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Attorneys for Plaintiff Candice Richard, a proxy for the State of California
as an aggrieved employee pursuant to the Private Attorneys General Act

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

Assigned for All Purposes Judge Randall J. Sherman

CANDICE RICHARD, a proxy for the State
of California as an aggrieved employee
pursuant to the Private Attorneys General
Act (“PAGA”),

Plaintiff,

vs.

DIMENSION DEVELOPMENT
COMPANY, INC., G&B HOTEL
EMPLOYEE LEASING LLC, and DOES 1
through 10, inclusive,

Defendants.

Case No.: 30-2022-01261804-CU-OE-CXC

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

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

Jury Trial Demanded

1 Plaintiff Candice Richard (“Plaintiff”), a proxy for the State of California as an
2 aggrieved employee, alleges, on behalf the State of California and all aggrieved employees, as
3 follows:

4 JURISDICTION AND VENUE

5 1. This is a law enforcement action under the Labor Code Private Attorneys
6 General Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Dimension Development Company, Inc., G&B
9 Hotel Employee Leasing LLC, and DOES 1 through 10, inclusive (collectively “Defendants”)
10 in California as non-exempt, hourly-paid employees, and against whom one or more violations
11 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
12 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
13 were committed, as set forth in this complaint (“Aggrieved Employees”), at any time between
14 one year before Plaintiff’s submission of the LWDA Notice (defined below) in advance of
15 Plaintiff’s filing of this complaint (in addition to all days the period was stayed or tolled) until
16 judgment. Plaintiff’s pro-rata share of civil penalties sought in this action does not exceed
17 \$75,000.

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

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

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

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

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

6. The State of California is the real party in interest under PAGA.

THE PARTIES

7. Plaintiff is a resident of California. Defendants employed Plaintiff from approximately March 16, 2021, to approximately July 18, 2021, as a non-exempt hourly-paid housekeeping employee, whose job duties included, but were not limited to, cleaning and sanitizing guest rooms at Defendants' location in Fresno, California. Plaintiff typically worked eight to twelve hours or more per workday, five to seven days per week, and up to forty or more hours per week.

8. Plaintiff is informed and believes, and thereon alleges, that Defendants are corporations authorized to do, and doing business in California, and at all times hereinafter mentioned, employers whose employees are engaged throughout this county and the State of California.

9. Plaintiff is informed and believes, and thereon alleges, that Defendants operate hospitality management companies throughout the United States, including in California.

10. Plaintiff is unaware of the true names or capacities of the Defendants sued herein 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 are
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 were 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 11. 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 12. Plaintiff is informed and believes, and thereon alleges, that each Defendant is in
15 some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
16 occurrences, and transactions alleged herein.

17 **PAGA REPRESENTATIVE ALLEGATIONS**

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

24 14. Upon information and belief, Defendants process payroll for all non-exempt,
25 hourly-paid employees working for Defendants in California, including Plaintiff and Aggrieved
26 Employees. Further, Defendants issue the same uniform and formatted wage statements to all
27 non-exempt, hourly-paid employees in California, irrespective of their work location, position,
28 or manner in which each employee's employment ended. Defendants' payroll department

1 processed payroll for non-exempt, hourly-paid employees in the same manner throughout
2 California. In other words, Defendants utilized the same methods and formulas when calculating
3 wages and any other remunerations due to Plaintiff and Aggrieved Employees in California.

4 15. Defendants continue to employ non-exempt, hourly-paid employees in
5 California.

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

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

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

18 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and Aggrieved Employees were entitled to receive at least
20 minimum wages for all hours worked. In violation of the California Labor Code, Plaintiff and
21 Aggrieved Employees were not paid at least minimum wages for all work performed.

22 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and Aggrieved Employees were entitled to meal periods in
24 accordance with the Labor Code; that Plaintiff and Aggrieved Employees were entitled to
25 payment of one additional hour of pay at their regular rates of compensation when they were not
26 provided with timely, uninterrupted, thirty-minute meal periods; and that Plaintiff and
27 Aggrieved Employees were not provided with all meal periods nor payment of one additional
28 hour of pay at their regular rates of compensation when they did not receive a timely,

uninterrupted, thirty-minute meal period.

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

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

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

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

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

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

1 all wages earned upon termination of employment. In violation of the California Labor Code,
2 Plaintiff and Aggrieved Employees did not receive payment of all wages due, including, but not
3 limited to, overtime wages, minimum wages, meal period and rest period premium wages,
4 within permissible time periods.

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

9 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that they had a duty to timely comply with requests from Plaintiff and other
11 Aggrieved Employees to inspect or receive a copy of their employment and personnel records in
12 accordance with the Labor Code, but failed to do so.

13 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that it is a violation of the California Labor Code to conduct unlawful
15 background checks and to require Plaintiff and other Aggrieved Employees to agree to unlawful
16 contract terms. Nevertheless, Defendants conducted unlawful background checks and required
17 Plaintiff and other Aggrieved Employees to agree to unlawful contract terms regarding
18 background checks.

19 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that it is a violation of the California Labor Code to collect, take, or receive
21 any gratuity or portion of a gratuity that is paid to an employee by a patron. Nevertheless,
22 Defendants had a policy and practice of retaining a percentage of gratuities paid to employees.

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

28 32. At all times herein set forth, PAGA provides that any provision of law under the

1 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
2 collected by the Labor and Workforce Development Agency (“LWDA”) for violations of the
3 California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by
4 aggrieved employees in a civil action brought on behalf of themselves and other current or
5 former employees pursuant to procedures outlined in California Labor Code section 2699.3.

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

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

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

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

1 California Labor Code section 2699 to recover civil penalties.

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

5 (a) The aggrieved employee or representative shall give (a) written notice by
6 online filing with the LWDA and by certified mail to the employer of the
7 specific provisions of the California Labor Code alleged to have been
8 violated (other than those listed in Section 2699.5), including the facts
9 and theories to support the alleged violation.

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

13 (c) The employer may cure the alleged violation within thirty-three (33)
14 calendar days of the postmark date of the notice sent by the aggrieved
15 employee or representative. The employer shall give written notice within
16 that period of time by certified mail to the aggrieved employee or
17 representative and by online filing with the LWDA if the alleged
18 violation is cured, including a description of actions taken, and no civil
19 action pursuant to Section 2699 may commence. If the alleged violation
20 is not cured within the 33-day period, the aggrieved employee may
21 commence a civil action pursuant to Section 2699.

22 37. On or about March 17, 2022, Plaintiff provided written notice by online filing to
23 the LWDA and by Certified Mail to Defendants of the specific provisions of the California
24 Labor Code alleged to have been violated, including facts and theories to support the alleged
25 violations, accompanied by the applicable filing fee of seventy-five dollars (\$75). A true and
26 correct copy of Plaintiff's written notice to the LWDA and Defendants dated March 17, 2022, is
27 attached as Exhibit 1.

28 38. As of the filing of this complaint, 65 days have passed since Plaintiff sent the

1 LWDA Notice described above to the LWDA, and the LWDA has not responded that it intends
2 to investigate Plaintiff's claims and Defendants have not cured the violations.

3 39. Thus, Plaintiff has satisfied the administrative prerequisites under California
4 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
5 addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204,
6 223, 225.5, 226(a), 226(c), 226.7, 351, 432.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197,
7 1197.1, 1198, 1198.5, 1199, and 2810.5, as well as all applicable IWC Wage Orders.

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

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

14 42. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
15 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney
16 general, seeks assessment and collection of civil penalties for herself, all Aggrieved Employees,
17 and the State of California against Defendants, in addition to other remedies, for violations of
18 California Labor Code sections 201, 202, 203, 204, 223, 225.5, 226(a), 226(c), 226.7, 351,
19 432.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 1199, and 2810.5, as
20 well as all applicable IWC Wage Orders.

21 **FIRST CAUSE OF ACTION**

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

23 **(Against all Defendants)**

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

26 44. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover various
27 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
28 2699.5. Section 2699.5 enumerates, among others, Labor Code sections 201, 202, 203, 204, 223,

226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198.

45. 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), 1182.12, and 1198.5.

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

- (a) Violations 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, 1197.1, and 1198 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) Violations 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 and/or pay meal period premiums, as set forth below;
- (d) Violations 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 and/or pay rest period premiums, as set forth below;
- (e) Violations 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 section 226(c) and 1198.5 for failure to provide the right to inspect and/or product Plaintiff's employment records upon request within the required time frame, as set forth below;
- (g) 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;

- (h) Violations of Labor Code section 1198 and the applicable IWC Wage Order for failure to maintain accurate time records, as set forth below;
- (i) Violations of Labor Code section 204 for failure to timely pay all wages during employment, as set forth below;
- (j) Violations of Labor Code sections 201, 202, and 203, for failure to timely pay all earned wages upon termination, as set forth below;
- (k) Violations 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;
- (l) Violations of California Labor Code sections 226(c) and 1198.5 for failure to provide the right to inspect and/or produce Plaintiff's employment records upon request within the required time frame as set forth below;
- (m) Violations of California Labor Code section 432.5 for failure to conduct complaint background checks, as set forth below; and
- (n) Violations of California Labor Code section 351 for withholding portions of gratuities paid by patrons to employees, as set forth below.

**FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF LABOR CODE SECTIONS 510 AND 1198 AND
CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 3**

47. 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."

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

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

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

14 51. An employee's regular rate of pay includes all remuneration for employment
15 paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

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

21 53. At all relevant times, Defendants failed to pay all overtime wages owed to
22 Plaintiff and Aggrieved Employees. During the relevant time period, Plaintiff and other
23 Aggrieved Employees were not paid overtime premiums for all of the hours they worked in
24 excess of eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a
25 week, and/or for the seventh consecutive day of work, sometimes because all hours that they
26 worked were not recorded, and other times because they were simply not paid for all hours that
27 were recorded and/or worked.

28 54. Additionally, Plaintiff and Aggrieved Employees have been subject to

1 Defendants' control during pre-shift and post-shift times, as well as during unpaid meal
2 periods resulting in unpaid overtime where they are not getting paid, which, when working
3 overtime eligible shifts results in underpaid overtime compensation. Based on information and
4 belief, not all recorded work hours were paid because of inaccurate timekeeping policies and
5 practices. For example, upon information and belief, Defendants utilize a company-wide
6 policy and/or practice of improperly rounding employee clock-in and clock-out times and of
7 requiring employees to accept supervisor-initiated changes to clock-out times to conform to an
8 employee's scheduled hours regardless of the actual time an employee clocked out prior to the
9 employee being permitted to clock-in for their next shift. Defendants' policies are, and
10 continue to be, unfair and have, over time, resulted in the underpayment of wages to Plaintiff
11 and other Aggrieved Employees. To the extent Defendants' policies have taken away time
12 worked that was eligible for overtime, Plaintiff and other Aggrieved Employees were denied
13 overtime pay for all hours worked. As a result, Plaintiff believes the hours she and other
14 Aggrieved Employees worked may not have been properly recorded and/or paid, and
15 therefore, Plaintiff and other Aggrieved Employees may not have been properly compensated
16 for all hours that were recorded and/or worked.

17 55. Defendants knew or should have known that, as a result of their policies,
18 practices and/or procedures, Plaintiff and other Aggrieved Employees were at times performing
19 their assigned duties off-the-clock, were subject to control of Defendants, and/or were suffered
20 or permitted to perform work for which they were not paid. Defendants also knew, or should
21 have known, that they did not compensate Plaintiff and other Aggrieved Employees for off-the-
22 clock work or all hours worked. Because Plaintiff and other Aggrieved Employees sometimes
23 worked shifts longer than eight hours a day, more than forty hours a week, and/or seven
24 consecutive days, some of the off-the-clock work qualified for overtime premium pay. At other
25 times, Defendants simply did not pay for all the hours that were recorded. Therefore, Plaintiff
26 and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they
27 actually worked. Defendants' failure to pay Plaintiff and other Aggrieved Employees the
28 balance of overtime compensation, as required by California law, violates the provisions of

1 California Labor Code sections 510 and 1198 and Wage Order No. 5.

2 56. Based on the foregoing, Plaintiff and other Aggrieved Employees are entitled to
3 recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections
4 510 and 1198 and Wage Order No. 5, pursuant to Labor Code sections 558, 1194, and/or
5 2699(a), (f), and (g).

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

9 57. At all relevant times, California Labor Code sections 223, 1182.12, 1194, 1197,
10 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
11 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
12 fixed is unlawful. Compensable work time defined in Wage Order No. 5 as "the time during
13 which an employee is subject to the control of an employer and includes all the time the
14 employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs.
15 tit. 8, § 11050(2)(K) (defining "Hours Worked").

16 58. Defendants have not paid for all the time Plaintiff and Aggrieved Employees
17 have worked throughout the day including all time spent working through meal periods and/or
18 any other time in the day when the employees were performing work tasks subject to the
19 control of Defendants. Plaintiff and other Aggrieved Employees are subjected to Defendants'
20 control pre-shift, post-shift, and throughout the workday, even during unpaid periods of the
21 workday such as unpaid meal periods.

22 59. As set forth above, Plaintiff is informed and believes, and thereon alleges, that
23 Defendants' policy and/or practice of rounding time records and/or requiring employees to
24 accept supervisor-initiated changes to employee time entries to conform such entries to
25 employees' scheduled hours regardless of actual time worked, has resulted in underpayment
26 of wages. Additionally, Defendants' policy and/or practice of understaffing has caused a lack
27 of meal period coverage and lead employees to perform off-the-clock work during their meal
28 periods. Defendants did not pay minimum wages for these off-the-clock hours that Plaintiff

1 and other Aggrieved Employees worked, including but not limited to before or after shifts as
2 well as during meal periods.

3 60. Defendants also have had a continuous policy of not paying Plaintiff and
4 Aggrieved Employees for all hours worked throughout the day, including, but not limited to,
5 before shifts start, after shifts end, and/or any other time in the day when the employees were
6 performing work tasks, subject to the control of Defendants.

7 61. To the extent that the off-the-clock work and/or recorded hours did not qualify
8 for overtime premium payment, Defendants did not pay at least minimum wages for those hours
9 worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223,
10 1182.12, 1194, 1197, 1197.1, and 1198 and Wage Order No. 5. Plaintiff and other Aggrieved
11 Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest,
12 pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (g).

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

16 62. At all relevant times herein set forth, California Labor Code sections 226.7,
17 512(a), and 1198, and the applicable IWC Wage Order were applicable to Plaintiff's and
18 Aggrieved Employees' employment by Defendants.

19 63. At all relevant times herein set forth, California Labor Code section 512(a)
20 provides that an employer may not require, cause, or permit an employee to work for a period of
21 more than five hours per day without providing the employee with a meal period of not less than
22 thirty minutes, except that if the total work period per day of the employee is not more than six
23 hours, the meal period may be waived by mutual consent of both the employer and the
24 employee. Under California law, first meal periods must start after no more than five hours.
25 *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012).

26 64. At all relevant times herein set forth, California Labor Code sections 226.7,
27 512(a), and 1198 provide that no employer shall require an employee to work during any meal
28 period mandated by an applicable order of the IWC. The wage order's meal period requirement

1 is satisfied if “the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the
2 premises, and (3) is relieved of all duty for the entire period.” *Brinker Rest. Corp.*, 53 Cal. 4th at
3 1036.

4 65. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
5 1198, and the applicable IWC Wage Order also require employers to provide a second meal
6 period of not less than thirty minutes if an employee works over ten hours per day, and if one is
7 not provided, pay an employee one additional hour of pay at the employee’s regular rate of
8 compensation, except that if the total hours worked is no more than twelve hours, the second
9 meal period may be waived by mutual consent of the employer and the employee only if the
10 first meal period was not waived.

11 66. Plaintiff is informed and believes, and thereon alleges, that Defendants prevented
12 Plaintiff and other Aggrieved Employees from taking all timely, uninterrupted meal periods,
13 including second meal periods, to which they were entitled. As a result of these policies and/or
14 practices, Plaintiff and other Aggrieved Employees continued to perform their assigned duties
15 without being able to take timely, compliant meal periods. Plaintiff and other Aggrieved
16 Employees had to work through part or all of their meal periods, had their meal periods
17 interrupted, and/or had to wait extended periods of time before taking meal periods. Moreover,
18 Defendants’ policies and/or practices of communicating with employees regarding work-related
19 matters as well as directing employees to continue working and/or return to work during meal
20 periods resulted in employees not receiving timely, uninterrupted thirty-minute meal periods.

21 67. Defendants knew or should have known that as a result of these policies and/or
22 practices, Plaintiff and other Aggrieved Employees were prevented from being relieved of all
23 duties and required to perform some of their assigned duties during meal periods and that they
24 did not receive timely meal periods. As a result, Plaintiff and other Aggrieved Employees had to
25 work through all or part of their meal periods, have their meal periods interrupted, and/or wait
26 extended periods of time before taking meal periods.

27 68. Defendants have failed to provide meal periods to Plaintiff and other Aggrieved
28 Employees. As a matter of policy and practice, Defendants have not provided Plaintiff and

1 other Aggrieved Employees with full thirty-minute meal periods for each day worked where
2 they are free from Defendants' required duties and control. Defendants have subjected
3 Plaintiff and other Aggrieved Employees to control and demanding duties throughout their
4 workday, even during times which should constitute uninterrupted duty-free meal periods.
5 Defendants encourage employees to stay working and/or under employer control, as opposed
6 to encouraging the rest and nourishment meal periods are designed to provide.

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 premium payments resulting from meal period violations. As such, Plaintiff was unaware
10 of when meal period premiums were owed to her. Accordingly, Plaintiff and other Aggrieved
11 Employees did not receive all meal period premium wages owed when compliant meal periods
12 were not provided. To the extent that Defendants did pay meal period premium wages to
13 Aggrieved Employees, such payments were admissions of their failure to provide meal periods.

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

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

22 71. At all relevant times herein set forth, California Labor Code sections 226.7 and
23 1198, and the applicable IWC Wage Order were applicable to Plaintiff and Aggrieved
24 Employees' employment by Defendants.

25 72. At all relevant times, the applicable IWC Wage Order provides that "[e]very
26 employer shall authorize and permit all employees to take rest periods, which insofar as
27 practicable shall be in the middle of each work period" and that the "rest period time shall be
28 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 hours.

73. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to provide rest periods under California Labor Code section 226.7 and the applicable IWC 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 v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to Labor Code section 226.7(c) and the applicable IWC Wage Order, Plaintiff and Aggrieved Employees are entitled to recover from Defendants one additional hour of pay at their regular rates of compensation for each workday that a required rest period was not provided.

74. Plaintiff and Aggrieved Employees frequently worked shifts in excess of three and one-half hours, in excess of six hours, and/or in excess of ten hours without receiving all uninterrupted net ten-minute rest periods to which they were entitled.

75. Upon information and belief, during the relevant time period, Defendants’ company-wide policy and practice of understaffing their business locations which resulted in a lack of break coverage and prevented Plaintiff and Aggrieved employees from taking all timely, uninterrupted rest periods to which they were entitled. Defendants’ policies and practices fail to relinquish all control over the employees during breaks.

76. Plaintiff is further informed and believes that Defendants have also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not provided. Additionally, Defendants paid rest period premiums at the incorrect rates. Thus, Defendants denied Plaintiff and Aggrieved Employees rest periods and failed to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

77. As with meal periods, Defendants’ policies and/or practices prevented Plaintiff

1 and other Aggrieved Employees from being relieved of all duties and to take compliant rest
2 periods. As a result, Plaintiff and other Aggrieved Employees would frequently work shifts in
3 excess of three and one-half hours, in excess of six hours, and/or in excess of ten hours without
4 receiving all uninterrupted ten-minute rest periods to which they were entitled.

5 78. Defendants have failed to authorize and permit rest periods to Plaintiff and
6 other Aggrieved Employees. As a matter of policy and practice, Defendants have not provided
7 Plaintiff and other Aggrieved Employees with net ten-minute rest periods for each day worked
8 where they are free from Defendants' required duties and control. Defendants have subjected
9 Plaintiff and other Aggrieved Employees to control and demanding duties throughout their
10 workday, even during times which should constitute uninterrupted duty-free rest periods.
11 Defendants encourage employees to stay working and/or under employer control, as opposed
12 to encouraging the rest and nourishment rest periods are designed to provide.

13 79. Defendants also engaged in a systematic, company-wide policy and/or practice of
14 not properly training Plaintiff and other Aggrieved Employees on their entitlement to rest period
15 premium payments resulting from rest period violations. As such, Plaintiff was unaware of
16 when rest period premiums were owed to her. Accordingly, Plaintiff and other Aggrieved
17 Employees did not receive all rest period premium wages owed when compliant rest periods
18 were not provided. To the extent that Defendants did pay rest period premium wages to
19 Aggrieved Employees, such payments were admissions of their failure to provide rest periods.

20 80. Accordingly, Defendants failed to provide all rest periods, pay wages for time
21 spent during rest periods, and/or pay all rest period premiums in violation of Labor Code
22 sections 226.7, and 1198 and Wage Order No. 5. Plaintiff and other Aggrieved Employees are
23 therefore entitled to civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code
24 sections 226.7, 1198, and 2699(a), (f), and (g).

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

27 81. At all relevant times herein set forth, Labor Code section 226(a) requires
28 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).

82. 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/or 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). In addition, upon information and belief, the total regular and overtime hours listed in Defendants’ wage statements, when added together, do not sum up to the total hours worked by the employee during the pertinent time period. Likewise, Defendants provide wage statements which do not properly itemize the total hours worked because Defendants itemize 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, Defendants’ wage statements do not comply with Labor Code section 226(a)(2). Additionally, upon information and belief, because Defendants did not calculate other Aggrieved Employees’ regular rate of pay correctly for purposes of paying overtime and/or premium wages, they did not list the correct amount of gross wages and net wages earned by other Aggrieved Employees in compliance with Sections

226(a)(1) and (5). Defendants also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal period and rest period premium wages, in violation of Section 226(a)(9). Furthermore, because Defendants failed to pay all meal period and rest period premiums to Plaintiff and other Aggrieved Employees, Defendants did not list the correct amount of gross wages earned by Plaintiff and other Aggrieved Employees in compliance with Section 226(a)(1). For the same reasons, Defendants failed to list the correct amount of net wages earned by Plaintiff and other Aggrieved Employees in violation of Section 226(a)(5).

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

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

84. At all relevant times herein set forth, 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, and in violation of Labor Code section 1174(d), Defendants wilfully failed to maintain accurate payroll records for Plaintiff and other Aggrieved Employees showing the daily hours they worked and the wages paid as a result of failing to record all hours worked and/or failing to correctly list the gross wages and/or net wages earned by them in violation of Labor Code section 1174(d).

85. Labor Code section 1198 provides that the maximum hours of work and the

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

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

19 87. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
20 penalties, attorneys’ fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or
21 2699(a), (f), and (g).

22 **FAILURE TO MAINTAIN ACCURATE TIME RECORDS IN**
23 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 1198 AND CALIFORNIA**
24 **CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 7**

25 88. At all relevant times herein set forth, California Labor Code section 1198
26 provides that the maximum hours of work and the standard conditions of labor shall be those
27 fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section
28 1198 further provides that “[t]he employment of any employees for longer hours than those

1 fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to
2 the applicable IWC Wage Order, employers are required to keep accurate time records showing
3 when the employee begins and ends each work period and meal period. Cal. Code Regs. tit. 8, §
4 11050(7)(A).

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

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

17 91. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
18 penalties, attorneys’ fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or
19 2699(a), (f), and (g).

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

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

27 93. At all times relevant herein, Labor Code section 204 provides that all wages
28 earned by any person in any employment between the sixteenth and the last day, inclusive, of

any calendar month, other than those wages due upon termination of an employee, are due and payable between the first and the tenth day of the following month.

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

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

96. Plaintiff 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).

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

97. At all relevant times herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

98. Defendants wilfully failed to pay Plaintiff and other Aggrieved Employees who are no longer employed by Defendants all their earned wages at the time of discharge, or within seventy-two hours of their leaving Defendants' employ in violation of California Labor Code sections 201-202, including but not limited to, overtime wages, minimum wages, and/or meal

1 period and rest period premium wages. For example, Plaintiff's employment was terminated by
2 Defendants in-person at Plaintiff's location of work, however she did not receive her final
3 payment of wages until approximately 4 days later when it was mailed to her residence.

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

9 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
10 **EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 1198 AND 2810.5**

11 100. California's Wage Theft Prevention Act was enacted to ensure that employers
12 provide employees with basic information material to their employment relationship at the time
13 of hiring, and to ensure that employees are given written and timely notice of any changes to
14 basic information material to their employment. Codified at California Labor Code section
15 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must
16 provide written notice to employees containing basic and material payroll information,
17 including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour,
18 shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the
19 regular payday designated by the employer, and any allowances claimed as part of the minimum
20 wage, including meal or lodging allowances.

21 101. Effective January 1, 2015, an employer's written notice pursuant to section
22 2810.5 must also include a statement that the employee may accrue and use sick leave; has a
23 right to request and use accrued paid sick leave; may not be terminated or retaliated against for
24 using or requesting the use of accrued paid sick leave; and has the right to file a complaint
25 against an employer who retaliates.

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

103. Defendants' failure to provide Plaintiff and other Aggrieved Employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5. Plaintiff and Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon pursuant to Labor Code sections 2699(a), (f), and (g).

**FAILURE TO PROVIDE OR PRODUCE EMPLOYMENT RECORDS IN VIOLATION
OF CALIFORNIA LABOR CODE SECTIONS 226(c), 1198.5, AND 1198**

104. At all relevant times herein set forth, California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee's request.

105. Additionally, Labor Code section 226(c) provides in relevant part:
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.

106. Similarly, Labor Code section 1198.5 requires an employer to timely produce certain employment records upon the request of an employee or their representative. Specifically, Section 1198.5 provides in relevant part:

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee...

(b)(1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request...

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement

as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer...

107. At all times relevant herein, California Labor Code section 226(f) states “[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.”

108. At all times relevant herein, California Labor Code section 226(h) states “[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney’s fees.”

109. At all times relevant herein, the IWC Wage Order No. 5-2001, section 7(A), provides “[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.”

110. During the relevant time period, Plaintiff sent Defendants reasonable written requests for documents and records relating to her employment with Defendants. During the relevant time period, Defendants failed to produce for inspection and copying or otherwise permit inspection and copying of documents and records relating to Plaintiff’s employment.

111. Plaintiff requested that Defendants produce her employment records pursuant to California Labor Code sections 226(c) and 1198.5. Defendants did not fully comply with this request because, among other things, a notice under Section 2810.5 was not provided within the requisite time frame. Labor Code section 2699.3(c) permits aggrieved employees,

1 including Plaintiff, to recover civil penalties for violations of Labor Code sections 226(c) and
2 1198.5. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
3 penalties, attorneys' fees, costs, and interest, pursuant to Section 2699(a), (f), and (g).

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

6 112. At all relevant times, the California Labor Code places procedural and
7 substantive limits on employers' abilities to conduct employee background checks and on how
8 employers can use the information they obtain through those background checks. The
9 Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, *et seq.* ("ICRAA"),
10 mandates several requirements prior to and following an employee background check, including
11 but not limited to, identifying an appropriate reason for the background check, a separate
12 consent form with required disclosures and certain formatting requirements, additional forms
13 such as a summary of rights, as well as proper notice of adverse actions taken, among other
14 statutory requirements. A violation of ICRAA results in a violation of Labor Code section
15 432.5.

16 113. At all relevant times, under Labor Code section 432.5, "[n]o employer... shall
17 require any employee or applicant for employment to agree, in writing, to any term or condition
18 which is known by such employer, or agent, manager, superintendent, or officer thereof to be
19 prohibited by law."

20 114. During the relevant time period, upon information and belief, Plaintiff and the
21 Aggrieved Employees have been required by Defendants to undergo background checks in
22 violation of California law. Among other things, ICRAA, Civil Code section 1786.16, requires
23 as follows: "(B) The person procuring or causing the report to be made provides a clear and
24 conspicuous disclosure in writing to the consumer at any time before the report is procured or
25 caused to be made in a document that consists solely of the disclosure, that: (i) An investigative
26 consumer report may be obtained. (ii) The permissible purpose of the report is identified. (iii)
27 The disclosure may include information on the consumer's character, general reputation,
28 personal characteristics, and mode of living. (iv) Identifies the name, address, and telephone

1 number of the investigative consumer reporting agency conducting the investigation. (v)
2 Notifies the consumer in writing of the nature and scope of the investigation requested,
3 including a summary of the provisions of Section 1786.22. (vi) Notifies the consumer of the
4 Internet Web site address of the investigative consumer reporting agency identified in clause
5 (iv), or, if the agency has no Internet Web site address, the telephone number of the agency,
6 where the consumer may find information about the investigative reporting agency's privacy
7 practices, including whether the consumer's personal information will be sent outside the United
8 States or its territories and information that complies with subdivision (d) of Section 1786.20.
9 This clause shall become operative on January 1, 2012."

10 115. During the relevant time period, upon information and belief, Defendants have
11 required Plaintiff and other Aggrieved Employees to submit to unlawful background checks.
12 Upon information and belief, Defendants have required Plaintiff and other Aggrieved
13 Employees to agree in writing to unlawful background checks which have failed to abide by the
14 requirements set forth in ICRAA. For example, upon information and belief, Defendants have
15 required Plaintiff and other Aggrieved Employees to agree in writing to unlawful background
16 checks that have failed to abide by the requirements set forth in ICRAA. Defendants have not
17 provided Plaintiff and other Aggrieved Employees with, among other things, a separate ICRAA
18 written notice of the intent to obtain a background check report; a notice that is clear,
19 conspicuous, and in writing; a document that consists solely of the required disclosure; a notice
20 that states the nature and scope of the information requested pursuant to ICRAA; and a
21 summary of the employee's rights pursuant to ICRAA.

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

26 \\\

27 \\\

28 \\\

1 **WITHOLDING EMPLOYEE GRATUITIES IN VIOLATION OF LABOR CODE**

2 **SECTION 351**

3 117. At all relevant times, Labor Code section 351 provides “[n]o employer or agent
4 shall collect, take, or receive any gratuity or part thereof that is paid, given to, or left for an
5 employee by a patron...” The purpose of section 351 is to “ensure that employees, not
6 [employers], receive the full benefit of gratuities that patrons intend for the sole benefit of those
7 employees who serve them.” *Searle v. Wyndham Internat., Inc.*, 102 Cal. App. 4th 1327, 1332
8 (2002).

9 118. During the relevant time period, upon information and belief, Defendants had a
10 policy and practice of adding a mandatory ‘service charge’ to hotel guests’ bills. Defendants’
11 policies required that 80% of the ‘service charges’ would be paid to employees providing
12 services and the remaining 20% would be paid to Defendants in violation of Labor Code section
13 351.

14 119. Defendants’ policies, practices, and/or procedures of failing to provide Plaintiff
15 and other Aggrieved Employees with the entire amount of gratuities paid to them by hotel
16 guests are in violation of Labor Code section 351.

17 120. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
18 penalties, attorney’s fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and
19 (g).

20 **REQUEST FOR JURY TRIAL**

21 Plaintiff requests a trial by jury.

22 **PRAYER FOR RELIEF**

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

25 1. For civil penalties and attorneys’ fees and costs in excess of twenty-five thousand
26 dollars (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different
27 amount.
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As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 223, 1182.12, 1194, 1197, 1197.1 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), and 1198 (by failing to provide all meal periods and/or meal premiums); 226.7 and 1198 (by failing to provide all rest periods and/or rest premiums); 226(a) and 1198 (by failing to provide accurate wage statements); 1174(d), 1198 and California Code of Regulations, Title 8, section 11050(7) (by failing to maintain accurate and complete payroll records); 1198 and California Code of Regulations, Title 8, section 11050(7) (by failing to maintain accurate and complete time records); 204 (by failing timely to pay all earned wages during employment); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 1198 and 2810.5(a)(1) (by failing to provide written notice of the material terms of employment); 226(c) and 1198.5 (by failing to timely produce employment records upon request); 432.5 and Civil Code sections 1786, *et seq* (by failing to conduct lawful background checks); and 351 (by improperly withholding gratuities from employees).

3. For civil penalties pursuant to California Labor Code sections 226.3, 558, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 223, 225.5, 226(a), 226(c), 226.7, 351, 432.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 1199, and 2810.5 as well as all applicable IWC Wage Orders;

4. For attorneys' fees and costs pursuant to California Labor Code sections 1194(a), 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 223, 225.5, 226(a), 226(c), 226.7, 351, 432.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 1199, and 2810.5;

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

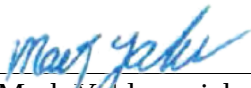
6. For such other and further relief as the Court may deem equitable and appropriate.

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Dated: May 23, 2022

Respectfully submitted,

LAW OFFICES OF MARK YABLONOVICH

By: 

Mark Yablonoich
Lisa J. Hartlep
Attorneys for Plaintiff Candice Richard, a proxy
for the State of California as an aggrieved
employee pursuant to the Private Attorneys
General Act

Exhibit 1

Candice Richard v. Dimension Development Company, Inc., et al.

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

March 17, 2022

VIA ONLINE SUBMISSION

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

Subject: *Candice Richard v. G&B Hotel Employee Leasing, LLC and Dimension Development Company, Inc.*

Dear PAGA Administrator:

This law firm represents Candice Richard (“Ms. Richard”) in connection with her claims under the California Labor Code against her former employer(s) G&B Hotel Employee Leasing, LLC and Dimension Development Company, Inc. (collectively “Dimension Development Company”).

Dimension Development Company may be contacted directly at:

G&B Hotel Employee Leasing, LLC
DBA as Homewood Suites – Clovis
835 Gettysburg Avenue
Clovis, CA 93612

Dimension Development Company, Inc.
DBA as Homewood Suites – Clovis
835 Gettysburg Avenue
Clovis, CA 93612

Ms. Richard intends to seek civil penalties, attorneys’ fees, costs, and all other available relief for Dimension Development Company’s violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Richard seeks relief on behalf of herself, the State of California, and other persons who are or were employed by Dimension Development Company in California as non-exempt, hourly-paid employees and who received or should have received at least one wage statement during the relevant time period which begins one year prior to the date of this notice (“Aggrieved Employees”). Ms. Richard sends this letter in compliance with the notice and reporting requirements of Labor Code section 2699.3.

Dimension Development Company employed Ms. Richard from approximately March 16, 2021, to approximately July 18, 2021, as a non-exempt, hourly-paid housekeeper out of Dimension Development Company’s Fresno Airport location. Ms. Richard 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 and sanitizing guest

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rooms.

Dimension Development Company committed one or more of the following Labor Code violations against Ms. Richard and/or the Aggrieved Employees, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

Dimension Development Company’s Company-Wide and Uniform Payroll and Human Resources Practices

Dimension Development Company operates hundreds of hotels throughout North America, at least fifteen of which are in California, including Homewood Suites by Hilton at the Fresno Airport in Fresno, California. Upon information and belief, Dimension Development Company maintains a centralized Human Resources department in California for all non-exempt, hourly-paid employees working for Dimension Development Company in California, including Ms. Richard and other Aggrieved Employees. At all relevant times, Dimension Development Company issued and maintained uniform, standardized policies, practices and/or procedures for all non-exempt, hourly-paid employees in California, including Ms. Richard and other Aggrieved Employees, regardless of their location, position, or job duties.

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

California Labor Code sections 510 and 1198 and California Code of Regulations Title 8, section

¹ These facts, theories, and claims are based on Ms. Richard’s experience and counsel’s review of those records currently available relating to Ms. Richard’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 hid the violations. Thus, Ms. Richard reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

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11050 (“Wage Order No. 5”),² require Dimension Development Company 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 Dimension Development Company are required to pay employees working more than twelve hours in a day, or in excess of eight hours on the seventh consecutive day, overtime compensation at a rate of two times their regular rate of pay.

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

On information and belief, Dimension Development Company utilizes a company-wide policy and/or practice of improperly rounding employee clock-in and clock-out times and of requiring employees to accept supervisor-initiated corrections to clock-out times to conform to an employee’s scheduled hours regardless of the actual time an employee clocked out prior to the employee being permitted to clock-in for their next shift. Dimension Development Company’s policies are, and continue to be, unfair and have, over time, resulted in the underpayment of wages to Ms. Richard and other Aggrieved Employees. To the extent Dimension Development Company’s policies have taken away time worked that was eligible for overtime, Ms. Richard and other Aggrieved Employees were denied overtime pay for all hours worked.

Dimension Development Company knew or should have known that, as a result of their policies, practices and/or procedures, Ms. Richard and other Aggrieved Employees were at times performing their assigned duties off-the-clock (and/or unrecorded), were subject to control of Dimension Development Company, and/or were suffered or permitted to perform work for which they were not paid. Dimension Development Company also knew, or should have known, that they did not compensate Ms. Richard and other Aggrieved Employees for off-the-clock work, or all hours worked. Because Ms. Richard and other Aggrieved Employees sometimes

² To the extent any other Wage Order applies to any of the claims in this letter, Dimension Development Company also violated those wage orders.

Re: *Candice Richard v. G&B Hotel Employee Leasing, LLC and Dimension Development Company, Inc.*
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worked shifts longer than eight or twelve hours a day, more than forty hours a week, and/or seven consecutive days (or in excess of eight hours on the seventh consecutive day), some of the unrecorded work qualified for overtime premium pay. At other times, Dimension Development Company simply did not pay for all the hours that were recorded. Therefore, Ms. Richard and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked. Dimension Development Company's failure to pay Ms. Richard and other Aggrieved Employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198 and the applicable Wage Order.

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

Violation of California Labor Code 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, Dimension Development Company did not pay Ms. Richard and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal period and rest period premium wages, within the time periods specified by Labor Code section 204.

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

Violation of California Labor Code Sections 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, as well as the applicable Wage Order require Dimension Development Company to pay employees the minimum wage fixed by the Industrial Welfare Commission ("IWC"). The payment of a lesser wage than the minimum so

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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”).

Dimension Development Company have not paid for all of the time that Ms. Richard and Aggrieved Employees have worked throughout the day including all time in the workday when the employees were performing work tasks subject to the control of Dimension Development Company. Ms. Richard and other Aggrieved Employees are subjected to Dimension Development Company’s control pre-shift, post-shift, and throughout the workday.

To the extent that the off-the-clock work and/or recorded hours did not qualify for overtime premium payment, Dimension Development Company did not pay at least minimum wages for those hours worked off-the-clock or that were 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. Richard and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 225.5,³ 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 Dimension Development Company to provide meal periods and rest periods and to pay employees one additional hour of pay at the employee’s regular rate of compensation 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, an employee’s first meal period must start no later than the end of an employee’s fifth 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 Dimension Development Company 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.

³ Labor Code section 2699.3(c) permits aggrieved employees, including Ms. Richard, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including section 225.5.

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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).

Dimension Development Company has failed to provide meal periods and authorize and permit rest periods to Ms. Richard and other Aggrieved Employees. As a matter of policy and practice, Dimension Development Company have not provided Ms. Richard 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 Dimension Development Company’s required duties and control. Dimension Development Company have subjected Ms. Richard and other Aggrieved Employees to control and demanding duties throughout their workday, even during times which should constitute uninterrupted duty-free rest periods and meal periods.

Dimension Development Company knew or should have known that as a result of their policies and/or practices, Ms. Richard 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 timely meal periods and rest periods. As a result, Ms. Richard 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.

Dimension Development Company have also engaged in a systematic, company-wide policy and/or practice of not properly training Ms. Richard and other Aggrieved Employees on their entitlement to meal period and rest period premium payments resulting from meal period and rest period violations. Ms. Richard and other Aggrieved Employees have been unaware of when meal period and/or rest period premiums were owed to them. Based on information and belief, Ms. Richard and other Aggrieved Employees have not received all meal period and/or rest period premium wages owed when compliant meal periods and rest periods have not been provided. To the extent that Dimension Development Company did pay meal period and/or rest period premium wages to Ms. Richard and other Aggrieved Employees, such payments were admissions of its failure to provide compliant meal periods and rest periods.⁴

⁴ Furthermore, based upon information and belief, to the extent employees should have been or were paid bonuses or incentives, those payments have not been included in Dimension Development Company’s regular rate of compensation for calculating meal period and/or rest

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Accordingly, Dimension Development Company have 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. Richard 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

Labor Code section 226(a) requires employers to keep and furnish accurate and complete employment records. Dimension Development Company has not provided Ms. Richard 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).

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."

Dimension Development Company have provided Ms. Richard and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, Dimension Development Company have violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Dimension Development Company have not recorded all the hours Ms. Richard and other Aggrieved Employees worked and/or paid all hours recorded, Dimension Development Company have not listed the correct amount of gross wages and net wages earned by Ms. Richard and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5), respectively. Dimension Development Company also have not accurately listed the total hours worked by Ms. Richard 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, overtime, double-time, and on-call hours listed in Dimension Development Company's wage statements, when added together, do not add up to the total hours worked by the employee during the pertinent time period. Likewise, Dimension Development

period premiums and has resulted in an underpayment of meal period and/or rest period premium wages.

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Company provides wage statements which do not properly itemize the total hours worked because Dimension Development Company itemizes the incorrect number of hours worked or an undecipherable number of hours worked or both. Without additional information regarding the wage statement and undecipherable codes, an employee cannot simply ‘arrive at the sum of hours worked.’ Thus, Dimension Development Company’s wage statements do not comply with Labor Code section 226(a)(2).

Dimension Development Company has knowingly and intentionally failed to properly itemize the regular, overtime, and double-time rates in effect during each pay period and the corresponding number of hours worked, making it impossible to determine the correct pay rate promptly and easily with the corresponding hours and pay. Upon information and belief, the Aggrieved Employees’ wage statements incorrectly show the regular rate, overtime rate, and/or the doubletime rate and incorrectly show regular rate, overtime rate, and/or the doubletime rate at a different number of hours than worked by the employee during the pay period. Thus, if the employee were to add together the hours listed in the line items for regular, overtime, and double-time hours, the total is incorrect because it exceeds the total number of hours actually worked by the employee during the pay period. As such, Dimension Development Company’s wage statements do not comply with Labor Code section 226(a)(9) which requires an itemized statement to show “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” The coding on Dimension Development Company’s wage statements cannot be said to clearly engage the employee’s use of simple math to understand the rates of pay and total hours worked itemized on the wage statements. Dimension Development Company’s wage statements here have confused and misled Ms. Richard and the Aggrieved Employees as to what the rates of pay and total hours worked are, a confusion that is compounded by the fact that Dimension Development Company does not itemize the total hours worked on the wage statements.

Furthermore, because Dimension Development Company have failed to pay all meal period and rest period premiums to Ms. Richard and other Aggrieved Employees, Dimension Development Company has not listed the correct amount of gross wages and net wages earned by Ms. Richard and other Aggrieved Employees in violation of Sections 226(a)(1) and (5).

Because Dimension Development Company has failed to provide, among other things, the accurate number of total hours worked, gross wages earned, net wages earned, and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked on wage statements, Ms. Richard 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. Richard 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. Richard requested that Dimension Development Company produce her employment records pursuant to Section 226(c), which requires an employer to produce records within 21 days and

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Section 1198.5 which requires an employer to produce records within 30 days. Dimension Development Company did not comply, nor even attempt to comply with this request. Labor Code section 2699.3(c) permits aggrieved employees, including Ms. Richard, to recover civil penalties for Labor Code sections 226(c) and 1198.5 violations.

Ms. Richard and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections 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, Dimension Development Company willfully failed to maintain accurate payroll records for Ms. Richard and other Aggrieved Employees showing the daily hours they have 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 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 Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period, as well as total daily hours. Cal. Code Regs. tit. 8, § 11050, subd. 7. During the relevant time period, Dimension Development Company failed, on a company-wide basis, to keep accurate records of shifts and meal period start and stop times and total daily hours for Ms. Richard and other Aggrieved Employees, in violation of Labor Code section 1174(d) and the applicable Wage Order.

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

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

Labor Code sections 201-202⁵ 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.

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

Furthermore, Dimension Development Company have not paid Ms. Richard and other Aggrieved Employees who are no longer employed by Dimension Development Company all their earned wages, at the time of discharge, or within seventy-two hours of their leaving Dimension Development Company's employment, including, but not limited to, overtime wages, minimum wages, and/or meal period and rest period premium wages.

As a result of Dimension Development Company's violations of Labor Code sections 201-202, Ms. Richard 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 Sections 1198 and 2810.5(a)(1)

California's Wage Theft Prevention Act was enacted to ensure that Dimension Development Company 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.

⁵ Ms. Richard also asserts Section 203, which is enumerated in Section 2699.5, to the extent applicable.

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On information and belief, Dimension Development Company failed to provide Ms. Richard and other Aggrieved Employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1). Dimension Development Company's failed to provide Ms. Richard and other Aggrieved Employees with written notice of basic information regarding their employment with Dimension Development Company, such as 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.

Ms. Richard 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).

Violation of California Labor Code Section 432.5

The Labor Code places procedural and substantive limits on Dimension Development Company's abilities to conduct employee background checks and on how Dimension Development Company 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. Richard and the Aggrieved Employees have been required by Dimension Development Company 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.
 - (vi) Notifies the consumer of the Internet Web site address of the investigative consumer reporting agency identified in clause (iv), or, if the

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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, Dimension Development Company required Ms. Richard and other Aggrieved Employees to submit to unlawful background checks. Upon information and belief, Dimension Development Company required Ms. Richard 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, Dimension Development Company have not provided Ms. Richard and the Aggrieved Employees with 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. Richard and other Aggrieved Employees sign off on the illegal background checks, Dimension Development Company have also violated Labor Code section 432.5.

As a result of Dimension Development Company's violations of Labor Code section 432.5, Ms. Richard 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 Labor Code Section 351

Labor Code section 351 provides "[n]o employer or agent shall collect, take, or receive any gratuity or part thereof that is paid, given to, or left for an employee by a patron..." The purpose of section 351 is to "ensure that employees, not Dimension Development Company, receive the full benefit of gratuities that patrons intend for the sole benefit of those employees who serve them." *Searle v. Wyndham Interat., Inc.*, 102 Cal. App. 4th 1327, 1332 (2002).

Dimension Development Company have a policy and practice of adding a mandatory service charge to hotel guests' bills. Per Dimension Development Company's policy, 80% of the service charges are paid to Aggrieved Employees providing services and the remaining 20% is paid to Dimension Development Company in violation of Labor Code section 351. *See O'Grady v. Merchant Exchanges Production, Inc.*, 41 Cal. App. 5th 771, 790 (2019) (a mandatory service charge can constitute a gratuity when intended for the employees providing the service).

As a result of Dimension Development Company's violations of Labor Code section 351, Ms. Richard and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2669(a), (f), and (g).

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Violation of 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.”⁶ 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.” Dimension Development Company, at all relevant times, were employers or persons acting on behalf of an employer(s) who violated Ms. Richard’s and other Aggrieved Employees’ rights by violating various sections of the California Labor Code as set forth herein.

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

* * *

Accordingly, Ms. Richard seeks the remedies set forth above for herself, the State of California, and all other Aggrieved Employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Ms. Richard, 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 Dimension Development Company for violations of California Labor Code sections 201, 202, 203, 204, 210, 223, 226(a), 226.7, 351, 432.3, 432.5, 510, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and the applicable Wage Orders, as well as sections 225.5, 226(c), 1198.5, 2810.5, which are ‘curable’ violations pursuant to section 2699.3(c)(2)(A).

Therefore, on behalf of the State of California and all Aggrieved Employees, Ms. Richard 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

⁶ Ms. Richard 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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March 17, 2022

Page 14 of 14

colleague at the phone number, address, or emails below:

Mark Yablonovich

Lisa J. Hartlep

LAW OFFICES OF MARK YABLONOVICH

9595 Wilshire Boulevard, Suite 900

Beverly Hills, California 90212

(310) 286-0246

Mark@Yablonovichlaw.com

Lisa@Yablonovichlaw.com

Best Regards,



Mark Yablonovich

Copy to: G&B Hotel Employee Leasing, LLC
DBA as Homewood Suites – Clovis
835 Gettysburg Avenue
Clovis, CA 93612

Dimension Development Company, Inc.
DBA as Homewood Suites – Clovis
835 Gettysburg Avenue
Clovis, CA 93612

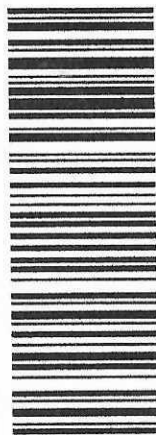
G&B Hotel Employee Leasing, LLC
Agent for Service of Process
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Dimension Development Company, Inc.
Agent for Service of Process
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

LAW OFFICES OF

MARK YABLONOVICH

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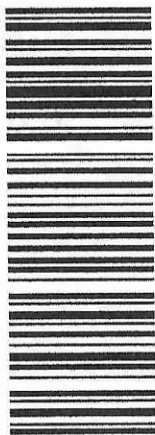
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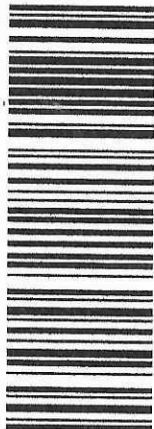
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☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
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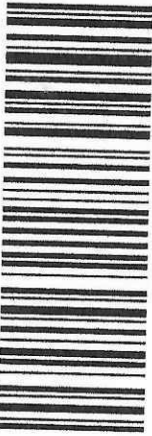
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■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 1. Article Addressed to: Dimension Development Company, Inc. DBA as Homewood Suites-Clovis 835 Gettysburg Avenue Clovis, CA 93612 9590 9402 6539 1028 2666 11 2. Article Number (Transfer from service label) 7021 1970 0001 0376 5553 PS Form 3811, July 2020 PSN 7530-02-000-9053		A. Signature ☒ Agent ☐ Addressee B. Received by (Printed Name) DWF C13 C19 C. Date of Delivery 8-21-22 D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below: 3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☒ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery Domestic Return Receipt	