

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
3 SARA BROWN (SBN 325763)
sara@spivaklaw.com
4 THE SPIVAK LAW FIRM
5 16530 Ventura Blvd., Suite 203
Encino, CA 91436
6 Telephone (213) 725-9094
7 Facsimile (213) 634-2485

8 Attorneys for Plaintiff,
9 MCKENNA MCKENZIE, and all others similarly situated
(Additional Counsel on Following Page)

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF CONTRA COSTA**
12 **(UNLIMITED JURISDICTION)**

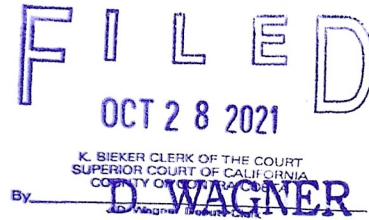
13 MCKENNA MCKENZIE, on behalf of herself,
all others similarly situated, and as an
14 "Aggrieved Employee" on behalf of other
15 "Aggrieved Employees" under the Private
Attorneys General Act of 2004,

16 *Plaintiff,*

17 vs.
18

19 RED DOOR ESCAPE ROOM, LLC, a
California limited liability company;
20 KINGSMEN ESCAPE ENTERTAINMENT,
LLC, a California limited liability company;
21 KYLE MALOY, an individual; and DOES 1–
22 50, inclusive,

23 *Defendants.*
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Case No.: CIVMSC21-01753

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Provide Rest Periods (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Unlawful Deductions (Lab. Code §221);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
8. Civil Penalties (Lab Code §§2698, *et seq.*)

JURY TRIAL DEMANDED

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ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER L. HAINES (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP, PC
4276 Katella Ave., Suite 301
Los Alamitos, CA 90720
Telephone (562) 256-1047
Facsimile (562) 256-1006



1 Plaintiff, MCKENNA MCKENZIE (hereafter “Plaintiff”) on behalf of herself and all
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendant RED DOOR
5 ESCAPE ROOM, LLC, a California limited liability company, KINGSMEN ESCAPE
6 ENTERTAINMENT, LLC, a California limited liability company, KYLE MALOY, an
7 individual; and DOES 1–50, inclusive (collectively “Defendants”) for alleged violations of the
8 California Labor Code, Industrial Welfare Commission Order No. 10–2001 (hereafter “the Wage
9 Order”), and the Business and Professions Code.

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
11 her, the State of California, and other similarly situated employees in California for unpaid wages
12 and other related relief. These claims are based on Defendants’ failures to: (1) Provide all rest
13 periods; (2) Provide all meal periods; (3) Pay all wages earned for all hours worked at the correct
14 rates of pay; (4) Refrain from unlawful deductions; (5) Issue accurate and complete itemized
15 written wage statements; (6) Timely pay all wages upon termination of employment; and (7)
16 Fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages, statutory and civil
17 penalties, interest, and related relief through this representative action.

18 **JURISDICTION AND VENUE**

19 3. This court has subject matter jurisdiction because the aggregate claims of
20 Plaintiff and the Class Members, inclusive of all relief, place more than \$25,000 in controversy.

21 4. There is no basis for federal question subject matter jurisdiction in this case.
22 Specifically, Plaintiff asserts claims that solely arise under California law, rather than federal
23 law on behalf of herself, the State of California, and Class Members.

24 5. There is also no basis for federal diversity jurisdiction in this case.

25 6. Venue is proper in Contra Costa County pursuant to California Code of Civil
26 Procedure § 395(a) and § 395.5 in that liability arose in Contra Costa County because at least
27 some of the transactions that are the subject matter of this Complaint occurred therein and/or
28 because each defendant is found, maintains offices, transacts business, and/or has an agent



therein.

PARTIES

7. Plaintiff MCKENNA MCKENZIE is a resident of Contra Costa county, California. On or about May 11, 2019, Defendants employed Plaintiff to work as a front desk attendant and manager in California. Defendants terminated Plaintiff's employment on or about June 18, 2021. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8 California Code of Regulations Section 11100, and an "aggrieved employee" within the meaning of California Labor Code § 2699(c).

8. Defendant RED DOOR ESCAPE ROOM, LLC, is a limited liability company organized and existing under the laws of California and also a citizen of California based on Plaintiff's information and belief.

9. Defendant KINGSMEN ESCAPE ENTERTAINMENT, LLC, is a limited liability company organized and existing under the laws of California and also a citizen of California based on Plaintiff's information and belief.

10. Defendant KYLE MALOY, is an individual and also a citizen of California based on Plaintiff's information and belief.

11. In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person action on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the industrial welfare commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of section 3294 of the Civil Code.

12. Based on Plaintiff's information and belief, Defendant KYLE MALOY is an



owner, director, officer, and/or managing agent of Defendants RED DOOR ESCAPE ROOM, LLC and KINGSMEN ESCAPE ENTERTAINMENT, LLC, who directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiff and the Class Members. Therefore, Defendant MALOY is liable to Plaintiff and the Class Members for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, and the wage order pursuant to Labor Code 558.1.

13. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1–50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

14. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees, servants, masters, and/or employers of the remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment and with the approval and ratification of each of the other Defendants.

15. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described Class Members in accordance with applicable laws as alleged herein.

16. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

17. This action has been brought and may be maintained as a class action pursuant to



1 California Code of Civil Procedure § 382 because there is a well-defined community of interest
2 among the persons who comprise the readily ascertainable class defined below and because
3 Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class
4 action.

5 18. **Class Definition:** The Class is defined as follows: All individuals currently and
6 formerly employed in California as non-exempt, hourly employees by Defendants, including but
7 not limited to managers, gamemasters, gamemaster leads, front desk, and front desk leads,
8 individuals performing work comparable to the aforementioned, and individuals in similar
9 positions at any time during the period beginning four years prior to the filing of this action and
10 ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

11 19. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
12 right to amend or modify the class definition with greater specificity, by further division into
13 subclasses and/or by limitation to particular issues.

14 20. **Numerosity:** The Class Members are so numerous that the individual joinder of
15 each individual Class Member is impractical. While Plaintiff does not currently know the exact
16 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
17 minimum required for numerosity under California laws.

18 21. **Commonality and Predominance:** Common questions of law and fact exist as to
19 all Class Members and predominate over any questions which affect only individual Class
20 Members. These questions include, but are not limited to:

21 A. Whether Defendants failed to provide the Class Members with all meal and
22 rest periods in compliance with California law;

23 B. Whether Defendants failed to pay all wages earned to the Class Members
24 for all hours worked at the correct rates of pay;

25 C. Whether Defendants collected, deducted, or received from the Class
26 Members any part of their wages;

27 D. Whether Defendants knowingly and intentionally failed to provide the
28 Class Members with accurate and complete written wage statements;



1 E. Whether Defendants willfully failed to provide the Class Members with
2 timely final wages upon termination of employment;

3 F. Whether persons acting on Defendants' behalf violated the Labor Code;

4 G. Whether the Class Members are entitled to penalties under the Private
5 Attorney General Act of 2004;

6 H. Whether Defendants engaged in unfair competition within the meaning of
7 Business and Professions Code §§ 17200, et seq., with respect to the Class Members;

8 I. Whether the Class Members are entitled to restitution of money or property
9 that Defendants may have acquired from them through alleged Labor Code violations; and

10 J. Whether Defendants are liable for civil penalties pursuant to the Labor
11 Code Private Attorneys General Act of 2004.

12 22. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
13 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
14 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
15 Code, the Wage Order, and the Business and Professions Code.

16 23. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
17 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
18 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
19 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
20 Members.

21 24. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
22 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
23 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
24 Plaintiff and absent Class Members.

25 25. **Superiority:** A class action is vastly superior to other available means for fair and
26 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
27 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
28 and efficiently prosecute their common claims in a single forum without the unnecessary



1 duplication of effort and expense that numerous individual actions would entail. In addition, the
2 monetary amounts due to many individual Class Members are likely to be relatively small and
3 would thus make it difficult, if not impossible, for individual Class Members to both seek and
4 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
5 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
6 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

7 **STATEMENT OF FACTS**

8 26. On approximately May 11, 2019, Plaintiff began working for Defendants at their
9 escape room establishment located at 2075 Diamond Boulevard, Suite 275 in the city of Concord
10 California as an hourly front desk attendant and as a manager. Defendants continuously employed
11 her in that capacity until on or about June 18, 2021, when Plaintiff's employment ended.

12 27. At all relevant times, Defendants issued wages to Plaintiff and the Class Members
13 on a bi-weekly basis and paid them at an hourly rate of pay. At all relevant times, Defendants
14 classified Plaintiff and the Class Members as non-exempt employees entitled to the protections
15 of both the Labor Code and the Wage Order.

16 28. At all relevant times, Defendants failed to provide Plaintiff and the Class
17 Members with all timely meal periods. Due to the workload and failure to hire sufficient staff
18 members, Defendants denied Plaintiff and the Class Members their 30-minute off-duty meal
19 periods within the first five hours of work. Defendants also denied meal periods to Plaintiff and
20 the Class Members because there were insufficient employees to cover for them during rest
21 breaks and meal periods. On those seldom occasions when Plaintiff and the Class Members did
22 attempt to take their 30-minute meal periods, Defendants' management often interrupted them
23 with demands for help in assisting customers, cleaning, or other related job duties.

24 29. Moreover, Defendants failed to authorize and permit rest periods to Plaintiff and
25 the Class Members in violation of California law. Due to high workload and low staffing levels,
26 Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute,
27 paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not
28 seek an exemption from the rest period protections of the Wage Order from the California



Divisions of Labor Standards Enforcement.

30. Defendants failed to hire sufficient staff members to cover and support Plaintiff and the Class Members so they could take duty-free, ten-minute rest periods and duty-free, 30-minute meal periods. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Class Members with timely meal periods. Defendants also failed to pay premium wages for days on which they failed to provide Plaintiff and the Class Members with timely rest periods.

31. At all relevant times, Defendants required Plaintiff and the Class Members to perform work while clocked-out and failed to compensate them for this time, including but not limited to, repair and related duties. Defendants failed to compensate Plaintiff and the Class Members for this work performed off-the-clock. Further, Defendants altered Plaintiff's and the Class Members' time records to show that they received meal and rest periods even though Plaintiff and the Class Members were required to work during the alleged meal or rest period. Defendants never compensated Plaintiff and the Class Members for the work performed during meal or rest periods.

32. Defendants failed to issue to Plaintiff and the Class Members complete and accurate wage statements as a result of their failure to state all hours worked at the correct rates of pay, and all wages earned including rest period and meal period premium wages. Defendants also failed to timely pay Plaintiff and the Class Members all earned wages described above at the conclusion of employment.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Lab. Code §§ 226.7 and 1198)

(By Plaintiff and the Class against all Defendants)

33. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

34. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.



1 35. In relevant part, California Labor Code § 1198 states:

2 The maximum hours of work and the standard conditions of labor fixed by the
3 commission shall be the maximum hours of work and the standard conditions of
4 labor for employees. The employment of any employee for longer hours than those
5 fixed by the order or under conditions of labor prohibited by the order is unlawful.

6 36. In relevant part, § 12 of the Wage Order states:

7 **Rest Periods**

8 (A) “Every employer shall authorize and permit all employees to take rest
9 periods, which insofar as practicable shall be in the middle of each work period.
10 The authorized rest period time shall be based on the total hours worked daily at
11 the rate of ten (10) minutes net rest time per four (4) hours or major fraction
12 thereof. However, a rest period need not be authorized for employees whose total
13 daily work time is less than three and one-half (3 1/2) hours. Authorized rest period
14 time shall be counted as hours worked for which there shall be no deduction from
15 wages.”

16 (B) If an employer fails to provide an employee a rest period in accordance
17 with the applicable provisions of this Order, the employer shall pay the employee
18 one (1) hour of pay at the employee’s regular rate of compensation for each work
19 day that the rest period is not provided.”

20 37. In relevant part, California Labor Code § 226.7 states:

21 (b) An employer shall not require an employee to work during a meal or rest
22 period mandated pursuant to an applicable statute, or applicable regulation,
23 standard, or order of the Industrial Welfare Commission, the Occupational Safety
24 and Health Standards Board, or the Division of Occupational Safety and Health.

25 (c) If an employer fails to provide an employee a meal period or rest period in
26 accordance with a state law, including, but not limited to, an applicable statute or
27 applicable regulation, standard, or order of the Industrial Welfare Commission, the
28 Occupational Safety and Health Standards Board, or the Division of Occupational
Safety and Health, the employer shall pay the employee one additional hour of pay
at the employee’s regular rate of compensation for each work day that the meal or
rest period is not provided.

38. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
provided with net rest breaks of at least ten minutes for each four-hour period of work, or major
fraction thereof.

39. Defendants intentionally failed to provide Plaintiff and the Class Members with
all required duty-free 10-minute rest periods free from any work duties in accordance with the
Wage Order.

40. At all relevant times, Defendants failed to authorize and permit Plaintiff and the



1 Class Members to take 10-minute rest breaks every four hours worked or major fraction thereof
2 as required by the Wage Order. Furthermore, Defendants failed to pay premium wages for days
3 on which they failed to provide Plaintiff and the Class Members with rest periods.

4 41. Plaintiff is informed and believes and thereon alleges that, at all relevant times
5 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
6 which resulted in Defendants not providing the Class with all off-duty rest periods required by
7 California law.

8 42. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
9 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
10 wages owed for all rest periods not provided to them.

11 43. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
12 the Class Members are entitled to premium wages for workdays in which one or more rest breaks
13 were not provided to them.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**

16 **(Lab. Code §§ 226.7, 512, and 1198)**

17 **(By Plaintiff and the Class against all Defendants)**

18 44. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 45. At all relevant times during the applicable limitations period, Plaintiff and the
20 Class Members have been employees of Defendants and entitled to the benefits and protections
21 of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

22 46. In relevant part, California Labor Code § 1198 states:
23 The maximum hours of work and the standard conditions of labor fixed by the
24 commission shall be the maximum hours of work and the standard conditions of
25 labor for employees. The employment of any employee for longer hours than those
26 fixed by the order or under conditions of labor prohibited by the order is unlawful.

27 47. In relevant part, California Labor Code § 512 states:
28 An employer shall not employ an employee for a work period of more than five
hours per day without providing the employee with a meal period of not less than
30 minutes, except that if the total work period per day of the employee is no more
than six hours, the meal period may be waived by mutual consent of both the
employer and employee.



An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

48. In relevant part, § 11 of the Wage Order states:

Meal Periods

(A) “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

49. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.

50. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

51. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty-free meal periods in accordance with the Wage Order.



52. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely 30-minute duty-free meal periods within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Class Members with timely meal periods.

53. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with all off-duty meal periods required by California law.

54. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional wages owed for all meal periods not provided to them.

55. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more off-duty meal periods were not provided to them.

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

(Lab. Code §§ 510, 1194, 1197, and 1198)

(By Plaintiff and the Class against Defendants)

56. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

57. At all relevant times, Plaintiff and the other Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198 and the Wage Order.

58. Section 2 of the Wage Order defines “hours worked” 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.”

59. Section 3 of the Wage Order states:
(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to



attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

60. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

61. Labor Code § 510 states:

Eight hours of labor constitutes a day's work. 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. 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. In addition, any 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. Nothing in this § requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

62. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

63. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

64. Labor Code § 1198 makes it unlawful for an employer to employ an employee



1 under conditions that violate the Wage Order.

2 65. In conjunction, these provisions of the Labor Code require employers to pay non-
3 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
4 worked, including unrecorded hours when the employer knew or reasonably should have known
5 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
6 Cal.4th 575, 585.)

7 66. At all relevant times during the applicable limitations period, at Defendants'
8 direction, Plaintiff and the Class Members have worked off-the-clock without pay, including after
9 clocking-out at the end of their shifts. Such work included repairs and related duties.

10 67. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
11 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
12 failure to compensate Plaintiff and the other Class Members for all hours worked as required by
13 California law.

14 68. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
15 suffered damages, in an amount subject to proof, to the extent they were not paid the full amount
16 of wages earned during each pay period during the applicable limitations period, including
17 minimum and overtime wages.

18 69. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members,
19 seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid
20 wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject
21 to proof.

22 **FOURTH CAUSE OF ACTION**

23 **UNLAWFUL DEDUCTIONS**

24 **(Lab. Code § 221)**

25 **(By Plaintiff and the Class against all Defendants)**

26 70. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

27 71. At all relevant times during the applicable limitations period, Plaintiff and the
28 Class Members have been employees of Defendants and entitled to the benefits and protections



1 of California Labor Code § 221 and the Wage Order.

2 72. Under Labor Code § 221, “It shall be unlawful for any employer to collect or
3 receive from an employee any part of wages theretofore paid by said employer to said employee.”

4 73. Defendants unlawfully received and/or collected wages from Plaintiff and the
5 Class Members by arbitrarily deducting 30-minutes worth of wages earned by Plaintiff and the
6 Class Members in violation of Labor Code § 221.

7 74. As a direct and proximate cause of these unauthorized deductions, Plaintiff and
8 the Class Members have been damaged in an amount to be determined at trial.

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

11 **(Lab. Code § 226)**

12 **(By Plaintiff and the Class against all Defendants)**

13 75. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

14 76. At all relevant times during the applicable limitations period, Plaintiff and the
15 Class Members have been employees of Defendants and entitled to the benefits and protections
16 of California Labor Code § 226.

17 77. Pursuant to California Labor Code § 226(a), Plaintiff and the other Class Members
18 were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate and
19 complete itemized statement showing:

20 (1) Gross wages earned,

21 (2) Total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment of overtime under
23 subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,

24 (3) The number of piece rate units earned and any applicable piece rate if the
25 employee is paid on a piece-rate basis,

26 (4) All deductions, provided that all deductions made on written orders of the
27 employee may be aggregated and shown as one item,

28 (5) Net wages earned,



- 1 (6) The inclusive dates of the period for which the employee is paid,
- 2 (7) The name of the employee and his or her social security number, except
- 3 that by January 1, 2008, only the last four digits of his or her social security number or an
- 4 employee identification number other than a social security number may be shown on the itemized
- 5 statement,
- 6 (8) The name and address of the legal entity that is the employer, and
- 7 (9) All applicable hourly rates in effect during the pay period and the
- 8 corresponding number of hours worked at each hourly rate by the employee.
- 9 78. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
- 10 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
- 11 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 12 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
- 13 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
- 14 is entitled to an award of costs and reasonable attorneys' fees.
- 15 79. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
- 16 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
- 17 injury if the employer fails to provide accurate and complete information as required by California
- 18 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
- 19 statement alone one or more of the following:
- 20 A. The amount of the gross wages or net wages paid to the employee during
- 21 the pay period or any of the other information required to be provided on the itemized wage
- 22 statement pursuant to California Labor Code § 226(a);
- 23 B. Which deductions the employer made from gross wages to determine the
- 24 net wages paid to the employee during the pay period;
- 25 C. The name and address of the employer and, if the employer is a farm labor
- 26 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
- 27 address of the legal entity that secured the services of the employer during the pay period; and
- 28 D. The name of the employee and only the last four digits of his or her social



1 security number or an employee identification number other than a social security number.

2 80. “Promptly and easily determine,” as stated in California Labor Code §
3 226(e), means a reasonable person would be able to readily ascertain the information without
4 reference to other documents or information.

5 81. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
6 with all meal and rest periods in compliance with California law. Defendants also failed to provide
7 Plaintiff and the Class Members with premium wages on the workdays Defendants failed to
8 provide them with one or more meal and/or rest periods in compliance with California law.
9 Further, Defendants failed to compensate Plaintiff and the Class Members for all hours worked.
10 Defendants deducted at least 30 minutes per day from the work time Plaintiff and the Class
11 Members had worked such time. As a result, Defendants have failed to properly itemize Plaintiff
12 and the Class Members’ gross and net wages earned, total hours worked, hourly rate of pay, the
13 corresponding number of hours worked at each hourly rate, and other requirements of California
14 Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

15 82. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
16 and complete wage statements was knowing and intentional. Defendants had the ability to provide
17 Plaintiff and the Class Members with accurate wage statements but intentionally provided wage
18 statements that Defendants knew were not accurate.

19 83. As a result of being provided with inaccurate wage statements by Defendants,
20 Plaintiff and the Class Members have suffered injury. Their legal rights to receive accurate wage
21 statements were violated and they were misled about the amount of wages they had actually
22 earned and were owed. In addition, the absence of accurate information on their wage statements
23 prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery
24 and mathematical computations to determine the amounts of wages owed, has caused difficulty
25 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
26 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
27 and the Class Members were not able to ascertain from the wage statements whether Defendants
28 complied with their obligations under California Labor Code § 226(a).



84. Pursuant to California Labor Code § 226(e), Plaintiff and the Class Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are also entitled to an award of costs and reasonable attorneys' fees.

85. Accordingly, with respect to this cause of action, on behalf of himself and the other Class, Plaintiff prays for the herein stated relief and for an award of all reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201, 202, and 203)

(By Plaintiff and the Class against all Defendants)

86. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

87. At all relevant times during the applicable limitations period, Plaintiff and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201–203, and the Wage Order.

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

89. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

90. By failing to pay earned minimum and premium wages to Plaintiff and the Class, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

91. Plaintiff is informed and believes that Defendants' failures to timely pay all final wages to her and the Class Members have been willful in that Defendants have the ability to pay



1 final wages in accordance with Labor Code §§ 201 and 202 but have intentionally adopted
2 policies or practice that are incompatible with those requirements.

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

6 93. Defendants failed to pay Plaintiff and the Class Members whose employment
7 ended all of the earned, but unpaid wages described above by the conclusion of their employment.
8 In addition, Defendants failed to issue to Plaintiff and the Class Members whose employment
9 ended their final paychecks until the next regular pay day following the termination.

10 94. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
11 and the Class all of their earned and unpaid wages have been willful in that, at all relevant times,
12 Defendants have deliberately maintained policies and practices that violate the requirements of
13 the Labor Code and the Wage Order, even though at all relevant times, they have had the ability
14 to comply with those legal requirements.

15 95. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
16 herself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties
17 for each Class Member.

18 **SEVENTH CAUSE OF ACTION**

19 **UNFAIR COMPETITION**

20 **(Bus. & Prof. Code §§ 17200, et seq.)**

21 **(By Plaintiff and the Class against all Defendants)**

22 96. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

23 97. At all relevant times during the applicable limitations period, Plaintiff and the
24 Class Members have been employees of Defendants and entitled to the benefits and protections
25 of the Business and Professions Code §§ 17200, et seq.

26 98. The unlawful conduct of Defendants alleged herein amounts to and constitutes
27 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
28 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have



1 unfairly gained a competitive advantage over other comparable companies doing business in
2 California that comply with their legal obligations to, among other things, pay their employees
3 premium wages for workdays in which they did not provide employees with one or more meal
4 and rest periods, and pay them all earned wages for all regular and overtime hours worked.
5 Defendants' unfair competitive advantage also includes the financial gains that resulted from
6 deducting at least 30 minutes from the work time Plaintiff and the Class Members had worked
7 per day.

8 99. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
9 Class Members have suffered injuries in fact and lost money or property. Defendants deprived
10 Plaintiff and the Class Members of minimum, overtime, off-the-clock, and missed meal and
11 missed rest period premium wages that Plaintiff and the Class Members earned during the course
12 of performing their duties.

13 100. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
14 Class Members are entitled to restitution of all monies rightfully belonging to them that
15 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
16 and unfair business practices.

17 101. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
18 connection with their unfair competition claims pursuant to California Code of Civil Procedure
19 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

20 **EIGHTH CAUSE OF ACTION**

21 **CIVIL PENALTIES**

22 **(Lab Code §§2698, et seq.)**

23 **(By Plaintiff and the Class against all Defendants)**

24 102. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 103. The "Aggrieved Employees" are all members of the Class defined above who
26 Defendants employed during the period beginning April 14, 2020 and ending on the date that
27 final judgment is entered in this action.

28 104. Labor Code § 204 states



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(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be 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.

105. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

106. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and 1198.

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

108. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, and 1198 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars

1 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
2 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
3 (penalty amounts established by California Labor Code § 210).

4 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
5 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
6 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
7 California Labor Code § 226.3).

8 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
9 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
10 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
11 established by California Labor Code § 558).

12 D. For violations of California Labor Code § 1197, one hundred dollars
13 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
14 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
15 (regardless of whether the initial violations were intentionally committed) (penalty amounts
16 established by California Labor Code § 1197.1).

17 E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, and
18 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
19 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
20 each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

21 F. For violations of California Labor Code § 221, one hundred dollars
22 (\$100.00) for each Aggrieved Employee for each initial and intentional violation (if found to be
23 neither willful nor intentional) and \$200 for each aggrieved employee for each initial violation of
24 California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent
25 violation of California Labor Code § 221 (regardless of whether they are found to be either willful
26 or intentional) (penalties set by California Labor Code § 225.5).

27 109. Plaintiff has complied with the procedures for bringing suit specified in California
28 Labor Code § 2699.3. By letter dated August 2, 2021, Plaintiff filed written notice online with



1 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
2 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
3 violated, including the facts and theories to support the alleged violations. A true and correct copy
4 of the notice to the LWDA dated August 2, 2021, is attached as Exhibit A. Plaintiff accompanied
5 her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
6 response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the
7 LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate
8 these allegations.

9 110. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
10 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
11 connection with their claims for civil penalties.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for
14 relief and judgment against Defendants as follows:

- 15 A. An order that the action be certified as a class action;
- 16 B. An order that Plaintiff be appointed class representative;
- 17 C. An order that counsel for Plaintiff be appointed class counsel;
- 18 D. Unpaid Wages;
- 19 E. Actual Damages;
- 20 F. Statutory Damages;
- 21 G. Liquidated Damages;
- 22 H. Civil Penalties;
- 23 I. Restitution;
- 24 J. Declaratory and injunctive relief;
- 25 K. Equitable relief;
- 26 L. Pre-judgment interest;
- 27 M. Statutory penalties;
- 28 N. Costs of suit;



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- O. Interest;
- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: October 27, 2021

By 

DAVID SPIVAK,
CAROLINE TAHMASSIAN
SARA BROWN,
Attorneys for Plaintiff, MCKENNA
MCKENZIE, and all others similarly situated



EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

August 2, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: McKenna McKenzie / Red Door Escape Room

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, McKenna McKenzie (hereafter “McKenzie” or “Complainant”) provides notice that Red Door Escape Room, LLC, a California limited liability company, Kingsmen Escape Entertainment LLC, a California limited liability company, and related entities (collectively “the Red Door Escape Room Employers” or “the Employers”) violated his rights and those of all other individuals the Red Door Escape Room Employers have employed or otherwise contracted with in California as nonexempt, hourly workers and employees, including but not limited to managers, gamemaster, gamemaster leads, front desk, and front desk lead, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198. On behalf of herself and all other Aggrieved Employees, McKenzie hereby provides this notice to the Labor & Workforce Development Agency and the Red Door Escape Room Employers and their agents and representatives.

At all relevant times, the Red Door Escape Room Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. McKenzie and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 10-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately May 11, 2019, the Red Door Escape Room Employers began to employ McKenzie in Concord in the position of hourly, nonexempt fro. The Red Door Escape Room Employers continuously employed her in that capacity until on or about June 18, 2021 when her employment ended.

At all relevant times, the Red Door Escape Room Employers issued wages to McKenzie and all of the other Aggrieved Employees on a basis and paid them by the hour. At all relevant times, the Red Door Escape Room Employers classified McKenzie and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Red Door Escape Room Employers willfully misclassified McKenzie and all of the other Aggrieved Employees as independent contractors. At all relevant times with regard to McKenzie and all of the other Aggrieved Employees, the Red Door Escape Room Employers . At all relevant times, McKenzie and all of the other Aggrieved Employees were employees of the Red Door Escape Room Employers. The Red Door Escape Room Employers engaged, suffered, and permitted them to work. The Red Door Escape Room Employers knew or should have known their actions of misclassifying McKenzie and all of the other Aggrieved Employees as independent contractors violated California law. Kyle Maloy knowingly advised the Red Door Escape Room Employers to misclassify McKenzie and all of the other Aggrieved Employees as independent contractors.

The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Red Door Escape Room Employers

required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this worktime.

The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. This work was performed on workdays in which the employees concerned worked in excess of eight hours in a day and in workweeks that exceeded 40 hours. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this work time (or other impacted work time) at overtime premium rates.

The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. This work was performed on workdays in which the employees concerned worked in excess of 12 hours in a day. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this work time (or other impacted work time) at doubletime premium rates.

At all relevant times, the Red Door Escape Room Employers failed to provide McKenzie and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this worktime. The Red Door Escape Room Employers also failed to pay premium wages for days on which it failed to

provide McKenzie and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Red Door Escape Room Employers failed to authorize and permit McKenzie and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their rest breaks. The Red Door Escape Room Employers also failed to pay premium wages for days on which it failed to authorize and permit McKenzie and all of the other Aggrieved Employees to take rest breaks as required by law.

The Red Door Escape Room Employers unlawfully deducted wages belonging to McKenzie and all of the other Aggrieved Employees. The Red Door Escape Room Employers deducted at least 30 minutes per day from the work time McKenzie and the Aggrieved Employees recorded even though McKenzie and the Aggrieved Employees had worked such time.

At all relevant times, the Red Door Escape Room Employers failed to issue to McKenzie and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Red Door Escape Room Employers knowingly and intentionally failed to state on the wage statements they issued to McKenzie and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all hours worked at the correct rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, and all earned wages subject to discount.

The Red Door Escape Room Employers also failed to timely pay McKenzie and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Red Door Escape Room Employers failed to maintain accurate employee records of McKenzie and all of the other Aggrieved Employees. The Red Door Escape Room Employers did not maintain records of the minimum, regular, overtime, doubletime, rest period premium, meal period premium, deducted, and discounted wages McKenzie and the Aggrieved Employees earned (discussed above).

For the reasons stated herein, McKenzie alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Red Door Escape Room Employers failed to pay McKenzie and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Red Door Escape Room Employers failed to provide McKenzie and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Red Door Escape Room Employers failed to authorize and permit McKenzie and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees at one hour's pay for each day in which the Red Door Escape Room Employers failed to provide them with one or more meal periods as required by law;
- (e) The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees at one hour's pay for each day in which the Red Door Escape Room Employers failed to authorize and permit them to take one or more rest breaks as required by law;

- (f) The Red Door Escape Room Employers unlawfully deducted wages belonging to McKenzie and all of the other Aggrieved Employees;
- (g) The Red Door Escape Room Employers knowingly and intentionally failed to provide McKenzie and all of the other Aggrieved Employees with accurate wage statements;
- (h) The Red Door Escape Room Employers willfully failed to timely pay McKenzie and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Red Door Escape Room Employers and when their employment ended; and
- (i) The Red Door Escape Room Employers failed to maintain accurate employment records pertaining to McKenzie and all of the other Aggrieved Employees.

Accordingly, McKenzie now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Red Door Escape Room Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the amusement and recreation whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Amusement and Recreation industry" to mean

any industry, business, or establishment operated for the purpose of furnishing entertainment or recreation to the public, including but not limited to theaters, dance halls, bowling alleys, billiard parlors, skating rinks, riding academies, racetracks, amusement parks, athletic fields, swimming pools, gymnasiums, golf courses, tennis courts, carnivals, and wired music studios

Wage Order, § 2(A). At all relevant times during the applicable limitations period, the Red Door Escape Room Employers, McKenzie, and all of the Aggrieved Employees were covered by the Wage Order because the Red Door Escape Room Employers operated, and McKenzie, and all of the Aggrieved Employees worked for, one or more establishments operated as amusement parks. Accordingly, McKenzie and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee 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.

In relevant part, Labor Code section 510 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. 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. In addition, any 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.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be

computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this worktime. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. This work was performed on workdays in which the employees concerned worked in excess of eight hours in a day and in workweeks that exceeded 40 hours. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this work time (or other impacted work time) at overtime premium rates. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. This work was performed on workdays in which the employees concerned worked in excess of 12 hours in a day. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this work time (or other impacted work time) at doubletime premium rates.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is

not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Merry Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Red Door Escape Room Employers, McKenzie and all of the other Aggrieved Employees earned during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates.

At all relevant times during the applicable limitations period, the Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, McKenzie now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Red Door Escape Room Employers failed to provide McKenzie and all of the other Aggrieved Employees with all timely meal periods. The Red Door Escape Room Employers denied McKenzie and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this worktime. Furthermore, the Red Door Escape Room Employers failed to pay premium wages for days on which they failed to provide McKenzie and all of the other Aggrieved Employees with timely meal periods. Accordingly, McKenzie now seeks civil penalties for these Labor Code violations that the Red

Door Escape Room Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the

employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Red Door Escape Room Employers failed to authorize and permit McKenzie and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Red Door Escape Room Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their rest breaks. Moreover, the Red Door Escape Room Employers failed to pay McKenzie and all of the other Aggrieved Employees premium wages on workdays the Red Door Escape Room Employers failed to provide McKenzie and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, McKenzie now seeks civil penalties for these Labor Code violations that the Red Door Escape Room Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." The Red Door Escape Room Employers deducted wages from the wages earned by McKenzie and all of the other Aggrieved Employees

for hours spent working or in on-duty meal periods in violation of Labor Code § 221. Accordingly, McKenzie seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other

than a social security number may be shown on the itemized statement;

8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Red Door Escape Room Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Red Door Escape Room Employers failed to state in the wage statements they issued to McKenzie and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Red Door Escape Room Employers knowingly and intentionally failed to state on the wage statements they issued to McKenzie and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all hours worked at the correct rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all earned wages subject to discount.

Accordingly, McKenzie seeks civil penalties for the Labor Code violations that the Red Door Escape Room Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, discounted wages, at the intervals stated above. As a result, the Red Door Escape Room Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, McKenzie now seeks civil penalties for the Labor Code violations that the Red Door Escape Room Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not

later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Red Door Escape Room Employers failed to pay McKenzie and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with McKenzie, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, discounted wages. Additionally, the Red Door Escape Room Employers failed to issue to McKenzie and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay McKenzie and all of the other Aggrieved Employees as set forth above at the end of employment, the Red Door Escape Room Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, McKenzie seeks civil penalties from the Red Door Escape Room Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours

worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be

made readily available to the employee upon reasonable request.

- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all hours worked at the correct rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all earned wages subject to discount. As a result, the Red Door Escape Room Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to McKenzie and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, McKenzie seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Kyle Maloy was an employer of McKenzie and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the Red Door Escape Room Employers and the other employers identified above. Kyle Maloy directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Aggrieved Employees, McKenzie seeks the same civil penalties against Kyle Maloy on the same grounds for which she seeks civil penalties against the Red Door Escape Room Employers.

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that McKenna McKenzie will seek both reasonable attorneys’ fees and costs under Labor Code

section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: McKenna McKenzie
Walter Haines, Esq.

Red Door Escape Room, LLC
c/o Agent for service of process
Kyle Maloy
Manager, Red Door Escape Room, LLC
1773 Crest Dr.
Encinitas, CA 92024

Kyle Maloy
1773 Crest Dr.
Encinitas, CA 92024

Kingsmen Escape Entertainment LLC
c/o Agent for service of process
Ross J. Schwartz Esq.
101 W Broadway, Ste 810
San Diego, CA 92101
ross@sscmlegal.com

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 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 16530 Ventura Blvd., Suite
203, Encino, California 91436.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 States Postal Service. It is the practice that correspondence is deposited
with the United States Postal Service the same day it is submitted for
mailing.

10 On Wednesday, October 27, 2021, I served the foregoing document
11 described as **FIRST AMENDED COMPLAINT** on interested parties by placing a true
and correct copy thereof enclosed in a sealed envelope, with postage fully
prepaid, addressed as follows:

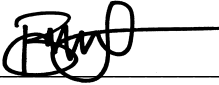
12 **Sarah Brite Evans, Esq.**
13 **SCHWARTZ SEMERDJIAN CAULEY & EVANS LLP**
14 **101 West Broadway, Ste. 810**
San Diego, CA 92101
15 sarah@sscelegal.com

16 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
17 electronic service addresses listed above from my electronic service address
breck@spivaklaw.com or boyama@spivaklaw.com.

18 EXECUTED on Wednesday, October 27, 2021, at Los Angeles, California.

19 XXXX (State) I declare under penalty of perjury under the laws of the State
of California that the above is true and correct.

20 ____ (Federal) I declare that I am employed in the office of a member of the
21 bar of this court at whose direction the service was made.

22 
23 _____
BRECK OYAMA