

Assigned for all purposes to: Governor George Deukmejian Courthouse, Judicial Officer: Michael Vicencia

LAW OFFICES OF MARK YABLONOVICH
Mark Yablonovich (SBN 186670)
Mark@Yablonovichlaw.com
Tony Roberts (SBN 315595)
Tony@Yablonovichlaw.com
9595 Wilshire Boulevard, Suite 900
Beverly Hills, California 90212
Telephone: (310) 286-0246 • Fax: (310) 407-5391

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JESSICA HERNANDEZ, a proxy for the
State of California as an aggrieved employee
pursuant to the Private Attorneys General
Act ("PAGA"),

Plaintiff,

vs.

RUFFIN HOTEL CORPORATION OF
CALIFORNIA, INC., DBA LONG BEACH
MARRIOTT, and DOES 1 through 10,
inclusive,

Defendants.

Case No.: **22LBCV00647**

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

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

Jury Trial Demanded

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

4 JURISDICTION AND VENUE

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

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

21 3. This Court has jurisdiction over all Defendants because Defendants are either
22 citizens of California, have sufficient minimum contacts in California, or otherwise intentionally
23 avail themselves of the California market so as to render the exercise of jurisdiction over them
24 by the California courts consistent with traditional notions of fair play and substantial justice.

25 4. There is no basis for federal diversity jurisdiction in this action given that the
26 State of California, the real party in interest, is not a “citizen” for purposes of satisfying
27 diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013)
28 (holding when the real party in interest is a state, it cannot be a “citizen” for purposes of

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

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

22 9. Plaintiff is informed and believes, and alleges, that Defendant Ruffin Hotel
23 Corporation of California, Inc., dba Long Beach Marriott is a corporation authorized to do, and
24 doing business in California, and at all times, an employer whose employees are engaged
25 throughout this county and the State of California.

10. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
under the fictitious names DOES 1 through 10 and will seek leave of this Court to amend the
complaint and serve such fictitiously named Defendants once their names and capacities

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

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

13 12. Plaintiff is informed and believes, and alleges, that each of the Defendants is in
14 some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
15 occurrences, and transactions alleged in this complaint.

16 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

1 California. In other words, Defendants utilized the same methods and formulas when calculating
2 wages and any other remunerations due to Plaintiff and Aggrieved Employees in California.

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

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

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

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

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

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

28 21. Plaintiff is informed and believes, and alleges, that Defendants knew or should

1 have known that Plaintiff and Aggrieved Employees were entitled to rest periods in accordance
2 with the Labor Code and applicable IWC Wage Order, that Plaintiff and Aggrieved Employees
3 were entitled to payment of one additional hour of pay at their regular rates of compensation
4 when they were not provided with a compliant rest period, and that Plaintiff and Aggrieved
5 Employees were not provided compliant rest periods nor payment of one additional hour of pay
6 at their regular rates of compensation when they were not provided a compliant rest period.

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

13 23. Plaintiff is informed and believes, and alleges, that Defendants knew or should
14 have known that Plaintiff and Aggrieved Employees were entitled to timely payment of all
15 wages earned upon termination of employment. In violation of the California Labor Code,
16 Plaintiff and Aggrieved Employees did not receive payment of all wages due, including, but not
17 limited to, overtime wages, minimum wages, meal period and rest period premium wages, split
18 shift pay, and reporting time pay within permissible time periods.

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

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

27 26. Plaintiff is informed and believes, and alleges, that Defendants knew or should
28 have known that they had a duty to maintain accurate and complete time records in accordance

1 with the Labor Code and applicable IWC Wage Order, but failed to do so.

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

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

10 29. Plaintiff is informed and believes, and alleges, that Defendants knew or should
11 have known that they had a duty to properly pay split shift differential when employees worked
12 double shifts on the same day in accordance with the Labor Code and applicable IWC Wage
13 Order but failed to do so.

14 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and Aggrieved Employees were entitled to receive at least two
16 hours of pay, or at least half of their regularly scheduled hours worth of pay for those shifts
17 regularly over four hours when Plaintiff or Aggrieved Employees reported to work for their
18 scheduled shift but were put to work for less than half of their scheduled shift, but failed to do
19 so.

20 31. Plaintiff is informed and believes, and alleges, that Defendants knew or should
21 have known that they had a duty to provide Plaintiff and Aggrieved Employees with written
22 notice setting forth the amount of paid sick leave available, or paid time off leave an employer
23 provides in lieu of sick leave, for use on either the employees' itemized wage statement or in a
24 separate writing provided on the designated pay day with the employees' payment of wages, but
25 failed to do so in violation of the California Labor Code. Further, Defendants knew or should
26 have known that they had a duty to provide Plaintiff and other Aggrieved Employees with no
27 less than 24 hours of accrued sick leave by the 120th calendar day of employment but failed to
28 do so.

1 32. Plaintiff is informed and believes, and alleges, that Defendants knew or should
2 have known that they had a duty to provide sick pay in accordance with the Labor Code and
3 applicable IWC Wage Order but failed to do so.

4 33. Plaintiff is informed and believes, and alleges, that Defendants knew or should
5 have known that they had a duty to provide Covid-19 supplemental sick pay in accordance with
6 the Labor Code and applicable IWC Wage Order but failed to do so.

7 34. Plaintiff is informed and believes, and alleges, that Defendants knew or should
8 have known that they had a duty to provide a safe and healthy work environment to its
9 employees in accordance with the Labor Code and applicable IWC Wage Order but failed to do
10 so.

11 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other Aggrieved Employees were entitled to
13 reimbursement for all business-related expenditures and/or losses they incurred during the
14 course and scope of their employment, and that they did not receive reimbursement of
15 applicable business-related expenditures and/or losses they incurred.

16 36. Plaintiff is informed and believes, and alleges, that at all times, Defendants knew
17 or should have known that they had a duty to compensate Plaintiff and Aggrieved Employees
18 for all hours worked, and that Defendants had the financial ability to pay such compensation,
19 but failed to do so, and falsely represented to Plaintiff and Aggrieved Employees that they were
20 properly denied wages, all in order to increase Defendants' profits.

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

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

violations was committed.”

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

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

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

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

- (a) The aggrieved employee or representative shall give (a) written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been

1 violated (other than those listed in Section 2699.5), including the facts
2 and theories to support the alleged violation.

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

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

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

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

24 44. Thus, Plaintiff has satisfied the administrative prerequisites under California
25 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
26 addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204,
27 210, 223, 224, 225.5, 226(a), 226(c), 226.7, 246, 248.2, 248.5, 510, 512(a), 1174(d), 1182.12,
28 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, 2810.5, 6400, 6401, 6402, 6403, 6404, 6407 as

well as all applicable IWC Wage Orders.

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

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

47. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all Aggrieved Employees, and the State of California against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 210, 223, 224, 225.5, 226(a), 226(c), 226.7, 246, 248.2, 248.5, 510, 512, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, 2810.5, 6400, 6401, 6402, 6403, 6404, 6407 as well as all applicable IWC Wage Orders.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

48. Plaintiff incorporates by reference and re-alleges as if fully stated here, each and every allegation set forth above.

49. California Labor Code sections 2698, et seq. permit Plaintiff to recover various civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates, among others, Labor Code sections 201, 202, 203, 204, 210, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, as well as all applicable IWC Wage Orders.

50. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including Sections 226(c), 225.5, 246, 248.2, 248.5, 1182.12, 1198.5, 2810.5, 6400, 6401, 6402, 6403, 6404, and 6407.

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

- 3 (a) Violations of Labor Code sections 510, 1198, and the applicable IWC
4 Wage Order for Defendants' failure to compensate Plaintiff and
5 Aggrieved Employees with all required overtime pay, as set forth below;
- 6 (b) Violations of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1,
7 1198, and the applicable IWC Wage Order for Defendants' failure to
8 compensate Plaintiff and Aggrieved Employees with at least minimum
9 wages for all hours worked, as set forth below;
- 10 (c) Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable
11 IWC Wage Order for Defendants' failure to provide Plaintiff and
12 Aggrieved Employees with meal periods and/or pay meal period
13 premiums, as set forth below;
- 14 (d) Violations of Labor Code sections 226.7, 1198, and the applicable IWC
15 Wage Order for Defendants' failure to provide Plaintiff and Aggrieved
16 Employees with rest periods and/or pay rest period premiums, as set forth
17 below;
- 18 (e) Violations of Labor Code section 204 for failure to timely pay all wages
19 during employment, as set forth below;
- 20 (f) Violations of Labor Code sections 201, 202, and 203, for failure to timely
21 pay all earned wages upon termination, as set forth below;
- 22 (g) Violations of Labor Code sections 226(a), 1198, and the applicable IWC
23 Wage Order for failure to provide accurate and complete wage statements
24 to Plaintiff and Aggrieved Employees, as set forth below;
- 25 (h) Violations of Labor Code sections 1174(d), 1198, and the applicable IWC
26 Wage Order for failure to maintain accurate payroll records, as set forth
27 below;
- 28 (i) Violations of Labor Code section 1198 and the applicable IWC Wage

- 1 Order for failure to maintain accurate time records, as set forth below;
- 2 (j) Violations of Labor Code sections 226(c) and 1198.5 for failure to
- 3 provide the right to inspect and/or produce Plaintiff's complete
- 4 employment records upon request within the required time frame, as set
- 5 forth below:
- 6 (k) Violations of Labor Code section 1198 and the applicable IWC Wage
- 7 Order for failure to provide split shift pay, as set forth below;
- 8 (l) Violations of Labor Code section 1198 and the applicable IWC Wage
- 9 Order for failure to provide reporting time pay, as set forth below;
- 10 (m) Violations of Labor Code sections 1198 and 2810.5(a)(1) for failure to
- 11 provide Plaintiff and Aggrieved Employees with written notice of
- 12 information material to Plaintiff's and Aggrieved Employees'
- 13 employment with Defendants, as set forth below;
- 14 (n) Violations of Labor Code sections 246, 248.2, 248.5, and the applicable
- 15 IWC Wage Order for failure to provide sick pay, as set forth below;
- 16 (o) Violations of Labor Code section 248.2, for failure to provide Covid-19
- 17 supplemental sick pay, as set forth below;
- 18 (p) Violations of Labor Code sections 6400, 6401, 6402, 6403, 6404, 6407,
- 19 and the applicable IWC Wage Order for failure to provide a safe and
- 20 healthful work environment, as set forth below; and
- 21 (q) Violations of Labor Code sections 2800 and 2802 for failure to
- 22 reimburse necessary business expenditures and losses, as set forth
- 23 below.

24 **FAILURE TO PAY OVERTIME WAGES IN**

25 **VIOLATION OF LABOR CODE SECTIONS 510, 1198, AND**

26 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 3**

27 52. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and

28 every allegation set forth above and below.

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

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

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

14 56. The applicable Wage Order further provides that Defendants are and were
15 required to pay Plaintiff and Aggrieved Employees working more than twelve hours in a day,
16 overtime compensation at a rate of two times their regular rate of pay and required to pay
17 Plaintiff and Aggrieved Employees at a rate of two times their regular rate of pay for hours
18 worked in excess of eight hours on the seventh consecutive day of a work in a workweek.

19 57. An employee’s regular rate of pay includes all remuneration for employment
20 paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

21 58. California Labor Code section 510 codifies the right to overtime compensation at
22 one and one-half times the regular rate of pay for hours worked in excess of eight hours in a day
23 or forty hours in a week or for the first eight hours worked on the seventh day of work, and to
24 overtime compensation at twice the employee’s regular rate of pay for hours worked in excess
25 of twelve hours in a day or in excess of eight hours in a day on the seventh day of work.

26 59. At all relevant times, Defendants failed to pay all overtime wages owed to
27 Plaintiff and Aggrieved Employees. During the relevant time period, Plaintiff and other
28 Aggrieved Employees were not paid overtime premiums for all of the hours they worked in

1 excess of eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a
2 week, and/or for the seventh consecutive day of work, sometimes because all hours that they
3 worked were not recorded, and other times because they were simply not paid for all hours that
4 were recorded and/or worked. As a result, Plaintiff believes the hours she and other Aggrieved
5 Employees worked may not have been properly recorded and/or paid, and therefore, Plaintiff
6 and other Aggrieved Employees may not have been properly compensated for all hours that
7 were recorded and/or worked. In addition, Plaintiff and Aggrieved Employees have been subject
8 to Defendants' control during pre-shift and post-shift times, as well as during unpaid meal
9 periods resulting in unpaid overtime where they are not getting paid, which, when working
10 overtime eligible shifts results in underpaid overtime compensation. Based on information and
11 belief, not all recorded work hours were paid because of inaccurate timekeeping policies and
12 practices. For example, upon information and belief, not all recorded hours were paid because of
13 inaccurate timekeeping policies and practices. Defendants' policies are, and continue to be,
14 unfair and have, over time, resulted in the underpayment of wages to Plaintiff and other
15 Aggrieved Employees. To the extent Defendants' policies have taken away time worked that
16 was eligible for overtime, Plaintiff and other Aggrieved Employees were denied overtime pay
17 for all hours worked. As a result, Plaintiff believes the hours she and other Aggrieved
18 Employees worked may not have been properly recorded and/or paid, and therefore, Plaintiff
19 and other Aggrieved Employees may not have been properly compensated for all hours that
20 were recorded and/or worked.

21 60. Additionally, Defendants did not pay Plaintiff and other Aggrieved Employees
22 the correct overtime rate for the recorded overtime hours that they worked. In addition to an
23 hourly wage, Defendants paid Plaintiff and other Aggrieved Employees various forms of
24 compensation that should have been included in calculating their regular rate of pay,
25 including, but not limited to, non-discretionary bonus pay in the form of "AMC Points" that
26 could be exchanged for cash. On information and belief, in violation of the California Labor
27 Code, Defendants failed to incorporate all remunerations, including non-discretionary bonus
28 pay, into the calculations of the regular rate of pay for purposes of calculating the overtime

1 wage rate. Therefore, during times when Plaintiff and/or Aggrieved Employees worked
2 overtime and received non-discretionary bonus pay, Defendants failed to pay all overtime
3 wages by paying a lower overtime rate than required.

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

18 62. Based on the foregoing, Plaintiff and other Aggrieved Employees are entitled to
19 recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections
20 510 and 1198 and Wage Order No. 5, pursuant to Labor Code sections 558, 1194, and/or
21 2699(a), (f), and (g).

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

25 63. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
26 every allegation set forth above and below.

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

1 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
2 fixed is unlawful. Compensable work time defined in Wage Order No. 5 as “the time during
3 which an employee is subject to the control of an employer and includes all the time the
4 employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs.
5 tit. 8, § 11050(2)(K) (defining “Hours Worked”). Labor Code section 224 prohibits any
6 deduction from an employee’s wages which is not authorized by the employer in writing or
7 permitted by law.

8 65. Defendants have not paid for all the time Plaintiff and Aggrieved Employees
9 have worked throughout the day including all time spent working through meal periods and/or
10 any other time in the day when the employees were performing work tasks subject to
11 Defendants’ control. Plaintiff and other Aggrieved Employees are subjected to Defendants’
12 control pre-shift, post-shift, and throughout the workday, even during unpaid periods of the
13 workday such as unpaid meal periods.

14 66. As set forth above, Plaintiff is informed and believes, and alleges, that
15 Defendants’ timekeeping policies and practices Plaintiff and other Aggrieved Employees were
16 not paid for all hours worked. Additionally, Defendants’ policies and/or practices have caused a
17 lack of meal and rest period coverage and lead employees to perform off-the-clock work during
18 their meal periods. Defendants did not pay minimum wages for these off-the-clock hours that
19 Plaintiff and other Aggrieved Employees worked, including but not limited to before or after
20 shifts as well as during meal period and rest periods.

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

25 68. To the extent that the off-the-clock work and/or recorded hours did not qualify
26 for overtime premium payment, Defendants did not pay at least minimum wages for those hours
27 worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223,
28 224, 1182.12, 1194, 1197, 1197.1, and 1198 and Wage Order No. 5. Plaintiff and other

1 Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and
2 interest, pursuant to Labor Code sections 225.5, 1194, 1197.1, and/or 2699(a), (f), and (g).

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

6 69. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
7 every allegation set forth above and below.

8 70. At all relevant times, California Labor Code sections 226.7, 512(a), and 1198,
9 and the applicable IWC Wage Order have applied to Plaintiff's and Aggrieved Employees'
10 employment by Defendants.

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

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

23 73. At all relevant times, Labor Code sections 226.7, 512(a), and 1198, and the
24 applicable IWC Wage Order also require employers to provide a second meal period of not less
25 than thirty minutes if an employee works over ten hours per day, and if one is not provided, pay
26 an employee one additional hour of pay at the employee's regular rate of compensation, except
27 that if the total hours worked is no more than twelve hours, the second meal period may be
28 waived by mutual consent of the employer and the employee only if the first meal period was

1 not waived.

2 74. Plaintiff is informed and believes, and alleges, that Defendants prevented
3 Plaintiff and other Aggrieved Employees from taking all timely, uninterrupted meal periods,
4 including second meal periods, to which they were entitled. As a result of these policies and/or
5 practices, Plaintiff and other Aggrieved Employees continued to perform their assigned duties
6 without being able to take timely, compliant meal periods. Plaintiff and other Aggrieved
7 Employees had to work through part or all of their meal periods, had their meal periods
8 interrupted, and/or had to wait extended periods of time before taking meal periods. Moreover,
9 Defendants' policies and/or practices of communicating with employees regarding work-related
10 matters as well as directing employees to continue working and/or return to work during meal
11 periods resulted in employees not receiving timely, uninterrupted thirty-minute meal periods.

12 75. Defendants knew or should have known that as a result of these policies and/or
13 practices, Plaintiff and other Aggrieved Employees were prevented from being relieved of all
14 duties and required to perform some of their assigned duties during meal periods and that they
15 did not receive timely meal periods. As a result, Plaintiff and other Aggrieved Employees had to
16 work through all or part of their meal periods, have their meal periods interrupted, and/or wait
17 extended periods of time before taking meal periods.

18 76. Defendants have failed to provide meal periods to Plaintiff and other Aggrieved
19 Employees. As a matter of policy and practice, Defendants have not provided Plaintiff and other
20 Aggrieved Employees with full thirty-minute meal periods for each day worked where they are
21 free from Defendants' required duties and control. Defendants have subjected Plaintiff and other
22 Aggrieved Employees to control and demanding duties throughout their workday, even during
23 times which should constitute uninterrupted duty-free meal periods. Defendants encouraged
24 employees to stay working and/or under employer control, as opposed to encouraging the rest
25 and nourishment meal periods are designed to provide.

26 77. Defendants also engaged in a systematic, company-wide policy and/or practice of
27 not properly training Plaintiff and other Aggrieved Employees on their entitlement to meal
28 period premium payments resulting from meal period violations. As such, Plaintiff was unaware

1 of when meal period premiums were owed to her. Accordingly, Plaintiff and other Aggrieved
2 Employees did not receive all meal period premium wages owed when compliant meal periods
3 were not provided. To the extent that Defendants did pay meal period premium wages to
4 Aggrieved Employees, such payments were admissions of their failure to provide meal periods.
5 Additionally, Defendants' failure to include AMC Points into the regular rate of compensation
6 would have rendered premium wages underpaid.

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

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

15 79. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
16 every allegation set forth above and below.

17 80. At all relevant times, California Labor Code sections 226.7 and 1198, and the
18 applicable IWC Wage Order have applied to Plaintiff and Aggrieved Employees' employment
19 by Defendants.

20 81. At all relevant times, the applicable IWC Wage Order provides that "[e]very
21 employer shall authorize and permit all employees to take rest periods, which insofar as
22 practicable shall be in the middle of each work period" and that the "rest period time shall be
23 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
24 hours or major fraction thereof" unless the total daily work time is less than three and one-half
25 hours.

26 82. At all relevant times, California Labor Code section 226.7 provides that no
27 employer shall require an employee to work during any rest period mandated by an applicable
28 order of the California IWC. To comply with its obligation to provide rest periods under

1 California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must
2 “relinquish any control over how employees spend their break time, and relieve their employees
3 of all duties — including the obligation that an employee remain on call. A rest period, in short,
4 must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270
5 (2016). Pursuant to Labor Code section 226.7(c) and the applicable IWC Wage Order, Plaintiff
6 and Aggrieved Employees are entitled to recover from Defendants one additional hour of pay at
7 their regular rates of compensation for each workday that a required rest period was not
8 provided.

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

12 84. Upon information and belief, during the relevant time period, Defendants’
13 company-wide policies and/or practices resulted in a lack of break coverage and prevented
14 Plaintiff and Aggrieved employees from taking all timely, uninterrupted rest periods to which
15 they were entitled. Defendants’ policies and practices fail to relinquish all control over the
16 employees during breaks.

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

23 86. Similar to meal periods, Defendants’ policies and/or practices prevented Plaintiff
24 and other Aggrieved Employees from being relieved of all duties and to take compliant rest
25 periods. As a result, Plaintiff and other Aggrieved Employees would frequently work shifts
26 three and one-half hours or longer, in excess of six hours, and/or in excess of ten hours without
27 receiving all uninterrupted ten-minute rest periods to which they were entitled.

28 87. Defendants have failed to authorize and permit rest periods to Plaintiff and other

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

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

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

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

21 90. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
22 every allegation set forth above and below.

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

28 92. At all times relevant herein, Labor Code section 204 provides that all wages

1 earned by any person in any employment between the sixteenth and the last day, inclusive, of
2 any calendar month, other than those wages due upon termination of an employee, are due and
3 payable between the first and the tenth day of the following month.

4 93. At all times relevant herein, Labor Code section 204 provides that all wages
5 earned for labor in excess of the normal work period shall be paid no later than the payday for
6 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
7 204 provides that the requirements of this section are deemed satisfied by the payment of wages
8 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
9 calendar days following the close of the payroll period.

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

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

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

19 96. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
20 every allegation set forth above and below.

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

27 98. Defendants wilfully failed to pay Plaintiff and other Aggrieved Employees who
28 are no longer employed by Defendants all their earned wages at the time of discharge, or within

seventy-two hours of their leaving Defendants' employ in violation of California Labor Code sections 201-202, including but not limited to, overtime wages, minimum wages, sick pay, and/or meal period and rest period premium wages.

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

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

100. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and every allegation set forth above and below.

101. At all relevant times, Labor Code sections 226(a) and 1198, and the Wage Order have applied to Plaintiff and the Aggrieved Employees.

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

103. Defendants have provided Plaintiff and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, Defendants violated, among others,

Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Defendants did not record all the hours Plaintiff and other Aggrieved Employees worked while off-the-clock and/or did not pay all hours recorded, Defendants did not list the correct amount of gross wages earned by Plaintiff and other Aggrieved Employees in compliance with Section 226(a)(1). Similarly, Defendants failed to list the correct amount of net wages earned by Plaintiff and other Aggrieved Employees in violation of Section 226(a)(5). In addition, upon information and belief, the total regular and overtime hours listed in Defendants' wage statements, when added together, do not sum up to the total hours worked by the employee during the pertinent time period. Likewise, Defendants provide wage statements which do not properly itemize the total hours worked because Defendants itemize the incorrect total number of hours worked. Without additional information regarding the wage statement and undecipherable codes, an employee cannot simply 'arrive at the sum of hours worked.' As such, Defendants' wage statements do not comply with Labor Code section 226(a)(2). Additionally, upon information and belief, because Defendants did not calculate other Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime and/or premium wages, they did not list the correct amount of gross wages and net wages earned by other Aggrieved Employees in compliance with Sections 226(a)(1) and (5). Defendants also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal period and rest period premium wages, in violation of Section 226(a)(9). Furthermore, because Defendants failed to pay all meal period and rest period premiums to Plaintiff and other Aggrieved Employees, Defendants did not list the correct amount of gross wages earned by Plaintiff and other Aggrieved Employees in compliance with Section 226(a)(1). For the same reasons, Defendants failed to list the correct amount of net wages earned by Plaintiff and other Aggrieved Employees in violation of Section 226(a)(5). Additionally, Defendants failed to itemize the amount of paid sick leave/paid time off Plaintiff and other Aggrieved Employees had available each pay period.

104. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 226(a), 226.3,

1 1198.5, and/or 2699(a), (f), and (g).

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

5 105. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
6 every allegation set forth above and below.

7 106. At all relevant times, Labor Code section 1174(d) provides that “[e]very person
8 employing labor in this state shall ... [k]eep a record showing the names and addresses of all
9 employees employed and the ages of all minors” and “[k]eep, at a central location in the state or
10 at the plants or establishments at which employees are employed, payroll records showing the
11 hours worked daily by and the wages paid to, and the number of piece-rate units earned by and
12 any applicable piece rate paid to, employees employed at the respective plants or
13 establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500
14 civil penalty if they fail to maintain accurate and complete records as required by Section
15 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
16 Defendants wilfully failed to maintain accurate payroll records for Plaintiff and other Aggrieved
17 Employees showing the daily hours they worked and the wages paid as a result of failing to
18 record all hours worked and/or failing to correctly list the gross wages and/or net wages earned
19 by them in violation of Labor Code section 1174(d).

20 107. Labor Code section 1198 provides that the maximum hours of work and the
21 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in
22 the applicable IWC Wage Order(s). Section 1198 further provides that “[t]he employment of
23 any employees for longer hours than those fixed by the order or under conditions of labor
24 prohibited by the order is unlawful.” Pursuant to the applicable Wage Order, employers are
25 required to keep accurate time records showing when the employee begins and ends each work
26 period and meal period. Cal. Code Regs. tit. 8, § 11050, subd. 7. During the relevant time
27 period, Defendants failed, on a company-wide basis, to keep accurate records of shift, and meal
28 period, start and stop times, along with daily hours worked, for Plaintiff and other Aggrieved

1 Employees, in violation of Section 1198 and Wage Order No. 5.

2 108. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
3 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or
4 2699(a), (f), and (g).

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

8 109. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
9 every allegation set forth above and below.

10 110. At all relevant times, California Labor Code section 1198 provides that the
11 maximum hours of work and the standard conditions of labor shall be those fixed by the Labor
12 Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further
13 provides that "[t]he employment of any employees for longer hours than those fixed by the
14 order or under conditions of labor prohibited by the order is unlawful." Pursuant to the
15 applicable IWC Wage Order, employers are required to keep accurate time records showing
16 when the employee begins and ends each work period and meal period. Cal. Code Regs. tit. 8, §
17 11050(7)(A).

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

21 112. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
22 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or
23 2699(a), (f), and (g).

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

26 113. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
27 every allegation set forth above and below.

28 114. At all relevant times herein set forth, California Labor Code section 226(b)

1 provides that every employer shall furnish current and former employees the right to inspect
2 or copy records pertaining to their employment, upon reasonable request to the employer.
3 Labor Code section 226(c) provides that an employer must comply with a request made
4 pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the
5 employee's request.

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

7
8 An employer who receives a written or oral request to inspect or receive
9 a copy of records pursuant to subdivision (b) pertaining to a current or
10 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.

11 116. Similarly, Labor Code section 1198.5 requires an employer to timely produce
12 certain employment records upon the request of an employee or their representative.

13 Specifically, Section 1198.5 provides in relevant part:

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

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

21 (k) If an employer fails to permit a current or former employee, or his
22 or her representative, to inspect or copy personnel records within the
23 times specified in this section, or times agreed to by mutual agreement
as provided in this section, the current or former employee or the Labor
Commissioner may recover a penalty of seven hundred fifty dollars
24 (\$750) from the employer...

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

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

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

120. During the relevant time period, Plaintiff sent Defendants reasonable written requests for documents and records relating to her employment with Defendants. During the relevant time period, Defendants failed to fully comply by providing an incomplete file, having produced an incomplete file including the absence of all her time records during her employment.

121. Plaintiff requested that Defendants produce her employment records pursuant to California Labor Code sections 226(c) and 1198.5. Defendants did not fully comply with this request. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of Labor Code sections 226(c) and 1198.5. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Sections 2699(a), (f), and (g).

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

122. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and

every allegation set forth above and below.

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

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

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

126. Upon information and belief, Defendants sometimes scheduled Plaintiff and Aggrieved Employees to work double-shifts that were separated by more than one hour of time but failed to pay her one hour’s pay at the minimum wage in addition to the minimum wage for that workday. Accordingly, Defendants required Plaintiff and other Aggrieved Employees to work split shifts but failed to pay them an additional hour at minimum wage in violation of California Labor Code section 1198.

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

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

128. At all relevant times herein set forth, Labor Code section 1198 and the IWC Wage Order were applicable to Plaintiff's and Aggrieved Employees' employment by Defendants.

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

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

131. Defendants' failure to provide reporting time pay to Plaintiff and Aggrieved Employees violated IWC Order No. 5-2001 section 5(A) in violation of Labor Code section 1198. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

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

132. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and every allegation set forth above and below.

133. California's Wage Theft Prevention Act was enacted to ensure that employers

1 provide employees with basic information material to their employment relationship at the time
2 of hiring, and to ensure that employees are given written and timely notice of any changes to
3 basic information material to their employment. Codified at California Labor Code section
4 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must
5 provide written notice to employees containing basic and material payroll information,
6 including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour,
7 shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the
8 regular payday designated by the employer, and any allowances claimed as part of the minimum
9 wage, including meal or lodging allowances.

10 134. Effective January 1, 2015, an employer's written notice pursuant to section
11 2810.5 must also include a statement that the employee may accrue and use sick leave; has a
12 right to request and use accrued paid sick leave; may not be terminated or retaliated against for
13 using or requesting the use of accrued paid sick leave; and has the right to file a complaint
14 against an employer who retaliates.

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

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

23 **FAILURE TO PROVIDE SICK PAY IN**

24 **VIOLATION OF LABOR CODE SECTIONS 233, 246, 248.2, AND 248.5**

25 137. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
26 every allegation set forth above and below.

27 138. At all relevant times, under California Labor Code sections 233 and 246,
28 employers in California must provide employees with paid sick leave at a specified rate of pay

1 which must factor in additional earnings during a given pay period where such leave is used.

2 139. Under California Labor Code section 248.2, employers much provide employees
3 with supplemental sick leave at a specified rate of pay which must factor in additional earnings
4 during a given pay period where such leave is used.

5 140. During the relevant time period, Plaintiff and Aggrieved Employee have earned
6 additional nondiscretionary compensation, such as, by way of example, shift differentials or
7 incentive pay. Upon information and belief, Defendants have failed to provide Plaintiff and
8 Aggrieved Employee with the appropriate rate of pay when paying sick pay as required under
9 California Labor Code sections 233, 246, and 248.2. In other words, upon information and
10 belief, Defendants have failed to factor in nondiscretionary compensation and have therefore
11 failed to provide the appropriate rate of pay when paying sick pay as required by California
12 Labor Code sections 233, 246, and 248.2.

13 141. Furthermore, Defendants have also failed to provide Plaintiff and other
14 Aggrieved Employee with written notice that sets forth the amount of paid sick leave available
15 and/or supplemental sick leave, or paid time off leave that Defendants provide in lieu of sick
16 leave, for use on either Plaintiff's or Aggrieved Employee' itemized wage statements or in
17 separate writings provided on the designated pay dates with the employees' payments of wages.
18 Also, supplemental paid sick leave has not been set forth separately from paid sick days.

19 142. As a result of Defendants' violations of California Labor Code sections 233, 246,
20 248.2, and 248.5, Plaintiff and Aggrieved Employees are entitled to recover penalties,
21 attorneys' fees, costs, and interest, pursuant to Labor Code sections 248.2 and/or 2699(a), (f),
22 and (g).

23 **FAILURE TO PROVIDE SUPPLEMENTAL SICK PAY IN VIOLATION OF**
24 **CALIFORNIA LABOR CODE SECTION 248.2**

25 143. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
26 every allegation set forth above and below.

27 144. Labor Code section 248.2 provided full-time employees with 80 hours of
28 supplemental paid sick leave for Covid-related illness, quarantine and isolation, care of

1 family members infected with Covid-19, and vaccine-related illness, during the period of
2 March 29, 2021 through January 1, 2022. Labor Code section 284.2 also provided employees
3 that were part-time that had a normal weekly schedule, the total number of hours the
4 employees were normally scheduled to work for the employer over two weeks of
5 supplemental paid sick leave. If the employees worked a variable number of hours, the
6 employees received 14 times the average number of hours the employees worked each day for
7 the employer in the six months preceding the date the employees took Covid-19 supplemental
8 paid sick leave. If the employees worked for the employer over a period of fewer than six
9 months but more than 14 days, this calculation was instead be made over the entire period the
10 employees had worked for the employer. If the employees worked a variable number of hours
11 and had worked for the employer over a period of 14 days or fewer, this calculation was
12 instead based on the total number of hours the employees had worked for that employer.

13 145. During the relevant time period, Defendants failed to inform Plaintiff and other
14 Aggrieved Employees of their rights to supplemental paid sick leave and further failed to
15 provide such supplemental paid leave. Accordingly, Plaintiff and Aggrieved Employees are
16 entitled to recover penalties, attorneys' fees, costs, and interest, pursuant to Labor Code
17 sections 248.2 and/or 2699(a), (f), and (g).

18 **FAILURE TO PROVIDE SAFE AND HEALTHFUL WORK ENVIRONMENT IN**
19 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 6400, 6401, 6402, 6403, 6404,**
20 **AND 6407**

21 146. Labor Code section 6400(a) provides that every employer shall furnish
22 employment at a place of employment that is safe and healthful for the employees therein.
23 Labor Code section 6401 provides that every employer shall furnish and use safety devices
24 and safeguards, and shall adopt and use practices, means, methods, operations, and processes
25 which are reasonably adequate to render such employment and place of employment safe and
26 healthful. Every employer shall do every other thing reasonably necessary to protect the life,
27 safety, and health of employees. Labor Code section 6402 provides that no employer shall
28 require or permit any employee to go to or be in any place of employment which is not safe

1 and healthful.

2 147. Labor Code section 6403 provides that no employer shall fail to do any of the
3 following: (a) to provide and use safety devices and safeguards reasonably adequate to render
4 the employment and place of employment safe; (b) to adopt and use methods and processes
5 reasonably adequate to render the employment and place of employment safe; and (c) to do
6 every other thing reasonably necessary to protect the life, safety, and health of employees.
7 Labor Code section 6404 provides that no employer shall occupy or maintain any place of
8 employment that is not safe and healthful.

9 148. Labor Code section 6407 provides that every employer and every employee
10 shall comply with the occupational safety and health standards, with Section 25910 of the
11 Health and Safety Code, and with all rules, regulations, and orders pursuant to this division,
12 which are applicable to his own actions and conduct.

13 149. During the Covid-19 pandemic, Defendants failed to take all appropriate and
14 reasonably necessary precautions to protect Plaintiff and other Aggrieved Employees. For
15 example, Defendants did not implement and/or enforce social distancing measures and failed
16 to limit the number of patrons that could be inside the hotel restaurant at one time. As a result,
17 Plaintiff and Aggrieved Employees were subjected to increased risk of contracting Covid-19.

18 150. Accordingly, Plaintiff and Aggrieved Employees are entitled to recover
19 penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 6400, 6401,
20 6402, 6403, 6404, and 6407 and/or 2699(a), (f), and (g).

21 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES IN**
22 **VIOLATION OF LABOR CODE SECTIONS 2800 AND 2802**

23 151. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
24 every allegation set forth above and below.

25 152. At all relevant times, Labor Code section 2802 requires employers to pay for all
26 necessary expenditures and losses incurred by the employee in the performance of their job.
27 The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of
28 doing business and operating expenses on to their employees. *Cochran v. Schwan's Home*

1 *Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). Wage Order No. 4 provides that: “[w]hen
2 tools or equipment are required by the employer or are necessary to the performance of a job,
3 such tools and equipment shall be provided and maintained by the employer, except that an
4 employee whose wages are at least two (2) times the minimum wage provided herein may be
5 required to provide and maintain hand tools and equipment customarily required by the trade
6 or craft.” Cal. Code Regs. tit. 8 § 11050, subd. 9(B).

7 153. On information and belief, Defendants have required Plaintiff and Aggrieved
8 Employee to use their own personal cell phones and data plans as a necessity to performing their
9 jobs. Plaintiff and Aggrieved Employee have also been required to purchase their own personal
10 protective equipment. Despite this, Defendants have not reimbursed Plaintiff and Aggrieved
11 Employee cell phones, data plans, or personal protective equipment.

12 154. Defendants’ policy, practice, and/or procedure of passing their operating costs on
13 to Plaintiff and Aggrieved Employee by requiring them to incur business-related costs,
14 including but not limited to, in connection with their use of personal cell phones and cell phone
15 data plans and purchasing of personal protective equipment to perform their job duties, without
16 full reimbursement, is in violation of California Labor Code sections 2800 and 2802.

17 155. Defendants’ policies, practices, and/or procedures of passing their operating costs
18 on to Plaintiff and Aggrieved Employees violates Labor Code sections 2800 and 2802. Plaintiff
19 and Aggrieved Employees are entitled to recover penalties, attorneys’ fees, costs, and interest,
20 pursuant to Labor Code sections 2699(a), (f), and (g).

21 **REQUEST FOR JURY TRIAL**

22 Plaintiff requests a trial by jury.

23 **PRAYER FOR RELIEF**

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

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

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 223, 1182.12, 1194, 1197, 1197.1 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), and 1198 (by failing to provide all meal periods and/or meal premiums); 226.7 and 1198 (by failing to provide all rest periods and/or rest premiums); 204 (by failing timely to pay all earned wages during employment); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 226(a) and 1198 (by failing to provide accurate wage statements); 1174(d), 1198 and California Code of Regulations, Title 8, section 11050(7) (by failing to maintain accurate and complete payroll records); 1198 and California Code of Regulations, Title 8, section 11050(7) (by failing to maintain accurate and complete time records); 226(c) and 1198.5 (by failing to produce a complete employment file); 1198 (by failing to pay split shift pay); 1198 and California Code of Regulations, Title 8, section 11050(5)(A) (by failing to pay reporting time pay); 1198 and 2810.5(a)(1) (by failing to provide written notice of the material terms of employment); 246, 248.2, 248.5 (by failing to pay sick pay); 248.2 (by failing to pay Covid-19 supplemental pay); 6400, 6401, 6402, 6403, 6404, 6407 (by failing to provide a safe and healthful work environment); and 2800 and 2802 (by failing to reimburse necessary business expenses);

3. For civil penalties pursuant to California Labor Code sections 226.3, 558, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 223, 224, 225.5, 226(a), 226(c), 226.7, 246, 248.2, 248.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2810.5, 6400, 6401, 6402, 6403, 6404, 6407, as well as all applicable IWC Wage Orders;

4. For attorneys' fees and costs pursuant to California Labor Code sections 1194(a), 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 223, 225.5, 226(a), 226(c), 226.7, 246, 248.2, 248.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, 2810.5, 6400,

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6401, 6402, 6403, 6404, 6407, as well as all applicable IWC Wage Orders;
5. For pre-judgment and post-judgment interest as provided by law; and
6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: October 21, 2022

Respectfully submitted,

LAW OFFICES OF MARK YABLONOVICH

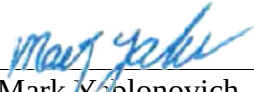
By: 
Mark Yablonoich
Tony Roberts
Attorneys for Plaintiff Jessica Hernandez, a
proxy for the State of California as an aggrieved
employee pursuant to the Private Attorneys
General Act

EXHIBIT 1

Hernandez v. Ruffin Hotel Corporation of California, Inc., dba Long Beach Marriott

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

August 17, 2022

VIA ONLINE SUBMISSION

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

Subject: *Jessica Hernandez v. Ruffin Hotel Corporation of California, Inc., dba Long Beach Marriott*

Dear PAGA Administrator:

This law firm represents Jessica Hernandez (“Ms. Hernandez”) in connection with her claims under the California Labor Code against her former employer Ruffin Hotel Corporation of California, Inc., dba Long Beach Marriott (“Ruffin” or “Employer”).

Employer may be contacted directly at:

Ruffin Hotel Corporation of California, Inc., dba
Long Beach Marriott
Attn: Human Resources
4700 Airport Plaza Drive
Long Beach, CA 90815-1252

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

Ruffin employed Ms. Hernandez from approximately February 2, 2018, to approximately April 5, 2022, as a non-exempt, hourly-paid bartender and food server at Ruffin’s Marriott Hotel located in Long Beach, California. Ms. Hernandez’s work schedule varied. On some occasions, she worked shifts that were five or six hours and on other occasions, she worked shifts that were eight hours or longer. Ms. Hernandez’s job duties included, but were not limited to, taking customers’ orders for food and drink, mixing drinks, and serving food and drinks.

Re: *Jessica Hernandez v. Ruffin Hotel Corporation of California, Inc dba Long Beach Marriott*
August 17, 2022
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Ruffin committed one or more of the following Labor Code violations against Ms. Hernandez and/or the Aggrieved Employees, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

Ruffin’s Company-Wide and Uniform Payroll and Human Resources Practices

Ruffin operates one hotel in California, the Marriot Long Beach. Upon information and belief, Ruffin maintains a centralized Human Resources department for all non-exempt, hourly-paid employees working for Ruffin in California, including Ms. Hernandez and other Aggrieved Employees. At all relevant times, Ruffin issued and maintained uniform, standardized policies, practices and/or procedures for all non-exempt, hourly-paid employees in California, including Ms. Hernandez and other Aggrieved Employees, regardless of their position or job duties.

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

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

California Labor Code sections 510 and 1198 and California Code of Regulations Title 8, section 11050 (“Wage Order No. 5”),² require Ruffin to pay employees working more than eight hours in a day, more than forty hours in a workweek, or for the first eight hours on the seventh consecutive day of work, at the rate of time-and-one-half times the regular rate of pay for all hours worked in excess of eight hours in a day, in excess of forty hours in a workweek, and during the first eight hours on the seventh consecutive day of work. The applicable Wage Order further provides that Ruffin is required to pay employees working more than twelve hours in a day, or in excess of eight hours on the seventh consecutive day, overtime compensation at a rate of two times their regular rate of pay. An aggrieved employee’s regular rate of pay includes all

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

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

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August 17, 2022
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renumeration for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and shift differentials.

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

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

Further, Ruffin did not pay Ms. Hernandez and other Aggrieved Employees the correct overtime rate for the recorded overtime hours that they worked. In addition to an hourly wage, Ruffin paid Ms. Hernandez and other Aggrieved Employees various forms of compensation that should have been included in calculating their regular rate of pay, including, but not limited to, non-discretionary bonus pay in the form of "AMC Points" that could be exchanged for cash. On information and belief, in violation of the California Labor Code, Ruffin failed to incorporate all remunerations, including non-discretionary bonus pay, into the calculations of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Ms. Hernandez and/or Aggrieved Employees worked overtime and received non-discretionary bonus pay, Ruffin failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

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

Ruffin has not paid for all of the time that Ms. Hernandez and Aggrieved Employees have worked throughout the day including all time in the workday when the employees were performing work tasks subject to the control of Ruffin. Ms. Hernandez and other Aggrieved Employees are subjected to Ruffin's control pre-shift, post-shift, during meal and rest periods, and throughout the workday.

To the extent that the off-the-clock work and/or recorded hours did not qualify for overtime premium payment, Ruffin did not pay at least minimum wages for those hours worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable Wage Order.

Ms. Hernandez and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 225.5,³ 1194, 1197.1 and/or 2699(a), (f), and (g).

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

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

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

Re: *Jessica Hernandez v. Ruffin Hotel Corporation of California, Inc dba Long Beach Marriott*
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the employer and the employee.

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

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

Ruffin has failed to provide meal periods and authorize and permit rest periods to Ms. Hernandez and other Aggrieved Employees. As a matter of policy and practice, Ruffin has not provided Ms. Hernandez and other Aggrieved Employees with full 30-minute meal periods and 10-minute rest periods for each day worked where they are free from Ruffin's required duties and control. Ruffin has subjected Ms. Hernandez and other Aggrieved Employees to control and demanding duties throughout their workday, even during times that should constitute uninterrupted duty-free rest periods and meal periods. For example, upon information and belief, Ruffin required Ms. Hernandez to clock in and out for meal periods despite working through entire meal periods on a regular basis. Further, upon information and belief, Ms. Hernandez was required to respond to messages and calls on her personal cellular phone from supervisors and managers during what should have been uninterrupted meal and rest periods.

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

Ruffin has also engaged in a systematic, company-wide policy and/or practice of not properly training Ms. Hernandez and other Aggrieved Employees on their entitlement to meal period and rest period premium payments resulting from meal period and rest period violations. Ms.

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Hernandez and other Aggrieved Employees have been unaware of when meal period and/or rest period premiums were owed to them. Based on information and belief, Ms. Hernandez and other Aggrieved Employees have not received all meal period and/or rest period premium wages owed when compliant meal periods and rest periods have not been provided.⁴

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

Violations of California Labor Code Section 204

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

During the relevant time period, Ruffin did not pay Ms. Hernandez and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal period and rest period premium wages, within the time periods specified by Labor Code section 204.

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

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

California Labor Code sections 201-202⁵ provide that if an employer discharges an employee,

⁴ To the extent that Ruffin did pay meal period and/or rest period premium wages to Ms. Hernandez and other Aggrieved Employees, such payments were admissions of its failure to provide compliant meal periods and rest periods. Furthermore, based on information and belief, to the extent employees were paid bonuses or incentives, those payments have not been included in Ruffin's regular rate of compensation for calculating meal period and/or rest period premiums and has resulted in an underpayment of meal period and/or rest period premium wages.

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

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

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

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

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

Violations of California Labor Code Section 226

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

Ruffin has provided Ms. Hernandez and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, Ruffin has violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Ruffin has not recorded all the hours Ms. Hernandez and other Aggrieved Employees worked and/or paid all hours recorded, Ruffin has not listed the correct amount of gross wages and net wages earned by Ms. Hernandez and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5), respectively. Ruffin also has not accurately listed the total hours worked by Ms. Hernandez and other Aggrieved Employees for work performed while off-the-clock in violation of Section 226(a)(2) and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked in violation of Section 226(a)(9).

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

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

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

Ms. Hernandez requested that Ruffin produce her employment records pursuant to Section 226(c), which requires an employer to produce records within 21 days and Section 1198.5 which requires an employer to produce records within 30 days. Ruffin did not fully comply because the records were incomplete. Labor Code section 2699.3(c) permits aggrieved employees, including Ms. Hernandez, to recover civil penalties for Labor Code sections 226(c) and 1198.5 violations.

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

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

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

During the relevant time period, Ruffin willfully failed to maintain accurate payroll records for Ms. Hernandez and other Aggrieved Employees showing the daily hours they have worked and the wages paid as a result of failing to record all hours worked and/or failing to correctly list the

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gross wages and/or net wages earned by them in violation of Labor Code section 1174(d).

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

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

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

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

On information and belief, Ruffin failed to provide Ms. Hernandez and other Aggrieved Employees with written notice that accurately lists all the requisite information set forth in Labor Code section 2810.5(a)(1). Ruffin failed to list the legal name of the company, the employer’s physical and mailing address, and the frequency of pay.

As a result of Ruffin’s violations of Sections 1198 and 2810.5, Ms. Hernandez and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

Wage Order No. 5 provides that "[w]hen an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment." Cal. Code Regs. tit. 8 § 11050, subd. 2(R).

Upon information and belief, Ruffin violated California Labor Code section 1198 and Wage Order No. 5 by failing to pay Ms. Hernandez and other Aggrieved Employees a split shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than one hour.

Upon information and belief, Ruffin occasionally requested that Aggrieved Employees work double shifts that were separated by more than one hour of time but failed to pay them one hour's pay at the minimum wage in addition to the minimum wage for the workday.

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

Violations of California Labor Code Sections 246, 248.2, and 248.5

Under Labor Code section 246, employers in California must provide employees with paid sick leave at a rate of not less than one hour for every thirty hours worked. Upon information and belief, Ruffin has failed to provide Ms. Hernandez and other Aggrieved Employees with the appropriate amount of sick leave, as required under Labor Code section 246. Ruffin has subjected Ms. Hernandez and other Aggrieved Employees to Ruffin's violations of Labor Code section 246. For example, according to Ruffin's companywide practices and explicit written Sick Leave Policy, "[e]mployee shall accrue 5/12 of a day of compensated time for each full month in a calendar year. Accrual amount will be added to each pay period at the rate of .0193 hours per pay period based on hours worked for a total of 26 pay period (sic) per year."

Under Labor Code section 246(b)(1), employees shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment (subject to the use and accrual limitations set forth in section 246). Also, under Labor Code section 246(b)(3), an employer may use a different accrual method, other than providing one

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hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. Furthermore, under Labor Code section 246(b)(4), an employer may satisfy the accrual requirements of Section 246 by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of the employee's 120th^h calendar day of employment. Despite this, and in violation of Labor Code section 246, Ruffin's accrual method only provides employees sick time at a rate of .0193 hours for every hour worked. Ruffin has not provided Ms. Hernandez and other Aggrieved Employees with no less than 24 hours accrued sick leave or paid time off by the 120th calendar day of employment.

Labor Code section 248.2(d)(2) further states that "[f]or purposes of the enforcement of subdivision (i) of Section 246 ... (A) Covid-19 supplemental paid sick leave shall be set forth separately from paid sick days." However, Ruffin failed to list Covid-19 supplemental paid sick leave on Ms. Hernandez's and other Aggrieved Employee's wage statements or in a separate writing as required.

As a result of Ruffin's violations of Labor Code sections 246 and 248.2, Ms. Hernandez and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

Violations of California Labor Code Section 248.2

Labor Code section 248.2 provided full-time employees with 80 hours of supplemental paid sick leave for Covid-related illness, quarantine and isolation, care of family members infected with Covid-19, and vaccine-related illness, during the period of March 29, 2021 through January 1, 2022. Labor Code section 284.2 also provided employees that were part-time that had a normal weekly schedule, the total number of hours the employees were normally scheduled to work for the employer over two weeks of supplemental paid sick leave. If the employees worked a variable number of hours, the employees received 14 times the average number of hours the employees worked each day for the employer in the six months preceding the date the employees took COVID-19 supplemental paid sick leave. If the employees worked for the employer over a period of fewer than six months but more than 14 days, this calculation was instead be made over the entire period the employees had worked for the employer. If the employees worked a variable number of hours and had worked for the employer over a period of 14 days or fewer, this calculation was instead based on the total number of hours the employees had worked for that employer.

During the relevant time period, Ruffin failed to inform Ms. Hernandez and other Aggrieved Employees of their rights to supplemental paid sick leave and further failed to provide such supplemental paid leave. Accordingly, Ms. Hernandez and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 248.2 and/or 2699(a), (f), and (g).

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Violations of Labor Code Sections 6400, 6401, 6402, 6403, 6404, and 6407

Labor Code section 6400(a) provides that every employer shall furnish employment at a place of employment that is safe and healthful for the employees therein. Labor Code section 6401 provides that every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees. Labor Code section 6402 provides that no employer shall require or permit any employee to go to or be in any place of employment which is not safe and healthful.

Labor Code section 6403 provides that no employer shall fail to do any of the following: (a) to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe; (b) to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and (c) to do every other thing reasonably necessary to protect the life, safety, and health of employees. Labor Code section 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful.

Labor Code section 6407 provides that every employer and every employee shall comply with the occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division, which are applicable to his own actions and conduct.

During the Covid-19 pandemic, Ruffin failed to take all appropriate and reasonably necessary precautions to protect Ms. Hernandez and other Aggrieved Employees. For example, Ruffin did not implement and/or enforce social distancing measures and failed to limit the number of patrons that could be inside the hotel restaurant at one time. As a result, Ms. Hernandez and other Aggrieved Employees were subjected to increased risk of contracting Covid-19.

Accordingly, Ms. Hernandez and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 6400, 6401, 6402, 6403, 6404, and 6407 and/or 2699(a), (f), and (g).

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

Pursuant to Wage Order No. 5:

Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more

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than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

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

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

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

Violation of California Labor Code Section 2802 and California Code of Regulations Title 8, Section 11050 Subdivision 9

Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of their job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). Wage Order No. 5 provides that: "[w]hen 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 the 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." Cal. Code Regs. tit. 8 § 11050, subd. 9(B).

Ruffin has required Ms. Hernandez and other Aggrieved Employees to use their own equipment and this equipment have been necessary to the performance of Ms. Hernandez's and other Aggrieved Employees' jobs. Despite this, Ruffin has not provided and maintained such equipment.

Ms. Hernandez and other Aggrieved Employees have incurred necessary business-related expenses and costs that Ruffin has not fully reimbursed, including but not limited to payments for equipment customarily required by Ms. Hernandez's and other Aggrieved Employees' positions. Furthermore, Ruffin has not paid Ms. Hernandez and other Aggrieved Employees at least two (2) times the minimum wage even though Ruffin, on a company-wide basis and without reimbursement, has required Ms. Hernandez and other Aggrieved Employees to utilize their own equipment.

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Ruffin's policy, practice, and/or procedure of passing its operating costs on to Ms. Hernandez and other Aggrieved Employees violates Labor Code sections 2800 and 2802 and the applicable wage order. Ms. Hernandez and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

Violations of California Labor Code Section 558(a)

Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."⁶ Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." Ruffin, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Hernandez's and other Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth herein.

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

* * *

Accordingly, Ms. Hernandez seeks the remedies set forth above for herself, the State of California, and all other Aggrieved Employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Ms. Hernandez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other Aggrieved Employees, and the State of California against Ruffin for violations of California Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 246, 248.2, 248.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6400, 6401, 6402, 6403, 6404, 6407, and the applicable Wage Order, as well as sections 1198.5 and 2810.5, which are 'curable' violations pursuant to Section 2699.3(c)(2)(A).

Therefore, on behalf of the State of California and all Aggrieved Employees, Ms. Hernandez seeks all applicable civil penalties and other available relief related to these violations of the

⁶ Ms. Hernandez does not seek to recover any unpaid wages that are provided for in Section 558(a). She only seeks civil penalties allowed by PAGA. *See ZB, NA v. Super. Ct. (Lawson)*, 8 Cal. 5th 175 (2019).

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California Labor Code pursuant to PAGA.

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

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

Best Regards,

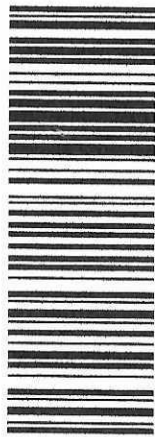


Mark Yablonovich

Copy to: Via Certified Mail:

Ruffin Hotel Corporation of California, Inc.
dba Long Beach Marriott
4700 Airport Plaza Drive
Long Beach, CA 90815-1252

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



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