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9 Attorneys for Plaintiff Jill Gardner, an aggrieved  
10 employee pursuant to the Private Attorneys General Act

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**01/13/2022 at 10:14:22 AM**  
Clerk of the Superior Court  
By Malka Manneh, Deputy Clerk

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

JILL GARDNER, as an aggrieved  
employee pursuant to the Private Attorneys  
General Act,

Plaintiff,

vs.

SONESTA INTERNATIONAL HOTELS  
CORPORATION, and DOES 1 through 10,  
inclusive,

Defendants.

Case No.: 37-2022-00001888-CU-OE-CTL

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

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

**Jury Trial Demanded**

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

### 3 JURISDICTION AND VENUE

4 1. This is a law enforcement action under the Labor Code Private Attorneys  
5 General Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil  
6 penalties and any other available relief on behalf of Plaintiff, the State of California, and other  
7 current and former employees who worked for Defendant Sonesta International Hotels  
8 Corporation and DOES 1 through 10, inclusive (collectively “Defendants”) in California as non-  
9 exempt, hourly-paid employees who received at least one wage statement during their  
10 employment, and against whom one or more violations of any provision in Division 2 Part 2  
11 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the  
12 applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth in  
13 this complaint (“Aggrieved Employees”), at any time between one year before Plaintiff’s  
14 submission of the LWDA Notice (defined below) in advance of Plaintiff’s filing of this  
15 complaint (in addition to all days the period was stayed or tolled) until judgment. Plaintiff’s  
16 share of civil penalties sought in this action does not exceed \$75,000.

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

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

1 controversy requirement for federal diversity jurisdiction in this action, and that diversity  
2 jurisdiction cannot be established when Plaintiff's share of the civil penalties attributable to  
3 violations personally suffered are less than \$75,000. *Id.* at 1122.

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

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

## 12 THE PARTIES

13 6. Defendants employed Plaintiff from approximately May 9, 2021, to  
14 approximately September 7, 2021, as an hourly-paid Front Desk Attendant, Night Auditor, and  
15 Housekeeper, at Defendants' resort in Lake Forest, California. Plaintiff typically worked  
16 approximately eight to twelve hours or more per workday, five to seven days per week, and up  
17 to forty hours or more per week. At the end of her employment with Defendants, Plaintiff  
18 earned approximately \$15.50 per hour. Her job duties included, but were not limited to, cleaning  
19 the hotel lobby, guest activity equipment, and guest rooms properly, as well as counting cash  
20 drawers at the beginning of her shifts, checking empty rooms, accommodating guests' needs,  
21 and checking in and greeting guests.

22 7. Plaintiff is informed and believes, and thereon alleges, that Defendant Sonesta  
23 International Hotels Corporation is a corporation, authorized to do, and doing business in  
24 California, and at all times hereinafter mentioned, an employer whose employees are engaged  
25 throughout this county, the State of California, and the various states of the United States of  
26 America.

27 8. Plaintiff is unaware of the true names or capacities of the Defendants sued herein  
28 under the fictitious names DOES 1 through 10, and will seek leave of this Court to amend the

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

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

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

### 17 **PAGA REPRESENTATIVE ALLEGATIONS**

18 11. Plaintiff is informed and believes that Defendants are corporations engaged in  
19 business across California. Upon information and belief, Defendants maintain a centralized  
20 Human Resources department for all non-exempt, hourly-paid employees working for  
21 Defendants in California, including Plaintiff and Aggrieved Employees. At all relevant times,  
22 Defendants issued and maintained uniform, standardized practices and procedures for all non-  
23 exempt, hourly-paid employees in California, including Plaintiff and Aggrieved Employees,  
24 regardless of their location or position.

25 12. Upon information and belief, Defendants process payroll for all non-exempt,  
26 hourly-paid employees working for Defendants in California, including Plaintiff and Aggrieved  
27 Employees. Further, Defendants issue the same uniform and formatted wage statements to all  
28 non-exempt, hourly-paid employees in California, irrespective of their work location, position,

1 or manner in which each employee's employment ended. Defendants' payroll department  
2 processed payroll for non-exempt, hourly-paid employees in the same manner throughout  
3 California. In other words, Defendants utilized the same methods and formulas when calculating  
4 wages and any other remunerations due to Plaintiff and Aggrieved Employees in California.

5 13. Defendants continue to employ non-exempt, hourly-paid employees in  
6 California.

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

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

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

19 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
20 should have known that Plaintiff and Aggrieved Employees were entitled to be paid at a regular  
21 rate of pay, and corresponding overtime rate of pay, that included all forms of remuneration paid  
22 to Plaintiff and other Aggrieved Employees, such as non-regular time remunerations.

23 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
24 should have known that Plaintiff and Aggrieved Employees were entitled to receive at least  
25 minimum wages for all hours worked. In violation of the California Labor Code, Plaintiff and  
26 Aggrieved Employees were not paid at least minimum wages and overtime wages for work that  
27 Defendants knew or should have known was performed off-the-clock.

28 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and Aggrieved Employees were entitled to meal periods in  
2 accordance with the Labor Code; that Plaintiff and Aggrieved Employees were entitled to  
3 payment of one additional hour of pay at their regular rates of compensation when they were not  
4 provided with timely, uninterrupted, thirty-minute meal periods; and that Plaintiff and  
5 Aggrieved Employees were not provided with all meal periods nor payment of one additional  
6 hour of pay at their regular rates of compensation when they did not receive a timely,  
7 uninterrupted, thirty-minute meal period.

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

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

21         22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
22 should have known that they had a duty to maintain accurate and complete payroll records in  
23 accordance with the Labor Code and applicable IWC Wage Order, but failed to do so.

24         23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
25 should have known that they had a duty to maintain accurate and complete time records in  
26 accordance with the Labor Code and applicable IWC Wage Order, but failed to do so.

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

1 wages during their employment. In violation of the California Labor Code, Plaintiff and  
2 Aggrieved Employees did not receive payment of all wages, including, but not limited to,  
3 overtime wages, minimum wages, meal period and rest period premium wages, split shift  
4 wages, and reporting time pay, within permissible time periods.

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

11 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
12 should have known that Plaintiff and other Aggrieved Employees were entitled to payment of  
13 one additional hour of pay at minimum wage for working split shifts, and that Plaintiff and other  
14 Aggrieved Employees were not provided payment of one additional hour of pay at minimum  
15 wage when they worked a split shift.

16 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
17 should have known that Plaintiff and Aggrieved Employees were entitled to reporting time pay.  
18 In violation of the California Labor Code, Plaintiff and Aggrieved Employees did not receive  
19 proper reporting time pay.

20 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
21 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff and  
22 Aggrieved Employees with suitable seating when the nature of their work reasonably permitted  
23 the use of seats and did not permit employees to sit in violation of Labor Code section 1198 and  
24 the applicable Wage Order.

25 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
26 should have known that it has conducted unlawful background checks in violation of the  
27 California Labor Code.

28 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein

1 mentioned, Defendants knew or should have know that they had a duty to provide Plaintiff and  
2 Aggrieved employees with written notice setting forth the amount of paid sick leave available,  
3 or paid time off leave an employer provides in lieu of sick leave, for use on either the  
4 employee's itemized wage statement or in a separate writing provided on the designated pay day  
5 with the employee's payment of wages, but failed to do so in violation of the Labor Code.

6 31. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
7 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff and  
8 other Aggrieved Employees with written notice of the material terms of their employment with  
9 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

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

15 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
16 mentioned, Defendants knew or should have known that they had a duty to comply with the  
17 Investigative Consumer Reporting Agencies Act, Civil Code section 1786, *et. seq.* ("ICRAA")  
18 in conducting pre-employment background checks. Defendants' failure to comply with ICRAA  
19 and Civil Code section 1786.16 resulted in a violation of Labor Code section 432.5.

20 34. At all times herein set forth, PAGA provides that any provision of law under the  
21 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and  
22 collected by the Labor and Workforce Development Agency ("LWDA") for violations of the  
23 California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by  
24 aggrieved employees in a civil action brought on behalf of themselves and other current or  
25 former employees pursuant to procedures outlined in California Labor Code section 2699.3.

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

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

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

- 7                   (a)     The aggrieved employee or representative shall give written notice by  
8                           online filing with the LWDA and by certified mail to the employer of the  
9                           specific provisions of the California Labor Code alleged to have been  
10                          violated, including the facts and theories to support the alleged violation.  
11                   (b)     An aggrieved employee’s notice filed with the LWDA pursuant to  
12                           2699.3(a) and any employer response to that notice shall be accompanied  
13                           by a filing fee of seventy-five dollars (\$75).  
14                   (c)     The LWDA shall notify the employer and the aggrieved employee or  
15                           representative by certified mail that it does not intend to investigate the  
16                           alleged violation (“LWDA Notice”) within sixty (60) calendar days of the  
17                           postmark date of the aggrieved employee’s notice. Upon receipt of the  
18                           LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)  
19                           calendar days of the postmark date of the aggrieved employee’s notice,  
20                           the aggrieved employee may commence a civil action pursuant to  
21                           California Labor Code section 2699 to recover civil penalties.

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

- 25                   (a)     The aggrieved employee or representative shall give written notice by  
26                           online filing with the LWDA and by certified mail to the employer of the  
27                           specific provisions of the California Labor Code alleged to have been  
28                           violated (other than those listed in Section 2699.5), including the facts

1 and theories to support the alleged violation.

2 (b) An aggrieved employee's notice filed with the LWDA pursuant to  
3 2699.3(c) and any employer response to that notice shall be accompanied  
4 by a filing fee of seventy-five dollars (\$75).

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

14 39. On or about November 9, 2021, Plaintiff provided written notice by online filing  
15 to the LWDA and by Certified Mail to Defendants of the specific provisions of the California  
16 Labor Code alleged to have been violated, including facts and theories to support the alleged  
17 violations, accompanied by the applicable filing fee of seventy-five dollars (\$75). A true and  
18 correct copy of Plaintiff's written notice to the LWDA and Defendants, dated November 9,  
19 2021, is attached as Exhibit 1.

20 40. As of the filing of this complaint, 65 days have passed since Plaintiff sent the  
21 LWDA Notice described above to the LWDA, and the LWDA has not responded that it intends  
22 to investigate Plaintiff's claims and Defendants have not cured the violations.

23 41. Thus, Plaintiff has satisfied the administrative prerequisites under California  
24 Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5 to recover civil penalties against  
25 Defendants, in addition to other remedies, for violations of California Labor Code sections 201,  
26 202, 203, 204, 223, 226(a), 226(c), 226.7, 246, 432.5, 510, 512(a), 1174(d), 1182.12, 1194,  
27 1197, 1197.1, 1198, and 2810.5, and all applicable IWC Wage Orders, as well as sections 225.5,  
28 226(c), and 1198.5, which are 'curable' violations pursuant to section 2699.3(c)(2)(A).

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

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

44. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all Aggrieved Employees, and the State of California against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 204, 223, 226(a), 246, 226.7, 432.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5, all applicable IWC Wage Orders, as well as sections 225.5, 226(c), and 1198.5, which are ‘curable’ violations pursuant to section 2699.3(c)(2)(A).

### FIRST CAUSE OF ACTION

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

**(Against all Defendants)**

45. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

46. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover various civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 432.5, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 225.5, 226(c), 246, 1182.12, 1198.5, and 2810.5.

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

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and Aggrieved Employees with all required overtime pay, as set forth below;
- (b) Violations of Labor Code sections 223, 1182.12, 1194, 1197, and 1197.1, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;
- (c) Violation of Labor Code sections 226.7, 512(a), and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and Aggrieved Employees with meal periods, as set forth below;
- (d) Violation of Labor Code sections 226.7 and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and Aggrieved Employees with rest periods, as set forth below;
- (e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and Aggrieved Employees, as set forth below;
- (f) Violations of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain accurate payroll records, as set forth below;
- (g) Violations of Labor Code section 1198 and the applicable IWC Wage Order for failure to maintain accurate time records, as set forth below;
- (h) Violation of Labor Code section 204 for failure to timely pay all wages during employment, as set forth below;
- (i) Violation of Labor Code sections 201, 202, and 203, for failure to timely pay all earned wages upon termination, as set forth below;
- (j) Violation of California Labor Code section 432.5 for failure to conduct compliant background checks, as set forth below;
- (k) Violation of California Labor Code section 246 for failure to itemize the

amount of accrued/available sick leave on Plaintiff and the Aggrieved employees wage statements each pay period or provide a separate writing with such information on the designated pay date, as set forth below;

(l) Violation of California Labor Code sections 1198 and 2810.5(a)(1) for failure to provide Plaintiff and Aggrieved Employees with written notice of information material to Plaintiff's and Aggrieved Employees' employment with Defendants, as set forth below;

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

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

(o) Violation of California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14 and the applicable IWC Wage Order for failure to provide suitable seating, as set forth below.

#### **FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

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

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

50. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and Aggrieved Employees working more than eight hours in a day

1 or more than forty hours in a workweek, at the rate of time and one-half for all hours worked in  
2 excess of eight hours in a day or more than forty hours in a workweek.

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

8 52. An employee's regular rate of pay includes all remuneration for employment  
9 paid to, or on behalf of, the employee, including non-regular time remunerations.

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

15 54. At all relevant times, Defendants failed to pay all overtime wages owed to  
16 Plaintiff and Aggrieved Employees. During the relevant time period, Plaintiff and other  
17 Aggrieved Employees were not paid overtime premiums for all of the hours they worked in  
18 excess of eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a  
19 week, and/or for the seventh consecutive day of work, sometimes because all hours that they  
20 worked were not recorded, and other times because they were simply not paid for all hours that  
21 were recorded and/or worked. As a result, Plaintiff believes the hours he and other Aggrieved  
22 Employees worked may not have been properly recorded and/or paid, and therefore, Plaintiff  
23 and other Aggrieved Employees may not have been properly compensated for all hours that  
24 were recorded and/or worked.

25 55. Plaintiff is informed and believes, and thereon alleges, that Defendants have a  
26 company-wide policy and/or practice of failing to accurately record time and pay employees for  
27 work performed during pre-shift and post-shift times during which employees were subject to  
28 Defendants' control, as well as during unpaid meal periods resulting in unpaid overtime when

1 employees worked overtime-eligible shifts.

2 56. Defendants knew or should have known that, as a result of their policies,  
3 practices and/or procedures, Plaintiff and other Aggrieved Employees were at times performing  
4 their assigned duties off-the-clock, were subject to control of Defendants, and/or were suffered  
5 or permitted to perform work for which they were not paid. Defendants also knew, or should  
6 have known, that they did not compensate Plaintiff and other Aggrieved Employees for off-the-  
7 clock work or all hours worked. Because Plaintiff and other Aggrieved Employees sometimes  
8 worked shifts longer than eight hours a day, more than forty hours a week, and/or seven  
9 consecutive days, some of the off-the-clock work qualified for overtime premium pay. At other  
10 times, Defendants simply did not pay for all the hours that were recorded. Therefore, Plaintiff  
11 and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they  
12 actually worked. Defendants' failure to pay Plaintiff and other Aggrieved Employees the  
13 balance of overtime compensation, as required by California law, violates the provisions of  
14 California Labor Code sections 510 and 1198 and Wage Order No. 5.

15 57. Plaintiff is further informed and believes, and thereon alleges, that Defendants'  
16 regular rate of pay for calculating overtime wages did not include all required remunerations,  
17 including non-regular time remunerations, or the correct calculation. Therefore, during times  
18 when some Aggrieved Employees worked overtime and received non-regular time  
19 remunerations, Defendants failed to pay all overtime wages due to paying a lower overtime rate  
20 than required by California law.

21 58. Based on the foregoing, Plaintiff and other Aggrieved Employees are entitled to  
22 recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections  
23 510 and 1198 and Wage Order No. 5, pursuant to Labor Code sections 558, 1194, and/or  
24 2699(a), (f), and (g).

25 **FAILURE TO PAY MINIMUM WAGES IN**  
26 **VIOLATION OF LABOR CODE SECTIONS 223, 1182.12, 1194, 1197, 1197.1 AND 1198**

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

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

6 60. As set forth above, Plaintiff is informed and believes, and thereon alleges, that  
7 Defendants’ policy and/or practice of suffering and permitting employees to work through meal  
8 periods and/or any other time in the day when employees have performed work tasks subject to  
9 Defendant’s control. Plaintiff and other Aggrieved Employees have been subjected to  
10 Defendants’ control pre-shift, post-shift, and throughout the workday, even during unpaid  
11 periods. By way of example, Defendants have forced Plaintiff and Aggrieved Employees to  
12 perform work-related tasks necessary to accommodate guests’ needs pre-shift and post-shift.  
13 Defendants did not pay minimum wages for these off-the-clock hours that Plaintiff and other  
14 Aggrieved Employees worked, including but not limited to before and after shifts as well as  
15 during meal periods.

16 61. To the extent that the off-the-clock work and/or recorded hours did not qualify  
17 for overtime premium payment, Defendants did not pay at least minimum wages for those hours  
18 worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223,  
19 1182.12, 1194, 1197, 1197.1, and 1198 and Wage Order No. 5. Plaintiff and other Aggrieved  
20 Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest,  
21 pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS IN**  
23 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), AND 1198**

24 62. At all relevant times herein set forth, California Labor Code sections 226.7,  
25 512(a), and 1198, and the applicable IWC Wage Order were applicable to Plaintiff’s and  
26 Aggrieved Employees’ employment by Defendants.

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

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

6 64. At all relevant times herein set forth, California Labor Code sections 226.7,  
7 512(a), and 1198 provide that no employer shall require an employee to work during any meal  
8 period mandated by an applicable order of the IWC. The wage order's meal period requirement  
9 is satisfied if "the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the  
10 premises, and (3) is relieved of all duty for the entire period." *Brinker Rest. Corp.*, 53 Cal. 4th at  
11 1036.

12 65. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and  
13 1198, and the applicable IWC Wage Order also require employers to provide a second meal  
14 break of not less than thirty minutes if an employee works over ten hours per day, and if one is  
15 not provided, pay an employee one additional hour of pay at the employee's regular rate of  
16 compensation, except that if the total hours worked is no more than twelve hours, the second  
17 meal period may be waived by mutual consent of the employer and the employee only if the  
18 first meal period was not waived.

19 66. Plaintiff is informed and believes, and thereon alleges, that Defendants have a  
20 company-wide policy or practice of failing to provide Plaintiff and other Aggrieved Employees  
21 with full 30-minute meal periods for each day worked where employees are free from required  
22 duties and Defendants' control. Moreover, Defendants have a company-wide policy or practice  
23 of encouraging employees to continue working and/or under employer control, as opposed to  
24 encouraging the rest and nourishment meal periods are designed to provide.

25 67. Defendants knew or should have known that as a result of these policies and/or  
26 practices, Plaintiff and other Aggrieved Employees were prevented from being relieved of all  
27 duties and required to perform some of their assigned duties during meal periods and that they  
28 did not receive timely meal periods. As a result, Plaintiff and other Aggrieved Employees had to

1 work through all or part of their meal periods, have their meal periods interrupted, and/or wait  
2 extended periods of time before taking meal periods.

3 68. Additionally, and in the alternative, upon information and belief, during the  
4 relevant time period, Defendants have not provided Plaintiff and the Aggrieved Employees  
5 with meal periods when they work the overnight shifts as Defendants do not provide any  
6 coverage for employees that work overnight shifts to take meal periods.

7 69. Defendants also engaged in a systematic, company-wide policy and/or practice of  
8 not properly training Plaintiff and other Aggrieved Employees on their entitlement to meal  
9 period and rest period premium payments resulting from meal period and rest period violations.  
10 As such, Plaintiff was unaware of when meal period and/or rest period premiums were owed to  
11 him. Accordingly, Plaintiff and other Aggrieved Employees did not receive all meal period  
12 and/or rest period premium wages owed when compliant meal periods and rest periods were not  
13 provided. To the extent that Defendants did pay meal period premium wages to Aggrieved  
14 Employees, such payments were admissions of their failure to provide meal periods.  
15 Furthermore, based upon information and belief, to the extent employees received non-  
16 discretionary remuneration, Defendants' regular rate of compensation for calculating meal  
17 period and/or rest period premiums did not include all required remunerations or the correct  
18 calculation and resulted in an underpayment of meal period and/or rest period premium wages.

19 70. Accordingly, Defendants failed to provide all meal periods and/or pay all meal  
20 period premiums in violation of Labor Code sections 226.7, 512, and 1198 and Wage Order No.  
21 5. Plaintiff and other Aggrieved Employees are therefore entitled to penalties, attorneys' fees,  
22 costs, and interest, pursuant to Labor Code sections 226.7, 558, and/or 2699(a), (f), and (g).

23 **FAILURE TO PROVIDE REST PERIODS IN**

24 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 1198**

25 71. At all relevant times herein set forth, California Labor Code sections 226.7 and  
26 1198, and the applicable IWC Wage Order were applicable to Plaintiff and Aggrieved  
27 Employees' employment by Defendants.

28 72. At all relevant times, the applicable IWC Wage Order provides that "[e]very

1 employer shall authorize and permit all employees to take rest periods, which insofar as  
2 practicable shall be in the middle of each work period” and that the “rest period time shall be  
3 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)  
4 hours or major fraction thereof” unless the total daily work time is less than three and one-half  
5 hours.

6 73. At all relevant times, California Labor Code section 226.7 provides that no  
7 employer shall require an employee to work during any rest period mandated by an applicable  
8 order of the California IWC. To comply with its obligation to provide rest periods under  
9 California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must  
10 “relinquish any control over how employees spend their break time, and relieve their employees  
11 of all duties — including the obligation that an employee remain on call. A rest period, in short,  
12 must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270  
13 (2016). Defendants’ policies and practices, among other things, fail to authorize and permit  
14 *duty-free* rest periods. Pursuant to California Labor Code section 226.7(c) and the applicable  
15 IWC Wage Order, Plaintiff and Aggrieved Employees are entitled to recover from Defendants  
16 one additional hour of pay at their regular rates of compensation for each workday that a  
17 required rest period was not provided.

18 74. Plaintiff is informed and believes, and thereon alleges, that as a matter of  
19 company-wide policy and practice, Defendants have not authorized and permitted Plaintiff and  
20 other Aggrieved Employees to take net 10-minute rest periods for each day worked where  
21 employees are free from required duties and Defendants’ control. Moreover, Defendants have  
22 subjected Plaintiff and other Aggrieved Employees to control throughout their workday, even  
23 during times which should constitute uninterrupted duty-free rest periods. Defendants have a  
24 company-wide policy or practice of encouraging employees to continue working and/or under  
25 employer control.

26 75. Upon information and belief, during the relevant time period, Defendants have  
27 had a company-wide policy and practice of prohibiting employees from leaving the work  
28 premises during rest periods and have encouraged employees to stay working and/or under

1 employer control, which has prevented Plaintiff and Aggrieved Employees from being relieved  
2 of all duty in order to take compliant rest periods.

3 76. Moreover, upon information and belief, Defendants have also engaged in a  
4 systematic, company-wide practice and/or policy of not paying rest period premiums owed  
5 when rest periods are not provided. Additionally, Defendants paid rest period premiums at the  
6 incorrect rates. Because Defendants did not properly calculate Plaintiff's and Aggrieved  
7 Employees' regular rates of compensation by including all remunerations, such as non-regular  
8 time remunerations, any premiums paid for rest period violations were also paid at an incorrect  
9 rate and resulted in an underpayment of rest period premium wages. Thus, Defendants denied  
10 Plaintiff and Aggrieved Employees rest periods and failed to pay them rest period premium  
11 wages due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order. As  
12 with meal periods, Defendants' policies and/or practices prevented Plaintiff and other  
13 Aggrieved Employees from being relieved of all duties to take compliant rest periods. As a  
14 result, Plaintiff and other Aggrieved Employees would frequently work shifts in excess of three  
15 and one-half hours, in excess of six hours, and/or in excess of ten hours without receiving all  
16 uninterrupted ten-minute rest periods to which they were entitled. Plaintiff was not able to take  
17 rest periods due to the pressure Defendants placed on her to meet workload demands, as well as  
18 a lack of break coverage. Moreover, Defendants' company-wide policy and/or practice of  
19 requiring their employees to remain on premises during their rest periods, but not providing  
20 suitable resting facilities further prevented Plaintiff and other Aggrieved Employees from being  
21 relieved of their duties during rest periods.

22 77. Additionally, and in the alternative, upon information and belief, during the  
23 relevant time period, Defendants have not provided Plaintiff and the Aggrieved Employees  
24 with rest periods when they work the overnight shifts as Defendants do not provide any  
25 coverage for employees who work overnight shifts to take rest periods.

26 78. To the extent that Defendants did pay rest period premium wages to Plaintiff and  
27 Aggrieved Employees, such payments are admissions of Defendants' failure to provide rest  
28 periods.

79. Accordingly, Defendants failed to provide all rest periods and/or pay all rest period premiums in violation of Labor Code sections 226.7, and 1198 and Wage Order No. 5. Plaintiff and other Aggrieved Employees are therefore entitled to penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 226.7, 1198, and 2699(a), (f), and (g).

**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226(a) AND 1198**

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

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

1 corresponding number of hours worked in violation of Section 226(a)(9). Also, without  
2 additional information regarding the wage statement, an employee cannot simply arrive at the  
3 sum of hours worked. As such, Defendants' wage statements do not comply with Labor Code  
4 section 226(a)(2). Additionally, because Defendants did not calculate other Aggrieved  
5 Employees' regular rate of pay correctly for purposes of paying overtime and/or premium  
6 wages, Defendants did not list the correct amount of gross wages and net wages earned by other  
7 Aggrieved Employees in compliance with Sections 226(a)(1) and (5). Defendants also failed to  
8 correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime  
9 rates of pay and correct rates of pay for meal and rest premium wages, in violation of Section  
10 226(a)(9). Furthermore, because Defendants failed to pay all meal period and rest period  
11 premiums to Plaintiff and other Aggrieved Employees, Defendants did not list the correct  
12 amount of gross wages earned by Plaintiff and other Aggrieved Employees in compliance with  
13 Section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages  
14 earned by Plaintiff and other Aggrieved Employees in violation of Section 226(a)(5).

15 82. Plaintiff and other Aggrieved Employees are therefore entitled to recover  
16 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 226(a), 226.3,  
17 1198.5, and/or 2699(a), (f), and (g).

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

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

1 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),  
2 Defendants wilfully failed to maintain accurate payroll records for Plaintiff and other Aggrieved  
3 Employees showing the daily hours they worked and the wages paid as a result of failing to  
4 record all hours worked and/or failing to correctly list the gross wages and/or net wages earned  
5 by them in violation of Labor Code section 1174(d).

6 84. Labor Code section 1198 provides that the maximum hours of work and the  
7 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in  
8 the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any  
9 employees for longer hours than those fixed by the order or under conditions of labor prohibited  
10 by the order is unlawful.” Pursuant to the applicable Wage Order, employers are required to  
11 keep accurate time records showing when the employee begins and ends each work period and  
12 meal period. Cal. Code Regs. tit. 8, § 11050, subd. 7. During the relevant time period,  
13 Defendants failed, on a company-wide basis, to keep accurate records of shift and meal period  
14 start and stop times for Plaintiff and other Aggrieved Employees, in violation of Section 1198  
15 and Wage Order No. 5.

16 85. Because Defendants failed to provide, among other things, the accurate number  
17 of total hours worked, gross wages earned, net wages earned, the applicable hourly rates in  
18 effect during the pay period and the corresponding number of hours worked on wage statements,  
19 Plaintiff and other Aggrieved Employees have been prevented from verifying, solely from  
20 information on the wage statements themselves, that they were paid correctly and in full and  
21 were given confusing and/or incomplete information about their employer. Instead, Plaintiff and  
22 other Aggrieved Employees have had to look to sources outside of the wage statements  
23 themselves and reconstruct time records to determine whether in fact they were paid correctly  
24 and the extent of underpayment, thereby causing them injury.

25 86. Plaintiff and other Aggrieved Employees are therefore entitled to recover  
26 penalties, attorneys’ fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or  
27 2699(a), (f), and (g).  
28

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

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

88. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of shift and meal period start and stop times for Plaintiff and other Aggrieved Employees, in violation of Section 1198 and Wage Order No. 5.

89. Because Defendants failed to provide, among other things, the accurate number of total hours worked, gross wages earned, net wages earned, the applicable hourly rates in effect during the pay period and the corresponding number of hours worked on wage statements, Plaintiff and other Aggrieved Employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full and were given confusing and/or incomplete information about their employer. Instead, Plaintiff and other Aggrieved Employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

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

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

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

8           92.     At all times relevant herein, Labor Code section 204 provides that all wages  
9 earned by any person in any employment between the sixteenth and the last day, inclusive, of  
10 any calendar month, other than those wages due upon termination of an employee, are due and  
11 payable between the first and the tenth day of the following month.

12          93.     At all times relevant herein, Labor Code section 204 provides that all wages  
13 earned for labor in excess of the normal work period shall be paid no later than the payday for  
14 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section  
15 204 provides that the requirements of this section are deemed satisfied by the payment of wages  
16 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven  
17 calendar days following the close of the payroll period.

18          94.     At all relevant times herein, Defendants failed to pay Plaintiff and other  
19 Aggrieved Employees all wages due to them, including, but not limited to, overtime wages,  
20 minimum wages, split shift premiums, and/or meal and rest period premium wages, within any  
21 time period specified by Labor Code section 204.

22          95.     Plaintiff and other Aggrieved Employees are entitled to recover penalties,  
23 attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or 2699(a), (f), and  
24 (g).

25                   **FAILURE TO PAY WAGES UPON TERMINATION IN**  
26                   **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 201, 202, AND 203**

27          96.     At all times relevant herein set forth, Labor Code sections 201, 202 and 203  
28 provide that if an employer discharges an employee, the wages earned and unpaid at the time of

1 discharge are due and payable immediately, and that if an employee voluntarily leaves his or her  
2 employment, his or her wages shall become due and payable not later than seventy-two hours  
3 thereafter, unless the employee has given seventy-two hours previous notice of his or her  
4 intention to quit, in which case the employee is entitled to his or her wages at the time of  
5 quitting.

6 97. Defendants wilfully failed to pay Plaintiff and other Aggrieved Employees who  
7 are no longer employed by Defendants all their earned wages at the time of discharge, or within  
8 seventy-two hours of their leaving Defendants' employ in violation of California Labor Code  
9 sections 201-203. For example, Plaintiff was untimely paid her final wages after being  
10 terminated.

11 98. Furthermore, Defendants did not pay Plaintiff and other Aggrieved Employees  
12 who are no longer employed by Defendants all their earned wages, at the time of discharge, or  
13 within seventy-two hours of their leaving Defendants' employ including, but not limited to,  
14 overtime wages, minimum wages, split shift premiums, and/or meal period and rest period  
15 premium wages.

16 99. Defendants' failure to pay Plaintiff and Aggrieved Employees who are no longer  
17 employed by Defendants their wages earned and unpaid at the time of discharge, or within 72  
18 hours of their leaving Defendants' employment, violates Labor Code sections 201, 202, and  
19 203. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties,  
20 attorneys' fees, costs, and interest, pursuant to Labor Code section 2699(a), (f), and (g).

21 **FAILURE TO PAY SPLIT SHIFT PREMIUMS IN**  
22 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 1198 AND CALIFORNIA**  
23 **CODE OF REGULATIONS, TITLE 8, SECTION 11050 SUBDIVISION 4(C)**

24 100. California Labor Code section 1198 provides that no employer may employ an  
25 employee under conditions of labor that are prohibited by the applicable IWC Wage Order.  
26 California Labor Code section 1198 further requires that ". . . the standard conditions of labor  
27 fixed by the commission shall be the . . . standard conditions of labor for employees. The  
28 employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

1           101. California Code of Regulations, Title 8, section 11050(4)(C) provides that  
2 “[w]hen an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid  
3 in addition to the minimum wage for that workday, except when the employee resides at the  
4 place of employment.” It defines a split shift as a “work schedule, which is interrupted by non-  
5 paid non-working periods established by the employer, other than bona fide rest or meal  
6 periods.” Cal. Code Regs. tit. 8 § 11050, subd. (2)(R).

7           102. Defendants violated California Labor code section 1198 and California Code of  
8 Regulations, Title 8, section 11050(4)(C), because they failed to pay Plaintiff and other  
9 Aggrieved Employees a split shift premium when they returned to work for an additional shift in  
10 the same day, after having been clocked out for more than an hour.

11           103. Defendants sometimes scheduled Plaintiff to work double-shifts that were  
12 separated by more than one hour of time but failed to pay her one hour’s pay at the minimum  
13 wage in addition to the minimum wage for that workday. Upon information and belief, other  
14 Aggrieved Employees also worked double shifts separated by more than one hour of time  
15 without receiving one additional hour of pay at minimum wage from Defendants for working a  
16 split shift. Accordingly, Defendants required Plaintiff and other Aggrieved Employees to work  
17 split shifts but failed to pay them an additional hour at minimum wage in violation of California  
18 Labor Code section 1198.

19           104. Defendants’ failure to provide Plaintiff and other Aggrieved Employees with  
20 split-shift pay when they returned to work for an additional shift in the same day, after having  
21 been clocked out for more than an hour, violates California Labor Code section 1198 and  
22 California Code of Regulations Title 8, section 11050(4)(C). Plaintiff and other Aggrieved  
23 Employees are entitled to recover penalties, attorneys’ fees, costs, and interest thereon, pursuant  
24 to Labor Code sections 1194 and/or 2699(a), (f), and (g).

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

28           105. At all relevant times herein set forth, Labor Code section 1198 and the IWC

1 Wage Order were applicable to Plaintiff's and the Aggrieved Employees' employment by  
2 Defendants.

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

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

16 108. Defendants' failure to provide reporting time pay to Plaintiff and Aggrieved  
17 Employees violates IWC Order No. 5-2001 section 5(A) in violation of Labor Code section  
18 1198 and Wage Order No. 5. Plaintiff and Aggrieved Employees are therefore entitled to  
19 recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 1194  
20 and/or 2699(a), (f), and (g).

21 **FAILURE TO PROVIDE SUITABLE SEATING IN**  
22 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 1198 AND CALIFORNIA**  
23 **CODE OF REGULATIONS,**  
24 **TITLE 8, SECTION 11050 SUBDIVISION 14**

25 109. California Labor Code section 1198 provides that no employer may employ an  
26 employee under conditions of labor that are prohibited by the applicable IWC wage order.  
27 California Labor Code section 1198 further requires that ". . . the standard conditions of labor  
28 fixed by the commission shall be the . . . standard conditions of labor for employees. The

1 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

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

8 111. Although Plaintiff and other Aggrieved Employees perform job functions that  
9 reasonably permit the use of seats such as filing paperwork, answering phones, performing work  
10 on computers, accommodating guests, and/or working the front desk and reception, Defendants  
11 refuse to provide seats or permit employees to sit in violation of Labor Code section 1198 and  
12 the applicable Wage Order.

13 112. Defendants’ failure to provide seats to their Aggrieved Employees is in violation  
14 of the applicable wage order and California Labor Code section 1198. Plaintiff and other  
15 Aggrieved Employees are entitled to recover penalties, attorneys’ fees, costs, and interest,  
16 pursuant to Labor Code sections 2699(a), (f), and (g).

17 **REQUIRING AGREEMENT TO TERMS AND/OR CONDITIONS PROHIBITED BY**  
18 **LAW IN VIOLATION OF LABOR CODE SECTION 432.5**

19 113. At all relevant times, the California Labor Code places procedural and  
20 substantive limits on employers’ abilities to conduct employee background checks and on how  
21 employers can use the information they obtain through those background checks. The  
22 Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, *et seq.*  
23 (“ICRAA”), mandates several requirements prior to and following an employee background  
24 check, including but not limited to, identifying an appropriate reason for the background  
25 check, a separate consent form with required disclosures and certain formatting requirements,  
26 additional forms such as a summary of rights, as well as proper notice of adverse actions  
27 taken, among other statutory requirements. A violation of ICRAA results in a violation of  
28 Labor Code section 432.5.

1           114. At all relevant times, under Labor Code section 432.5, “[n]o employer... shall  
2 require any employee or applicant for employment to agree, in writing, to any term or  
3 condition which is known by such employer, or agent, manager, superintendent, or officer  
4 thereof to be prohibited by law.”

5           115. During the relevant time period, upon information and belief, Plaintiff and the  
6 Aggrieved Employees have been required by Defendants to undergo background checks in  
7 violation of California law. Among other things, ICRAA, Civil Code section 1786.16, requires  
8 as follows: “(B) The person procuring or causing the report to be made provides a clear and  
9 conspicuous disclosure in writing to the consumer at any time before the report is procured or  
10 caused to be made in a document that consists solely of the disclosure, that: (i) An  
11 investigative consumer report may be obtained. (ii) The permissible purpose of the report is  
12 identified. (iii) The disclosure may include information on the consumer's character, general  
13 reputation, personal characteristics, and mode of living. (iv) Identifies the name, address, and  
14 telephone number of the investigative consumer reporting agency conducting the  
15 investigation. (v) Notifies the consumer in writing of the nature and scope of the investigation  
16 requested, including a summary of the provisions of Section 1786.22. (vi) Notifies the  
17 consumer of the Internet Web site address of the investigative consumer reporting agency  
18 identified in clause (iv), or, if the agency has no Internet Web site address, the telephone  
19 number of the agency, where the consumer may find information about the investigative  
20 reporting agency's privacy practices, including whether the consumer's personal information  
21 will be sent outside the United States or its territories and information that complies with  
22 subdivision (d) of Section 1786.20. This clause shall become operative on January 1, 2012.”

23           116. During the relevant time period, upon information and belief, Defendants have  
24 required Plaintiff and other Aggrieved Employees to submit to unlawful background checks.  
25 Upon information and belief, Defendants have required Plaintiff and other Aggrieved  
26 Employees to agree in writing to unlawful background checks which have failed to abide by  
27 the requirements set forth in ICRAA. For example, upon information and belief, Defendants  
28 have required Plaintiff and other Aggrieved Employees to agree in writing to unlawful

1 background checks that have failed to abide by the requirements set forth in ICRAA.  
2 Defendants have not provided Plaintiff and other Aggrieved Employees with, among other  
3 things, a separate ICRAA written notice of the intent to obtain a background check report; a  
4 notice that is clear, conspicuous, and in writing; a document that consists solely of the required  
5 disclosure; a notice that states the nature and scope of the information requested pursuant to  
6 ICRAA; and a summary of the employee's rights pursuant to ICRAA.

7 117. Defendants' required agreement to terms and conditions prohibited by law  
8 violates and failure to provide the items required by ICRAA violates Labor Code section 432.5.  
9 Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties,  
10 attorneys' fees, costs, and interest pursuant to Labor Code sections 2699(a), (f), and (g).

11 **FAILURE TO PROVIDE WRITTEN NOTICE OF PAID SICK LEAVE AND/OR PAID**  
12 **TIME OFF IN VIOLATION OF LABOR CODE SECTION 246**

13 118. Pursuant to Labor Code section 246(i), "[a]n employer shall provide an employee  
14 with written notice that sets forth the amount of paid sick leave available, or paid time off leave  
15 an employer provides in lieu of sick leave, for use on either the employee's itemized wage  
16 statement described in Section 226 or in a separate writing provided on the designated pay date  
17 with the employee's payment of wages. If an employer provides unlimited paid sick leave or  
18 unlimited paid time off to an employee, the employer may satisfy this section by indicating on  
19 the notice or the employee's itemized wage statement 'unlimited'."

20 119. During the relevant time period, Defendants have failed to correctly itemize the  
21 amount of accrued/available sick leave or paid time off that Plaintiff and other Aggrieved  
22 Employees had on wage statements each pay period or provide a separate writing with such  
23 information on the designated pay date.

24 120. Defendants' failure to provide Plaintiff and other Aggrieved Employees with a  
25 written notice setting forth the amount of paid sick leave or paid time off available for use on  
26 either Plaintiff's and the Aggrieved Employees' itemized wage statements described in Labor  
27 Code section 226 or in a separate writing provided on the designated pay date with Plaintiff and  
28 other Aggrieved Employees' payment of wages violates Labor Code section 246. Plaintiff and

1 the other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees,  
2 costs, and interest, pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

3 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**  
4 **EMPLOYMENT IN VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

5 121. California's Wage Theft Prevention Act was enacted to ensure that employers  
6 provide employees with basic information material to their employment relationship at the time  
7 of hiring, and to ensure that employees are given written and timely notice of any changes to  
8 basic information material to their employment. Codified at California Labor Code section  
9 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must  
10 provide written notice to employees containing basic and material payroll information,  
11 including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour,  
12 shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the  
13 regular payday designated by the employer, and any allowances claimed as part of the minimum  
14 wage, including meal or lodging allowances.

15 122. Effective January 1, 2015, an employer's written notice pursuant to section  
16 2810.5 must also include a statement that the employee may accrue and use sick leave; has a  
17 right to request and use accrued paid sick leave; may not be terminated or retaliated against for  
18 using or requesting the use of accrued paid sick leave; and has the right to file a complaint  
19 against an employer who retaliates.

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

23 124. Defendants' failure to provide Plaintiff and other Aggrieved Employees with  
24 written notice of basic information regarding their employment with Defendants is in violation  
25 of Labor Code section 2810.5. Plaintiff and Aggrieved Employees are entitled to recover  
26 penalties, attorneys' fees, costs, and interest thereon pursuant to Labor Code sections 2699(a),  
27 (f), and (g).  
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1 256, 558, 1174.5, 1197.1, 248.5, 2699(a) and/or 2699(f) and (g), for violations of California  
2 Labor Code sections 201, 202, 204, 223, 225.5, 226(a), 226(c), 226.7, 246, 432.5, 510, 512(a),  
3 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, and 2810.5 as well as all applicable IWC  
4 Wage Orders;

5 4. For attorneys' fees and costs pursuant to California Labor Code sections 1194(a),  
6 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California  
7 Labor Code sections 201, 202, 204, 223, 225.5, 226(a), 226(c), 226.7, 246, 432.5, 510, 512(a),  
8 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, and 2810.5;

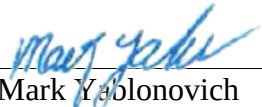
9 5. For pre-judgment and post-judgment interest as provided by law; and

10 6. For such other and further relief as the Court may deem equitable and  
11 appropriate.  
12

13 Dated: January 13, 2022

Respectfully submitted,

14 LAW OFFICES OF MARK YABLONOVICH  
15

16 By:   
17 Mark Yablonovich  
18 Tony Roberts  
19 Attorneys for Plaintiff Jill Gardner, an aggrieved  
20 employee pursuant to the Private Attorneys  
21 General Act  
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# EXHIBIT 1

*Gardner v. Sonesta International Hotels Corporation*

LAW OFFICES OF  
**MARK YABLONOVICH**  
9595 WILSHIRE BOULEVARD, SUITE 900  
**BEVERLY HILLS, CALIFORNIA 90212-2511**  
TELEPHONE: (310) 286-0246  
FACSIMILE: (310) 407-5391

November 9, 2021

VIA ONLINE SUBMISSION

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

Subject: *Jill Gardner v. Sonesta International Hotels Corporation*

Dear PAGA Administrator:

This law firm represents Jill Gardner (“Ms. Gardner”) in connection with her claims under the California Labor Code against her former employer Sonesta International Hotels Corporation (“Sonesta”).

The employer may be contacted directly:

Sonesta International Hotels Corporation  
Two Newton Place, 255 Washington Suite 300  
Newton, MA 02458

Ms. Gardner intends to seek civil penalties, attorneys’ fees, costs, and all other available relief for Sonesta’s violations of the California Labor Code, which are recoverable under Labor Code sections 2698, *et seq.*, the Private Attorneys General Act of 2004 (“PAGA”). Ms. Gardner seeks relief on behalf of herself, the State of California, and all other persons who are or were employed in California as non-exempt, hourly-paid employees and who worked one or more shifts in a pay period at Sonesta International Hotels Corporation in California at any time during the relevant time period which begins one year prior to the date of this notice (“Aggrieved Employees”). Ms. Gardner sends this letter in compliance with the notice and reporting requirements of Labor Code section 2699.3.

Sonesta employed Ms. Gardner from approximately the beginning of May 2021 to approximately the beginning of September 2021, as an hourly-paid Front Desk Attendant, Night Auditor, and Housekeeper at Sonesta’s resort in Lake Forest, California. Ms. Gardner typically worked approximately eight to twelve hours or more per workday, five to seven days per week, and up to forty hours or more per week. Her job duties included, but were not limited to, cleaning the hotel lobby, guest activity equipment and rooms properly and thoroughly, as well as counting cash drawers at the beginning of her shifts, checking empty rooms, accommodating guests’ needs, and checking in and greeting guests.

Sonesta committed one or more of the following Labor Code violations against Ms. Gardner and/or the Aggrieved Employees, the facts and theories of which follow, making her an

Re: *Jill Gardner v. Sonesta International Hotels Corporation*  
November 9, 2021  
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“aggrieved employee” pursuant to Labor Code section 2699(c):<sup>1</sup>

**Sonesta’s Company-Wide and Uniform Human Resources Practices**

Sonesta is a corporation dedicated to owning and operating establishments providing lodging services throughout California. Upon information and belief, Sonesta maintains a centralized Human Resources department in California for all non-exempt, hourly-paid employees working for Sonesta in California, including Ms. Gardner and other Aggrieved Employees. At all relevant times, Sonesta has issued and maintained uniform, standardized policies, practices and/or procedures for all non-exempt, hourly-paid employees in California, including Ms. Gardner and other Aggrieved Employees, regardless of their location or position.

Upon information and belief, Sonesta maintains a centralized payroll department which processes payroll for all non-exempt, hourly-paid employees working for Sonesta in California, including Ms. Gardner and other Aggrieved Employees. Further, Sonesta issues the same uniform and formatted wage statements to all non-exempt, hourly-paid employees in California, irrespective of their location, position, or manner in which each employee’s employment ended. Sonesta’s centralized payroll department processes payroll for all non-exempt, hourly-paid employees in the same manner throughout California. In other words, Sonesta utilized the same methods and formulas when calculating wages and any other remunerations owed to Ms. Gardner and other Aggrieved Employees in California.

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

Labor Code sections 510 and 1198 and California Code of Regulations Title 8, section 11050 (“Wage Order No. 5”),<sup>2</sup> require employers to pay employees working more than eight hours in a day, more than forty hours in a workweek, or for the first eight hours on the seventh consecutive day of work at the rate of time-and-one-half times the regular rate of pay for all hours worked in excess of eight hours in a day, in excess of forty hours in a workweek, and during the first eight hours on the seventh consecutive day of work. The applicable Wage Order further provides that employers are required to pay employees working more than twelve hours in a day or in excess

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<sup>1</sup> These facts, theories, and claims are based on Ms. Gardner’s experience and counsel’s review of those records currently available relating to Ms. Gardner’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of, typically because the aggrieved employee was not aware of the law’s requirements and/or the employer’s obligations, the employer misinformed its employee of the law’s requirements, or because the employer effectively concealed the existence of its violations. Thus, Ms. Gardner reserves the right to supplement this notice with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this notice.

<sup>2</sup> To the extent any other Wage Order applies to any of the claims in this letter, Sonesta has violated those wage orders.

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of eight hours on the seventh consecutive day overtime compensation at a rate of two times their regular rate of pay.

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

Sonesta has known or should have known that, as a result of its policies, practices, and/or procedures, Ms. Gardner and other Aggrieved Employees have at times performed their assigned duties off-the-clock (and/or unrecorded), have been subject to control of Sonesta, and/or are suffered or permitted to perform work for which they have not been paid. Sonesta also has known or should have known that it did not compensate Ms. Gardner and other Aggrieved Employees for off-the-clock work or for all hours worked. Because Ms. Gardner and other Aggrieved Employees sometimes worked shifts longer than eight hours a day, more than forty hours a week, and/or for seven consecutive days, some of the unrecorded work has qualified for overtime premium pay. At other times, Sonesta simply has not paid for all recorded hours. Therefore, Ms. Gardner and other Aggrieved Employees have not been paid overtime wages for all of the overtime hours actually worked. Sonesta's failure to pay Ms. Gardner and other Aggrieved Employees the balance of overtime compensation, as required by California law, violates the provisions of Labor Code sections 510 and 1198 and the applicable Wage Order(s).

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

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

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

Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable Wage Order require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission (“IWC”). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined by the applicable Wage Order as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11050, subd. 2(K) (defining “Hours Worked”).

Sonesta has not paid for all the time Ms. Gardner and Aggrieved Employees have worked throughout the day including all time spent working through meal periods and/or any other time in the day when the employees have performed work tasks subject to Sonesta’s control. Ms. Gardner and other Aggrieved Employees have been subjected to Sonesta’s control pre-shift, post-shift, and throughout the workday, even during unpaid periods such as unpaid meal periods. By way of example, Sonesta has forced Ms. Gardner and Aggrieved Employees to perform work-related tasks necessary to accommodate guests’ needs pre-shift and post-shift.

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

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

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

Labor Code sections 226.7, 512(a) and 1198 and the applicable Wage Order require employers to provide meal periods and rest periods and to pay employees one additional hour of pay at the employee’s regular rate for each workday that a meal period or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five hours per day without providing the employee with an uninterrupted duty-free and control-free meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six hours, the meal period may be waived by mutual consent of both the employer and the employee.

Under California law, first meal periods must start no later than the end of an employee’s fifth

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hour of work. *See Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012); *see also* Cal. Code Regs. tit. 8, § 11050, subd. 11. Labor Code sections 226.7 and 512(a) also require employers to provide a second meal period of not less than thirty minutes if an employee works over ten hours in a day, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was taken.

Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable IWC Wage Order. The applicable Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours. Cal. Code Regs. tit. 8, § 11050, subd. 12. To comply with its obligation to provide rest periods under Labor Code section 226.7 and the applicable Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Sonesta’s policies and practices, among other things, fail to authorize and permit *duty-free* rest periods.

Sonesta has failed to provide meal periods and authorize and permit rest periods to Ms. Gardner and other Aggrieved Employees. As a matter of policy and practice, Sonesta has not provided Ms. Gardner and other Aggrieved Employees with full 30-minute meal periods and net 10-minute rest periods for each day worked where they are free from Sonesta’s required duties and control. During rest periods, Sonesta has also not permitted Ms. Gardner and Aggrieved Employees to leave the work premises. Sonesta has subjected Ms. Gardner and other Aggrieved Employees to control throughout their workday, even during times which should constitute uninterrupted duty-free rest periods and meal periods. Sonesta encourages employees to stay working and/or under employer control, as opposed to encouraging the rest and nourishment meal periods and rest periods are designed to provide.

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

Sonesta has also engaged in a systematic, company-wide policy and/or practice of not properly training Ms. Gardner and other Aggrieved Employees on their entitlement to meal period and rest period premium payments resulting from meal period and rest period violations. Ms. Gardner and other Aggrieved Employees have been unaware of when meal period and/or rest period premiums were owed to them. Based upon information and belief, Ms. Gardner and other

Re: *Jill Gardner v. Sonesta International Hotels Corporation*

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Aggrieved Employees have not received all meal period and/or rest period premium wages owed when compliant meal periods and rest periods have not been provided. To the extent that Sonesta did pay meal period and/or rest period premium wages to Ms. Gardner and other Aggrieved Employees, such payments were admissions of its failure to provide compliant meal periods and rest periods. Furthermore, based upon information and belief, to the extent employees have been non-regular time remunerations, those payments have not been included in Sonesta's regular rate of compensation for calculating meal period and/or rest period premiums and has resulted in an underpayment of meal period and/or rest period premium wages.

Additionally, and in the alternative, Sonesta has not provided Ms. Gardner and the Aggrieved Employees with meal periods or rest periods when they work the overnight shifts as Sonesta does not provide any coverage for employees that work overnight shifts to take meal periods or rest periods.

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

#### **Violation of California Labor Code Section 226(a)**

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

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

Sonesta has furnished Ms. Gardner and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, Sonesta violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Sonesta did not record all the hours Ms. Gardner and other Aggrieved Employees worked and/or pay all hours recorded, Sonesta did not list the correct amount of gross wages and net wages earned by Ms. Gardner and other Aggrieved

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Employees in compliance with Sections 226(a)(1) and (5), respectively. Sonesta has also failed to accurately list the total hours worked by Ms. Gardner and other Aggrieved Employees for work performed while off-the-clock in violation of Section 226(a)(2) and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked in violation of Section 226(a)(9).

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

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

Because Sonesta has furnished wage statements inaccurately itemizing, among other things, the number of total hours worked, gross wages earned, net wages earned, and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked on wage statements, Ms. Gardner and other Aggrieved Employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full and were given confusing and/or incomplete information about their employer. Instead, Ms. Gardner and other Aggrieved Employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

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

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

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

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the daily hours they worked and the wages paid as a result of failing to record all hours worked and/or failing to correctly list the gross wages and/or net wages earned by them in violation of Labor Code section 1174(d).

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

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

#### **Violation of California Labor Code Section 204**

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

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

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

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

Labor Code sections 201-202<sup>3</sup> provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves their employment, their wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

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

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

As a result of Sonesta's violations of Labor Code sections 201-202, Ms. Gardner and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 203 and/or 2699(a), (f), and (g).

**Violation of California Labor Code Section 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C)**

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

Wage Order No. 5 provides that "[w]hen an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment." Cal. Code Regs. tit. 8 § 11050, subd. 4(C). A split shift is defined as "a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods." Cal. Code Regs. tit. 8 § 11050, subd. 2(R).

Sonesta violated Labor Code section 1198 and Wage Order No. 5 by failing to pay Ms. Gardner and other Aggrieved Employees split shift premiums when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour.

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

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For example, on several occasions, Sonesta had Ms. Gardner work double-shifts that were separated by more than one hour of time but failed to pay her one-hour's pay at the minimum wage in addition to the minimum wage for that workday. Upon information and belief, other Aggrieved Employees also worked double shifts separated by more than one hour of time without receiving one additional hour at minimum wage from Sonesta for working a split shift.

Sonesta's failure to provide Ms. Gardner and other Aggrieved Employees with split shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates Labor Code section 1198 and Wage Order No. 5. Ms. Gardner and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 1194 and/or 2699(a), (f), and (g).

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

Pursuant to Wage Order No. 5:

Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

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

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

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

**Violation of California Labor Code Section 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14**

The suitable seating requirement set forth in the applicable IWC Wage Orders is a standard condition of labor for employees. *Bright v. 99¢ Only Stores*, 189 Cal. App. 4th 1472 (2010).

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The applicable Wage Order provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. [] When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.” Cal. Code Regs. tit. 8 § 11050, subd. 14.

Although Ms. Gardner and other Aggrieved Employees perform job functions that reasonably permit the use of seats such as filling out paperwork, answering phones, performing work on computers, accommodating guests, and/or working the front desk and reception, Sonesta does not provide seats. Sonesta refuses to provide seats or permit employees to sit in violation of Labor Code section 1198 and the applicable Wage Order. Accordingly, Ms. Gardner and other Aggrieved Employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

### **Violation of California Labor Code Section 432.5**

The Labor Code places procedural and substantive limits on employers’ abilities to conduct employee background checks and on how employers can use the information they obtain through those background checks. The Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, *et seq.* (“ICRAA”), mandates several requirements prior to and following an employee background check, including but not limited to, identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, as well as proper notice of adverse actions taken, among other statutory requirements. A violation of ICRAA results in a violation of Labor Code section 432.5. Under Labor Code section 432.5, “[n]o employer... shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.” Ms. Gardner and the Aggrieved Employees have been required by Sonesta to undergo background checks in violation of California law. Among other things, ICRAA, Civil Code section 1786.16, requires as follows:

- (B) The person procuring or causing the report to be made provides a clear and conspicuous disclosure in writing to the consumer at any time before the report is procured or caused to be made in a document that consists solely of the disclosure, that:
  - (i) An investigative consumer report may be obtained.
  - (ii) The permissible purpose of the report is identified.
  - (iii) The disclosure may include information on the consumer's character, general reputation, personal characteristics, and mode of living.
  - (iv) Identifies the name, address, and telephone number of the investigative consumer reporting agency conducting the investigation.
  - (v) Notifies the consumer in writing of the nature and scope of the investigation requested, including a summary of the provisions of Section 1786.22.

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(vi) Notifies the consumer of the Internet Web site address of the investigative consumer reporting agency identified in clause (iv), or, if the agency has no Internet Web site address, the telephone number of the agency, where the consumer may find information about the investigative reporting agency's privacy practices, including whether the consumer's personal information will be sent outside the United States or its territories and information that complies with subdivision (d) of Section 1786.20. This clause shall become operative on January 1, 2012.

Upon information and belief, Sonesta has required Ms. Gardner and other Aggrieved Employees to submit to unlawful background checks. Upon information and belief, Sonesta has required Ms. Gardner and other Aggrieved Employees to agree in writing to unlawful background checks which have failed to abide by the requirements set forth in ICRAA. For example, Sonesta has not provided Ms. Gardner and the Aggrieved Employees with, among other things, a separate ICRAA written notice of the intent to obtain a background check report; a notice that is clear, conspicuous, and in writing; a document that consists solely of the disclosure; a notice that states the nature and scope of the information requested pursuant to ICRAA; and, a summary of the employee's rights pursuant to ICRAA.

By having Ms. Gardner and other Aggrieved Employees sign off on the illegal background checks, Sonesta has also violated Labor Code section 432.5.

As a result of Sonesta's violations of Labor Code section 432.5, Ms. Gardner and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

### **Violation of California Labor Code Section 246**

Pursuant to Labor Code section 246(i), "[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement 'unlimited.'"

Sonesta has failed to correctly itemize the amount of accrued/available sick leave that Ms. Gardner and the Aggrieved Employees have on wage statements each pay period or provide a separate writing with such information on the designated pay date.

Sonesta's failure to provide Ms. Gardner and Aggrieved Employees with a written notice setting forth the amount of paid sick leave available for use on either Ms. Gardner's and the Aggrieved Employees' itemized wage statements described in Section 226 or in a separate writing provided on the designated pay date with Ms. Gardner's and other Aggrieved Employees' payments of wages violates Labor Code section 246. Ms. Gardner and the Aggrieved Employees are therefore

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entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

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

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

Sonesta has failed to provide Ms. Gardner and other Aggrieved Employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1). Sonesta's failure to provide Ms. Gardner and other Aggrieved Employees with written notice of basic information regarding their employment with Sonesta is in violation of Labor Code section 2810.5. Ms. Gardner and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

**California Labor Code Section 558(a)**

Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."<sup>4</sup> Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." Sonesta, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Gardner's and other Aggrieved

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

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Employees' rights by violating various sections of the Labor Code as set forth herein.

Pursuant to Labor Code section 2699(f) and the other Labor Code sections as set forth above, Ms. Gardner seeks recovery of applicable civil penalties. In the alternative to the penalties above, Ms. Gardner seeks penalties pursuant to Labor Code section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Labor Code section 558(a)(1) and 558(a)(2) should such provision be applicable.

\* \* \*

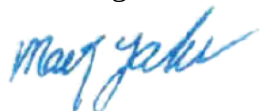
Accordingly, Ms. Gardner seeks the remedies set forth above for herself, the State of California, and all other Aggrieved Employees. Specifically, pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Ms. Gardner, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other Aggrieved Employees, and the State of California against Sonesta for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 246, 432.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5 and the applicable Wage Order, as well as sections 225.5, 226(c), and 1198.5, which are 'curable' violations pursuant to section 2699.3(c)(2)(A).

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

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

Mark Yablonovich  
Tony Roberts  
LAW OFFICES OF MARK YABLONOVICH  
9595 Wilshire Boulevard, Suite 900  
Beverly Hills, California 90212  
(310) 286-0246  
Mark@Yablonovichlaw.com  
Tony@Yablonovichlaw.com

Best Regards,



Mark Yablonovich

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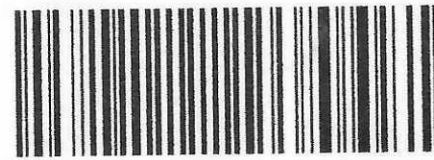
Page 15 of 15

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*Via U.S. Certified Mail*

LAW OFFICES OF  
**MARK YABLONOVICH**  
 9595 WILSHIRE BOULEVARD, SUITE 900  
 BEVERLY HILLS, CALIFORNIA 90212-2511



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| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail Restricted Delivery        |
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| <input type="checkbox"/> Certified Mail Restricted Delivery            | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
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| <input type="checkbox"/> Collect on Delivery Restricted Delivery       |                                                                     |
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Corporation  
Two Newton Place  
255 Washington Street, Suite 300  
Newton, MA 02428



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2. Article Number (Transfer from service label)

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

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| <input type="checkbox"/> Collect on Delivery                           |                                                                     |
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