extent that VRI did pay meal period and/or rest period premium wages to Ms. Gardner and other Aggrieved Employees, such payments were admissions of its failure to provide compliant meal periods and rest periods. Furthermore, based upon information and belief, to the extent employees have been paid shift differential pay or similar remunerations, those payments have not been included in VRI's regular rate of compensation for calculating meal period and/or rest period premiums and has resulted in an underpayment of meal period and/or rest period premium wages.

Accordingly, VRI has failed to provide all meal periods and rest periods and/or pay all meal period and rest period premiums, in violation of Labor Code sections 226.7, 512, and 1198 and the applicable Wage Order. Ms. Gardner and other Aggrieved Employees are therefore entitled to civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 226.7, 558 and/or 2699(a), (f), and (g).

Violation of California Labor Code Section 226(a)

Labor Code section 226(a) requires employers to keep and furnish accurate and complete employment records. VRI has not provided Ms. Gardner and other Aggrieved Employees with

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properly itemized wage statements. Moreover, an aggrieved employee may seek civil penalties under Labor Code section 2699 for violations of wage statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*, 15 Cal.App.5th 773, 788 (2017) (“a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”) Rather, 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 furnish an accurate itemized wage statement or fails to keep the required records pursuant to Section 226(a).

Labor Code section 226(c) provides as follows: “An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.”

VRI has furnished Ms. Gardner and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, VRI violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because VRI did not record all the hours Ms. Gardner and other Aggrieved Employees worked and/or pay all hours recorded, VRI did not list the correct amount of gross wages and net wages earned by Ms. Gardner and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5), respectively. VRI also failed to accurately list the total hours worked by Ms. Gardner and other Aggrieved Employees for work performed while off-the-clock in violation of Section 226(a)(2) and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked in violation of Section 226(a)(9).

In addition, the total regular, shift differential, and overtime hours listed in VRI’s wage statements, when added together, do not sum up to the total hours worked by the employee during the pertinent time period. Likewise, VRI furnishes wage statements which do not properly itemize the total hours worked because VRI itemizes the incorrect total number of hours worked. Without additional information regarding the wage statement, an employee cannot simply arrive at the sum of hours worked. As such, VRI’s wage statements do not comply with Labor Code section 226(a)(2).

Furthermore, because VRI has failed to pay all meal period and rest period premiums to Ms. Gardner and other Aggrieved Employees, VRI has not listed the correct amount of gross wages and net wages earned by Ms. Gardner and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5).

Because VRI has furnished wage statements inaccurately itemizing, among other things, the accurate number of total hours worked, gross wages earned, net wages earned, and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked on wage statements, Ms. Gardner 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 and were given confusing and/or incomplete information about their

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employer. Instead, Ms. Gardner 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.

VRI has also failed to itemize the name and address of the legal entity that is the employer (i.e., Vacation Resorts International, 6649 Westwood Blvd., Orlando, Florida 32821) on Ms. Gardner's and the Aggrieved Employees' wage statements in violation of Labor Code section 226(a)(8).

Ms. Gardner and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code section 226(a), 226(c) and 1198.5, pursuant to Labor Code sections 226.3 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 1174(d) and 1198, and California Code of Regulations Title 8, Section 11050 Subdivision 7

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, VRI willfully failed to maintain accurate payroll records for Ms. Gardner and other Aggrieved Employees showing the daily hours they worked and the wages paid as a result of failing to record all hours worked and/or failing to correctly list the gross wages and/or net wages earned by them in violation of Labor Code section 1174(d).

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 IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period, as well as total daily hours. Cal. Code Regs. tit. 8, § 11050, subd. 7. During the relevant time period, VRI has failed, on a company-wide basis, to keep accurate records of shift and meal period start and stop times and total daily hours for Ms. Gardner and other Aggrieved Employees, in violation of Labor Code section 1174(d) and the Wage Order.

Due to VRI's failure to maintain accurate payroll and time records, Ms. Gardner and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 1174.5 and/or 2699(a), (f), and (g).

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Violation of California Labor Code Section 204

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. 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, 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 calendar days following the close of the payroll period.

During the relevant time period, VRI has not paid Ms. Gardner and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, minimum wages, shift differential pay, and/or meal period and rest period premium wages, within any time period specified by Labor Code section 204.

Ms. Gardner and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 201, 202, and 203

California Labor Code sections 201-202³ 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 their employment, their wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

VRI has failed to pay Ms. Gardner and other Aggrieved Employees who are no longer employed by VRI all their earned wages at the time of discharge, or within seventy-two hours of their leaving VRI's employment in violation of California Labor Code sections 201-202.

Furthermore, VRI has not paid Ms. Gardner and other Aggrieved Employees who are no longer employed by VRI all their earned wages, at the time of discharge, or within seventy-two hours of their leaving VRI's employ including, but not limited to, overtime wages, minimum wages, shift differential pay, and/or meal period and rest period premium wages.

As a result of VRI's violations of Labor Code sections 201-202, Ms. Gardner and other

³ Ms. Gardner also asserts Section 203, which is enumerated in Section 2699.5, to the extent applicable.

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Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 203 and/or 2699(a), (f), and (g).

Violation of California Labor Code Section 432.5

Pursuant to California Civil Code section 1668, "[a]ll contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law." Similarly, per California Civil Code section 3513, "[a]nyone may waive the advantage of a law intended solely for his [her/their] benefit. But a law established for a public reason cannot be contravened by a private agreement." These statutes, among others, when violated result in a violation of California Labor Code section 432.5. Under California Labor Code section 432.5, "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law."

In violation of California Labor Code section 432.5, VRI has required Ms. Gardner and the Aggrieved Employees to agree to contract terms that VRI knows or should know are unlawful. For example, VRI has required Ms. Gardner and the Aggrieved Employees to agree to a contract clause purporting to waive their right to bring a representative action under the PAGA and prohibiting them from pursuing PAGA claims in any forum. In *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348 (2014), the California Supreme Court held that "an employee's right to bring a PAGA action is unwaivable" and that "an employment agreement compel[ling] the waiver of representative claims under the PAGA ... is contrary to public policy and unenforceable as a matter of state law." *Id.* at 383-384. Where an employment agreement compels the waiver of representative claims under the PAGA, such an agreement contravenes two statutes undergirding the unwaivability of statutory rights, California Civil Code sections 1668 and 3513, which are themselves derived from public policy. *Id.* at 383-384. Because the Legislature's purpose in enacting the PAGA was to empower employees to enforce the Labor Code as agency representatives, a PAGA waiver disables that mechanism, and thus has as its "object, ... indirectly, to exempt [the employer] from responsibility for [its] own ... violation of law...." *Id.* at 383. Such an agreement also violates California Civil Code section 3513 in that "agreements requiring the waiver of PAGA rights ... harm the state's interests in enforcing the Labor Code and in receiving the proceeds of civil penalties used to deter violations." *Id.*

As such, VRI has required Ms. Gardner and the Aggrieved Employees to agree to contract terms that it knows or should know are unlawful. Ms. Gardner and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

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Violation of California Labor Code Section 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A)

Pursuant to Wage Order No. 5:

Each 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.

Cal. Code Regs. tit. 8 § 11050, subd. 5(A).

VRI has violated Labor Code section 1198 and Wage Order No. 5, because VRI has failed to pay Ms. Gardner and other Aggrieved Employees reporting time pay when they have reported to work for a scheduled shift but have been put to work for less than half of the scheduled hours. For instance, Ms. Gardner has reported to work based on the schedule that VRI provided to her only to be sent home immediately or before having worked less than half of her scheduled shift. Whenever this occurred, Ms. Gardner would not receive the proper reporting time pay.

As a result of VRI's violation of California Labor Code section 1198 and Wage Order No. 5, Ms. Gardner and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 1194 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 1198 and 2810.5(a)(1)

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

At the time of hiring, San Clemente Inn provided Ms. Gardner with a DLSE NTE form

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containing some information related to Labor Code section 2810.5. However, Vacation Resorts International has failed to provide Ms. Gardner and other Aggrieved Employees written notice that lists all the requisite information—such as the name used by the employer (i.e., Vacation Resorts International)—set forth in Labor Code section 2810.5(a)(1). VRI’s failure to provide Ms. Gardner and other Aggrieved Employees with written notice of basic information regarding their employment with VRI is in violation of Labor Code section 2810.5. Ms. Gardner and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

California Labor Code Section 558(a)

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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”⁴ 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.” VRI, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Gardner’s and other Aggrieved Employees’ rights by violating various sections of the California Labor Code as set forth herein.

Pursuant to Labor Code section 2699(f), Ms. Gardner seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Labor Code section 2699(f)(2). In the alternative to the penalties above, Ms. Gardner seeks penalties pursuant to Labor Code section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Labor Code sections 558(a)(1) and 558(a)(2) should such provision be applicable.

* * *

Accordingly, Ms. Gardner seeks the remedies set forth above for herself, the State of California, and all other Aggrieved Employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Ms. Gardner, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other Aggrieved Employees, and the State of California against VRI for violations of

⁴ Mrs. Gardner does not seek to recover any unpaid wages that are provided for in Section 558(a). She only seeks civil penalties allowed by PAGA. *See ZB, NA v. Super. Ct. (Lawson)*, 8 Cal. 5th 175 (2019).

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California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5 and the applicable Wage Order, as well as sections 225.5, 226(c), and 1198.5, which are 'curable' violations pursuant to section 2699.3(c)(2)(A).

Therefore, on behalf of all Aggrieved Employees, Ms. Gardner seeks all applicable civil penalties and other available relief related to these violations of the California Labor Code pursuant to PAGA.

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

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Best Regards,



Mark Yablonovich

Copy to: Vacation Resorts International
6649 Westwood Blvd.
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Via U.S. Certified Mail

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