

Carolyn Hunt Cottrell (SBN 166977)
Ori Edelstein (SBN 268145)
Michelle S. Lim (SBN 315691)
**SCHNEIDER WALLACE
COTTRELL KIM LLP**
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100; Fax: (415) 421-7105
ccottrell@schneiderwallace.com
oedelstein@schneiderwallace.com
mlim@schneiderwallace.com

JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
SEPIDEH ARDESTANI, ESQ. (SBN 274259)
sepideh@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429

*Attorneys for Plaintiffs, on behalf of the State of
California and Aggrieved Employees*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

BENJAMIN ZERMENO, on behalf of the State
of California and Aggrieved Employees,

Plaintiffs,

vs.

REMINGTON LODGING & HOSPITALITY,
LLC, ASHFORD HOSPITALITY TRUST, INC.,
ASHFORD HOSPITALITY ADVISORS LLC,
and ASHFORD TRS BEVERLY HILLS LLC and
DOES 1 through 50 inclusive,

Defendants.

Case No. RG20069869

Assigned for All Purposes to:
Hon. Han Tran
Dept. 22

DECLARATION OF SEPIDEH ARDESTANI
IN SUPPORT OF MOTION FOR APPROVAL
OF SETTLEMENT UNDER PRIVATE
ATTORNEYS GENERAL ACT

Date: January 6, 2026
Time: 3:00 p.m.
Dept.: 22

Reservation ID: 712863276743

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1 Zermeno demanded arbitration through the American Arbitration Association. On August 12, 2022,
2 this court granted Remington’s motion to compel arbitration as to his individual PAGA claim, and
3 stayed the representative PAGA claims. On November 9, 2023, Zermeno filed an amended demand
4 for arbitration to include his individual PAGA claim.

5 6. On June 1, 2022, Plaintiff Catalano filed a class action complaint in the Los Angeles
6 County Superior Court on behalf of herself and all current and former non-exempt employees who
7 worked either directly or via a staffing agency for Defendant Mr. C Manager, LLC at any time from
8 December 5, 2017 to the present. Catalano also named as Defendants Beverly Hills Hotel
9 Management LLC, BHR TRS Beverly Hills LLC, Braemar Hotels & Resorts, Inc., Remington
10 Lodging & Hospitality, LLC and Ashford TRS Beverly Hills LLC (collectively the “BHHM
11 Defendants”). The BHHM Defendants filed a motion to compel arbitration in this matter, and
12 Plaintiff Catalano’s individual wage and hour claims against BHHM Defendants were compelled to
13 arbitration and the class claims dismissed with respect to BHHM Defendants. On August 18, 2022,
14 Plaintiff Catalano filed a PAGA-only against both Mr. C and the BHHM Defendants. The BHHM
15 Defendants again moved to compel arbitration, which motion was deemed filed in this action as the
16 cases were related by Judge Highberger in Los Angeles. This Court ordered Catalano’s individual
17 PAGA claims to arbitration and stayed her non-individual PAGA claims pending the outcome in
18 *Adolph v. Uber Techs.* Plaintiff Catalano has also settled her individual claims in arbitration against
19 the BHHM Defendants. This settlement did not include her representative PAGA claim which are
20 still pending.

21 7. After settling the pleadings and initiating arbitration, the Parties undertook substantial
22 formal discovery, including written discovery and depositions. Subsequently, after extensive
23 meeting and conferring between all Parties to both matters, the Parties agreed to a global mediation
24 to address all claims alleged by Plaintiffs in their respective PAGA actions. The Parties further
25 agreed to a protocol for exchanging additional documents and information on all claims before the
26 mediation. Through this informal discovery, Defendant provided Plaintiffs with information
27 including, inter alia, the number of potential Aggrieved Employees, the number of aggregate pay
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1 periods, pay stubs and time records for a sampling of the allegedly Aggrieved Employees, employee
2 handbooks and manuals, and other policy documents regarding Defendant's time keeping and
3 reporting policies.

4 8. The Parties then mediated the case with Steve Serratore, Esq., a respected mediator
5 with extensive class action/wage and hour experience, in December 2024. Before and during the
6 mediation, Plaintiffs and their counsel analyzed, researched, and investigated the potential issues,
7 including matters related to the calculation of damages, trial, and appellate issues and risks. During
8 mediation, the Parties vigorously debated the likelihood of Plaintiffs' ability to proceed on a
9 representative basis as to the PAGA claims, the legal grounds for Plaintiffs' claims and Defendant's
10 defenses, and the parties' data analyses and conclusions based on data provided by Defendant. After
11 a contentious full day of negotiations, the Parties were unable to reach an agreement. After
12 additional discussions, however, the Parties finally reached agreement on all major issues after both
13 sides accepted a mediator's proposal in January 2025. The Parties subsequently formalized their
14 tentative settlement in the Settlement Agreement now before the Court for approval. Further, the
15 Parties agreed to amend the complaint in the Zermeno action to add Ms. Catalano as a party-plaintiff
16 and otherwise conform the pleadings to the scope of the proposed settlement.

17 **SUMMARY OF SETTLEMENT TERMS**

18 9. Under the settlement, Defendant will pay a non-reversionary settlement amount of
19 \$2,038,000 (the "Gross Settlement Amount" or "GSA"). The GSA is inclusive of payments to the
20 LWDA and Aggrieved Employees, costs of settlement administration, service awards to the
21 Plaintiffs, and reasonable attorney's fees and costs (Plaintiffs' counsel request fees of 35% of the
22 GSA, or \$713,300.00, and costs in the amount of \$54,702.19, while Plaintiffs request service awards
23 of \$10,000.00 each, or \$20,000.00 total). After payment of settlement administration costs,
24 Plaintiffs' service awards, and reasonable attorney's fees and costs from the GSA, Plaintiffs
25 presently estimate about \$1,233,497.81 will remain (the "Net Settlement Amount" or "NSA").
26 Seventy-five percent of the NSA (about \$925,123.36) will go to the LWDA, and the remaining 25%
27 (about \$308,374.45) will be distributed to the Aggrieved Employees in proportion to the total
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1 number of Pay Periods each individual worked during the PAGA Period. I estimate the average
2 award at about \$64.27 per Aggrieved Employee.

3 10. The Parties propose using Atticus Administration, LLC as the Settlement
4 Administrator. Atticus has extensive experience administering PAGA settlements, and has agreed to
5 cap its fees at \$16,500.00. Defendant will fund the GSA within 60 days of the Effective Date, and
6 within 14 days thereafter Atticus will mail a Notice and settlement check to all Aggrieved
7 Employees via regular First-Class U.S. Mail, using the most current, known mailing addresses
8 identified in Defendant's records. Aggrieved Employees need not submit claim forms and will
9 automatically receive a Notice and settlement check. Checks will be negotiable for 180 days, after
10 which time any unclaimed residual funds will be forwarded to the California State Controller's
11 Unclaimed Property Fund.

12 11. The California Supreme Court has explained that a judgment in "a representative
13 action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of
14 2004 ... is binding not only on the named employee plaintiff but also on government agencies and
15 any aggrieved employee not a party to the proceeding." Arias v. Superior Court (2009) 46 Cal.4th
16 969, 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil
17 penalty claims brought under PAGA. Under Arias, the order the Parties request the Court enter is
18 intended to be "binding not only on the named employee plaintiff but also on government agencies
19 and any aggrieved employee not a party to the proceeding." The Settlement Agreement protects the
20 rights of the Aggrieved Employees to bring their own individual claims should they wish. For these
21 reasons, the Parties contend the release narrowly applies only to the PAGA claims alleged, and the
22 Settlement Agreement specifically provides the Release is inapplicable to any claims other than
23 those brought under PAGA.

24 **THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, FURTHERS THE**
25 **PURPOSES UNDERLYING PAGA, AND WARRANTS APPROVAL**

26 12. Plaintiffs first contend Defendant did not pay employees for all hours worked, and that
27 employees often had to work off-the clock to, inter alia, don and doff uniforms at the hotel before/after
28 clocking in/out, and undergoing mandatory health checks during Covid. Per Plaintiffs, this could

1 amount to as much as 20 minutes per shift, which time was certainly not “de minimis” and was also
2 not compensated by Defendant. Plaintiffs also contend Defendant would round off or “shave”
3 employee time punches, particularly if an employee clocked over 8 hours and became entitled to
4 overtime pay. As result, over time the employees lost substantial compensable hours work and
5 corresponding pay.

6 13. Plaintiff also argued that Defendant failed to pay employees for all service charges
7 earned. Here, Plaintiffs allege Remington charged customers a mandatory service charge for certain
8 services and purportedly paid some of those service charges to employees in addition to their base
9 hourly pay. Plaintiffs contend that Remington would likewise “shave” some of those earnings and pay
10 employees less than the full amount of earned services charges as stipulated in Defendant’s
11 compensation policies. Compounding this, Plaintiffs further allege Remington did not include this
12 compensation in the “regular rate of pay” and thereby underpaid employees for their overtime wages.
13 Instead of incorporating earned service charges into the “regular rate,” per Plaintiffs Remington
14 instead paid overtime at 1.5 times employees’ normal hourly wage rate and as a result consistently
15 underpaid for overtime hours worked.

16 14. Plaintiffs next contend Defendant failed to provide legally compliant meal and rest
17 breaks. Specifically, as to meal breaks, Plaintiffs contends employees regularly had to come back to
18 work while on a lunch or rest break due to understaffing and the when the hotels were busy. Plaintiffs
19 allege this violates Labor Code sections 512, 226.7, and the applicable IWC Wage Orders, and the
20 case law for failure to provide all required meal periods and within the required time frames. In
21 response to Plaintiffs’ formal discovery requests, and in its informal mediation production, Defendant
22 failed to provide a *singular* document evidencing that a single meal or rest period premium payment
23 was paid throughout the PAGA period.

24 15. As a result of the above alleged violations, Plaintiff also derivatively alleged
25 Remington failed to provide accurate wage statements and failed timely pay all wages that were due
26 and owing upon separation of employment under Labor Code § 226 (wage statements) and Labor
27 Code §§ 201, *et seq.* (failure to timely pay final wages).
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1 16. For mediation, Defendant indicated it employed approximately 4,798 non-exempt
2 employees in California during the applicable PAGA period, and these individuals worked
3 approximately 120,000 pay periods during that time. Based on the data and information provided by
4 Defendant, Plaintiffs estimated Defendant's maximum PAGA exposure at approximately \$44.33
5 million.

6 17. To arrive at this estimate, Plaintiffs' counsel applied a variety of assumptions based on
7 Defendants' data and documents, as well as testimony provided by Plaintiff Zermeno, and interviews
8 of Aggrieved Employees. These assumptions included: 120,000 total pay periods; 4,798 Aggrieved
9 Employees; 3,290 separated Aggrieved Employees; 3,930 Aggrieved Employees who also received
10 service charges; an estimated 25% violation rate for unpaid wages due to unpaid service charges for
11 all pay periods; an estimated 25% violation rate for unpaid wages due to Defendants' alleged time
12 shaving practices for all pay periods; an estimated 5% violation rate for facial noncompliant meal
13 periods; an estimated 21% violation rate for unpaid wages due to failure to incorporate service charges
14 into the regular rate calculation for meal period premium payments; an estimated 40% violation rate
15 for noncompliant rest periods; an estimated 100% violation rate for Section 226 and 202-203 claims
16 across all pay periods; and a 1% violation rate for Section 2802 across all pay periods. Based on
17 Plaintiffs' counsel's calculations, assuming a \$100 per pay period penalty, with the exception of
18 penalties associated with Section 226 violations (which in turn were calculated at a \$250 per pay
19 period penalty), Defendants' total exposure, assuming stacking, is estimated as \$44,329,529.54. The
20 breakdown of such penalties follows: (1) for unpaid wages, \$6,012,784; (2) for meal break violations,
21 \$3,067,745.32; (3) for rest break violations, \$4,800,000.00; (4) for inaccurate wage statements,
22 \$30,000,000.00; (5) for waiting time penalties, \$329,000; and (6) for expense reimbursement claims,
23 \$120,000.00

24 18. In response to Plaintiffs' unpaid wage claims, Remington argued its timekeeping and
25 payroll policies are fully compliant with California law, and that it captured and paid for all hours
26 worked at the correct hourly rates. On the time shaving/rounding claim, Defendant emphasized its
27 written policies specifically prohibit changing employee time punches, and that its timekeeping system
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1 otherwise captured employee hours worked down to the minute and that all recorded hours were paid
2 for. As far as service charges, Remington contended such payments were more properly considered
3 gratuities, and that employees were paid for all such amounts consistent with Labor Code § 351.
4 Further, Defendant argued that gratuities are not part of the “regular rate of pay” and it was not required
5 to account for those amounts when paying overtime. Otherwise, Defendant again emphasized that it
6 paid the employees all overtime wages due and at the correct premium rate of pay.

7 19. On the meal and rest break claims, Defendant denies Plaintiffs’ contentions, claiming
8 it made meal and rest breaks available to Class Members in compliance with California law. Defendant
9 contends its meal and rest break policies are lawful and that its policies and practices comport with
10 the flexibility the *Brinker* court held was integral to California’s meal and rest period requirements.
11 Per Remington, Class Members were frequently reminded to take all meal and rest breaks, and
12 Defendant contends its time records demonstrate that Class Members took duty-free, timely meal and
13 rest breaks. Finally, Defendant argues that Plaintiff’s meal and rest break claims are not susceptible to
14 common proof, as the claims would require individualized inquiry, including whether there was an
15 unlawful companywide policy, whether employees had the opportunity to take meal and rest periods,
16 whether they voluntarily chose to forego their meal and rest periods, and whether Defendant ever
17 prevented them from taking meal and rest periods. Accordingly, Defendant contends these claims are
18 vulnerable to a ruling that representative treatment is not appropriate.

19 20. Finally, Remington argued that Plaintiffs would be unlikely to prevail on their
20 derivative claims for inaccurate wage statements and failure to timely pay wages on separation of
21 employment. Since these claims are entirely derivative, should the primary claims for unpaid wages
22 fail, Plaintiffs’ derivative claims would also fail, and as addressed above, Defendant asserted multiple
23 defenses to Plaintiffs’ claims for unpaid wages. Defendant also contends it would not be liable for
24 waiting time penalties because a “good faith dispute” exists over the payment of past wages. Further,
25 Defendant contends Plaintiff would have to prove it “willfully” failed to pay Class Members
26 appropriate wages due upon separation of employment in order to prevail on this claim. Accordingly,
27 Plaintiffs discounted the value of this claim significantly in light of these multiple potential defenses.
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Defendant also contended a substantial discount should be applied to the civil penalties for these derivative (i.e., “stacked”) violations, as it would be unfair to penalize Defendant multiple times for the same violation.

21. Defendant also emphasized PAGA gives the Court wide latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h). I am aware that multiple state and federal courts in California have applied significant reductions to PAGA civil penalties, of up to 90%, even after plaintiff prevailed on the merits, and we accounted for this in our evaluation of the settlement.

22. Thus, Defendant raised various and multi-layered defenses to each of Plaintiffs' claims, anyone of which, if successful, could have decimated Plaintiffs' case. And Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiffs faced risky issues going forward with this litigation, and it could have taken years to realize any recovery in this action along with the possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be unmanageable, Defendant also intended to raise additional defenses on damages, including the proper measure of civil penalties and the appropriate discount to place on any assessment of such penalties.

23. Although Plaintiffs, co-counsel and I believe they could have prevailed, there was no such guarantee. When the risks of overcoming Defendant's multiple defenses and prevailing at trial on the merits on all claims, and securing 100% of the theoretical civil penalties, all are factored into the equation, the settlement value is reasonable and supported. Of course, to recover anywhere near the maximum penalties Plaintiffs would have to shoot the moon and win both liability and maximum penalties on all claims, which outcome, for the reasons discussed, is unlikely. Given Defendant's various procedural and merits defenses, as well as the substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed settlement is eminently reasonable.

SUBMISSION TO THE LWDA

1 24. My office timely served the LWDA with the Settlement Agreement and this motion,
2 and gave notice of the approval hearing, via the LWDA's online portal and as reflected on the
3 accompanying proof of service.

4 **THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE**

5 25. Under the terms of the Settlement Agreement, Crosner Legal and co-counsel
6 respectfully request an award of attorney's fees equal to 35% of the total settlement amount, or
7 \$713,300. A common fund attorney fee award is consistent with what courts have awarded
8 Plaintiff's counsel in other representative actions, and awarding attorney's fees as a percentage of a
9 gross settlement amount is favored by California courts when a fund established for the common
10 benefit of others is involved, such as here.

11 26. There are several additional factors why I believe that the Court should award one-
12 third of the common fund as a reasonable attorney's fee. First, our efforts along with co-counsel
13 resulted in a common fund settlement amount of \$2,038,000.00, which for the reasons explained, is
14 fair and reasonable in light of the risks/defenses Defendant raised in litigation and threatened to raise
15 at trial and in post-trial appeals. Further, this is a significant sum that furthers the purposes
16 underlying PAGA such as augmenting the state's enforcement capabilities, encouraging compliance
17 with Labor Code provisions, and deterring future non-compliance. Moreover, this result was
18 achieved by the work and success of this office and our co-counsel, who negotiated the settlement
19 after extensive preparation, informal discovery, and an adversarial mediation.

20 27. Second, Plaintiffs faced significant risks going forward with the litigation. As
21 discussed above, Defendant raised various defenses to his claims, anyone of which, if successful,
22 could have decimated Plaintiffs' case. Plaintiffs faced risky legal issues going forward with this
23 litigation, were litigating on multiple fronts in the pending arbitrations and representative PAGA
24 cases, and it would have taken several more years to realize any recovery in this action along with
25 the possibility of post-trial appeals,
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1 28. Third, we are experienced class and representative action litigators, and have
2 achieved several approved PAGA settlements. This experience and expertise, combined with the
3 high quality of work performed, resulted in the settlement achieved in this case.

4 29. I graduated from the University of California, Los Angeles in 2004 with a
5 bachelor's in science, obtained my J.D. from Whittier Law School in 2009, and earned a masters
6 in law from Santa Clara University School of Law in 2010. I have been a member of the California
7 Bar since 2010 and have extensive experience in employment matters, including wage and hour
8 litigation. I worked as a wage and hour class action attorney at Gaines & Gaines, APLC from 2012
9 through 2021 and, prior to joining Gaines & Gaines I worked at Sirkin Law Group as a litigation
10 associate from 2010-2012. I joined Crosner Legal in December 2021 and I am a Partner. I have
11 solely handled employment, wage and hour class actions, and PAGA lawsuits for some 13 years. I
12 was selected for 2020-2021 by Super Lawyers as a "Southern California Rising Star" for
13 employment and labor law.

14 30. Zach Crosner is a 2010 graduate of University San Diego School of Law and he has
15 approximately thirteen years of experience as a practicing attorney. For nearly his entire career, his
16 practice has focused on litigation of wage & hour, consumer, and privacy class action and
17 representative action claims. Following graduation he immediately began working for a nationally
18 recognized plaintiff's complex litigation firm, CaseyGerry, where he worked directly with past
19 presidents of the consumer attorneys and recipients of trial attorneys of the year awards. He also
20 worked for other firms that included former CAALA and CLAY trial attorney of the year
21 recipients. While with these firms, he advocated for the rights of consumers and employees in
22 class action litigation, civil rights and employment litigation, catastrophic injuries, insurance bad
23 faith and appellate litigation.

24 31. In 2013, he founded the law firm of Crosner Legal, P.C. which since its inception
25 has focused almost exclusively on plaintiff-side class actions lawsuits representing employees,
26 consumers and other victims. Currently, over ninety percent (95%) of his practice is dedicated
27 exclusively to the prosecution of class actions and representative action lawsuits, and his law firm
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1 is currently responsible as lead counsel or co-lead counsel for prosecuting over one hundred (100)
2 active wage and hour class actions and/or PAGA representative actions, as well as a multitude of
3 consumer and privacy class actions, in both federal and state courts throughout California. He has
4 been a direct participant in over one hundred (100) class action and/or representative action
5 settlements where he has been approved as adequate lead counsel.

6 32. Mr. Crosner has been selected by Super Lawyers as a “Southern California Rising
7 Star” for employment and labor law consecutively from 2018 through 2023. Super Lawyers has
8 also named me on their “Up-and-Coming 100” Southern California Rising Stars List for
9 consecutive years from 2021 through 2023. Only 2.5% of lawyers within California are named a
10 Super Lawyer Rising Star and even less are added to their Top Lists. Additionally, he has been
11 selected as a Top 40 Under 40 Civil Plaintiff Attorney by the National Trial Lawyers, invitation-
12 only organization composed of the premier trial lawyers, from 2019 through 2023. He is an active
13 participant in advocacy groups, including as an executive board member of the Wage and Hour
14 Committee and the Legislative Committee for the California Employment Lawyers Association; a
15 member of the Grassroots Advocacy Team for the National Employment Lawyers Association;
16 Wage and Hour Committee member and Class Action Committee member for the National Trial
17 Lawyers; a member of the American Association for Justice; and a member of the Pound Civil
18 Justice Institute.

19 33. Jamie Serb is a partner with Crosner Legal and head of the firm’s Wage and Hour
20 practice group. She graduated from the University of California, San Diego in 2004, graduated from
21 California Western School of Law in 2013, and has been a member of the California Bar since 2013.
22 She gained extensive experience in wage and hour litigation, beginning work as a class action attorney
23 in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley Law Firm,
24 APLC). She has handled wage and hour class actions and PAGA lawsuits for nearly ten years and has
25 assisted in obtaining millions of dollars for employees during her years of practice.

26 34. Branden Hamilton obtained her undergraduate degree from UCLA in 2004, and her
27 law degree from George Washington University in 2007. She has been affiliated with my firm since
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1 2017 and became Of Counsel with Crosner Legal in 2019, and her practice focuses almost exclusively
2 on wage and hour class and representative actions. She has spent her entire career representing
3 plaintiffs in employment litigation, including several years as an associate at well-known plaintiff's
4 firm Carlin & Buchsbaum.

5 35. Kiara Bramasco received her undergraduate degree, magna cum laude, from Loyola
6 Marymount University in Political Science, and then received her JD from Loyola Law School in
7 2018. She then spent several years with well-known plaintiff's firm Moss Bollinger, first as a law
8 clerk and then as an associate, where her practice focused on employment law, particularly wage
9 and hour class action and PAGA litigation. She joined Crosner Legal in 2021 and is head of the
10 Firm's Pre-Litigation Department.

11 36. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
12 action settlements while serving as lead class counsel in recent years, including but not limited to a
13 \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*,
14 Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement in
15 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento Cty.
16 Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean*
17 *Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million wage and
18 hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American*
19 *Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour class action
20 settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a
21 \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation*
22 *Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million wage and
23 hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-
24 YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in 2020 in *Avina, et al. v.*
25 *First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2
26 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et*
27 *al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour
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1 settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case No.
2 CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class action
3 settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super.
4 Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply*
5 *Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a \$2.38 million wage and
6 hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No.
7 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action settlement
8 in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super.
9 Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism*
10 *Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million wage and
11 hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No.
12 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour class action settlement
13 in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super. Court); a \$1.3
14 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case No.
15 20STCV06618 (Los Angeles Cty. Super. Court); a \$1.925 million wage and hour class settlement in
16 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super. Ct); a \$1.19
17 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature Flight Support*
18 *LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.); a \$2.65 million wage and hour class
19 action settlement in 2024 in *Shilevinatz v. Airport Terminal Services*, Case No. CIVSB2229072 (San
20 Bernardino Cty. Super Ct.); a \$1 million wage and hour class action settlement in 2025 in *Hernandez*
21 *v YZER, LLC*, Case No. 23CV025345 (Alameda Cty. Superior Ct); a \$3.9 million wage and hour
22 class action settlement in 2025 in *Bolanos et al. v. Newport Fab*, Case No. 30-2022-01280696-CU-
23 OE-CXC (Orange Cty. Super. Ct.); and a \$5,093,537.50 wage and hour class action settlement in
24 2025 in *Deaver, et al. v Blue Diamond Growers*, Case No. 34-2022-00316490-CU-OE-GDS
25 (Sacramento Cty. Super. Ct.).
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1 37. Based upon the qualifications and experience set forth above, the following hourly
2 rates are reasonable: Zachary Crosner \$850; Jamie Serb and Sepideh Ardestani \$800; Kiara
3 Bramasco \$650; Branden Hamilton \$600.

4 38. I request the Court apply the above hourly billing rates in this case, as it reasonable in
5 the California legal market for attorneys handling wage and hour class and PAGA actions. I have
6 personal knowledge of the hourly rates charged by a number of plaintiff-side wage and hour class
7 action firms in major California legal markets for partner-level attorneys with experience
8 comparable to mine. These rates have ranged from \$750 to \$900 per hour for calendar years 2018-
9 2023. Some examples include attorney Ron Makarem of Makarem & Associates in Los Angeles,
10 with 28 years of experience, \$900/hour (2023), Matthew Matern of Matern Law Group in Los
11 Angeles, with approximately 26 years of experience \$850/hour (2018); Craig Ackermann of
12 Ackermann & Tilajef, PC in Los Angeles with approximately 25 years of experience \$850/hour
13 (2021), Michael Singer and Isam Khoury of Cohelan Khoury & Singer in San Diego, 35 years and
14 45 years of experience respectively, both \$825/hour (2018), Zachary Crosner of Crosner Legal PC in
15 Los Angeles, 13 years of experience \$750/hour (2022), and James Kawahito of Kawahito Law
16 Group in Los Angeles, with approximately 16 years of experience \$750/hour (2020).

17 39. The requested rates also comport with the adjusted Laffey Matrix, which provides
18 that reasonable hourly rates for attorneys with 10+ years of experience, such as myself, Ms. Serb,
19 and Mr. Crosner, are well over \$800/hour. The adjusted Laffey Matrix may be found at
20 <http://www.laffeymatrix.com/see.html>.

21 40. Fourth, my office has been representing Plaintiff (and the State of California) in this
22 matter on a strictly contingent basis and as such, had to forego other financial opportunities to
23 litigate other cases, incurred the risk of non-recovery after a substantial investment of time, money,
24 and resources, and have done so since the inception of this case without any payment or
25 compensation. This is not an easy burden for a small firm. If, despite these hardships and risks, the
26 best this office could hope for is merely to be paid our customary hourly rate multiplied by the
27 number of hours worked on the case, then we would not be compensated for the hardships and
28

1 serious risks it faced litigating this contingency case, and would not be incentivized to take on
2 similar private attorney general cases in the future.

3 41. For all of the above reasons, a common fund fee award here in the amount of 35% of
4 the \$2,038,000 common fund, or \$713,300.00, is fair and reasonable.

5 42. I have reviewed the work performed on the case and the billing inputted, and the
6 hours worked on this case for Crosner Legal total 142.2 attorney hours, and Crosner Legal's lodestar
7 totals approximately \$111,090, exclusive of time for attending the hearing on the approval motion
8 and time to be incurred thereafter to implement and administer the settlement. The lodestar is
9 summarized in Exhibit 5 hereto, which as true and correct summary of Crosner Legal's work
10 performed and time expended. When combined with our co-counsel's lodestar, the total combined
11 lodestar for both firms is \$475,847.50. On a lodestar basis, the requested fees represent the lodestar
12 with a modest 1.5 upward modifier, which I submit is entirely in line with California law and
13 appropriate in this matter, and represents a fair return on the contingency.

14 43. As noted, Crosner Legal and co-counsel have represented Plaintiffs for some five
15 years with respect to these matters and have expended a significant amount of time and resources in
16 that representation. Our firm agreed to litigate this case on a purely contingent basis and in so doing
17 assumed considerable risk of non-payment for its fees and costs, as discussed above, and as is the
18 case with these matters in general. Under all relevant factors (as outlined herein and in the
19 accompanying memorandum), I respectfully request the Court award the requested fees of \$713,300
20 based on the common fund theory with a corresponding lodestar cross-check and reasonable 1.5
21 lodestar enhancement. Plaintiffs' counsel will share any fees awarded 70% to the Schneider Wallace
22 firm and 30% to Crosner Legal. Both plaintiffs have been informed of the proposed fee split and
23 consented thereto in writing.

24 **THE REQUESTED COSTS ARE FAIR AND REASONABLE**

25 44. I also request reimbursement of Plaintiffs' Counsels' actual out-of-pocket expenses
26 incurred to prosecute this action. These expenses were incidental and necessary to the effective
27 representation of the employees.
28

45. Crosner Legal's costs are \$22,645.07, including court filing/service of process fees, mediation fees, and postage. The requested costs are reasonable and uncontested and should be approved and a true and correct itemization of the costs and expenses incurred is set forth below:

Expense Category	Amount
Court Filing Fees/ Service of Process/Attorney Service	\$3,238.00
Mediation Fees	\$15,200.00
Case Anywhere	\$1,298.55
Expert Witness Fees	\$2,725.00
Postage/Overnight/Fax	\$108.52
PAGA Filing Fee	\$75.00
Photocopying	(waived)
Legal Research	(waived)
Total Costs and Expenses	\$22,645.07

When combined with our co-counsel's costs, the total amount requested is \$54,702.19, and I respectfully request approve reimbursement in that amount.

THE PROPOSED SERVICE AWARDS FOR PLAINTIFFS ARE FAIR AND REASONABLE

46. Pursuant to the Settlement Agreement, Plaintiffs seek incentive awards of \$10,000 each. These requests are reasonable given the much broader release each Plaintiff is agreeing to, as well as their respective efforts in this case and the risks each undertook on behalf of the Aggrieved Employees and the State. Additionally, by contacting and retaining counsel to pursue these claims, Plaintiffs made this settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the risk of being liable for Defendant's litigation costs if they were unsuccessful. Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing Plaintiffs at risk of discrimination by future prospective employers. Among taking many other actions assisting in the successful litigation of this case, Plaintiffs all provided substantial factual information to their counsel, participated in numerous phone calls and meetings with counsel to discuss the case, and general kept

1 up to speed and informed on the case's progress, as reflected in their respective declarations filed
2 herewith..

3 47. For the foregoing reasons, it is respectfully requested that the Court approve the
4 settlement in its entirety.

5 I declare under penalty of perjury under the laws of the State of California that the foregoing
6 is true and correct. Executed on December 5th, 2025, at Los Angeles, California.

7
8 

9 Declarant

Exhibit 1

PAGA SETTLEMENT AGREEMENT

This Private Attorneys General Act (“PAGA”) Settlement Agreement (“Agreement”) is made by and between Plaintiffs Benjamin Zermeno and Cristina Catalano (collectively “Plaintiffs”) and Defendants Remington Lodging & Hospitality, LLC (“Defendant”). The Agreement refers to Plaintiffs and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means Plaintiff Zermeno’s PAGA lawsuit alleging wage and hour violations against Defendants captioned *Zermeno v. Remington Lodging & Hospitality, LLC, et al.*, Case No. RG20069869 initiated on August 4, 2020 and pending in Superior Court of the State of California, County of Alameda, and Plaintiff Catalano’s PAGA lawsuit alleging wage and hour violations against Defendants captioned *Catalano v. Beverley Hills Hotel Management LLC, et al.*, Case No. 22STCV8139 initiated on June 1, 2022 and pending in the Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means Atticus Administration LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employees” means all individuals who were employed by Remington Lodging & Hospitality, LLC in California and classified as non-exempt employees during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendants’ possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Approval Order” means the Court’s order granting approval of the Settlement.
- 1.8. “Court” means the Superior Court of California, County of Alameda.
- 1.9. “Defendants” means named Remington Lodging & Hospitality, LLC, Ashford Hospitality Trust, Inc., Ashford Hospitality Advisors, LLC, and Ashford TRS Beverly Hills, LLC.
- 1.10. “Defendants’ Counsel” means Ogletree Deakins.

- 1.11. "Effective Date" means the date the Court enters a Judgment on its Order Approving the PAGA Settlement.
- 1.12. "Gross Settlement Amount" means Two Million Thirty-Eight Thousand Dollars (\$2,038,000), which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 8 below and the Plaintiff Individual Settlement Amount. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Expense Payment, the Service Award, and the Administrator's Expenses Payment.
- 1.13. "Individual PAGA Payment" means each Aggrieved Employee's *pro rata* share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.14. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.15. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.16. "LWDA Notice" means the notices pursuant to Labor Code section 2699.3, subd. (a) that Plaintiff Zermeno and Plaintiff Catalano submitted to the LWDA on October 15, 2020; May 27, 2020; and on June 1, 2022 describing their allegations to the LWDA and Defendants.
- 1.17. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.18. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Expense Payment, the Service Award, and the Administration Expenses Payment. The remainder is the Net Settlement Amount, to be paid to Aggrieved Employees as Individual PAGA Payments and to the LWDA as a LWDA PAGA Payment, which, together, are the PAGA Penalties.
- 1.19. "PAGA" means the Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq.*
- 1.20. "PAGA Counsel" means Schneider Wallace Cottrell Kim LLP and Crosner Legal, P.C., the attorneys representing the Plaintiffs in the Action.
- 1.21. "PAGA Counsel Fees Payment" means the amount allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees incurred to prosecute the Action. PAGA Counsel will not seek more than \$713,300.00 (35% of the Gross Settlement Amount) as the PAGA Counsel Fees Payment.
- 1.22. "PAGA Counsel Expenses Payment" means the amount allocated to PAGA Counsel for reimbursement of reasonable attorneys' expenses, incurred to prosecute the Action.

Counsel will seek reimbursement for all reasonable costs associated with the Action, currently estimated to be \$57,000.

- 1.23. "PAGA Pay Periods" means the total number of Pay Periods that an Aggrieved Employee worked during the PAGA Period.
- 1.24. "PAGA Period" means the period from May 27, 2019 to the date the Court enters a Judgment on its Order Approving the PAGA Settlement, or 60 days from January 16, 2025, whichever is sooner.
- 1.25. "Plaintiffs" mean Benjamin Zermeno and Cristina Catalano, the named plaintiffs in the Action.
- 1.26. "Released PAGA Claims" means the claims being released by the Plaintiffs and PAGA Counsel and as described in Paragraph 5 below.
- 1.27. "Released Parties" means Defendant, Ashford Hospitality Trust, Inc., Ashford Hospitality Advisors LLC, Ashford TRS Beverly Hills LLC, Beverly Hills Hotel Management LLC, BHR TRS Beverly Hills LLC, and Braemar Hotels & Resorts, Inc., and each of their former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates, divisions, trustees, employees, agents, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, joint employers, insurers and related corporations.
- 1.28. "Service Award" means the payments to named Plaintiff Benjamin Zermeno and named Plaintiff Cristina Catalano for their efforts in bringing and prosecuting this matter. The Service Award will not exceed Ten Thousand Dollars (\$10,000.00) each for Plaintiff Benjamin Zermeno and Plaintiff Cristina Catalano.

2. RECITALS.

- 2.1. On July 15, 2020, Plaintiff Zermeno commenced filed a class and collective action complaint in the Central District of California, Case No. 2:20-cv-06302, which was later dismissed without prejudice on October 14, 2020, following the parties' stipulation to submit Plaintiff Zermeno's individual claims to arbitration. On August 4, 2020, Plaintiff Zermeno commenced this action by filing a PAGA complaint against Remington Lodging & Hospitality, LLC, Ashford Hospitality Trust, Inc., Ashford Hospitality Advisors, LLC, and Ashford TRS Beverly Hills, LLC in Alameda Superior Court, Case No. RG20069869. Zermeno alleges claims pursuant to California Labor Code §§ 2699(a) and (f) for civil penalties for violating the following California Labor Code provisions: California Labor Code § 351 (gratuity violation), § 1194 (failure to pay minimum wage), § 510 (failure to pay overtime wages), § 204 (failure to compensate for all hours worked), § 226.7 and 512 (failure to provide compliant rest periods), §§ 226 and 226.3 (failure to provide timely and compliant itemized wage statements), §§ 201-203, 225.5 and 256 (failure to timely pay all wages owed during employment and following separation from employment). On August 12, 2022, the Alameda court granted Remington Lodging & Hospitality, LLC's motion to compel arbitration as to Plaintiff Zermeno's individual PAGA claim, and stayed the representative PAGA

claims pending completion of the arbitration. On November 9, 2023, pursuant to the parties' agreement, Plaintiff Zermeno filed an amended demand for arbitration to include his individual PAGA claim.

- 2.2. On June 1, 2022, Plaintiff Catalano filed a class action complaint on behalf of herself and all current and former non-exempt employees who worked for Beverley Hills Hotel Management LLC, BHR TRS Beverley Hills LLC, Braemar Hotels & Resorts, Inc., Remington Lodging & Hospitality, LLC and Ashford TRS Beverley Hills LLC ("BHHM Defendants"). BHHM Defendants filed a motion to compel arbitration in this matter.
- 2.3. On August 18, 2022, Plaintiff Catalano filed a representative action complaint against the BHHM Defendants on behalf of herself and aggrieved employees defined as all current and former employees that worked either directly or via a staffing agency for the BHHM Defendants at any location in California at any time from June 14, 2021 to the present. The BHHM Defendants' motion to compel arbitration was deemed filed in this action as the cases were related by the Honorable William F. Highberger. The court ordered Plaintiff's individual representative claims to arbitration and stayed her non-individual representative claims pending the outcome in *Adolph v. Uber Techs.* Plaintiff Catalano settled her individual claims in arbitration against the BHHM Defendants. The settlement did not include her non-individual PAGA claim.
- 2.4. Defendant denies the allegations in the Action, deny any failure to comply with the laws identified in in the Action, and denies any and all liability for the causes of action alleged. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law.
- 2.5. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiffs gave timely written notice to Defendants and the LWDA. Plaintiff Zermeno submitted his notice on May 27, 2020, and then supplemented his notice on October 15, 2020. Plaintiff Catalano submitted her notice on May 27, 2022 and June 1, 2022.
- 2.6. On December 27, 2024, the Parties participated in an all-day mediation presided over by Steven Serratore, Esq., which led to this Agreement to settle the Action. The Parties subsequently accepted the mediator's proposal outlining the major terms of this Settlement on January 16, 2025.
- 2.7. Prior to mediation, Plaintiffs obtained, through formal and informal discovery, a sampling of payroll and time records for the Aggrieved Employees, relevant agreements, policies, and procedures, along with figures and information regarding the number of Aggrieved Employees and PAGA Pay Periods. Plaintiff Zermeno also took multiple depositions in anticipation of his individual arbitration.
- 2.8. Except as necessary in a proceeding to enforce the terms of this Settlement, this Agreement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants

or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

3. MONETARY TERMS.

- 3.1. **Gross Settlement Amount.** Except as otherwise provided by Paragraph 8 below, Defendants promise to pay \$2,038,000 and no more as the Gross Settlement Amount. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.
- 3.2. **Payments from the Gross Settlement Amount.** The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Approval Order:
 - 3.2.1. **To PAGA Counsel:** A PAGA Counsel Fees Payment of not more than 35% (\$713,300.00) and PAGA Counsel Expense Payment as documented in PAGA Counsel's billing statements, currently estimated as \$57,000. Defendant will not oppose requests for Court approval of these payments. Plaintiffs and/or PAGA Counsel will file an application or motion for approval of the PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Expense Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Expense Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Expense Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.
 - 3.2.2. **To the Administrator:** An Administrator Expenses Payment not to exceed \$16,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$16,500, the Administrator will retain the remainder in the Net Settlement Amount.
 - 3.2.3. **To the Plaintiffs:** A Service Award of not more than \$10,000 each. To the extent the Court approves payment less than \$10,000, the Administrator will retain the remainder in the Net Settlement Amount.
 - 3.2.4. **To the LWDA and Aggrieved Employees:** PAGA Penalties constituting 75% of the Net Settlement Amount allocated to the LWDA PAGA Payment and constituting 25% of the Net Settlement Amount allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (the Individual PAGA Payments) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period; and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. **Aggrieved Employee Data.** Within ten (10) days of the date of the Approval Order, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify PAGA Counsel if they discover that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data to the Administrator as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.
- 4.2. **Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than sixty (60) days after the Effective Date.
- 4.3. **Payments from the Gross Settlement Amount.** Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Service Awards, the PAGA Counsel Fee Payment, and the PAGA Counsel Expense Payment.
- 4.3.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.3.2. Simultaneous with the checks issued pursuant to paragraph 4.4.1 above, the Administrator will mail a letter explaining the reason why the Aggrieved Employee is receiving a check, substantially in the form attached as **Exhibit A**, to the Aggrieved Employees along with the Individual PAGA Payment checks.

- 4.3.3. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without a USPS forwarding address. Within 7 days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, as requested by the Aggrieved Employee prior to the void date.
- 4.3.4. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall tender the funds represented by such checks to the Parties' agreed upon Legal Aid Foundation of Los Angeles, subject to the Court's approval.
- 4.3.5. The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount, the following claims will be released against all Released Parties as follows:

5.1. **Released PAGA Claims:** The State of California, on behalf of the Aggrieved Employees, is deemed to release the Released Parties from all claims for PAGA civil penalties that were or could have been asserted based on the facts alleged in the LWDA Notices, or in the operative complaint (attached hereto as Exhibit B), including claims for civil penalties pursuant to Labor Code section 2699, et seq. for violations of Labor Code sections 201, 202, 203, 204, 225.5, 226, 226.3, 226.7, 256, 351, 510, 512, 1194 and applicable Industrial Welfare Commission Wage Orders during the PAGA Period. The release does not include underlying Labor Code claims; claims for wrongful termination, discrimination, unemployment insurance, disability and workers' compensation; claims outside of the PAGA Period; and any claims that cannot be released as a matter of law.

5.2. Effective on the date when Defendants fully fund the entire Gross Settlement Amount, Plaintiffs will also release claims against all Released Parties as follows:

6. **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** Plaintiffs' Counsel shall draft and file a motion for approval of this Settlement as soon as practicable following the execution of this Agreement.

6.1. **Plaintiffs' Responsibilities.** Plaintiffs will request that the Court dismiss without prejudice Plaintiff Zermeno's class action claims.

- 6.2. **Stay of Catalano:** After the execution of this Agreement and before filing the Motion for Preliminary Approval, the Parties will jointly stipulate and request an order to stay the *Catalano* action. Upon the Court's granting of approval of the Settlement, the Parties will file a stipulation to dismiss the *Catalano* action with prejudice.
- 6.3. **Amended Complaint.** The Parties shall jointly stipulate to the filing of the Second Amended Complaint ("SAC") and to personal and subject matter jurisdiction in Alameda County Superior Court solely for the purposes of obtaining approval of this Settlement. The SAC will add the individual PAGA cause of action asserted in Plaintiff Zermeno's arbitration demand into the SAC, add Plaintiff Catalano to the SAC, and add the allegations in the Catalano PAGA complaint into the SAC. The Parties shall cooperate in ensuring that Defendants need not file a response to the Second Amended Complaint. The Parties shall file the stipulation and proposed Second Amended Complaint with or prior to the filing of Plaintiff's unopposed motion for approval of PAGA Settlement. The Second Amended Complaint is attached hereto as **Exhibit B**.

7. SETTLEMENT ADMINISTRATION.

- 7.1. **Selection of Administrator.** The Parties have jointly selected Atticus Administration LLC to serve as the Administrator. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2. **Tax Treatment of Settlement Amounts.** With regard to the Individual PAGA Payments, 100% will be allocated to penalties and IRS Form 1099s will be issued. With regard to the PAGA Counsel Fees Payment and PAGA Counsel Expense Payment, IRS Form 1099 will be issued to PAGA Counsel.
- 7.3. **Administrator Duties.** The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. **AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE.** Based on its records, Defendant estimates that, as of December 27, 2024, there were 4,798 Aggrieved Employees who worked 120,000 Pay Periods during the PAGA Period. If that amount of pay periods during the PAGA Period is determined to be more than 10% higher than 120,000 pay periods, then the Gross Settlement Amount shall be increased proportionally by the amount of pay periods over the 10% increase, or Defendant may agree to a release end date as of the accrual of 120,000 pay periods.

9. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

- 9.1. **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Expense Payment, the Parties and their respective counsel waive

all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

- 10.1. **No Admission of Liability or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the operative complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserve the right to contest Defendant's defenses. The Settlement, this Agreement and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 10.2. **Integrated Agreement.** Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3. **Attorney Authorization.** PAGA Counsel and Defendant's Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4. **Cooperation.** The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution. Notwithstanding the Parties' attempts to implement the Settlement using their best efforts, in the event the Court does not approve the Settlement, the Court does not enter a judgment or if this Settlement does not become effective for any reason, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the date of January 16, 2025, and the Parties shall proceed with the

Action in all respects as if this Settlement had not been executed and as if the Second Amended Complaint had not been filed. Should the Settlement not become effective for any reason, the time between the date January 16, 2025, and the date the Settlement is terminated or otherwise made not final shall be tolled for the purposes of *Zermeno*'s and *Catalano*'s five-year limitations under Cal. Code Civ. Proc. Section 583.310.

- 10.5. **No Prior Assignments.** The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.6. **No Tax Advice.** Neither Plaintiffs, PAGA Counsel, Defendant, nor Defendant's Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7. **Modification of Agreement.** This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.
- 10.10. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11. **No Press.** The Parties agree that they will keep all settlement negotiations and/or communications leading up to the execution of this settlement strictly confidential and will not make press, social media, or marketing/advertisements communications to third parties or the general public regarding this litigation and resolution (such as publicizing the settlement and/or display of it for marketing/advertising purposes), other than as necessary to obtain Court approval and effectuate the terms of the Settlement. The Parties agree that if they receive inquiries from the press, media or social media about this settlement, they will respond only that the case has been amicably resolved to the Parties' mutual satisfaction. Nothing in this provision will affect the ability of the Parties' respective counsel to carry out their duties required by the Court or affect their respective attorney client communications. Additionally, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the name of the Parties in this action and the venue/case number of this action (but not any other settlement details) for such purposes. This paragraph does not prohibit PAGA Counsel from speaking to or responding to inquiries from Aggrieved Employees.

- 10.12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.13. **Calendar Days.** Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.14. **Notice.** All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff Zermeno:

Carolyn H. Cottrell
Ori Edelstein
Michelle S. Lim
Elizabeth R. Klos
SCHNEIDER WALLACE
COTTRELL KIM LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
ccottrell@schneiderwallace.com
oedelstein@schneiderwallace.com
mlim@schneiderwallace.com
eklos@schneiderwallace.com

To Plaintiff Catalano:

Jamie K. Serb
Sepideh Ardestani
Zachary M. Crosner
CROSNER LEGAL, P.C.
9440 Santa Monica Blvd., Suite 301
Beverly Hills, CA 90210
jamie@crosnerlegal.com
sepideh@crosnerlegal.com
zach@crosnerlegal.com

To Defendant:

Linda Claxton
Charles Thompson
Graham Helm
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
One Embarcadero Center, Suite 900
San Francisco, CA 94111
linda.claxton@ogletree.com
Charles.thompson@ogletree.com
graham.helm@ogletree.com

- 10.15. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically (*i.e.*, DocuSign, Dropbox Sign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 10.16. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330, the date to bring a case to trial under CCP section 583.310 is extended for the entire period of this settlement process.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as follows:



Plaintiff Benjamin Zermeno

Defendant
Remington Lodging & Hospitality, LLC

08 / 21 / 2025

Date

Date



Plaintiff Cristina Catalano

09 / 09 / 2025

Date

APPROVED AS TO FORM:


Counsel for Zermeno

August 21, 2025

Date


Counsel for Catalano

September 9, 2025

Date

Counsel for Defendant

Date

To Defendant:

Linda Claxton
Charles Thompson
Graham Helm
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
One Embarcadero Center, Suite 900
San Francisco, CA 94111
linda.claxton@ogletree.com
Charles.thompson@ogletree.com
graham.helm@ogletree.com

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10.16. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330, the date to bring a case to trial under CCP section 583.310 is extended for the entire period of this settlement process.

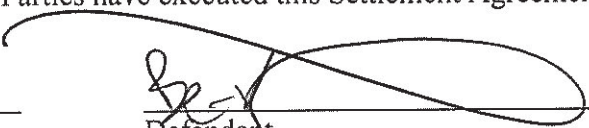
IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as follows:

Plaintiff Benjamin Zermeno

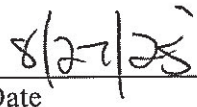
Date

Plaintiff Cristina Catalano

Date



Defendant
Remington Lodging & Hospitality, LLC



Date

APPROVED AS TO FORM:

Counsel for Zermeno

Linda Clapton

Counsel for Defendant

Date

09/03/25

Date

Counsel for Catalano

Date

Exhibit A

[Settlement Admin Contact Info]
<<SETTLEMENT ADMIN ID>>

[Mailing Date]
<<FullName>>
<<Address1>> <<Address2>>
<<City>> <<State>> <<Zip>>

Re: Settlement Payment from the *Zermeno v. Remington Lodging & Hospitality, LLC, et al.* Lawsuit

Dear <<FullName>>:

Enclosed is your settlement payment from the settlement of the lawsuit entitled *Zermeno, et al. v. Remington Lodging & Hospitality, LLC, et al.*, Case No. RG20069869, Superior Court of California, County of Alameda (the "Action").

Plaintiffs Benjamin Zermeno and Christina Catalano filed actions against Remington Lodging & Hospitality, LLC, ("Defendant") pursuant to the California Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called "PAGA") on behalf of the State of California and all "aggrieved employees" of Defendant for civil penalties for alleged wage and hour violations, including but not limited to: the alleged failure to pay minimum wages, overtime wages, provide compliant meal periods and rest breaks, pay meal and rest period premium payments, provide compliant itemized and accurate wage statements, timely and fully pay all wages during employment and upon termination, and reimburse necessary business expenses.

Defendant denies that it has done anything wrong or that it owes any wages or penalties. Defendant believes it has at all times complied with the Labor Code. The parties in this Action have agreed to resolve the case to avoid the uncertainty and expense of litigation, and as part of the settlement, Defendant agreed to pay a certain amount of money categorized as PAGA penalties. Under the PAGA statute, the penalties are divided between the State and the employees, with 75% of the settlement going to the State and the remaining 25% divided among the represented employees. As a result of this settlement, the State of California's and your ability to seek penalties recoverable under the PAGA, for all of the claims ordered released by the Court and summarized above, have been released.

The PAGA claims that have been settled in this matter are limited to those brought on behalf of the State of California. This settlement payment does not affect your right to bring any individual claim against Defendant and related released parties. You are not able to opt out or object to the settlement.

This settlement includes and applies to: all individuals who were employed by Remington Lodging & Hospitality, LLC in California and classified as non-exempt employees during the period from May 27, 2019 to the date the Court enters a Judgment on its Order Approving the PAGA Settlement, or _____ (60 days from January 16, 2025). You have been identified as a current or former employee to whom this settlement applies and who is included in this settlement. Enclosed is a check made out to you. The check represents your share of the settlement for PAGA civil penalties.

If you have any questions, you can view the public docket on the Court's website at [web address] by searching the case number, or you can contact the settlement administrator (whose contact information is at the top of this letter).

Sincerely,
[Settlement Administrator]

89463784.v1-OGLETREE

Title	Zermeno and Catalano Settlement Agreement
File name	Zermeno_and_Catal...ent_Agreement.pdf
Document ID	b2ffe10d5200a677727fa7098f155705150e7acb
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History



SENT

09 / 09 / 2025

22:53:19 UTC

Sent for signature to CRISTINA CATALANO
(cristinacatalano@icloud.com) from mathew@crosnerlegal.com
IP: 97.190.117.238



VIEWED

09 / 09 / 2025

23:20:15 UTC

Viewed by CRISTINA CATALANO (cristinacatalano@icloud.com)
IP: 104.28.123.87



SIGNED

09 / 09 / 2025

23:26:51 UTC

Signed by CRISTINA CATALANO (cristinacatalano@icloud.com)
IP: 104.28.123.87



COMPLETED

09 / 09 / 2025

23:26:51 UTC

The document has been completed.

AMENDMENT TO PAGA SETTLEMENT AGREEMENT

Plaintiffs Benjamin Zermeno and Christina Catalano (together, "Named Plaintiffs") and Defendant Remington Lodging & Hospitality, LLC ("Defendant"), hereby enter into this Amendment (the "Amendment") to PAGA Settlement Agreement (the "Settlement Agreement" or "Settlement"), that was fully executed on September 9, 2025. Plaintiffs and Defendant are herein collectively referred to as the "Parties."

The Parties make the following amendment to the Settlement Agreement to remove Paragraph 5.2, which states in full: "5.2. Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiffs will also release claims against all Released Parties as follows:"

Paragraph 5.2 is hereby removed from the Settlement.

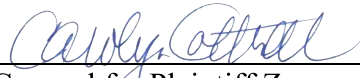
IN WITNESS WHEREOF, the Parties and their Counsel have executed this Settlement Agreement as follows:

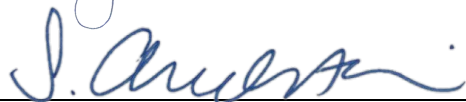
PLAINTIFF:  Date: 11 / 12 / 2025, 2025
Benjamin Zermeno

PLAINTIFF:  Date: 11 / 13 / 2025, 2025
Christina Catalano

DEFENDANT: _____ Date: _____, 2025
On behalf of Defendant Remington Lodging & Hospitality, LLC

APPROVED AS TO FORM:

 Date: November 12, 2025
Counsel for Plaintiff Zermeno

 Date: November 13, 2025
Counsel for Plaintiff Catalano

_____ Date: _____, 2025
Counsel for Defendant Remington Lodging & Hospitality, LLC

Title	Amended Settlement Agreement (Catalano)
File name	Zermeno_PAGA_Sett...Client_251112.pdf
Document ID	8d54c5e75a310891e554aaa62712689b7c74bae5
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History



SENT

11 / 13 / 2025
21:15:39 UTC

Sent for signature to CRISTINA CATALANO
(cristinacatalano@icloud.com) from mathew@crosnerlegal.com
IP: 130.191.100.225



VIEWED

11 / 13 / 2025
21:42:15 UTC

Viewed by CRISTINA CATALANO (cristinacatalano@icloud.com)
IP: 104.28.85.108



SIGNED

11 / 13 / 2025
22:39:49 UTC

Signed by CRISTINA CATALANO (cristinacatalano@icloud.com)
IP: 172.226.186.126



COMPLETED

11 / 13 / 2025
22:39:49 UTC

The document has been completed.

Exhibit 2

[Settlement Admin Contact Info]
<<SETTLEMENT ADMIN ID>>

[Mailing Date]
<<FullName>>
<<Address1>> <<Address2>>
<<City>> <<State>> <<Zip>>

Re: Settlement Payment from the *Zermeno v. Remington Lodging & Hospitality, LLC, et al.* Lawsuit

Dear <<FullName>>:

Enclosed is your settlement payment from the settlement of the lawsuit entitled *Zermeno, et al. v. Remington Lodging & Hospitality, LLC, et al.*, Case No. RG20069869, Superior Court of California, County of Alameda (the "Action").

Plaintiffs Benjamin Zermeno and Christina Catalano filed actions against Remington Lodging & Hospitality, LLC, ("Defendant") pursuant to the California Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called "PAGA") on behalf of the State of California and all "aggrieved employees" of Defendant for civil penalties for alleged wage and hour violations, including but not limited to: the alleged failure to pay minimum wages, overtime wages, provide compliant meal periods and rest breaks, pay meal and rest period premium payments, provide compliant itemized and accurate wage statements, timely and fully pay all wages during employment and upon termination, and reimburse necessary business expenses.

Defendant denies that it has done anything wrong or that it owes any wages or penalties. Defendant believes it has at all times complied with the Labor Code. The parties in this Action have agreed to resolve the case to avoid the uncertainty and expense of litigation, and as part of the settlement, Defendant agreed to pay a certain amount of money categorized as PAGA penalties. Under the PAGA statute, the penalties are divided between the State and the employees, with 75% of the settlement going to the State and the remaining 25% divided among the represented employees. As a result of this settlement, the State of California's and your ability to seek penalties recoverable under the PAGA, for all of the claims ordered released by the Court and summarized above, have been released.

The PAGA claims that have been settled in this matter are limited to those brought on behalf of the State of California. This settlement payment does not affect your right to bring any individual claim against Defendant and related released parties. You are not able to opt out or object to the settlement.

This settlement includes and applies to: all individuals who were employed by Remington Lodging & Hospitality, LLC in California and classified as non-exempt employees during the period from May 27, 2019 to the date the Court enters a Judgment on its Order Approving the PAGA Settlement, or _____ (60 days from January 16, 2025). You have been identified as a current or former employee to whom this settlement applies and who is included in this settlement. Enclosed is a check made out to you. The check represents your share of the settlement for PAGA civil penalties.

If you have any questions, you can view the public docket on the Court's website at [web address] by searching the case number, or you can contact the settlement administrator (whose contact information is at the top of this letter).

Sincerely,
[Settlement Administrator]

89463784.v1-OGLETREE

Exhibit 3



Zachary Crosner, Esq.
Managing Attorney
Los Angeles Office
9440 Santa Monica Blvd.,
Ste. 301
Beverly Hills, CA 90210

zach@crosnerlegal.com
office: (310) 496-5818
fax: (310) 510-6429

May 27, 2022

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

CSC Lawyers Incorporating Service
Agent for Service of Process for:
Beverly Hills Hotel Management, LLC
2710 Gateway Oaks Dr. Ste 150N.
Sacramento CA, 95833

CSC – Lawyers Incorporating Service
Agent for Service of Process for:
BHR TRS Beverly Hills, LLC
2710 Gateway Oaks Dr. Ste 150N.
Sacramento CA, 95833

Cogency Global Inc.
Agent for Service of Process for:
Mr. C Manager, LLC
122 East 42nd Street, 18th Floor
New York, NY 10168

CSC – Lawyers Incorporating Service
Company
Agent for Service of Process for:
Braemar Hotels & Resorts, Inc.
7 St. Paul Street Suite 820
Baltimore MD 21202

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Beverly Hills Hotel
Management, LLC; Mr. C Manager, LLC; BHR TRS Beverly Hills, LLC; and
Braemar Hotels & Resorts, Inc.
Date: May 27, 2022
Subject: *Cristina Catalano v. Beverly Hills Hotel Management, LLC et. al.*

Introduction

This office represents COMPLAINANT, Cristina Catalano (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Beverly Hills Hotel Management, LLC; Mr. C Manager, LLC; BHR TRS Beverly Hills, LLC; and Braemar Hotels & Resorts, Inc. (hereinafter, these entities and their managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by EMPLOYER in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process as provided to the California Secretary of State and/or as provided to the Secretary of State in which entity was formed.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not

cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT's claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 351-353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of "employer" for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties

for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER owns, operates or otherwise manages hotels in California including but not limited to the Mr. C Beverly Hills hotel.¹ At all times mentioned herein, EMPLOYER conducted and continues to conduct substantial business in the State of California. At all times mentioned herein, EMPLOYER was and is an employer covered by the Labor Code and the applicable California Industrial Welfare Commission ("IWC") Wage Order. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a server (and/or similar position/title) at the restaurant located in

¹ See <https://www.mrchotels.com/mrcbeverlyhills/>. Last visited on May 26, 2022.

See also <https://www.bhrreit.com/>. Last visited on May 27, 2022.

EMPLOYER's Mr. C Beverly Hills hotel in Beverly, Hills California. COMPLAINANT worked for EMPLOYER from in or about April 2019 through in or around December 2021. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) failed and continues to fail to comply with Labor Code sections 351 and 353; (13) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (14) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; and (15) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER’s time rounding policy and practice, auto deduction policies and practices and/or other off-the-clock work policies and practices (described below).

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER’s failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER’s control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT’s and NON-EXEMPT AGGRIEVED EMPLOYEES’ meal periods.

Based on further information and belief, EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT’s and NON-EXEMPT AGGRIEVED EMPLOYEES’ work shifts.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER’s failure to keep “accurate and complete” payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor

Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "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." An employer's failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT sent a request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES worked shifts of five and one-half (5 ½) hours or more, entitling them to at least one meal period. However, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute meal periods. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal

periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal periods or skip meal periods completely. Based on information and belief, COMPLAINANT was unable to take a timely 30-minute meal period due to understaffing and the nature and constraints of her job duties, including but not limited to the need to assist/serve customers. Moreover, at times, COMPLAINANT continued working after beginning a purported meal period due to her need to clean up after customers left the restaurant and/or complete other work tasks, thereby depriving COMPLAINANT of a full 30-minute, off-duty meal period. Furthermore, during most of her employment, COMPLAINANT was required to use a time clock machine that was located on a different floor within the hotel. Based on information and belief, COMPLAINANT's meal periods were short, in part due to her need allow sufficient time to go to and from the different floors in order to punch in and out for meal periods and return to her workstation.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES often completed off-the-clock work prior to their scheduled shift time (including but not limited to donning/doffing and pre-shift temperature checks) which EMPLOYER failed to take into account when scheduling meal periods for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing, and/or the nature and constraints of their job duties.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods.

Moreover, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal periods despite having actual and/or constructive knowledge that NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods. Based on information and belief, this time rounding policy resulted in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, EMPLOYER failed to instruct NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, EMPLOYER did not have a compliant written meal period policy, nor did EMPLOYER have a compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of timely, uninterrupted meal periods that were free of EMPLOYER's control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Moreover, based on information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, and 1199 discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest periods per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking or timing of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have a compliant rest period policy in practice. Based on information and belief, any purported rest periods were interrupted, cut short, on duty, restricted to premises, and/or late due to the nature and constraints of NON-EXEMPT AGGRIEVED EMPLOYEES' job duties, need to assist customers (and/or complete other work tasks), understaffing, and/or commentary from supervisors pressuring them to skip rest periods completely and/or take non-compliant rest periods. For example, COMPLAINANT was consistently unable to take a timely off-duty rest period (or any rest period at all) due to understaffing, and the nature and constraints of her job duties, including but not limited to the need to assist/serve customers (and/or complete other assigned work tasks).

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest periods were only taken once tasks were completed, and/or as time permitted.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED

EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” See all applicable Wage Orders section 4. The applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See all applicable Wage Orders section 2. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

Based on information and belief, EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER’s

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

time rounding policies and practices, automatic deduction for purported meal periods (and/or failure to relieve employees of all duties/employer control during unpaid meal periods, short meal periods, or otherwise unlawful meal period practices). Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not afforded lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's mandated off-the-clock work policies and practices, including but not limited to pre-shift and post-shift off-the-clock work.

Prior to clocking in for a scheduled shift, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to undergo pre-shift temperature screenings that took at least two to three minutes to complete. This work time was off-the-clock and uncompensated.

EMPLOYER also required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to don and doff their work uniform prior to clocking in to work. Upon arriving at the hotel (and after completing the pre-shift temperature screening), COMPLAINANT was required to go to the locker room and pick up her uniform. COMPLAINANT then walked to the nearest restroom to change into her uniform (EMPLOYER's locker room did not have changing rooms). After changing into her uniform, COMPLAINANT returned to the locker room to place her belongings in her locker. This process, which took at least twenty (20) minutes to complete, was off-the-clock and uncompensated.

Similarly, after completing a scheduled shift, COMPLAINANT was required to clock out first, then go to the locker room to retrieve her belongings. She then walked to the nearest restroom to change out of her uniform. After changing, COMPLAINANT either returned her uniform to her locker, or left her uniform in the laundry department. If and when COMPLAINANT left her uniform in the laundry department, COMPLAINANT was required to fill out paperwork in the laundry department. This process, which took at least twenty (20) minutes to complete, was off-the-clock and uncompensated.

Additionally, COMPLAINANT was occasionally required to attend meetings with EMPLOYER's human resources department after clocking out of a scheduled shift. For example, if a customer or guest complained at the restaurant, and/or there was a disciplinary matter or policy that needed to be addressed, human resources asked to speak to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES after clocking out of a scheduled shift. As a result, meetings with human resources were off-the-clock and uncompensated. COMPLAINANT recalls attending a post-shift off-the-clock meeting with human resources that lasted approximately one hour.

Moreover, based on information and belief, COMPLAINANT completed off-the-clock work due to EMPLOYER's policy and/or practice of paying for scheduled hours worked rather than actual hours worked. For example, in addition to using a time clock, COMPLAINANT was required to fill out a daily time sheet at the restaurant. COMPLAINANT's manager required that NON-EXEMPT AGGRIEVED EMPLOYEES write down their scheduled shift start, and shift end times as opposed to their actual start and end times. As a result, COMPLAINANT regularly wrote down her scheduled shift end time even though her actual shift end time was much later (due to her need to assist customers, clean up after customers and/or complete other work tasks). Based on information and belief, COMPLAINANT was paid for the hours notated on the daily time sheet as opposed to the hours recorded by the time clock machine.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding policies and practices, auto-deduction policies and practices for purported meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies/failure to pay for all hours worked resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work policies and practices resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's time rounding policies and practices automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods, and/or other off-the-clock work (described above) resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of EMPLOYER's time rounding policy and practice, automatic deduction policies and practices for meal periods, and/or other off-the-clock work described above) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

Based on information and belief, EMPLOYER failed to put NON-EXEMPT AGGRIEVED EMPLOYEES on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to NON-EXEMPT AGGRIEVED EMPLOYEES throughout the relevant time period.

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of the sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain accurate records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief, EMPLOYER failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

⁷ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Based on further information and belief, EMPLOYER issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES that failed to list the accurate total hours worked whenever shift differential wages were paid in violation of Labor Code section 226.

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

Unlawful Deductions: Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee.” COMPLAINANT alleges on information and belief that EMPLOYER made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES paychecks during the relevant period, including but not limited to \$10 that were deducted every pay period as part of EMPLOYER’s subsidized meal plan. Based on information and belief, these deductions are unlawful and in violation of including but not limited to, Labor Code Sections 221-222 which subject EMPLOYER to civil penalties under Labor Code Section 2699.

Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.[1] [1] See Lab. Code §225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

⁸ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and business expenses result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention

to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination (including but not limited to layoffs) or resignation. Based on information and belief, EMPLOYER untimely provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202. For example, COMPLAINANT last worked for EMPLOYER on or about December 1, 2021, yet EMPLOYER issued COMPLAINANT's last paycheck on or around December 10, 2021.

Based on information and belief, upon separation of employment, other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁹

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. See Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and

⁹ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

equipment customarily required by the trade or craft. See applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. Further, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State." See Cal. Lab. Code § 2804.

Based on information and belief, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to the use of a personal cell phone.

Based on information and belief, EMPLOYER shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, use of a personal mobile phone and data usage for work related purposes including but not limited to making and receiving work-related calls and/or messages from co-workers and/or managers/supervisors.

As a pattern and practice, EMPLOYER regularly failed to fully reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for this business expense. Pursuant to California Labor Code section 2802, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out EMPLOYER's orders and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Violation of Labor Code section 351 and 353: Labor Code Section 351 prohibits employers and their agents from sharing in or keeping any portion of a gratuity left for or given to one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353 mandates employers to keep accurate records of all gratuities received.

Based on information and belief, EMPLOYER failed to ensure that NON-EXEMPT AGGRIEVED EMPLOYEES fully received the gratuities left for them by patrons, in that EMPLOYER and its agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor Code Section 351. Based on further information and belief, EMPLOYER also failed/fails to keep accurate records of all tips received, in violation of Labor Code Section 353. Based on information and belief, EMPLOYER failed to pay gratuities paid by customers using credit cards to NON-EXEMPT AGGRIEVED EMPLOYEES by the next regular payday following the credit card payment, in violation of Labor Code section 351.

Based on information and belief, EMPLOYER charges an additional service charge to its customers/patrons. Customers are led to believe that the service charge will be paid to EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES. Instead, EMPLOYER keeps a majority (if not the entirety) of the service charge, thereby depriving NON-EXEMPT AGGRIEVED EMPLOYEES of the service charge/gratuity that is left by the patron/customer for the NON-EXEMPT AGGRIEVED EMPLOYEES. *See O'Grady v Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can constitute a gratuity that is intended to the employees providing the service).

Pursuant to PAGA, EMPLOYER is liable for penalties of \$100 per pay period payable to each NON-EXEMPT AGGRIEVED EMPLOYEE for the first violation of Labor Code Sections 351 and 353 they experienced within the statutory period, and \$200 per pay period for each additional violation.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate 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, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA. For example, based on information and belief, EMPLOYER conducted a background check on COMPLAINANT as a condition of obtaining employment. Based on information and belief, EMPLOYER failed and continues to fail to comply with the requirements of the ICRAA and FCRA when conducting background screenings for applicants, including but not limited to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES that were subject to a background check (as a condition of employment) during the application phase.

Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to

agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law. For example, in EMPLOYER's application for employment, COMPLAINANT was required to answer the following question:

-“Have you ever been arrested or charged with a crime for which trial is currently pending?”

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law. For example, in EMPLOYER's application for employment (and prior to extending an offer of employment), COMPLAINANT was required to answer the following questions:

-“Have you ever been convicted of a felony, including a guilty plea or plea of nolo contendere?”

-“Have you ever been convicted of a misdemeanor which resulted in imprisonment, including a guilty or plea or plea of nolo contendere?”

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

As such, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws,

and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The signature is written in a cursive, flowing style.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC



Alberto Villavicencio <alberto@crosnerlegal.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Fri, May 27, 2022 at 1:16 PM

To: "alberto@crosnerlegal.com" <alberto@crosnerlegal.com>

5/27/2022

LWDA Case No. LWDA-CM-886110-22

Law Firm : Crosner Legal

Plaintiff Name : Cristina Catalano

Employer: Beverly Hills Hotel Management, LLC

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

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

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



Zachary Crosner, Esq.
Managing Attorney
Los Angeles Office
9440 Santa Monica Blvd.,
Ste. 301
Beverly Hills, CA 90210

zach@crosnerlegal.com
office: (310) 496-5818
fax: (310) 510-6429

June 1, 2022

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

CSC Lawyers Incorporating Service
Agent for Service of Process for:
Beverly Hills Hotel Management, LLC
2710 Gateway Oaks Dr. Ste 150N.
Sacramento CA, 95833

CSC – Lawyers Incorporating Service
Agent for Service of Process for:
BHR TRS Beverly Hills, LLC
2710 Gateway Oaks Dr. Ste 150N.
Sacramento CA, 95833

CSC – Lawyers Incorporating Service
Agent for Service of Process for:
Remington Lodging & Hospitality, LLC
2710 Gateway Oaks Drive Ste. 150N.
Sacramento, CA 95833

Cogency Global Inc.
Agent for Service of Process for:
Mr. C Manager, LLC
122 East 42nd Street, 18th Floor
New York, NY 10168

CSC – Lawyers Incorporating Service
Company
Agent for Service of Process for:
Braemar Hotels & Resorts, Inc.
7 St. Paul Street Suite 820
Baltimore MD 21202

CSC – Lawyers Incorporating Service
Agent for Service of Process for:
Ashford TRS Beverly Hills LLC
2710 Gateway Oaks Drive Ste. 150N.
Sacramento, CA 95833

AMENDED NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Beverly Hills Hotel Management, LLC; Mr. C Manager, LLC; BHR TRS Beverly Hills, LLC; Braemar Hotels & Resorts, Inc.; Remington Lodging & Hospitality, LLC; and Ashford TRS Beverly Hills LLC
Date: June 1, 2022
Subject: *Cristina Catalano v. Beverly Hills Hotel Management, LLC et. al.*
LWDA Case No. LWDA-CM-886110-22

Introduction

This office represents COMPLAINANT, Cristina Catalano (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Beverly Hills Hotel Management, LLC; Mr. C Manager, LLC; BHR TRS Beverly Hills, LLC; Braemar Hotels & Resorts, Inc.; Remington Lodging & Hospitality, LLC; and Ashford TRS Beverly Hills LLC (hereinafter, these entities and their managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER in California within one year of the date of COMPLAINANT’s original notice filed on May 27, 2022 (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by EMPLOYER in California within one year of the date of COMPLAINANT’s original notice filed on May 27, 2022 (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written amended notice (“AMENDED NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This AMENDED NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process as provided to the California Secretary of State and/or as provided to the Secretary of State in which the entity was formed. The reason for this AMENDED NOTICE is to add Remington Lodging & Hospitality, LLC and Ashford TRS Beverly Hills LLC as entities that employed COMPLAINANT during the relevant period.

This AMENDED NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C., at the address listed at the close of this AMENDED NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This AMENDED NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This AMENDED NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of COMPLAINANT’s original notice filed on May 27, 2022. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this AMENDED NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this AMENDED NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 351-353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. For example, COMPLAINANT received wage statements identifying Beverly Hills Hotel Management LLC as the employer, and other wage statements identifying BHR TRS Beverly Hills LLC as the employer. COMPLAINANT also received wage statements that stated the following: “Employing Entity: Beverly Hills Marriott 150 South Beverly Drive, Los Angeles, CA 90035.” Based on information and belief, the Beverly Hills Marriott is owned, managed, and/or operated by Remington Lodging & Hospitality, LLC,¹ and/or Ashford TRS Beverly Hills LLC.² Moreover, some documents in COMPLAINANT’s personnel file identify Mr. C Manager, LLC as the employer. Based on information and belief, at times during the relevant period, Mr. C Beverly Hills hotel was owned, managed and/or operated by Remington Lodging & Hospitality, LLC.³ Furthermore, documents in COMPLAINANT’s personnel file, including but not limited to an employee handbook identify “Remington” as the employer. Upon information and belief, Braemar Hotels & Resorts, Inc., acquired the Mr. C Beverly Hills hotel at some time during the relevant period. By reason of EMPLOYER’s status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT’s and other NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT

¹ See <https://www.remingtonhotels.com/portfolio>. Last visited on June 1, 2022.

² See <https://www.ahltreit.com/portfolio.htm>. Last visited on June 1, 2022.

³ See <https://www.remingtonhotels.com/portfolio>. Last visited on June 1, 2022.

AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the original date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER owns, operates or otherwise manages hotels in California including but not limited to the Mr. C Beverly Hills hotel.⁴ At all times mentioned herein, EMPLOYER conducted and continues to conduct substantial business in the State of California. At all times mentioned herein, EMPLOYER was and is an employer covered by the Labor Code and the applicable California Industrial Welfare Commission ("IWC") Wage Order. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a server (and/or similar position/title) at the restaurant located in EMPLOYER's Mr. C Beverly Hills hotel in Beverly, Hills California. COMPLAINANT worked for EMPLOYER from in or about April 2019 through in or around December 2021. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES

⁴ See <https://www.mrchotels.com/mrcbeverlyhills/>. Last visited on May 26, 2022.

See also <https://www.bhrreit.com/>. Last visited on May 27, 2022;

See also <https://www.remingtonhotels.com/portfolio>. Last visited on June 1, 2022; and

See also See <https://www.ahltreit.com/portfolio.htm>. Last visited on June 1, 2022.

for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) failed and continues to fail to comply with Labor Code sections 351 and 353; (13) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (14) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; and (15) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER's time rounding policy and practice, auto deduction policies and practices and/or other off-the-clock work policies and practices (described below).

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER's failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

Based on further information and belief, EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁵

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer.” Section (c) of Labor Code section 226 provides that, “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.” An employer’s failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee’s signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a “reasonable” amount of time, but “not later than 30 calendar days from the date the employer receives a written request.” An employer’s failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee’s personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT sent a request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a

second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES worked shifts of five and one-half (5 ½) hours or more, entitling them to at least one meal period. However, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute meal periods. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal periods or skip meal periods completely. Based on information and belief, COMPLAINANT was unable to take a timely 30-minute meal period due to understaffing and the nature and constraints of her job duties, including but not limited to the need to assist/serve customers. Moreover, at times, COMPLAINANT continued working after beginning a purported meal period due to her need to clean up after customers left the restaurant and/or complete other work tasks, thereby depriving COMPLAINANT of a full 30-minute, off-duty meal period. Furthermore, during most of her employment, COMPLAINANT was required to use a time clock machine that was located on a different floor within the hotel. Based on information and belief, COMPLAINANT's meal periods were short, in part due to her need allow sufficient time to go to

and from the different floors in order to punch in and out for meal periods and return to her workstation.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES often completed off-the-clock work prior to their scheduled shift time (including but not limited to donning/doffing and pre-shift temperature checks) which EMPLOYER failed to take into account when scheduling meal periods for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing, and/or the nature and constraints of their job duties.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods.

Moreover, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal periods despite having actual and/or constructive knowledge that NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods. Based on information and belief, this time rounding policy resulted in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, EMPLOYER failed to instruct NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, EMPLOYER did not have a compliant written meal period policy, nor did EMPLOYER have a compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of timely, uninterrupted meal periods that were free of

EMPLOYER's control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Moreover, based on information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶ EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, and 1199 discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest periods per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking or timing of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have a compliant rest period policy in practice. Based on information and belief, any purported rest periods were interrupted, cut short, on duty, restricted to premises, and/or late due to the nature and constraints of NON-EXEMPT AGGRIEVED EMPLOYEES' job duties, need to assist customers (and/or complete other work tasks), understaffing, and/or commentary from supervisors pressuring them to skip rest periods completely and/or take non-compliant rest periods. For example, COMPLAINANT was consistently unable to take a timely off-duty rest period (or any rest period at all) due to understaffing, and the nature and constraints of her job duties, including but not limited to the need to assist/serve customers (and/or complete other assigned work tasks).

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest periods were only taken once tasks were completed, and/or as time permitted.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty,

for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁷

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” See all applicable Wage Orders section 4. The applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See all applicable Wage Orders section 2. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

Based on information and belief, EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER’s time rounding policies and practices, automatic deduction for purported meal periods (and/or failure to relieve employees of all duties/employer control during unpaid meal periods, short meal periods, or otherwise unlawful meal period practices). Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not afforded lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

⁷ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's mandated off-the-clock work policies and practices, including but not limited to pre-shift and post-shift off-the-clock work.

Prior to clocking in for a scheduled shift, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to undergo pre-shift temperature screenings that took at least two to three minutes to complete. This work time was off-the-clock and uncompensated. EMPLOYER also required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to don and doff their work uniform prior to clocking in to work. Upon arriving at the hotel (and after completing the pre-shift temperature screening), COMPLAINANT was required to go to the locker room and pick up her uniform. COMPLAINANT then walked to the nearest restroom to change into her uniform (EMPLOYER's locker room did not have changing rooms). After changing into her uniform, COMPLAINANT returned to the locker room to place her belongings in her locker. This process, which took at least twenty (20) minutes to complete, was off-the-clock and uncompensated.

Similarly, after completing a scheduled shift, COMPLAINANT was required to clock out first, then go to the locker room to retrieve her belongings. She then walked to the nearest restroom to change out of her uniform. After changing, COMPLAINANT either returned her uniform to her locker, or left her uniform in the laundry department. If and when COMPLAINANT left her uniform in the laundry department, COMPLAINANT was required to fill out paperwork in the laundry department. This process, which took at least twenty (20) minutes to complete, was off-the-clock and uncompensated.

Additionally, COMPLAINANT was occasionally required to attend meetings with EMPLOYER's human resources department after clocking out of a scheduled shift. For example, if a customer or guest complained at the restaurant, and/or there was a disciplinary matter or policy that needed to be addressed, human resources asked to speak to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES after clocking out of a scheduled shift. As a result, meetings with human resources were off-the-clock and uncompensated. COMPLAINANT recalls attending a post-shift off-the-clock meeting with human resources that lasted approximately one hour.

Moreover, based on information and belief, COMPLAINANT completed off-the-clock work due to EMPLOYER's policy and/or practice of paying for scheduled hours worked rather than actual hours worked. For example, in addition to using a time clock, COMPLAINANT was required to fill out a daily time sheet at the restaurant. COMPLAINANT's manager required that NON-EXEMPT AGGRIEVED EMPLOYEES write down their scheduled shift start, and shift end times as opposed to their actual start and end times. As a result, COMPLAINANT regularly wrote down her scheduled shift end time even though her actual shift end time was much later (due to her need to assist customers, clean up after customers and/or complete other work tasks). Based on information and belief, COMPLAINANT was paid for the hours notated on the daily time sheet as opposed to the hours recorded by the time clock machine.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding policies and practices, auto-deduction policies and practices for purported meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies/failure to pay for all hours worked resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work policies and practices resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁸

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid*.

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's time rounding policies and practices automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods, and/or other off-the-clock work (described above) resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

⁸ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁹

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of EMPLOYER's time rounding policy and practice, automatic deduction policies and practices for meal periods, and/or other off-the-clock work described above) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Based on information and belief, EMPLOYER failed to put NON-EXEMPT AGGRIEVED EMPLOYEES on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to NON-EXEMPT AGGRIEVED EMPLOYEES throughout the relevant time period.

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of the sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain accurate records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as

permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief, EMPLOYER failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.¹⁰

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage

¹⁰ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Based on further information and belief, EMPLOYER issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES that failed to list the accurate total hours worked whenever shift differential wages were paid in violation of Labor Code section 226.

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.¹¹

Unlawful Deductions: Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee.” COMPLAINANT alleges on information and belief that EMPLOYER made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES paychecks during the relevant period, including but not limited to \$10 that were deducted every pay period as part of EMPLOYER’s subsidized meal plan. Based on information and belief, these deductions are unlawful and in violation of including but not limited to, Labor Code Sections 221-222 which subject EMPLOYER to civil penalties under Labor Code Section 2699.

Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.[1] [1] See Lab. Code §225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute’s provisions were violated.

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

¹¹ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and business expenses result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination (including but not limited to layoffs) or resignation. Based on information and belief, EMPLOYER untimely provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202. For example, COMPLAINANT last worked for EMPLOYER on or about December 1, 2021, yet EMPLOYER issued COMPLAINANT's last paycheck on or around December 10, 2021.

Based on information and belief, upon separation of employment, other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹²

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

Based on information and belief, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to the use of a personal cell phone.

¹² (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

Based on information and belief, EMPLOYER shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, use of a personal mobile phone and data usage for work related purposes including but not limited to making and receiving work-related calls and/or messages from co-workers and/or managers/supervisors.

As a pattern and practice, EMPLOYER regularly failed to fully reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for this business expense. Pursuant to California Labor Code section 2802, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out EMPLOYER's orders and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Violation of Labor Code section 351 and 353: Labor Code Section 351 prohibits employers and their agents from sharing in or keeping any portion of a gratuity left for or given to one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353 mandates employers to keep accurate records of all gratuities received.

Based on information and belief, EMPLOYER failed to ensure that NON-EXEMPT AGGRIEVED EMPLOYEES fully received the gratuities left for them by patrons, in that EMPLOYER and its agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor Code Section 351. Based on further information and belief, EMPLOYER also failed/fails to keep accurate records of all tips received, in violation of Labor Code Section 353. Based on information and belief, EMPLOYER failed to pay gratuities paid by customers using credit cards to NON-EXEMPT AGGRIEVED EMPLOYEES by the next regular payday following the credit card payment, in violation of Labor Code section 351.

Based on information and belief, EMPLOYER charges an additional service charge to its customers/patrons. Customers are led to believe that the service charge will be paid to EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES. Instead, EMPLOYER keeps a majority (if not the entirety) of the service charge, thereby depriving NON-EXEMPT AGGRIEVED EMPLOYEES of the service charge/gratuity that is left by the patron/customer for the NON-EXEMPT AGGRIEVED EMPLOYEES. *See O'Grady v Merchant Exchanges*

Production, Inc., 41 Cal.App.5th 771, 790 (a mandatory service charge can constitute a gratuity that is intended to the employees providing the service).

Pursuant to PAGA, EMPLOYER is liable for penalties of \$100 per pay period payable to each NON-EXEMPT AGGRIEVED EMPLOYEE for the first violation of Labor Code Sections 351 and 353 they experienced within the statutory period, and \$200 per pay period for each additional violation.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.” Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limits on employers’ ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate 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, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA. For example, based on information and belief, EMPLOYER conducted a background check on COMPLAINANT as a condition of obtaining employment. Based on information and belief, EMPLOYER failed and continues to fail to comply with the requirements of the ICRAA and FCRA when conducting background

screenings for applicants, including but not limited to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES that were subject to a background check (as a condition of employment) during the application phase.

Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law. For example, in EMPLOYER's application for employment, COMPLAINANT was required to answer the following question:

-“Have you ever been arrested or charged with a crime for which trial is currently pending?”

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act ("FEHA"), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law. For example, in EMPLOYER's application for employment (and prior to extending an offer of employment), COMPLAINANT was required to answer the following questions:

-“Have you ever been convicted of a felony, including a guilty plea or plea of nolo contendere?”

-“Have you ever been convicted of a misdemeanor which resulted in imprisonment, including a guilty or plea or plea of nolo contendere?”

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

As such, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this AMENDED NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this AMENDED NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this AMENDED NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this AMENDED NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC



Alberto Villavicencio <alberto@crosnerlegal.com>

Thank you for your Amended PAGA Claim Notice Submission.

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: alberto@crosnerlegal.com

Wed, Jun 1, 2022 at 4:18 PM

06/01/2022 04:18:23 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit 4

Exhibit 5

**Cristina Catalano v. Remington Lodging and Hospitality
(Los Angeles County Superior Court Case No. 22STCV18139 and 22STCV2649)**

Crosner Legal Time Report

Tasks	Zachary Crosner	Jamie Serb	Sepideh Ardestani	Kiara Bramasco	Branden Hamilton
Pre-filing Case Investigation	6.6	0.0	0.0	4.7	2.1
Pleadings and Law and Motion	4.3	0.0	0.0	6.8	4.5
Discovery and Post-Filing Investigation	3.1	0.0	0.0	0.0	0.0
Court Appearances	0.0	0.0	3.5	0.0	0.0
Case Management; Litigation Strategy & Analysis	10.2	30.6	44.2	0.0	0.0
Mediation and Settlement	2.5	3.8	10.5	0.0	4.8
Total Hours	26.7	34.4	58.2	11.5	11.4
Hourly Rate	\$850	\$800	\$800	\$650	\$600
Lodestar	\$22,695	\$27,520	\$46,560	\$7,475	\$6,840

Total Hours:142.2

Total Lodestar: \$111,090.00