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Attorneys for Plaintiff CARMEN MARTINEZ,
individually and on behalf of all others similarly situated

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

CARMEN MARTINEZ, individually,
and on behalf of all others similarly
situated,

Plaintiff,

vs.

SYR SERVICE COMPANY, LLC, a
Delaware limited liability corporation;
SAN YSIDRO BB PROPERTY, LLC, a
Delaware limited liability corporation;
TY WARNER HOTELS & RESORTS,
LLC, a Delaware limited liability
corporation; and DOES 1 through 25,
inclusive,

Defendants.

CASE NO. 21CV04034

COMPLAINT FOR:

**1. CIVIL PENALTIES UNDER LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE 2698, ET. SEQ**

1 Plaintiff CARMEN MARTINEZ, an individual, hereby files this Complaint against
2 Defendants SYR SERVICE COMPANY, LLC, a Delaware limited liability corporation; SAN
3 YSIDRO BB PROPERTY, LLC, a Delaware limited liability corporation, (collectively “SYR”); TY
4 WARNER HOTELS & RESORTS, LLC, a Delaware limited liability corporation; and DOES 1
5 through 25, inclusive (together with “SYR”, hereinafter referred to as “the Company” or
6 “Defendants”). Plaintiff, in her representative capacity, is informed and believes and on the basis of
7 that information and belief alleges as follows:

8 **INTRODUCTION**

9 1. This lawsuit challenges Defendants’ employment practices with respect to their non-
10 exempt hourly workers employed in the State of California as housekeepers, or any other similarly
11 situated non-exempt, hourly position, based on Defendants’ policy and practice of denying earned
12 wages, including minimum and overtime pay, failing to provide legally compliant meal and rest
13 breaks, and failing to provide accurate and itemized wage statements. In particular, Defendants require
14 non-exempt employees to be present and perform work in excess of eight hours per day and/or forty
15 hours per work week but fail to pay them overtime wages accordingly. Also, Defendants require such
16 employees to submit to mandatory drug testing without reimbursing Plaintiff for travel or millage.
17 Finally, Defendants fail to timely compensate employees for all wages earned and fail to properly and
18 accurately calculate overtime and report wages earned, hours worked, and wage rates.

19 2. At all times relevant hereto, and with certain defined exceptions, Defendants’
20 compensation scheme did not fully compensate Plaintiff with at least minimum wages and/or
21 designated rates for all hours worked.

22 3. At all times relevant hereto, and with certain defined exceptions, Defendants’
23 compensation scheme did not fully compensate Plaintiff with overtime compensation for all overtime
24 hours worked.

25 4. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
26 to provide Plaintiff with timely off-duty meal periods and meal period compensation in violation of
27 Labor Code sections 226.7 and 512, and IWC Wage Order No. 4 section 11.

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5. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to provide Plaintiff with timely paid rest periods and rest period compensation in violation of Labor Code sections 226.7 and 516 and IWC Wage Order No. 4 section 12.

6. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to indemnify Plaintiff for all necessary business expenditures in violation of Labor Code section 2802.

7. At all times relevant hereto, and as a matter of policy and/or practice, Defendants knowingly and intentionally provided Plaintiff with wage statements that, among others, do not show all wages earned, all hours worked, or all applicable rates.

8. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to maintain documentation of the actual hours worked each day by Plaintiff, all wages earned, and meal breaks taken in violation of Labor Code sections 1174 and IWC Wage Order No. 4 section 11.

9. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to pay Plaintiff all wages due and owing upon termination of employment including, but not limited to, payment of wages for off-the-clock work, overtime compensation and late meal and rest period compensation.

10. In this case, Plaintiff seek penalties established by Labor Code section 2699, the Private Attorneys General Act (“PAGA”), against Defendants for their unlawful employment practices.

PARTIES

Plaintiff Carmen Martinez

11. Plaintiff Carmen Martinez is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of California. Within the Relevant Time Period, from approximately July 2019 to on or about March 30, 2021, Ms. Rosales worked for Defendants as a non-exempt employee, in the role of housekeeper at Defendants' San Ysidro Ranch located at 900 San Ysidro Lane, Santa Barbara, California 93108.

Defendant SYR Service Company, LLC.

12. Plaintiff is informed and believes and based thereon alleges that Defendant SYR Service Company, LLC, is a Delaware limited liability corporation and now and/or at all times mentioned in this Complaint was, licensed to do business and actually doing business in the State of

1 California. SYR is part of the Ty Warner Hotels & Resorts, LLC's enterprise that operates luxury
2 resorts across the globe, including in, Santa Barbara, California.

3 ***Defendant San Ysidro BB Property, LLC***

4 13. Plaintiff is informed and believes and based thereon alleges that Defendant San Ysidro
5 BB Property, LLC, is a Delaware limited liability corporation licensed to do business and actually
6 doing business in the State of California. SYR is part of the Ty Warner Hotels & Resorts, LLC's
7 enterprise that operates luxury resorts across the globe, including in, Santa Barbara, California.

8 ***Defendant Ty Warner Hotels & Resorts, LLC***

9 14. Plaintiff is informed and believes and based thereon alleges that Defendant Ty Warner
10 Hotels & Resorts, LLC, is a Delaware limited liability corporation licensed to do business and actually
11 doing business in the State of California. Ty Warner Hotels & Resorts, LLC owns and operates several
12 establishments in or around California, including the Sandpiper golf course in Goleta, California, the
13 Montecito Country Club, and the Four Seasons Hotel in Santa Barbara, California.

14 ***Defendants Does 1 through 25, Inclusive***

15 15. DOES 1 through 25 inclusive are now and/or at all times mentioned in this Complaint
16 were, licensed to do business and/or actually doing business in the State of California. Plaintiff do not
17 know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through 25,
18 inclusive and for that reason, DOES 1 through 25 are sued under such fictitious names pursuant to
19 California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this
20 Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 15
21 are believed to be business entities who were also co-employers of the Plaintiffs and the other
22 aggrieved employees.

23 ***All Defendants***

24 16. Plaintiff is informed and believes and based thereon alleges that at all times herein
25 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
26 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within
27 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
28 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or

1 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
2 taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the
3 matters referred to herein.

4 17. Plaintiff is informed and believes and based thereon alleges that at all times herein
5 mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated
6 and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
7 damages alleged in this Complaint.

8 18. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
9 of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in
10 a joint venture, partnership and common enterprise, and were acting within the course and scope of,
11 and in pursuit of said joint venture, partnership and common enterprise and, as such were co-employers
12 of the Plaintiff and the other aggrieved employees.

13 19. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
14 of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided
15 and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every one
16 of the other Defendants in proximately causing the injuries and/or damages alleged in this Complaint.

17 20. Plaintiff is informed and believes and based thereon alleges that Defendants have such
18 a unity of interest and ownership that the separate personalities do not in reality exist and that the
19 corporate structure is just a shield for the alter ego of each other. Plaintiff therefore is informed and
20 believe and thereupon alleges that Defendants, and each of them, were Plaintiff's employer under
21 California law, that Defendants herein did acts consistent with the existence of an employer-employee
22 relationship with Plaintiff and that Defendants were controlled by one another.

23 **JURISDICTION AND VENUE**

24 21. This Court has jurisdiction over this matter, and under Code of Civil Procedure section
25 395, venue is proper in that Plaintiff's injuries were incurred within the County of Santa Barbara; the
26 actions giving rise to Plaintiff's Complaint arose in whole or in part within the County of Santa
27 Barbara; and Defendants operate in the County of Santa Barbara. Moreover, there are aggrieved
28 employees who reside in the county of Santa Barbara and some of whose harms occurred in the county

1 of Santa Barbara.

2 22. Plaintiff does not seek more than seventy-five thousand dollars (\$75,000) and waives
3 seeking more than seventy-five thousand dollars (\$75,000), including attorneys' fees but excluding
4 costs and interest, as to their share or portion of penalties or any other recovery with respect to the
5 violations alleged herein against Defendants. This case also raises no federal questions.

6 23. The Relevant Time Period for this matter encompasses April 6, 2020 and continues
7 through the present ("Relevant Time Period"). By letter submitted August 3, 2021, Plaintiff, on behalf
8 of herself and the other aggrieved employees, gave written notice by online submission to the Labor
9 and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the
10 California Labor Code alleged to have been violated, including the facts and theories to support the
11 alleged violations. However, as of April 6, 2020, the statute of limitations for the PAGA claims
12 asserted by Plaintiff on behalf of herself and the aggrieved employees were tolled as a result of
13 California Rules of Court, Emergency Rule 9(a).

14 **FACTUAL ALLEGATIONS**

15 ***Background***

16 24. SYR is part of the Ty Warner Hotels & Resorts, LLC's enterprise that operates luxury
17 resorts across the globe, including in, Montecito, California. Ty Warner Hotels & Resorts, LLC owns
18 and operates several other establishments in or around California, including the Sandpiper golf course
19 in Goleta, California, the Montecito Country Club, and the Four Seasons Hotel in Santa Barbara,
20 California. As part of SYR's operations, non-exempt employees, particularly the housekeeping staff,
21 provide cleaning services throughout the resort.

22 25. Carmen Martinez was employed as a housekeeper by SYR and the Company at the San
23 Ysidro Ranch – a luxury resort - in Montecito, California from approximately July 2019 through on
24 or about March 30, 2021. Throughout her employment with SYR and the Company, she was a non-
25 exempt, hourly employee.

26 26. Housekeepers, like Ms. Martinez, (hereinafter "Aggrieved Employees") commonly
27 work in excess of 8 hours a day or 40 hours in one week. Ms. Martinez and other Aggrieved Employees
28 were not allowed to clock-in prior to their shift start time. However, supervisors would often instruct

1 Aggrieved Employees who had arrived early to begin working prior to allowing them to clock-in.
2 Consequently, Ms. Martinez prior to clocking-in would spend 10-15 minutes off-the-clock folding
3 towels or re-stocking housekeeping carts with supplies. Moreover, Aggrieved Employees, for the past
4 year, were required to submit to a health screening prior to clocking-in. Ms. Martinez and all other
5 Aggrieved Employees were required to wait in line with other employees at the entrance of the resort
6 to have their temperature scanned, resulting in an additional 15 minutes every morning in which
7 Aggrieved Employees, including Ms. Martinez were under the control of their employer, but were not
8 being compensated.

9 27. Additionally, Ms. Martinez, was required to take mandatory drug tests at a clinic in the
10 about a 10-mile/ 20-minute drive each way from the resorts' offices. Ms. Martinez would drive herself
11 in her own car from her house, again about 20-minutes, then would have to wait 30-minutes before
12 taking the test, the test itself took about 10-minutes, and then she would drive herself back home for
13 another 20-minutes. Defendants instructed Ms. Martinez to use this clinic and did not reimburse Ms.
14 Martinez for travel or milage costs or compensate Ms. Martinez for her time, resulting in about 1.5
15 hours of uncompensated time and about 20 miles of unreimbursed travel and mileage every time Ms.
16 Martinez completed Defendants mandatory drug test.

17 28. Finally, Defendants expected Aggrieved Employees, specifically housekeepers to clean
18 a guest's room in 40-minutes and provided a daily checklist to each housekeeper, with tasks including
19 cleaning the room, providing turn down service, replacing dirty towels, replenishing amenities, and
20 preparing housekeeping trollies. Defendants assigned eight rooms per employee per shift. However,
21 the reality was that it took 120-minutes to clean a guest's room and most guest rooms needed to be
22 completed by the 3:00pm guest check-in time. Accordingly, due to the heavy workload and
23 understaffing, Aggrieved employees, particularly housekeepers were forced to clock out before the
24 end of the 5th hour of work and instead of taking their meal breaks were pressured to work through
25 their lunch to finish their assigned rooms. Similarly, state-mandated rest breaks were not scheduled
26 and were not taken by Aggrieved Employees, again due to the heavy workload and understaffing.

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1 ***Defendants' Failure to Pay Minimum Wages and Designated Rates***

2 29. IWC Wage Order, number 4 defines "hours worked" to mean "the time during which
3 an employee is subject to the control of an employer and includes all the time the employee is suffered
4 or permitted to work, whether or not required to do so."

5 30. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 formerly
6 provided that on and after January 1, 2008, the minimum wage shall be not less than eight dollars
7 (\$8.00) per hour.

8 31. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 provide that
9 on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9)
10 per hour, that on and after January 1, 2016, the minimum wage for all industries shall be not less than
11 ten dollars (\$10) per hour, that on and after January 1, 2017, the minimum wage for all industries shall
12 be not less than ten dollars and fifty cents (\$10.50) per hour, and that on and after January 1, 2018, the
13 minimum wage for all industries shall be not less than eleven dollars (\$11) per hour,

14 32. Labor Code section 1194(a) provides in relevant part: "Notwithstanding any agreement
15 to work for a lesser wage, any employee receiving less than the legal minimum wage [] is entitled to
16 recover in a civil action the unpaid balance of the full amount of this minimum wage [], including
17 interest thereon, reasonable attorney's fees, and costs of suit."

18 33. Labor Code section 1194.2(a) provides in relevant part: "In any action under Section
19 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum
20 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages
21 in an amount equal to the wages unlawfully unpaid and interest thereon."

22 34. Labor Code section 1197 provides: "The minimum wage for employees fixed by the
23 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
24 minimum so fixed is unlawful."

25 35. Defendants' non-exempt employees, including housekeepers, are paid on an hourly
26 basis for their time spent working. Hours worked include, but are not limited to, all hours that an
27 employee is permitted or suffered to work including, but not limited to, off-the-clock work that an
28 employer either knew or should have known that an employee was performing.

1 36. As a matter of policy and/or practice, Defendants routinely failed to compensate
2 housekeepers based on the actual time worked but instead only paid Aggrieved Employees for the
3 actual time clocked in and clocked out, without accounting for mandatory pre-shift time. This leads
4 to widespread underpayment of wages.

5 37. California law requires that an employer compensate an employee for all hours worked.
6 See Industrial Welfare Commission Wage Order 1-2001, § 2(G) (“‘Hours worked’ means the time
7 during which an employee is subject to the control of an employer and includes all the time the
8 employee is suffered or permitted to work, whether or not required to do so.”) Labor Code § 204;
9 *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 584-586 (2000); *See also Troester v. Starbucks Corp.*,
10 421 P.3d 1114 (2018) (recent California Supreme Court decision affirming that relevant statutes and
11 wage order do not allow employers to require employees to routinely work for minutes off-the-clock
12 without compensation.) Defendants’ practice of not paying Aggrieved Employees for mandatory pre-
13 shift time spent under Defendants’ control runs in direct violation of the California Labor Code as
14 specified herein.

15 ***Defendants’ Failure to Pay Overtime Compensation***

16 38. Labor Code Section 1194 provides that an employee receiving less than the legal
17 overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount of
18 this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees,
19 and costs of suit.

20 39. Labor Code Section 510(a) states: “Any work in excess of eight hours in one workday
21 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
22 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
23 one-half times the regular rate of pay for an employee.” Labor Code Section 510(a) further states:
24 “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
25 regular rate of pay for an employee.” Labor Code Section 510(a) further states: “[A]ny work in excess
26 of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
27 the regular rate of pay of an employee.”

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1 40. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment
2 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all
3 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment
4 of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess
5 of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the
6 seventh (7th) day of work in any one workweek.

7 41. Plaintiff was classified as non-exempt by Defendants and was therefore entitled to
8 overtime compensation for all hours worked in excess of the hours and time specified in the Wage
9 Order, statutes and regulations identified herein.

10 42. As a matter of policy and/or practice, Plaintiff was frequently required to perform work
11 before her scheduled shifts. However, as a matter of policy and/or practice, Defendants only
12 compensated Plaintiff for time when she was permitted to clock-in.

13 43. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff
14 and thus failed to pay overtime wages for the actual amount of overtime hours worked.

15 44. Additionally, Defendants improperly calculated the amount of overtime wages owing
16 as they did not consider the actual hours worked and earned by Plaintiff, and thus failed to pay Plaintiff
17 all overtime wages due.

18 ***Defendants' Failure to Provide Adequate and Timely Meal Breaks***

19 45. Plaintiff did not waive her meal periods by mutual consent with Defendants or
20 otherwise. Plaintiff did not enter into any written agreement with Defendants agreeing to an on-the-
21 job paid meal period. Nevertheless, Defendants implemented a uniform policy and procedure in which
22 Plaintiff was not provided timely required duty-free meal periods.

23 46. Plaintiff is informed and believes and based thereon alleges that as a matter of policy
24 and/or practice, Defendants routinely failed to provide their non-exempt employees, including Plaintiff
25 and other Aggrieved Employees, with adequate meal periods. Defendants did this by requiring
26 Plaintiff and the other non-exempt employees to take their meal periods in accordance with their
27 scheduled shift times and not actual shift start times. Moreover, due to the understaffing and heavy
28 workload Aggrieved Employees are often forced to work through their meal period or cut their meal

1 period short.

2 47. Accordingly, throughout the Relevant Time Period, Defendants regularly:

- 3 a. Failed to provide Plaintiff and the other Aggrieved Employees with a timely first
4 meal period of not less than thirty (30) minutes during which they were relieved
5 of all duty before working more than five (5) hours;
6 b. Failed to provide Plaintiff and the other Aggrieved Employees with a timely
7 second meal period of not less than thirty (30) minutes during which they are
8 relieved of all duty before working more than ten (10) hours per day; and
9 c. Failed to pay Plaintiff and the other Aggrieved Employees one hour of pay at their
10 regular rate of compensation for each workday that a timely meal period was not
11 provided.

12 ***Defendants' Failure to Provide Timely Rest Breaks***

13 48. At all times relevant hereto, Labor Code section 226.7 and IWC Wage Order, number
14 4, section 12 required employers to authorize, permit, and provide a ten (10) minute paid rest for each
15 four (4) hours of work, during which employees are relieved of all duty.

16 49. At all times relevant hereto, Labor Code Section 226.7(b) and IWC Wage Order,
17 number 4, section 12 required employers to pay one hour of additional pay at the regular rate of
18 compensation for each employee and each workday that a proper rest period is not provided.

19 50. Plaintiff is informed and believes and based thereon alleges that Defendants failed to
20 effectively communicate California rest period requirements to their non-exempt employees, including
21 Plaintiff and other Aggrieved Employees. Plaintiff is further informed and believes and based thereon
22 alleges that throughout the Relevant Time Period Defendants failed to schedule timely rest periods.

23 51. Throughout the Relevant Time Period, Plaintiff and the other aggrieved employees
24 were routinely denied timely rest breaks they were entitled to under California law.

25 52. Specifically, throughout the Relevant Time Period, Defendants regularly:

- 26 a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiff and the
27 other aggrieved employees were relieved of all duty for each four (4) hours of work;
28 b. Failed to compensate Plaintiff and the other aggrieved employees for break time when

breaks were taken; and

- c. Failed to pay Plaintiff and the other aggrieved employees one (1) hour of pay at their regular rate of compensation for each workday that a timely rest period was not permitted.

Defendants' Failure to Timely Pay Wages During Employment

53. California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

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

55. Upon information and belief Defendants willfully failed to pay Plaintiffs and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

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

Defendants' Failure to Pay All Wages Due at Termination of Employment

57. At all times relevant hereto, Labor Code § 201 required an employer that discharges an employee to pay compensation due and owing to said employee immediately upon discharge. Labor Code Sections 202 requires an employer to pay an employee who quits any compensation due and

owing to said employee within seventy-two (72) hours of an employee's resignation. Labor Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required under Sections 201 and 202, then the employer is liable for waiting time penalties in the form of continued compensation for up to thirty (30) workdays.

58. Defendants willfully and knowingly failed to pay Plaintiff and the other aggrieved employees, upon termination of employment, all accrued compensation including payment of minimum wage compensation, missed meal and rest periods compensation and for time spent performing work off the clock at Defendants' direction.

Defendants' Failure to Reimburse Necessary Business Expenditures

59. At all times relevant hereto, California Labor Code §2802 requires an employer to indemnify its employees for all that such employees expend or lose in direct consequence of the discharge of their duties, or in direct consequence of their obedience to the directions of their employer.

60. Defendants, and each of them, have violated California Labor Code §2802 by requiring Plaintiff and all other Aggrieved Employees to take mandatory drug tests about a 10-mile/ 20-minute drive each way from the resorts' offices resulting in about 20 miles of unreimbursed travel and mileage every time Plaintiff completed Defendants mandatory drug test.

61. Additionally, Aggrieved Employees, including Plaintiff, are required by SYR and the Company to wear and maintain three blue blouses and three charcoal pants, which were given to them by Defendants. However, due to the nature of housekeeping work Ms. Martinez's uniforms were often, and easily, dirtied and stained with cleaning chemicals. Accordingly, Ms. Martinez had to separate her uniform items from her regular cloths and take them to the laundromat, spending \$5 each week on her uniform maintenance. Plaintiff and other Aggrieved Employees were therefore not reimbursed for the maintenance related to their uniforms.

Defendants' Failure to Provide Accurate, Itemized Wage Statements

62. At all times relevant hereto, Labor Code section 226 and IWC Wage Order, number 4, section 7 required employers to maintain adequate employment records and provide employees with accurate itemized wage statements showing gross wages, total hours worked, all applicable hourly rates worked during each pay period, the corresponding number of hours worked at each hourly rate,

1 and meal breaks taken.

2 63. Wage statements provided to Plaintiff and the other aggrieved employees by
3 Defendants do not show all wages earned, all hours worked, or all applicable rates, in violation of the
4 Labor Code section 226, and IWC Wage Order number 4, section 7.

5 64. Moreover, Defendants did not maintain adequate records of all wages earned, hours
6 worked, and breaks taken.

7 ***Exhaustion of Administrative Remedies***

8 65. Plaintiff has complied with the procedures for bringing suit specified in California
9 Labor Code Section 2699.3. By letter dated August 3, 2021 Plaintiff, on behalf of herself and the
10 other aggrieved employees, gave written notice by electronic mail and certified mail to the Labor and
11 Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the
12 California Labor Code alleged to have been violated, including the facts and theories to support the
13 alleged violations. Attached as Exhibit “1” is a true and correct copy of the referenced letter.

14 66. More than sixty-five (65) calendar days have passed since Plaintiff provided the
15 LWDA with written notice. To date, Plaintiff has not received any written notice nor been notified
16 from the LWDA that it does intend to investigate the violations of the California Labor Code alleged
17 herein.

18 **FIRST CAUSE OF ACTION**

19 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

20 **(On Behalf of Plaintiff and the Other Aggrieved Employees Against All Defendants)**

21 67. Plaintiff incorporates by reference the allegations set forth above.

22 68. As set forth above, Plaintiff has complied with the procedures for bringing suit
23 specified in California Labor Code Section 2699.3. By letter dated August 3, 2021, Plaintiff, on behalf
24 of herself and the other Aggrieved Employees, gave written notice by certified mail to the LWDA and
25 to Defendants of the specific provisions of the California Labor Code alleged to have been violated,
26 including the facts and theories to support the alleged violations. More than sixty-five (65) calendar
27 days have passed since Plaintiffs provided the LWDA with written notice. To date, Plaintiff has not
28 received any written notice nor been notified from the LWDA that it does intend to investigate the

1 violations of the California Labor Code alleged herein.

2 69. This action arises out of the allegedly unlawful labor practices of Defendants in
3 California. Through this private attorneys' general action, Plaintiff represents herself, and other
4 aggrieved employees of Defendants that were in California, against whom Defendants have allegedly
5 committed labor law violations alleged herein. As a result of the allegedly unlawful conduct described
6 herein, Plaintiff now seek to recover civil penalties, including the value of unpaid wages, attorneys'
7 fees and costs, pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code
8 Sections 558 and 2698, *et seq.*

9 70. Labor Code Section 1198 makes it unlawful for an employer to employ an employee
10 under conditions that violate the applicable Wage Order.

11 71. Plaintiff is informed and believes that throughout the Relevant Time Period,
12 Defendants have applied centrally devised policies and practices to Plaintiff and the other aggrieved
13 employees with respect to wages, hours, and working conditions.

14 **Failure to Pay Minimum Wages and Designated Rates**

15 72. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide
16 that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees
17 and the payment of a wage less than the minimum so fixed is unlawful. Additionally, Code Section
18 1198 makes it unlawful for an employer to employ an employee under conditions that violate the
19 applicable Wage Order.

20 73. Where any statute or contract requires an employer to maintain the designated wage
21 scale, Labor Code Section 223 makes it unlawful for an employer to secretly pay a lower wage while
22 purporting to pay the wage designated by statute or by contract.

23 74. At all relevant times, Defendants maintained a policy and practice of requiring Plaintiff
24 and the other aggrieved employees to remain under Defendants' control without paying therefore,
25 which resulted in them earning less than the legal minimum wage in the State of California for all
26 hours worked.

27 75. Defendants' failure to pay Plaintiff and other aggrieved employees minimum wages
28 violates California Labor Code sections 223, 1182.12, 1194, and 1197. Plaintiff and other aggrieved

employees are entitled to recover civil penalties pursuant to sections 1197.1 and 2699(a), (f), and (g).

Failure to Pay Overtime Compensation

76. Labor Code Section 1194 provides that an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

77. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states: "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

78. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the seventh (7th) day of work in any one workweek.

79. Plaintiff and the other aggrieved employees were classified as non-exempt by Defendants and were therefore entitled to overtime compensation for all hours worked in excess of the hours and time specified in the Wage Order, statutes and regulations identified herein.

80. As a matter of policy and/or practice, Plaintiff and the other aggrieved employees were frequently required to performed work before their scheduled shifts. Despite this, Defendants required Plaintiff and the other aggrieved employees to clock-in at their scheduled shift time, thus purporting to show an eight-hour day with a legally compliant meal break, thus causing Plaintiff and the other aggrieved employees to not receive pay for all hours worked.

1 81. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff
2 and other aggrieved employees, and thus failed to pay overtime wages for the actual amount of
3 overtime hours worked.

4 **Failure to Provide Timely Meal and Rest Breaks**

5 82. Labor Code Section 512 and Section 11 of the Wage Order impose an affirmative
6 obligation on employers to provide non-exempt employees with uninterrupted, duty-free, meal periods
7 of at least thirty (30) minutes for each work period of five (5) or more hours, and to provide them with
8 two uninterrupted, duty-free, meal periods of at least thirty (30) minutes for each work period of more
9 than ten (10) hours.

10 83. Labor Code Section 226.7 and Section 11 of the Wage Order prohibit employers from
11 requiring employees to work during required meal periods and require employers to pay non-exempt
12 employees an additional hour of premium wages on each workday that the employee is not provided
13 with a required meal period.

14 84. Plaintiff is informed and believes and thereon alleges that, at relevant times during the
15 applicable limitations period, Defendants failed to provide Plaintiff with a timely uninterrupted meal
16 period of at least thirty (30) minutes on each day that she worked five (5) or more hours, as required
17 by Labor Code Section 512 and the Wage Order, as a result of duties and schedules that did not permit
18 her to take all legally required meal periods.

19 85. Plaintiff is informed, believes, and thereon alleges that, at relevant times during the
20 applicable limitations period, Defendants maintained a policy or practice of not providing the other
21 aggrieved employees with timely uninterrupted meal periods of at least thirty (30) minutes for each
22 five (5) hour work period, as required by Labor Code Section 512 and the Wage Order, as a result of
23 duties and schedules that do not permit them to take all legally required meal periods.

24 86. Plaintiff is informed, believes, and thereon alleges that at relevant times during the
25 applicable limitations period, Defendants failed to provide Plaintiff with two timely uninterrupted
26 meal periods of at least thirty (30) minutes on each day that she worked ten (10) or more hours, as
27 required by Labor Code Section 512 and the Wage Order, as a result of duties and schedules that do
28 not permit her to take all legally required meal periods.

1 87. Plaintiff is informed, believes, and thereon alleges that at relevant times during the
2 applicable limitations period, Defendants failed to provide the other aggrieved employees with two
3 timely uninterrupted meal periods of at least thirty (30) minutes on each day that they worked ten
4 (10) or more hours, as required by Labor Code Section 512 and the Wage Order, as a result of duties
5 and schedules that do not permit them to take all legally required meal periods.

6 88. Section 12 of the Wage Order imposes an affirmative obligation on employers to permit
7 and authorize employees to take required rest periods at a rate of no less than ten (10) minutes of net
8 rest time for each four (4) hour work period, or major portion thereof, that must be in the middle of
9 each work period insofar as is practicable.

10 89. Labor Code Section 226.7 and Section 12 the Wage Order prohibit employers from
11 requiring employees to work during required rest periods and require employers to pay non-exempt
12 employees an additional hour of premium wages on each workday that the employee is not provided
13 with the required rest period.

14 90. At relevant times during the applicable limitations period, Defendants failed to provide
15 Plaintiff with timely net rest periods of at least ten (10) minutes for each four (4) hour work period, or
16 major portion thereof, as required by the Wage Order, as a result of duties and schedules that do not
17 permit Plaintiff to take all legally required rest breaks.

18 91. Plaintiff is informed, believes, and thereon allege that, at relevant times during the
19 applicable limitations period, Defendants maintained a policy or practice of not providing the other
20 aggrieved employees with timely net rest periods of a least ten (10) minutes for each four (4) hour
21 work period, or major portion thereof, as required by the Wage Order, as a result of duties and
22 schedules that do not permit them to take all legally required rest breaks.

23 **Failure to Timely Pay Wages During Employment**

24 92. California Labor Code section 204 requires that all wages earned by any person in any
25 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
26 wages due upon termination of an employee, are due and payable between the 16th and the 26th day
27 of the month during which the labor was performed, and that all wages earned by any person in any
28 employment between the 16th and the last day, inclusive, of any calendar month, other than those

1 wages due upon termination of an employee, are due and payable between the 1st and the 10th day of
2 the following month.

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

8 94. Upon information and belief Defendants willfully failed to pay Plaintiff and other
9 aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages,
10 meal and rest period premiums, and/or reporting time pay, within the time periods specified by
11 California Labor Code section 204.

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

15 **Failure to Reimburse Necessary Business Expenditures**

16 96. California Labor Code §2802 requires an employer to indemnify its employees for all
17 that such employees expend or lose in direct consequence of the discharge of their duties, or in direct
18 consequence of their obedience to the directions of their employer.

19 97. Defendants, and each of them, have violated California Labor Code §2802 by requiring
20 Plaintiff and all other Aggrieved Employees to maintain uniforms required by Defendants and to pay
21 mileage and travel costs for Plaintiff and Class Members to complete mandatory drug testing.

22 98. By virtue of defendants' failure to comply with the provisions of California Labor Code
23 §2802, Plaintiff, and all other Aggrieved Employees, have suffered, and will continue to suffer,
24 damages in an amount which is presently unknown to Plaintiff, but which exceeds the jurisdictional
25 limits of this Court, and which will be ascertained according to proof at trial.

26 **Failure to Pay Wages Upon Termination**

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

1 100. Labor Code Section 202 provides that all earned and unpaid wages of an employee who
2 quits after providing at least 72-hours' notice before quitting are due and payable at the time of quitting
3 and that all earned and unpaid wages of an employee who quits without providing at least 72-hours'
4 notice before quitting are due and payable within 72 hours.

5 101. Labor Code Section 203 provides that the wages of an employee continue on a daily
6 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid
7 wages to the employee in accordance with Labor Code Section 201 or Section 202.

8 102. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and
9 the aggrieved employees all of their earned and unpaid wages, including unpaid minimum wage and
10 overtime, and unprovided timely rest and meal period premium wages, have been willful in that, at all
11 relevant times, Defendants have deliberately maintained policies and practices that violate the
12 requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had
13 the ability to comply with those legal requirements.

14 **Failure to Provide and Maintain Compliant Wage Statements**

15 103. Labor Code Section 1174 requires that every person employing labor in this state shall
16 keep (1) a record showing the names and addresses of all employees employed and the ages of all
17 minors; (2) at a central location in the state or at the plants or establishments at which employees are
18 employed, payroll records showing the hours worked daily by and the wages paid to, and the number
19 of piece-rate units earned by and any applicable piece rate paid to, employees employed at the
20 respective plants or establishments; (3) such records in accordance with rules established for this
21 purpose by the commission, but in any case, on file for not less than three years. This statute also
22 prevents an employer from prohibiting an employee from maintaining a personal record of hours
23 worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have willfully failed to
24 keep the records required by Section 1174.

25 104. Pursuant to California Labor Code Section 226(a), Plaintiff and the other aggrieved
26 employees were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
27 itemized statement showing: (a) gross wages earned; (b) net wages earned; (c) all applicable hourly
28 rates in effect during the pay period; and (d) the corresponding number of hours worked at each hourly

1 rate by the employee.

2 105. Defendants failed to provide Plaintiff with accurate itemized statements in accordance
3 with California Labor Code Section 226(a) by providing Plaintiff with wage statements with
4 inaccurate entries for hours worked, corresponding rates of pay, and total wages earned as a result of
5 the unlawful labor and payroll practices described herein.

6 106. Plaintiff is informed and believes and thereon alleges that, at all relevant times during
7 the applicable limitations period, Defendants maintained a policy or practice of not providing
8 aggrieved employees with accurate itemized wage statements by providing them with wage statements
9 with inaccurate entries for hours worked, corresponding rates of pay, total wages and deductions from
10 wages earned as a result of the unlawful labor and payroll practices described herein.

11 107. Plaintiff is informed and believes and thereon alleges that Defendants' failure to
12 provide her and the other aggrieved employees with accurate written wage statements is knowing and
13 intentional.

14 108. Plaintiff is informed and believes and thereon alleges that Defendants had the ability to
15 provide her and the aggrieved employees with accurate wage statements, but intentionally provided
16 wage statements that they knew are not accurate.

17 109. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff
18 and the aggrieved employees have suffered an injury. Their legal rights to receive accurate wage
19 statements were violated and they were misled about the amount of wages they had actually earned
20 and were owed. In addition, the absence of accurate information on their wage statements prevented
21 immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical
22 computations to determine the amounts of wages owed, has caused difficulty and expense in
23 attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate
24 information about wages and amounts deducted from wages to state and federal government agencies.

25 110. California Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on
26 behalf of themselves and other current or former employees, to bring a civil action to recover civil
27 penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

28 **Section 558 Penalties**

111. The PAGA claims are also brought against Defendants pursuant to provisions of the labor code including § 558 which permits liability of persons or employers who violate or cause to be violated Labor Code and IWC regulations. California Labor Code Section 2699.

112. The PAGA states:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself or herself and other current or former employees...

113. One provision of law enforceable through PAGA as to civil penalties, though *not unpaid wages*, is Labor Code § 558, which states the following:

(a) Any 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 any 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...

Penalties Authorized by PAGA

114. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiff and the other aggrieved employees of Defendants are entitled to, and seek to, recover civil penalties for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1182.1-1182.3, 1182.12, 1194-1197.1, 1198, 2802, and 2698, *et seq.* during the applicable limitations period in the following amounts:

a. For violations of California Labor Code sections 201, 202, 203, 204, 226.7, 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code Section 2699(f)(2));

b. For violations of California Labor Code Section 1194-1197.1, and 2802 one hundred dollars (\$100.00) for each aggrieved employee per pay period for each

1 initial violation and two hundred dollars and fifty (\$250.00) for each aggrieved
2 employee per pay period for each subsequent violation regardless of whether the
3 initial violation is intentionally committed (penalty amounts established by
4 California Labor Code § 1197.1);

5 c. For violations of California Labor Code Sections 216, 223 one hundred dollars
6 (\$100.00) for each aggrieved employee for each initial violation and two hundred
7 dollars (\$200.00) for each aggrieved employee for each subsequent or willful
8 violation (penalty amounts established by California Labor Code § 225.5);

9 d. For violations of California Labor Code Section 1174, five hundred dollars
10 (\$500.00) for each of Defendants' violations in addition to any other penalties or
11 fines permitted by law (penalty amounts established by California Labor Code §
12 1174.5);

13 e. For violations of California Labor Code Section 226, two hundred fifty dollars
14 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
15 employee for each subsequent violation (penalty amounts established by California
16 Labor Code Section 226.3);

17 f. For violations of California Labor Code Section 204, one hundred dollars (\$100.00)
18 per employee for initial violation and two hundred dollars (\$200.00) per employee
19 for each subsequent violation, plus 25 percent of the amount unlawfully withheld
20 (penalty amounts established by California Labor Code Section 210);

21 g. For violations of California Labor Code section 510, 511, 512, 551, 552, 553 and,
22 Wage Order 4-2001 Sections 11, and 12, fifty dollars (\$50.00) for each aggrieved
23 employee for each initial violation for pay period for which the employee was
24 underpaid in addition to an amount sufficient to recover unpaid wages and one
25 hundred dollars (\$100.00) for each underpaid employee for each pay period for
26 which the employee was underpaid in addition to an amount sufficient to recover
27 unpaid wages (penalty amounts established by California Labor Code Section
28 558).

1 h. For violations of California Labor Code Section 558, fifty dollars (\$50.00) for
2 initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay
3 period for which the employee was underpaid; for each subsequent violation, one
4 hundred dollars (\$100.00) for each underpaid employee for each pay period for
5 which the employee was underpaid (penalty amounts established by California
6 Labor Code Section 558).

7 115. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of herself and
8 the other aggrieved employees, are entitled to an award of reasonable attorneys' fees and costs.

9 **PRAYER FOR RELIEF**

10 Wherefore, Plaintiff on behalf of herself and on behalf of the aggrieved employees, prays
11 for judgment against Defendants as follows:

- 12 a. Civil penalties;
13 b. Other penalties and fines permitted by law;
14 c. Costs of suit;
15 d. Reasonable attorneys' fees;
16 e. Pre-judgment and post-judgment interest as provided by law; and
17 f. Such other and further relief as the Court deems just and proper.
18

19 DATED: October 8, 2021

BOYAMIAN LAW, INC.
CAPSTONE LAW, APC

21
22 By: 

23 Michael H. Boyamian
24 Attorneys for Plaintiff TANIA ROSALES,
25 Other Aggrieved Employees, and the
26 General Public
27
28

EXHIBIT 1



BOYAMIAN LAW

August 3, 2021

SENT VIA CERTIFIED U.S. MAIL & RETURN RECEIPT REQUESTED TO:

Labor Workforce and Development Agency
Attention: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

**Re: *Martinez v. SYR Service Company, LLC, et al*
Notice of PAGA Claims Pursuant to Labor Code § 2699.3**

Dear Labor and Workforce Development Agency and Employer:

We, along with Capstone Law, APC, represent Carmen Martinez with respect to claims on behalf of herself and other similarly situated current and former hourly, non-exempt employees of SYR Service Company, LLC; San Ysidro BB Property, LLC, (collectively “SYR”) and Ty Warner Hotels & Resorts, LLC (together with “SYR”, hereinafter referred to as “the Company”). The purpose of this letter is to satisfy the notice requirements of Labor Code § 2699.3(a).

Below we set forth the facts and theories which we believe support our contention that the Company has violated and continues to violate various provisions of the California Labor Code including, but not limited to, failure to pay overtime, failure to provide meal and rest breaks, and unpaid wages.

Facts and Theories About the Case

SYR is part of the Ty Warner Hotels & Resorts, LLC’s enterprise that operates luxury resorts across the globe, including in, Montecito, California. Ty Warner Hotels & Resorts, LLC owns and operates several other establishments in or around California, including the Sandpiper golf course in Goleta, California, the Montecito Country Club, and the Four Seasons Hotel in Santa Barbara, California. As part of SYR’s operations, non-exempt employees, particularly the housekeeping staff, provide cleaning services throughout the resort. The Company is headquartered at 280 Chestnut Ave., Westmont, Illinois 60559. Carmen Martinez was employed as a housekeeper by SYR and the Company at the San Ysidro Ranch – a luxury resort - in Montecito, California from approximately July 2019 through on or about March 30, 2021. Throughout her employment with SYR and the Company, she was a non-exempt, hourly employee.

////

A. *Failure to Pay for All Hours Worked, Including Overtime*

Current and former hourly, non-exempt aggrieved employees (hereinafter “Aggrieved Employees”), including Ms. Martinez, are not paid for all of their time worked.

Our investigation has revealed that SYR and the Company do not compensate Aggrieved Employees, including Ms. Martinez, for all hours worked, including overtime. Specifically, the Company required Aggrieved Employees, including Ms. Martinez, to regularly work for more than eight (8) hours per day and more than forty (40) hours per week. SYR and the Company do not and did not pay Aggrieved Employees, including Ms. Martinez, one and one-half (1-1/2) times their regular rate of pay for any overtime hours worked over eight hours per day and/or forty hours per week.

By way of example, Aggrieved Employees were not allowed to clock-in prior to their shift start time. They were instructed to only clock-in at their scheduled shift start time and not one second earlier. However, supervisors would often instruct Aggrieved Employees who had arrived early to begin working prior to allowing them to clock-in by stating “if you are at work, you better get working.” Consequently, Ms. Martinez prior to clocking-in would spend 10-15 minutes off-the-clock folding towels or re-stocking housekeeping carts with supplies. Moreover, Aggrieved Employees, for the past year, were required to submit to a health screening prior to clocking-in. Ms. Martinez and all other housekeepers were required to wait in line with other employees at the entrance of the resort to have their temperature scanned, resulting in an additional 15 minutes every morning in which Aggrieved Employees, including Ms. Martinez were under the control of their employer, but were not being compensated.

Additionally, Ms. Martinez, was required to take mandatory drug tests at a clinic in the La Cumbre area of Santa Barbara, California, about a 10-mile/ 20-minute drive each way from the resorts’ offices. Ms. Martinez would drive herself in her own car from her house, again about 20-minutes, then would have to wait 30-minutes before taking the test, the test itself took about 10-minutes, and then she would drive herself back home for another 20-minutes. SYR instructed Ms. Martinez to use this clinic and SYR did not reimburse Ms. Martinez for travel or mileage costs or compensate Ms. Martinez for her time, resulting in about 1.5 hours of uncompensated time and about 20 miles of unreimbursed travel and mileage every time Ms. Martinez completed an SYR and the Company mandatory drug test.

Finally, SYR and the Company expected Aggrieved Employees, specifically housekeepers to clean a guest’s room in 40-minutes and even provided a daily checklist to each housekeeper, with tasks including cleaning the room, providing turn down service, replacing dirty towels and replenishing amenities, and preparing housekeeping trollies. SYR and the Company assigned eight rooms per employee per shift. However, the reality was that it took 120-minutes to clean a guest’s room and most guest rooms needed to be completed by the 3:00pm guest check-in time. Accordingly, due to the heavy workload and understaffing, Aggrieved employees, particularly housekeepers were forced to clock out before the end of the 5th hour of work and instead of taking their meal breaks were pressured to return to work to finish their

assigned rooms. Similarly, state-mandated rest breaks were not scheduled and were not taken by Aggrieved Employees, again due to the heavy workload and understaffing.

California law requires that an employer compensate an employee for all hours worked. Pursuant to Labor Code § 1194 Defendants had a duty to pay Plaintiff not less than the minimum required hourly rate of pay set by the Department of Industrial Relations, and legal overtime wages. Sections 1194 and 1197 direct employers to compensate employees at the state-mandated minimum wage for all hours worked. Cal. Lab. Code §§ 1194, 1197. California law requires payment of overtime premium pay for all hours worked by non-exempt employees in excess of eight hours in one day, 40 hours in one week, and for the first eight hours on the seventh-straight day of work in one workweek. *See, e.g.*, Labor Code § 510. It further requires payment of double-time premium pay for all hours worked by such employees in excess of twelve hours in one day, or in excess of eight hours on the seventh-straight day of work in a single workweek. *Id.*

B. Meal & Rest Break Violations

Our investigation has also revealed that Aggrieved Employees, including Ms. Martinez, are not provided with legally compliant meal periods and rest breaks. With respect to breaks, Ms. Martinez and other similarly situated Aggrieved Employees are not provided any training about statutory breaks under California law, are not scheduled to take rest breaks, and in fact, rest breaks are not made available to them.

California law requires that an employer provides an employee who works more than five hours a meal break that is no less than 30 minutes in duration. 8 CCR 11070(11)(A). Unless an employee is relieved of all duty during the 30-minute meal period, the meal period is considered an on-duty meal period and counted as time worked. *Id.* However, an on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-the-job paid meal period. *Id.* If an employer fails to provide an employee a lawful meal period, the employer must pay the employee one hour of pay for each violation. 8 CCR 11070(11)(D). Additionally, California law mandates that an employer must “authorize and permit” an employee to take a duty-free rest period not less than 10 minutes in duration for every four hours of work. 8 CCR 11070(12)(A). Violation of the rest break provisions requires the employer pay the employee one hour of pay for each workday a rest period was not provided. 8 CCR 11070(12)(B). Lastly, in California, the employer is required to keep records of all hours worked. Labor Code § 1174(d).

Aggrieved Employees, including housekeepers like Ms. Martinez who typically are scheduled to work for eight hours, are not provided with statutory meal breaks or rest breaks. This is an unlawful company practice in and of itself. Aggrieved Employees, including Ms. Martinez, are regularly pressured to falsify time punches to appear compliant, when in reality due to the understaffing and heavy workload Aggrieved Employees, including Ms. Martinez, are often forced to work through their meal period or cut their meal period short. Specifically, each housekeeper is required to clean eight guest rooms per shift, most guest rooms needed to be completed by guest check-in at 3:00pm. Ms. Martinez’s shift started at 8:30am, meaning she needed to take her meal period before 1:30 p.m. However, in order to meet her work

expectations she was pressured to clock out before the 5th hour of work, but then return to work to finish her assigned rooms by 3:00 p.m. Additionally, SYR and the Company require Aggrieved Employees, including housekeepers, to carry a company-owned walkie-talkie at all times and respond at all times, including during meal periods, causing interruptions to any portion of a meal break attempted to be taken.

C. *Unreimbursed Business Expenditures*

California Labor Code § 2802 requires employers to always reimburse employees for necessary business expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

Aggrieved Employees, including Ms. Martinez are required to take mandatory drug tests at a clinic in the La Cumbre area of Santa Barbara, California, about a 10-mile/ 20-minute drive each way from the resorts' offices. Ms. Martinez would drive herself in her own car from her house, then would have to wait 30-minutes before taking the test, which took about 10-minutes, and then she would drive herself back home. SYR and the Company instructed Ms. Martinez to use this clinic and SYR and the Company did not reimburse Ms. Martinez for travel or mileage costs resulting in about 20 miles of unreimbursed travel and mileage every time Ms. Martinez completed an SYR and the Company mandatory drug test.

Additionally, Aggrieved Employees, including Ms. Martinez, are required by SYR and the Company to wear and maintain three blue blouses and three charcoal pants, which were given to them by SYR and the Company. However, due to the nature of housekeeping work Ms. Martinez's uniforms were often, and easily, dirtied and stained with cleaning chemicals. Accordingly, Ms. Martinez had to separate her uniform items from her regular cloths and take them to the laundromat, spending \$5 each week on her uniform maintenance. Ms. Martinez, and other housekeepers and Aggrieved Employees were not reimbursed for such uniforms or maintenance of uniforms.

D. *Other Claims*

The other alleged violations, including inaccurate wage statements, and the failure to pay all wages by the appropriate pay period are largely derivative of the failure to pay Aggrieved Employees, including Ms. Martinez, for all hours worked and for failure to provide statutory mandated and compliant meal period and rest breaks.

With respect to the inaccurate wage statements claim under Labor Code Section 226, the unpaid minimum and/or overtime hours are not reflected on wage statements issued to the employees, in violation of Labor Code Section 226. California Labor Code Section 226(a) governs the information that must appear on wage statements. Specifically, Labor Code Section 226(a) requires that wage statements accurately itemize "(1) gross wages earned, (2) total hours worked by the employee...(4) all deductions...(5) net wages earned... (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

SYR and the Company's wage statements are facially non-compliant by virtue of SYR and the Company's practice of failing to pay for all hours worked, including overtime. Coupled with the defective meal and rest period policies and uncompensated off-the-clock work which does not accurately record the total hours worked by Aggrieved Employees, including Ms. Martinez. Accordingly, the wage statements do not accurately itemize or reflect showing gross hours earned, total hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

Based on the foregoing facts, Ms. Martinez is asserting PAGA claims on behalf of herself and on behalf of all other Aggrieved Employees employed by SYR and the Company in California from April 6, 2020, to the present. Ms. Martinez seeks civil penalties under PAGA for the following Labor Code violations:

1. Violations of Labor Code sections 216, 225.5, 558 for failing to pay minimum and overtime wages due. Specifically, SYR and the Company do not pay minimum and overtime wages to Ms. Martinez and other Aggrieved Employees for all hours worked, as required by Labor Code sections 216, 510, 511, 558, 1182.1-1182.3, 1194-1197.1 and 1198.
2. Violations of Labor Code section 558 for failing to pay wages due, including those for missed meal and rest periods as required by Labor Code sections 226.7, 512, 551-553. Specifically, with respect to meal breaks, SYR and the Company do not permit Ms. Martinez and other Aggrieved Employees to take off-duty meal periods and do not pay one additional hour of pay at their regular rate of compensation for each missed meal period. SYR and the Company also do not provide Ms. Martinez and other Aggrieved Employees with rest periods. Nor does it pay one additional hour of pay at their regular rate of compensation for each missed rest period.
3. Violations of Labor Code sections 226 and 226.3, requiring employers to provide specific information on employees' itemized wage statements, as SYR and the Company do not include all hours worked and wages earned on the wage statements of Ms. Martinez and other Aggrieved Employees.
4. Violations of Labor Code sections 204 and 210, based on SYR and the Company's failure to pay Ms. Martinez and similarly situated Aggrieved Employees on the regular pay day all owed wages.

Accordingly, we believe SYR and the Company have violated, and continue to violate, numerous provisions of California law, including, without limitation Labor Code Sections §§ 201, 202, 203, 204, 210, 216, 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1194-1197.1, 1198, 2802, and 2698, *et seq.*, as well as the relevant IWC orders and regulations, and that Ms. Martinez and other similarly situated current and former Aggrieved Employees are entitled to all damages, restitution and statutory penalties allowed by law. Our investigation is continuing, and there may be more violations uncovered.

August 3, 2021

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We respectfully request that the Labor Workforce Development Agency notify this office within sixty (60) days if it wishes to investigate this matter further. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned. If SYR and the Company wish to resolve these claims prior to litigation by stopping its unlawful practices and making full restitution to Ms. Martinez and others, please contact the undersigned forthwith to discuss this matter further. Thank you in advance for your attention to this matter.

Sincerely,
BOYAMIAN LAW, INC.

A handwritten signature in black ink, appearing to read 'Heather M. Zermeno', with a stylized flourish at the end.

Heather M. Zermeno, Esq.

- Cc: SYR Service Company, LLC
Attention: C T Corporation System (C0168406) (*Agent of Service of Process*)
330 N. Brand Blvd., Suite 700
Glendale, California 91203
- Cc: San Ysidro BB Property, LLC
Attention: C T Corporation System (C0168406) (*Agent Service of Process*)
330 N. Brand Blvd., Suite 700
Glendale, California 91203
- Cc: Ty Warner Hotels & Resorts, LLC
Attention: C T Corporation System (C0168406) (*Agent Service of Process*)
330 N. Brand Blvd., Suite 700
Glendale, California 91203

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 550 North Brand Boulevard, 15th Floor, Glendale, California 91203. My electronic service address is demiah@boyamianlaw.com

On October 13, 2021, I served the foregoing document described as

COMPLAINT FOR CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE 2698, ET. SEQ

For the following case: **Martinez v. SYR Service Company, LLC, et al.**
LWDA/Court Case No.: **LWDA-CM-840153-21**
21CV04034
Santa Barbara Superior Court

on the interested parties in this action as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

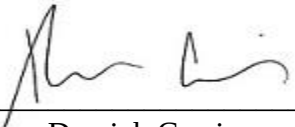
 X **BY ELECTRONIC SUBMISSION**

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

 X **STATE**

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

Executed on October 13, 2021 at Glendale, California.



Demiah Cseri