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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF FRESNO**

SHELTON HARPER, an individual, on  
behalf of himself and others similarly situated

PLAINTIFF,

v.

SAN MAR PROPERTIES, INC.; and DOES  
1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21CECG03563

[Case Assigned for All Purposes to Hon.  
Rosemary McGuire in Dept. 502]

**[Amended as a matter of right, pursuant to  
Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1194.2, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions Code § 17200
7. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff SHELTON HARPER, an individual, on behalf of himself, all others similarly  
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”  
3 under Labor Code Private Attorneys General Act of 2004, §2699, *et seq.* (hereafter “PAGA”),  
4 complains of Defendant SAN MAR PROPERTIES, INC. (“Defendant”) and each of them, as  
5 follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §  
9 382, and Labor Code §2699, *et seq.*, on behalf of Plaintiff and a Proposed Class defined as:

10 All non-exempt employees who are employed or have been  
11 employed by SAN MAR PROPERTIES, INC., in the State of  
12 California who worked one or more pay periods since four (4) years  
13 prior to the filing of this action to the present plus any additional  
14 time during which the statutes of limitation for the causes of action  
herein were tolled pursuant to Emergency Rule 9 of the California  
Rules of Court, the ‘Emergency Rules Related to COVID-19’.  
 (“Proposed Class”)

15 2. Any limitations period referenced in this complaint is extended pursuant to  
16 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the  
17 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of  
18 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020  
19 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action  
20 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the  
21 relevant time period or statute of limitations referenced in this complaint is extended into the past  
22 by the number of days in which this tolling was in effect.

23 3. For at least four (4) years prior to the filing of this action continuing to the present,  
24 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class  
25 members when they work more than eight (8) hours in a day or forty (40) hours in a week.  
26 Defendant failed to pay wages and/or overtime to Plaintiff and the Proposed Class for the following  
27 reasons:

28 a. First, Plaintiff and members of the Proposed Class were not properly

1 compensated for all hours worked. Plaintiff and Proposed Class members were  
2 routinely required to work clock out for their meal periods, but continue to  
3 perform their work duties. Thus, they were required to work “off the clock”  
4 during their meal periods. Though Plaintiff and Proposed Class members were  
5 routinely required to perform compensable activities during their meal periods,  
6 Defendant failed to compensate them for this time actually worked.

- 7 b. Second, Plaintiff and the Proposed Class were not properly compensated at the  
8 appropriate rate of pay because Defendant failed to include bonus and premium  
9 pay when calculating Plaintiff and all Proposed Class member’s regular rate of  
10 pay in pay periods where they were paid bonus and/or non-discretionary  
11 compensation like a housing allowance and were also paid overtime. As such,  
12 Plaintiff and the Proposed Class were paid at an overtime rate less than the rate  
13 required under California law.

14 4. From at least four (4) years prior to the filing of this action and continuing to the  
15 present, Defendant failed to apprise Plaintiff and the Proposed Class of their rights associated with  
16 meal periods and failed to provide timely and compliant meal periods. As explained above,  
17 Plaintiff and the Proposed Class are required to clock out for their meal periods, but continue to  
18 perform their work duties. As a result of these unlawful practices, Defendant fails to accurately  
19 record meal periods for Plaintiff and the Proposed Class members. Further, Defendant failed to  
20 pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each  
21 workday that the first meal period of at least thirty (30) minutes was not provided within the first  
22 (5) hours of the shift in violation of the Labor Code and *Ferra v. Loews Hollywood Hotel, LLC*<sup>1</sup>.  
23 Defendant has had a consistent policy of paying meal period premiums at the base rate and not the  
24 blended rate when meal premiums are provided in violation of Labor Code §§ 226.7 and 512.

25  
26 <sup>1</sup> Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California  
27 Supreme Court set forth the formula for calculating the one extra hour of premium pay that  
28 employees are owed if an employer fails to provide a compliant meal period or rest break.  
Specifically, the Court held that those premium payments must include the hourly value of any  
nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at  
an employee’s base hourly rate.

1           5.       From at least four (4) years prior to the filing of this action and continuing to the  
2 present, Defendant failed to apprise Plaintiff and the Proposed Class of their rights associated with  
3 rest periods and failed to provide compliant rest periods. Defendant maintained a consistent policy  
4 of failing to provide Plaintiff and the Proposed Class with rest breaks of not less than ten (10)  
5 minutes per four (4) hour work period or major fraction thereof. Plaintiff and the Proposed Class  
6 are required to work four hour increments (or major fractions thereof) without being provided with  
7 a ten (10) minute rest period. Further, Plaintiff and the Proposed Class were not compensated with  
8 one (1) hour of wages at the regular rate of compensation for each missed rest period in violation  
9 of the Labor Code. As with meals, Defendant has had a consistent policy of paying rest period  
10 premiums at the base rate and not the blended rate when rest period premiums are provided in  
11 violation of the Labor Code and *Ferra*.

12           6.       For at least one (1) year prior to the filing of this action continuing to the present,  
13 Defendant has failed to comply with Labor Code § 226(a). Plaintiff and the Proposed Class are  
14 issued wage statements in violation of Labor Code §226(a)(2) and do not accurately show the  
15 number of total hours worked at each applicable hourly rate in effect during the pay period and the  
16 corresponding number of hours worked at each hourly rate by Plaintiff and the Proposed Class in  
17 violation of Labor Code §226(a)(9). Further, Plaintiff and the Proposed Class are issued wage  
18 statements that do not accurately include meal and rest period premiums as a result of the claims  
19 alleged above and when they do, they are not the accurate rate.

20           7.       For at least three (3) years prior to the filing of this action continuing to the present,  
21 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and  
22 the Proposed Class.

23           8.       Plaintiff, on behalf of himself and all Proposed Class members brings this action  
24 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, and 1199; Wage  
25 Order 5-2001; and California Code of Regulations, Title 8, Section 11050, seeking unpaid  
26 wages/overtime, meal and rest period penalties, accurate itemized wage statements, other  
27 penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

28           9.       Plaintiff, on behalf of himself and all Proposed Class members, pursuant to

1 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and  
2 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

3 10. For at least one (1) year prior to the date of the letter sent to the Labor Workforce  
4 and Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to  
5 PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph  
6 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim  
7 pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently or  
8 formerly employed by Defendant during the liability period as defined in his PAGA notice letter  
9 (see Exhibit “1”), brings this representative action pursuant to Labor Code §2699, et seq. seeking  
10 penalties for Defendant’s failure to comply with Labor Code §§ 201, 202, 203, 226(a), 226.7, 510,  
11 512, 551, 1194, 1194.2, 1199, and IWC Wage Order 5-2001.

## 12 **II.**

### 13 **JURISDICTION AND VENUE**

14 11. This Court has subject matter jurisdiction over all causes of action asserted herein  
15 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure  
16 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive  
17 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the  
18 State of California or is subject to adjudication in the courts of the State of California.

19 12. This Court has personal jurisdiction over Defendant because Defendant has caused  
20 injuries in the County of Fresno and the State of California through their acts, and by their violation  
21 of the California Labor Code, California state common law, and California Business & Professions  
22 Code § 17200, et seq.

23 13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of  
24 Civil Procedure § 395. Defendant operates within California and do business within Fresno  
25 County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class  
26 members within the State of California and the county of Fresno.

27 14. This case should be classified as complex according to Rule 3.400 of the California  
28 Rules of Court, and assigned to a complex litigation judge and department, as it will involve

substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

15. Plaintiff files this amended complaint adding a claim for penalties under Labor Code §2699, *et seq.* as a matter of right. (*see* Labor Code § 2699.3(a)(2)(C)).

### **III.**

### **PARTIES**

#### **A. PLAINTIFF**

16. Plaintiff SHELTON HARPER is a resident of California.

17. Plaintiff and all Proposed Class members, were regularly required to:

- a. Work without being paid for all hours at the appropriate overtime rate;
- b. Work without being provided compliant meal periods;
- c. Work without being provided compliant rest periods; and,
- d. Work without being provided accurate itemized wage statements.

18. Defendant willfully failed to compensate Plaintiff and all Proposed Class members for wages at the termination of their employment with Defendant.

19. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

20. Plaintiff and all aggrieved employees, as defined in his notice letter to the LWDA, are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (*see* Labor Code §2699(c).)

#### **B. DEFENDANT**

21. Defendant SAN MAR PROPERTIES, INC. is believed to be a California corporation operating within the State of California. Defendant’s corporate address is believed to be 6356 N Fresno Street Fresno, CA 93710. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and do business throughout the State of California.

22. The true names and capacities, whether individual, corporate, associate, or

otherwise, of Defendant sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendant by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendant designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendant designated hereinafter as DOES when such identities become known.

23. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendant. Furthermore, Defendant in all respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class members.

24. Furthermore, Defendant acted in all respects as the employers or joint employers of the Proposed Class. Defendant, and each of them, exercised control over the wages, hours or working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or engaged, thereby creating a common law employment relationship, with the Proposed Class. Therefore, Defendant, and each of them, employed or jointly employed the Proposed Class.

#### IV.

## FACTUAL BACKGROUND

25. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been classified as non-exempt employees by Defendant. Defendant hires employees who work as hourly employees who are paid on an hourly basis.

26. Upon information and belief, Plaintiff and the Proposed Class are covered by California Industrial Welfare Commission Occupational Wage Order No. 5-2001 (Title 8 Cal. Code of Regs. § 11050).

27. On a regular and consistent basis, Plaintiff and the Proposed Class members were not paid at the proper rate of compensation. Plaintiff and Proposed Class members were not properly compensated at the correct overtime rate of pay for hours in excess of eight (8) in one day and/or forty (40) hours in one week for the following reasons:

1 a. First, Plaintiff and members of the Proposed Class were not properly  
2 compensated for all hours worked. Plaintiff and Proposed Class members were  
3 routinely required to work clock out for their meal periods, but continue to  
4 perform their work duties. Thus, they were required to work “off the clock”  
5 during their meal periods. Though Plaintiff and Proposed Class members were  
6 routinely required to perform compensable activities during their meal periods,  
7 Defendant failed to compensate them for this time actually worked.

8 b. Second, Defendant failed to include bonus and premium pay when calculating  
9 Plaintiff and all Proposed Class members’ regular rate of pay for the purposes  
10 of determining the correct overtime rate in pay periods where they were paid  
11 bonus and/or premium pay and were also paid overtime and/or double-time.  
12 This includes housing allowance and/or other bonuses that were not properly  
13 blended. As such, Plaintiff and the Proposed Class were paid at a rate less than  
14 the rate required under California law.

15 28. Plaintiff and all Proposed Class members have been forced by Defendant to work  
16 over five (5) hours in one day without being provided a timely thirty (30) minute uninterrupted  
17 meal break and not being compensated one (1) hour of pay at their regular rate of compensation  
18 for each workday that a meal period was not provided or provided after five (5) hours, all in  
19 violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders.  
20 When premium pay was provided, Defendant has had a consistent policy of paying meal period  
21 premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.  
22 Defendant also failed to inform Plaintiff and the members of the Proposed Class of their right to  
23 take compliant meal periods by way of a lawful policy.

24 29. Defendant failed to provide Plaintiff and the Proposed Class members with  
25 compliant rest breaks of not less than ten (10) minutes per four (4) hour work period or major  
26 fraction thereof. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class  
27 of this right. Plaintiff and the Proposed Class have been required to work four-hour increments  
28 (or major fractions thereof) without being provided with compliant ten (10) minute rest periods.

Further, Plaintiff and the Proposed Class were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period as required. When premium pay was provided, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7.

30. For at least one (1) year prior to the filing of this action continuing to the present, Defendant has failed to comply with Labor Code § 226(a). Plaintiff and the Proposed Class are issued wage statements in violation of Labor Code §226(a)(2) and do not accurately show the number of total hours worked at each applicable hourly rate in effect during the pay period and the corresponding number of hours worked at each hourly rate by Plaintiff and the Proposed Class in violation of Labor Code §226(a)(9). Further, Plaintiff and the Proposed Class are issued wage statements that do not include meal and rest period premiums as a result of the claims alleged above and when they do, they are not accurate rate.

31. Defendant willfully failed to pay wages and compensation, when Plaintiff and all Proposed Class members quit or were discharged. This failure was willful, without legal justification, and interfered with Plaintiff's and Class members' rights.

32. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

## **V.**

### **CLASS ACTION ALLEGATIONS**

33. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a proposed class composed of and defined as follows:

All non-exempt employees who are employed or have been employed by SAN MAR PROPERTIES, INC., in the State of California who worked one or more pay periods since four (4) years prior to the filing of this action to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the 'Emergency Rules Related to COVID-19'. ("Proposed Class")

34. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by

1 limitation to particular issues.

2 35. This action has been brought and may properly be maintained as a class action  
3 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined  
4 community of interest in the litigation and the Proposed Class are easily ascertainable.

5 **A. NUMEROSITY**

6 36. The potential members of the Proposed Class as defined are so numerous that  
7 joinder of all the members of the Proposed Class is impracticable. While the precise number of  
8 Proposed Class members has not been determined at this time, Plaintiff is informed and believes  
9 that Defendant currently employ, and during the relevant time periods employed over 50 members  
10 of the Proposed Class.

11 37. Plaintiff alleges that Defendant's employment records would provide information  
12 as to the number and location of all Proposed Class members. Joinder of all members of the  
13 Proposed Class is not practicable.

14 **B. COMMONALITY**

15 38. There are questions of law and fact common to the Proposed Class that predominate  
16 over any questions affecting only individual Proposed Class members. These common questions  
17 of law and fact include, without limitation:

18 a. Whether Defendant failed to pay wages and/or overtime compensation as  
19 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, 1194.2, and 1199;

20 b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 5-  
21 2001 or other applicable IWC Wage Orders by failing to inform Plaintiff and the Proposed Class  
22 of their right to take meal periods and by failing to provide required meal periods throughout the  
23 term of employment and/or failing to compensate said employees one (1) hour of wages at their  
24 regular rate of compensation in lieu of meal periods;

25 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 5-  
26 2001 or other applicable IWC Wage Orders by failing to inform Plaintiff and the Proposed Class  
27 of their right to take rest periods and by failing to provide required rest periods throughout the term  
28 of employment and/or failing to compensate said employees one (1) hour of wages at their regular

1 rate of compensation in lieu of rest periods;

2 d. Whether Defendant violated Labor Code § 226(a) by failing to provide  
3 accurate itemized wage statements that accurately report the total hours worked and the applicable  
4 rates for all hours worked and the corresponding number of hours worked at each hourly rate by  
5 the employee and meal and rest period premiums;

6 e. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay  
7 compensation due and owing at the time that any Proposed Class Member's employment with  
8 Defendant terminated;

9 f. Whether Defendant violated § 17200, *et seq.* of the Business & Professions  
10 Code by engaging in the acts previously alleged; and

11 g. Whether Plaintiff and the members of the Proposed Class are entitled to  
12 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

13 h. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the  
14 acts alleged herein.

15 **C. TYPICALITY**

16 39. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and  
17 all members of the Proposed Class sustained injuries and damages arising out of and caused by  
18 Defendant's common course of conduct in violation of laws, regulations that have the force and  
19 effect of law, and statutes as alleged herein.

20 **D. ADEQUACY OF REPRESENTATION**

21 40. Plaintiff will fairly and adequately represent and protect the interests of the  
22 members of the Proposed Class.

23 41. Counsel who represent Plaintiff and the Proposed Class are competent and  
24 experienced in litigating large employment class actions.

25 **E. SUPERIORITY OF CLASS ACTION**

26 42. A class action is superior to other available means for the fair and efficient  
27 adjudication of this controversy. Individual joinder of all Proposed Class members is not  
28 practicable, and questions of law and fact common to the Proposed Class predominate over any

1 questions affecting only individual members of the Proposed Class. Each member of the Proposed  
2 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or  
3 practice of failing to pay all wages due, failing to provide meal and rest periods, failing to provide  
4 accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

5 43. Class action treatment will allow those similarly situated persons to litigate their  
6 claims in the manner that is most efficient and economical for the parties and the judicial system.  
7 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this  
8 action that would preclude its maintenance as a class action.

9 **VI.**

10 **FIRST CAUSE OF ACTION**

11 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

12 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

13 **LABOR CODE §§ 510, 1194, 1194.2, AND 1199**

14 44. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates  
15 by reference all previous paragraphs.

16 45. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal  
17 minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that  
18 eight (8) hours of labor constitutes a day's work and any work in excess of eight (8) hours in one  
19 workday and any work in excess of forty (40) hours in any one workweek must be compensated  
20 at the rate of no less than one and one-half times the regular rate of pay for an employee. Any  
21 work in excess of twelve (12) hours in one day shall be compensated at the rate of no less than  
22 twice the regular rate of pay. California law also requires that any compensation, including bonus  
23 and premium pay, must be included in the regular rate of pay for the purposes of determining the  
24 correct overtime rates.

25 46. Plaintiff and the Proposed Class were forced to work on a regular and consistent  
26 basis without receiving compensation for all hours worked at proper overtime rate when they were  
27 working more than eight (8) hours in one day or forty (40) hours in one week for the following  
28 reasons:

1 a. First, Plaintiff and the Proposed Class members were not properly compensated  
2 for all hours worked. Plaintiff and the Proposed Class members were routinely  
3 required to clock out for their meal periods, but continue to perform their work  
4 duties. Thus, they were required to work “off the clock” during their meal  
5 periods. Though Plaintiff and the Proposed Class members were routinely  
6 required to perform compensable activities during their meal periods,  
7 Defendant failed to compensate them for this time actually worked.

8 b. Second, Plaintiff and the Proposed Class were not properly compensated at the  
9 appropriate overtime rate of pay because Defendant failed to include bonus and  
10 premium pay when calculating Plaintiff and all Proposed Class member’s  
11 regular rate for the purpose of determining the correct overtime rates in pay  
12 periods where they were paid bonus and/or premium pay and were also paid  
13 overtime. This includes housing allowance and/or other bonuses that were not  
14 properly blended.

15 47. As such, Plaintiff and the Proposed Class were paid at a regular rate less than the  
16 rate required under California law for all work in excess of eight (8) hours in a workday and/or  
17 forty (40) hours in a workweek.

18 48. By their policy of failing to include premium and bonus pay when calculating the  
19 regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194,  
20 1194.2, and 1199.

21 49. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class  
22 members have been deprived of wages and/or overtime, in amounts to be determined at trial, and  
23 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and  
24 costs.

25 ///

1 **VII.**

2 **SECOND CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

5 **LABOR CODE § 226.7 AND LABOR CODE § 512**

6 50. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates  
7 by reference all previous paragraphs.

8 51. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of  
9 compensation for each meal period the employer fails to provide. Employees are entitled to a first  
10 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the  
11 first five (5) hours of the shift. Defendant failed to maintain a policy informing Plaintiff and the  
12 Proposed Class of these rights.

13 52. Wage Order No.5, §7(A)(3)[“Every employer shall keep accurate information  
14 with respect to each employee... .[¶] ... [¶] ...Meal periods... shall also be recorded.”].)  
15 Defendant fails to accurately record meal periods for Plaintiff and the Proposed Class members.

16 53. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.  
17 Defendant failed to provide Plaintiff and the Proposed Class with timely and proper meal periods  
18 of not less than thirty (30) minutes as required by the Labor Code during the relevant time period.  
19 Defendant required Plaintiff and the Proposed Class to clock out for their meal periods, but  
20 continue to perform their work duties including, but not limited to being available on a walkie  
21 talkie and/or phone at all times during purported meal periods. As a result of these unlawful  
22 practices, Defendant fails to provide meal periods for Plaintiff and the Proposed Class members.

23 54. Defendant has had a consistent policy of failing to pay Plaintiff and the Proposed  
24 Class one (1) hour of pay at the employees’ regular rate of compensation for each workday that  
25 the first meal period was not provided within the first (5) hours of the shift. As discussed above,  
26 very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme  
27 Court set forth the formula for calculating the one extra hour of premium pay that employees are  
28 owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court

1 held that those premium payments must include the hourly value of any nondiscretionary earnings  
2 (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate.  
3 Here, when meal period premiums are provided, Defendant has had a consistent policy of paying  
4 meal period premiums at the base rate and not the appropriate blended rate in violation of Labor  
5 Code §§ 226.7 and 512.

6 55. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to  
7 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per  
8 missed meal break, per day in a sum to be proven at trial.

9 **VIII.**

10 **THIRD CAUSE OF ACTION**

11 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

12 **FAILURE TO PROVIDE REST PERIODS PURSUANT TO**

13 **LABOR CODE § 226.7**

14 56. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates  
15 by reference all previous paragraphs.

16 57. Labor Code § 226.7 and IWC Wage Order 1 require an employer to provide rest  
17 periods or to pay an additional one (1) hour of wages for each rest period the employer fails to  
18 provide. Employees are entitled to a ten (10) minute rest break for every four (4) hours worked or  
19 major fraction thereof.

20 58. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of  
21 this right.

22 59. Defendant maintained a consistent policy of failing to provide Plaintiff and the  
23 Proposed Class with rest breaks of not less than ten (10) minutes per four (4) hour work period or  
24 major fraction thereof. Plaintiff and the Proposed Class have been required to work four-hour  
25 increments (or major fractions thereof) without being provided with compliant ten (10) minute rest  
26 periods.

27 60. Plaintiff and the Proposed Class were also not compensated with one (1) hour of  
28 wages at the regular rate of compensation for each missed rest period as required by Labor Code

1 § 226.7. As explained above, *Ferra* requires the rest period premium payments must include the  
2 hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot  
3 simply be paid at an employee's base hourly rate. As with meals, Defendant has had a consistent  
4 policy of paying rest period premiums at the base rate and not the appropriate blended rate in  
5 violation of the Labor Code.

6 61. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to  
7 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per  
8 missed rest break, per day in a sum to be proven at trial.

9 **IX.**

10 **FOURTH CAUSE OF ACTION**

11 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

12 **VIOLATION OF LABOR CODE § 226(A)**

13 62. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates  
14 by reference all previous paragraphs.

15 63. Labor Code §226(a) requires employers to issue accurate itemized wage statements  
16 in writing that show total hours worked by the employee and all applicable hourly rates in effect  
17 during the pay period and the corresponding number of hours worked at each hourly rate by the  
18 employee. (Labor Code §§ 226(a)(2) and (9) respectively.)

19 64. Defendant issues Plaintiff and the Proposed Class members itemized wage  
20 statements that do not accurately show total hours worked or all applicable hourly rates in effect  
21 during the pay period and the corresponding number of hours worked at each hourly rate in  
22 violation of the Labor Code.

23 65. Further, Plaintiff and the Proposed Class are issued wage statements that do not  
24 include meal and rest period premiums as a result of the claims alleged above and when they do,  
25 they are not at the accurate rate.

26 66. Defendant's failure to provide accurate itemized wages statements according to  
27 Labor Code § 226(a) was all done on a regular and consistent basis.

28 67. An employee suffering injury as a result of a knowing and intentional failure by an

1 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual  
2 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred  
3 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an  
4 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and  
5 reasonable attorneys' fees.

6 **X.**

7 **FIFTH CAUSE OF ACTION**

8 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

9 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

10 68. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates  
11 by reference all previous paragraphs.

12 69. Numerous members of the Proposed Class including the Plaintiff are no longer  
13 employed by Defendant. They were either fired or quit Defendant's employ.

14 70. Defendant's failure to pay wages, as alleged above was willful in that Defendant  
15 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to  
16 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a  
17 penalty until paid for a period of up to thirty (30) days from the time they were due.

18 71. Defendant has failed to pay Plaintiff and others a sum certain at the time of  
19 termination or within seventy-two (72) hours of their resignation, and have failed to pay those  
20 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and  
21 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class  
22 members' daily wage multiplied by thirty (30) days.

23 **XI.**

24 **SIXTH CAUSE OF ACTION**

25 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

26 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

27 72. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates  
28 by reference all previous paragraphs.

1           73.     This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,  
2 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to  
3 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this  
4 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general  
5 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public  
6 interest within the meaning of Code of Civil Procedure § 1021.5.

7           74.     Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,  
8 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other  
9 appropriate equitable relief.

10          75.     Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business  
11 practices.

12          76.     California’s wage and hour laws express fundamental public policies. Providing  
13 employees with proper wages and compensation are fundamental public policies of this State and  
14 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce  
15 vigorously minimum labor standards, to ensure that employees are not required or permitted to  
16 work under substandard and unlawful conditions, and to protect law-abiding employers and their  
17 employees from competitors who lower their costs by failing to comply with minimum labor  
18 standards.

19          77.     Defendant has violated statutes and public policies as alleged herein. Through the  
20 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have  
21 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair  
22 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,  
23 and all persons similarly situated, and all interested persons of rights, benefits, and privileges  
24 guaranteed to all employees under law.

25          78.     Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in  
26 violation of § 17200, *et seq.* of the Business & Professions Code.

27          79.     Defendant, by engaging in the conduct herein alleged, either knew or in the exercise  
28 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of

§ 17200, *et seq.* of the Business & Professions Code.

80. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and others similarly situated have been damaged in a sum as may be proven.

81. Unless restrained, Defendant will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the proposed Class the money Defendant has unlawfully failed to pay.

## **XII.**

### **SEVENTH CAUSE OF ACTION**

#### **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

82. Plaintiff, on behalf of himself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

83. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code §2699, *et seq.* because of Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 551, 1194, 1194.2, 1199; Wage Order 5-2001; and California Code of Regulations, Title 8, Section 11050, which call for civil penalties.

84. For each such penalty, Plaintiff and the aggrieved employees are entitled to penalties in an amount to be shown at trial, subject to the following formula:

a. \$100 for the initial violation per employee per pay period.

b. \$200 for each subsequent violation per employee per pay period.

85. These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

86. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the LWDA<sup>2</sup> and mailed a letter by certified mail to Defendant's entity address, which is 6356 N Fresno

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<sup>2</sup> Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California

Street Fresno, CA 93710, as proscribed by the Code on December 2, 2021, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 551, 1194, 1194.2, 1199, and IWC Wage Order 5-2001. (see Exhibit "1.") Plaintiff obtained an e-filing confirmation from the LWDA confirming receipt of the notice (see Exhibit "2").

87. As no letter evidencing the LWDA's intention to investigate was received by Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A).

88. Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Class and Representative Action Complaint immediately.

### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid wages and/or overtime not paid to Plaintiff and each Proposed Class member from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For compensatory damages in the amount of Plaintiff's and each Proposed Class members' hourly wage for each meal and/or rest period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000);

4. For penalties pursuant to Labor Code § 203 for all employees who were terminated or resigned equal to their daily wage times thirty (30) days;

5. An award of prejudgment and post judgment interest;

6. An order enjoining Defendant and its agents, servants, and employees, and all

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Labor and Workforce Development Agency / Department of Industrial Relations website (<https://dir.tfaforms.net/308>).

persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or overtime, meal periods, rest periods, accurate itemized wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and IWC 5-2001;

7. For restitution for unfair competition pursuant to Business & Professions Code § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

8. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 551, 1194, 1194.2, 1199, and IWC Wage Order 5-2001;

9. An award providing for payment of costs of suit;

10. An award of attorneys' fees; and

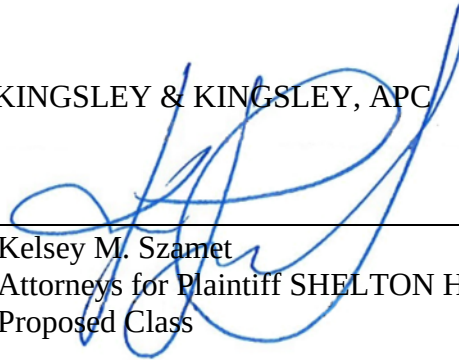
11. Such other and further relief as this Court may deem proper and just.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

DATED: February 7, 2022

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet  
Attorneys for Plaintiff SHELTON HARPER and the  
Proposed Class

EXHIBIT "1"

# KINGSLEY & KINGSLEY

| L A W Y E R S |

December 2, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

SAN MAR PROPERTIES, INC.  
6356 N Fresno Street  
Fresno, CA 93710

Re: SHELTON HARPER v. SAN MAR PROPERTIES, INC.  
*California Labor Code § 2699 Penalties*

Gentlepersons:

This office represents SHELTON HARPER (“Plaintiff”) and a proposed group of current and former employees working for SAN MAR PROPERTIES, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by SAN MAR PROPERTIES, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 16 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Defendant has violated Labor Code §§ 510, 1194, 1194.2, and 1199. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that eight (8) hours of labor constitutes a day’s work and any work in excess of eight (8) hours in one workday and any work in excess of

## LABOR & WORKFORCE DEVELOPMENT AGENCY

### *California Labor Code §2699 Penalties*

December 2, 2021

Page 2 of 4

forty (40) hours in any one workweek must be compensated at the rate of no less than one and one-half times the *regular rate of pay* for an employee. Any work in excess of twelve (12) hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation, including bonus and premium pay, must be included in the regular rate of pay for the purpose of determining the correct overtime rates.

Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees at the appropriate rate of pay. First, Plaintiff and other aggrieved employees were not properly compensated for all hours worked. Plaintiff and the aggrieved employees were routinely required to clock out for their meal periods, but continue to perform their work duties. Thus, they were required to work “off the clock” during their meal periods. Though Plaintiff and the aggrieved employees were routinely required to perform compensable activities during their meal periods, Defendant failed to compensate them for this time actually worked. As such, Defendant failed to properly compensate Plaintiff and all aggrieved employees at the appropriate rate of pay and failed to pay them for each and every hour worked and Defendant has violated Labor Code §§ 510, 1194, and 1199 with respect to Plaintiff and all aggrieved employees. Second, Plaintiff and the aggrieved employees were not properly compensated at the appropriate rate of pay because Defendant failed to include Plaintiff’s and the aggrieved employees’ bonus and premium pay when calculating their regular rate for the purpose of determining the correct overtime rate in pay periods where they were paid bonus and/or premium pay and were also paid overtime. This includes housing allowance and/or other bonuses that were not properly blended. As such, Plaintiff and the aggrieved employees were paid at a regular rate less than the rate required under California law.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant has had a consistent policy of: (1) failing to provide Plaintiff and the aggrieved employees timely and compliant meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each workday that the complaint meal period was not provided. In addition, as explained above, Plaintiff and all aggrieved employees are required to clock out for their meal periods, but continue to perform their work duties. As a result of these unlawful practices, Defendant fails to provide all required meal periods.

Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court

## LABOR & WORKFORCE DEVELOPMENT AGENCY

### *California Labor Code §2699 Penalties*

December 2, 2021

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held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when meal period premiums were provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512. In addition, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods.

Pursuant to Labor Code § 226.7 and Wage Order 5-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period or major fraction thereof. Defendant failed to maintain a policy informing Plaintiff and the aggrieved employees of this right. Plaintiff and all aggrieved employees have been required to work four-hour increments (or major fractions thereof) without being provided with a ten (10) minute rest period. As such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods.

Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period in violation of *Ferra*. As discussed above, the California Supreme Court held that premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, as with meals, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate when rest period premiums are provided in violation of the Labor Code.

Industrial Welfare Commission ("IWC") Wage Order 5-2001 section 7(a)(3) requires an employer to keep records of when the employee begins and ends each work period and meal period. Labor Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the IWC or from violating, refusing, or neglecting to comply with any order of the commission's orders regarding wages, hours, and working conditions. Defendant does not record meal periods for Plaintiff and the aggrieved employees and, if and when they do, meal periods are not accurately recorded. As such, Defendant has violated this statute and the Wage Order by failing to keep accurate records.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each employee an accurate itemized statement in writing showing a number of specific items, including all hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendant has failed to maintain accurate itemized wage statements that include all hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee under Labor Code §§ 226(a)(2) and (9). Specifically, the double time rates are not displayed correctly on the wage statements that are issued to Plaintiff and the aggrieved employees. Further, Plaintiff

LABOR & WORKFORCE DEVELOPMENT AGENCY

*California Labor Code §2699 Penalties*

December 2, 2021

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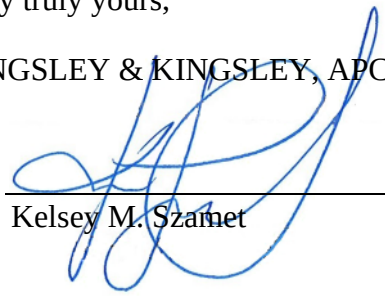
and the aggrieved employees are issued wage statements that do not include meal and rest premiums as a result of the claims alleged above and when they are provided, they are not provided at the accurate rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 551, 1194, 1194.2, 1199 and IWC Wage Order 5 -2001 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/km

- CC:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
  2. San Mar Properties via USPS Certified Mail # 7020 0640 0002 1439 7946
  3. Abramson Labor Group 3580 Wilshire Blvd Ste 1260, Los Angeles, CA 90010-2513 via Electronic Mail Transmission: [wza@abramsonlabor.com](mailto:wza@abramsonlabor.com); [dani@abramsonlabor.com](mailto:dani@abramsonlabor.com)

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /  
Department of Industrial Relations

## Private Attorneys General Act (PAGA) – Filing

## New PAGA Claim Notice

## Your Information (Person Who is Filing)

Your First Name \*

Kelsey

Your Last Name \*

Szamet

Firm Name (if any) \*

Kingsley &amp; Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address \*

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt \*

16133 Ventura Blvd., Ste 1

Your Mobile Phone Number

8189908300

Your City \*

Encino

Your Work Phone Number

Your State \*

California ▼

Your Zip/Postal Code \*

91436

## Plaintiff Information

Plaintiff/Aggrieved Employee Name \*

Shelton Harper

Plaintiff/Aggrieved Employee Occupation \*

Property Manager

[Add Additional Plaintiffs](#)

## Employer Information

Employer Entity Type

Please select... ▼

Employer Name \*

San Mar Properties, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt \*

Employer City \*

|                                       |                                                                |
|---------------------------------------|----------------------------------------------------------------|
| 6356 N Fresno Street                  | Fresno                                                         |
| <b>Employer State *</b><br>California | <b>Employer Zip/Postal Code *</b><br>93710                     |
| <b>Employer Industry *</b><br>Other   | <b>Employer Industry for "Other" *</b><br>real estate managers |

**Add additional defendants**

☐ Add any entity other than an individual

☐ Add an individual/sole proprietor employer

**Notice General Information**

**Estimated Number of Employees Impacted by Violations \***

50

## Notice Violations – Check All that Apply \*

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

## Child Labor – Specify Ages

## Provide Details of Other Violation \*

## Other(Maybe Multiple)

- ☐ Other Violation

**PAGA Claim Type – Check All that Apply \***

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

**Filing Fee**

A filing fee of \$75 is required to file a new PAGA claim notice.

**IFP**

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

**Billing information****Billing First Name \***

Eric

**Billing Last Name \***

Kingsley

**Billing Email \***

service@kingsleykingsley.c

**Billing Phone**

8189908300

**Billing Street Name, Number and Suite/Apt \***

16133 Ventura Blvd., Ste 1200

**Billing City \***

Encino

**Billing State \***

California

**Billing Zip/Postal Code \***

91436

**Credit Card Type \***

[REDACTED]

**Credit Card Number \***

[REDACTED]

**CVV Number \***

[REDACTED]

**Credit Card Expiration Month \***

[REDACTED]

mm

**Credit Card Expiration Year \***

[REDACTED]

yyyy

**Notice and Other Attachments****PAGA Claim Notice (must be a .pdf) \*** LWDA Letter – ...rties, Inc.pdf**Other Attachment – (if any) (must be a .pdf)** No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact [PAGInfo@dir.ca.gov](mailto:PAGInfo@dir.ca.gov)

**IMPORTANT NOTICE OF REDACTION RESPONSIBILITY:** All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ **I understand that, if I file, I must comply with the redaction rules consistent with this notice.**

Previous Page

Submit

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

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**From:** noreply@salesforce.com on behalf of LWDA DO NOT REPLY  
<lwdadonotreply@dir.ca.gov>  
**Sent:** Thursday, December 2, 2021 8:57 AM  
**To:** Service Email  
**Subject:** Thank you for submission of your PAGA Case.

External Email!

12/2/2021

LWDA Case No. LWDA-CM-855399-21  
Law Firm : Kingsley & Kingsley, APC  
Plaintiff Name : Shelton Harper  
Employer: San Mar Properties, Inc.  
Filing Fee : \$75.00  
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website:

[https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate\\_Attorneys\\_General\\_Act.htm&data=04%7C01%7Ckimberly%40kingsleykingsley.com%7C922e77b079574fdc7ba208d9b5b4be6f%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C0%7C0%7C637740610170923813%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjA%7CwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwiLCJXVCi6Mn0%3D%7C3000&data=q5Gu4p1MaL9Q36B4THlrI38IGaoh%2BCUSz%2FMSRAyBA4M%3D&reserved=0](https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7Ckimberly%40kingsleykingsley.com%7C922e77b079574fdc7ba208d9b5b4be6f%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C0%7C0%7C637740610170923813%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjA%7CwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwiLCJXVCi6Mn0%3D%7C3000&data=q5Gu4p1MaL9Q36B4THlrI38IGaoh%2BCUSz%2FMSRAyBA4M%3D&reserved=0)

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**From:** noreply@salesforce.com on behalf of LWDA DO NOT REPLY  
<lwdadonotreply@dir.ca.gov>  
**Sent:** Thursday, December 2, 2021 8:57 AM  
**To:** Service Email  
**Subject:** State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-855399-21

Order Number: ORD-000144360

Total:\$75.00

Card Type: XXXXXXXXXX

Date: 12/2/2021

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