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February 7, 2025

Sent Via Certified U.S. Mail

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William J. Kellogg, Registered Agent [Certified No.: 7018 0360 0000 8464 3794]
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William J. Kellogg, Registered Agent [Certified No.: 7018 0360 0000 8464 3800]
La Jolla Beach & Tennis Club, Inc. d/b/a La Jolla Shores Hotel
2000 Spindrift Drive
La Jolla, CA 92037

RE: Adam J. McHugh v. La Jolla Beach & Tennis Club Partners, L.P. et al.

To Whom It May Concern:

This letter is the written notice required by the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), California Labor Code Section 2698 *et seq.*, including without limitation California Labor Code Sections 2699.3 (a)(1), 2699.3(b)(1), and/or 2699.3(c)(1) of the California Labor Code, and any other applicable provision of statute, rule, or law. On February 7, 2024, we filed this letter with the California Labor and Workforce Development Agency ("LWDA"). This letter is an important formal legal notice which may lead to immediate action against your company in a court of law and in administrative proceedings, or both and the imposition of substantial penalties and other orders and remedies against your company.

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This office represents Adam J. McHugh, a former employee of La Jolla Beach & Tennis Club, Inc. located at 2000 Spindrift Drive, La Jolla, CA 92037. We are investigating a potential class and representative California Labor Code Private Attorneys General Act (“PAGA”) action on behalf of current and former employees, who worked for La Jolla Beach & Tennis Club, Inc.

FACTS AND THEORIES UPON WHICH THE ACTION WILL BE BASED:

A. *Failure to Make Compliant Overtime and Meal Period & Rest Period Premium Payments*

California Labor Code § 510(a) provides, in pertinent part:

“Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

California Labor Code § 226.7(c) provides:

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

IWC Wage Order 5-2001(11)(B) provides:

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

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IWC Wage Order 5-2001(12)(B) provides:

“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.”

An employer’s calculation of “regular rate of pay” and “regular rate of compensation” for the purposes of paying overtime and meal and rest period premium payments must include “all nondiscretionary payments, not just hourly wages.” *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858 (2021). “Nondiscretionary payments” are payments and benefits made “pursuant to a prior contract, agreement, or promise. ... [A] payment is discretionary if both the fact that the payment is to be made and the amount of the payment are determined at the sole discretion of the employer ... and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly.” *Ferra v. Loews, Id.* (internal quotation marks omitted).

Mr. McHugh was employed by La Jolla Beach & Tennis Club, Inc. as a seasonal employee from August 2022 to July 2024. During his employment, the terms and conditions of employment provided that, in addition to his regular hourly rate, employees receive employer provided meals as part of their regular compensation. Employer-provided meal compensation is included as part of employee wages on employee wage statements.

However, in violation of the statutory and wage order provisions cited above, La Jolla Beach & Tennis Club, Inc., excluded non-discretionary compensation, including, but not limited to, employer-provided meals when calculating overtime and meal period/ rest break premium payments. Mr. McHugh alleges that the foregoing unlawful exclusions were accomplished pursuant to payroll policies and practices that were uniform throughout all of the La Jolla Beach & Tennis Club, Inc.

B. *Failure to Provide Compliant Meal Periods and Rest Breaks*

IWC Wage Order 5-2001(11) and (12), as well Labor Code Section 512, require employers to provide a ten-minute, paid rest break, for every four-hour work period or major fraction thereof, as well as a thirty-minute unpaid meal period which must begin by the end of the fifth hour of a shift.

Labor Code 226.7 requires premium payments for each shift in which an employee is not provided with a meal period or rest break compliant with the Wage Order and Labor Code.

Mr. McHugh alleges that the La Jolla Beach & Tennis Club, Inc., as a matter of policy and practice, assigns a quantity of work on a daily basis that is incompatible with employees receiving compliant meal periods and rest breaks. This policy and practice involve, but are not limited to, requiring employees to set up barbecue pits, seating, umbrellas, and perform other duties during their rest and meal breaks. Additionally, employees are not permitted to leave the site during their 10-minute rest breaks and are often unable to take their lunch breaks on time due to these responsibilities. As a result, employees are routinely denied the compliant meal periods and rest breaks to which they are entitled.

Furthermore, as set forth above, employers are required to make premium payments to employees who are denied compliant meal periods and rest breaks. However, the La Jolla Beach & Tennis Club, Inc., routinely fails to make required premium payments, and if and when premium payments are made, they are routinely in a lesser amount than that to which the employees are entitled, as a result of the failure to include non-discretionary compensation, including, but not limited to, employer provided meals, in the regular rate of compensation, as set forth above.

C. *Failure to Provide Accurate Wage Statements*

California Labor Code Section 226 requires employers to provide accurate itemized wage statements to their employees. On account of the violations set forth above, the La Jolla Beach & Tennis Club, Inc., owed their employee's wages which were neither paid nor listed on employee wage statements. This failure constitutes a violation of Section 226.

D. *Notice of Representation and Scope of Claims*

This notice is hereby given to and is made against La Jolla Beach & Tennis Club, Inc., and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of these alleged violations as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be employees of any of the La Jolla Beach & Tennis Club, Inc., or any related or alter ego company,

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corporation, partnership, and/or business entity, at any time on or after a date four years prior to the date of this letter at any location within the State of California.

This notice shall apply without limitation to any past, present, future, or continuing violation of the California Labor Code or regulations thereunder which might be discovered because of reasonable and diligent investigation made pursuant to this notice.

Very truly yours,

Rastegar Law Group, APC

A handwritten signature in blue ink, appearing to read 'Farzad Rastegar', with a stylized flourish at the end.

Farzad Rastegar, Esq.