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Attorneys for Plaintiff Luis Gonzalez

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

LUIS GONZALEZ, individually and on
 behalf of all aggrieved employees of
 Defendants in the State of California,

Plaintiff,

v.

ROLLING HILLS COMMUNITY
 ASSOCIATION OF RANCHOS PALOS
 VERDES, a nonprofit corporation
 authorized to do business in California;
 and DOES 1 through 50 inclusive,

Defendants.

Case No.: 23TRCV00477

**REPRESENTATIVE ACTION FOR
 CIVIL PENALTIES PURSUANT TO
 THE PRIVATE ATTORNEYS
 GENERAL ACT OF 2004
 (Labor Code §§ 2698 et seq.)**

Plaintiff Luis Gonzalez (“Plaintiff”) brings this representative enforcement action in his representative capacity against Defendant ROLLING HILLS COMMUNITY ASSOCIATION OF RANCHOS PALOS VERDES, and DOES 1 through 50, inclusive (collectively, “RHCA” or “Defendants”), on the following grounds:

INTRODUCTION

1. Plaintiff brings this representative enforcement action under the Private Attorneys General Act of 2004 (codified in California Labor Code §§ 2698 *et seq.*, “PAGA”) on behalf of himself and all other current or former employees who were employed by Defendants in the State of California and who worked in any non-exempt position during the applicable relevant time period (referred to herein as “aggrieved employees”).

2. Plaintiff alleges that during the relevant time period Defendants engaged in wage and hour violations under the California Labor Code (“Labor Code”) and the Industrial Welfare Commission (“IWC”) Wage Orders by, among other things:

- a. Failing to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods during employment;
- b. Failing to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods during employment;
- c. Failing to timely pay all minimum and/or regular wages during employment;
- d. Failing to timely pay all overtime wages during employment;
- e. Failing to reimburse for necessary business expenses;
- f. Failing to furnish accurate itemized wage statements; and
- g. Failing to timely pay all wages upon termination.

3. By and through this representative enforcement action, Plaintiff seeks to recover all available remedies including, but not limited to, civil penalties, reasonable attorneys’ fees and litigation costs, as provided under California law.

4. All allegations in this Complaint are based upon information and belief except those allegations specifically pertaining to Plaintiff and/or his counsel, which are based upon personal

1 knowledge. Each allegation in this Complaint has evidentiary support and/or is likely to have
2 evidentiary support after reasonable opportunity for further investigation and formal discovery.

3 **JURISDICTION AND VENUE**

4 5. This Court has jurisdiction over this action pursuant to California Code of Civil
5 Procedure (“Code of Civil Procedure”) § 410.10 and Labor Code §§ 2698 *et seq.* Pursuant to
6 §§ 2698 *et seq.*, Plaintiff brings this action, in his representative capacity, on behalf of himself
7 and all other aggrieved employees.

8 6. This Court has personal jurisdiction over Defendants because Defendants conduct
9 business in the state of California and have caused injuries in the county of Los Angeles, as well
10 as throughout the state of California, through their acts, omissions, and violations of the Labor
11 Code and relevant IWC Wage Order.

12 7. Pursuant to Judicial Council Emergency Rule 9, the statute of limitations was tolled
13 from April 6, 2020 to October 1, 2020.

14 8. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
15 Procedure §§ 395(a) and 395.5. Defendants transact business in the county of Los Angeles and
16 are otherwise within this Court’s jurisdiction for purposes of service of process. The unlawful acts
17 alleged herein have a direct effect on Plaintiff and all other aggrieved employees within the county
18 of Los Angeles and throughout the state of California.

19 **THE PARTIES**

20 **I. PLAINTIFF**

21 9. Plaintiff Luis Gonzalez at all material times mentioned herein:

22 a. Was and is a resident of the county of Los Angeles, California;

23 b. Was employed by and/or otherwise performed work for RHCA from approximately
24 March 2020 through the present;

25 c. Engaged in work for RHCA in the County of Los Angeles, California;

26 d. Was classified by RHCA as a non-exempt employee for purposes of the Labor Code
27 and the IWC Wage Orders;

28 e. Earned an hourly wage;

- f. Was to be paid on a bi-weekly basis;
- g. Regularly worked five (5) days per week and eight (8) hours per day, from 2:00 p.m. to 10:00 p.m.;
- h. Has not been provided with the opportunity to take legally compliant meal periods and/or paid premium wages for non-compliant meal periods;
- i. Has not been authorized and permitted to take legally compliant rest periods and/or paid premium wages for non-compliant rest periods;
- j. Has not been timely compensated appropriate minimum, regular, overtime, and/or double time wages for all time worked;
- k. Has not been reimbursed for business expenses;
- l. Contends his records are not accurately maintained by RHCA;
- m. Has not been furnished with itemized wage statements that show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;
- n. Has not been timely paid all wages while employed by Defendants;
- o. Is an “aggrieved employee” within the meaning of Labor Code § 2699(c); and
- p. Has complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

II. DEFENDANTS

10. Defendant Rolling Hills Community Association of Rancho Palos Verdes is a nonprofit corporation that is authorized to do business, and is actually doing business, in the state of California. Rolling Hills Community Association of Rancho Palos Verdes is a community-based association that was established in 1936 to provide services to residents of the Rolling Hills neighborhood in Los Angeles County.

11. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of defendants Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed

1 and believes, and on that basis alleges, that each of the fictitious defendants have participated in
2 the acts and/or omissions alleged in this Complaint.

3 12. At all times mentioned herein, the acts alleged to have been done and/or caused by
4 each named defendant is also alleged to have been done and/or caused by each of the fictitiously
5 named defendants, and by each of their agents and/or employees who acted within the scope of
6 their agency and/or employment.

7 13. At all times mentioned herein, each defendant, including each fictitiously named
8 defendant, is believed to have acted individually or as an officer, agent, or employee of the other
9 defendants.

10 14. At all times mentioned herein, each defendant, including each fictitiously named
11 defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of
12 each of the other defendants, and in doing the things alleged herein acted within the course and
13 scope of such agency, employment, alter-ego and/or in furtherance of the joint venture.

14 15. At all times mentioned herein, the acts and/or omissions of each of the defendants,
15 including each fictitiously named defendant, concurrently contributed to the various acts and/or
16 omissions of each and every one of the other defendants, including each fictitiously named
17 defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein.
18 Each of the defendants, including each fictitiously named defendant, approved of, condoned,
19 and/or otherwise ratified each and every one of the acts and/or omissions complained herein. Each
20 defendant, including each fictitiously named defendant, was and is acting with authority of each
21 and every other defendant and/or are acting as agents of each and every other defendant or Doe
22 defendant.

23 16. At all times mentioned herein there was a unity of interest and ownership between
24 each defendant, including each fictitiously named defendant, such that all defendants acted as a
25 single employer of Plaintiff and all other aggrieved employees.

26 17. At all times mentioned herein, each defendant, including each fictitiously named
27 defendant, exercised supervision and control over the wages, hours, and/or working conditions of
28

1 Plaintiff and all other aggrieved employees, including, but not limited to, implementing standard
2 policies and procedures.

3 18. At all times mentioned herein, each defendant, including each fictitiously named
4 defendant, caused aggrieved employees, including Plaintiff, to work and/or prevented Plaintiff
5 and other aggrieved employees from working.

6 19. At all times mentioned herein, each defendant, including each fictitiously named
7 defendant, had control over aggrieved employees.

8 20. Each defendant, including each fictitiously named defendant, is alleged to have
9 caused each of the violations alleged herein.

10 21. Each defendant, including each fictitiously named defendant, is jointly and severally
11 liable for each of the violations alleged herein.

12 **FACTUAL ALLEGATIONS**

13 22. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
14 paragraphs of this Complaint.

15 23. Plaintiff was employed by, or otherwise performed work for, RHCA from about
16 March 2020 through and including the present. Plaintiff performed work as a Gate Attendant at
17 the Rolling Hills location. As a Gate Attendant, Plaintiff's job duties consisted of confirming that
18 visitors have permission to enter the premises by checking resident's guest lists and/or confirming
19 verbally with residents, calling law enforcement or emergency medical services when needed,
20 cleaning and sanitizing the gatehouse at the end of each shift, among other things. At all times
21 during his employment, Plaintiff was classified by Defendants as a non-exempt employee, earned
22 an hourly wage, and was paid on a bi-weekly basis. Plaintiff typically worked five (5) days per
23 week and eight (8) hours per day, from 2:00 p.m. to 10:00 p.m.

24 24. Plaintiff asserts that RHCA has employed, and will continue to employ, other
25 aggrieved employees throughout the state of California. Plaintiff alleges that aggrieved employees
26 are categorized as non-exempt, paid an hourly wage, and are paid bi-weekly.

1 25. Plaintiff contends that he and all other aggrieved employees were subject to, and
2 continue to be subject to, the same and/or similar policies, practices, procedures, guidelines,
3 and/or culture described herein.

4 26. Plaintiff further alleges that he and all other aggrieved employees have suffered, and
5 will continue to suffer, the same and/or similar violations of law described herein.

6 27. Plaintiff alleges that RHCA had, and continues to have, a policy, practice,
7 procedure, guideline, and/or culture of failing to timely pay all minimum and/or regular wages at
8 least twice per calendar month on the dates designated in advance by RHCA during employment,
9 and failed to timely pay all wages upon termination.

10 28. Defendants failed to pay Plaintiff and other aggrieved employees for the time they
11 spent communicating with supervisors via phone or text message outside of scheduled work hours.
12 Specifically, Defendants did not count all of those times as hours worked and did not provide all
13 remuneration.

14 29. Plaintiff and, on information and belief, other aggrieved employees of Defendants
15 were required to report for work ten (10) to fifteen (15) minutes prior to the start of every
16 scheduled shift to prepare for the day. Defendants failed to compensate Plaintiff and other
17 aggrieved employees for the time spent prior to their shift starting.

18 30. Thus, as a result of Defendants' illegal policies, Plaintiff and, on information and
19 belief, other aggrieved employees were not paid all minimum, regular, and overtime wages for all
20 hours worked.

21 31. Plaintiff alleges that RHCA had, and continues to have, a policy, practice,
22 procedure, guideline, and/or culture of failing to pay all overtime wages no later than the pay day
23 for the next regular payroll period during employment.

24 32. Defendants further failed to include bonuses into the regular rate of pay when
25 Plaintiff and other aggrieved employees worked overtime.

26 33. Plaintiff alleges that RHCA had, and continues to have, a policy, practice,
27 procedure, guideline, and/or culture of failing to provide legally compliant meal periods and/or
28 timely pay premium wages for non-compliant meal periods during employment.

34. Defendants failed to provide Plaintiff and, on information and belief, other aggrieved employees the opportunity to take legally compliant 30-minute, off-duty meal periods commencing before the start of their sixth hour of work. Specifically, Defendants maintain an illegal meal period policy that only authorizes meal breaks for employees who work 8.5 hours or more in a day. Defendants' illegal meal period policy further fails to authorize a meal period before the end of the fifth hour of work. Additionally, Defendants utilize illegal on-duty meal period agreements, which illegally waive certain employees' meal periods.

35. Plaintiff and, on information and belief, other aggrieved employees were unable to be relieved to take their 30-minute meal break when a "breaker" attendant was not scheduled. The breaker's primary role is to relieve other gate attendants to take their 30-minute meal break and 15-minute rest breaks. Further, Defendants failed to schedule any "breaker" attendants before or after the period of September to October 2020. Additionally, due to the long distances between each gate, when breaker attendants were scheduled, they often arrived late. Thus, Plaintiff and, on information and belief, other aggrieved employees often received late meal breaks that did not commence before their sixth hour of work. Plaintiff was further unable to take his meal breaks completely when he worked graveyard shifts from 10:00 p.m. to 6:00 a.m. due to the lack of a breaker.

36. Defendants failed to timely pay Plaintiff and, on information and belief, other aggrieved employees the additional one hour of pay at their respective regular rates of pay that Plaintiff and other aggrieved employees were owed for each workday that Defendants did not provide a compliant meal period, as required under the Labor Code and the applicable IWC Wage Order.

37. Plaintiff alleges that RHCA had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods during employment.

38. Plaintiff and, on information and belief, other aggrieved employees were unable to be relieved to take their 10-minute meal breaks when a "breaker" attendant was not scheduled.

1 Additionally, Plaintiff and, on information and belief, other aggrieved employees would have to
2 forego rest breaks entirely when no “breaker” attendant was scheduled.

3 39. Defendants failed to authorize and permit Plaintiff and, on information and belief,
4 other aggrieved employees to take legally compliant, off-duty rest periods for every four (4) hours
5 worked. Specifically, Defendants failed to provide sufficient coverage and failed to provide an
6 enforced schedule for rest periods. Specifically, RHCA provided Plaintiff with a printed schedule
7 for rest breaks daily, but due to irregularities in the breaker shifts, the gate attendants would be
8 unable to take breaks at these scheduled times and/or take the breaks at all. Additionally, Plaintiff
9 was unable to take his rest breaks completely when he worked graveyard shifts from 10:00 p.m.
10 to 6:00 a.m. due to the lack of a breaker.

11 40. Defendants failed to timely pay Plaintiff and, on information and belief, other
12 aggrieved employees the additional one hour of pay at their respective regular rates of pay that
13 Plaintiff and other aggrieved employees were owed for each workday that Defendants did not
14 provide a compliant rest period, as required under the Labor Code and the applicable IWC Wage
15 Order.

16 41. Plaintiff alleges that RHCA had, and continues to have, a policy, practice,
17 procedure, guideline, and/or culture of failing to furnish accurate itemized wage statements.

18 42. Defendants failed to furnish Plaintiff and other aggrieved employees with accurate
19 itemized wage statements that comply with the requirements of the Labor Code because the wage
20 statements issued did not accurately reflect their total hours worked, all applicable hourly rates in
21 effect during the pay period, and the corresponding number of hours worked at each hourly rate,
22 the gross wages earned, and the net wages earned.

23 43. Plaintiff alleges that RHCA had, and continues to have, a policy, practice,
24 procedure, guideline, and/or culture of failing to maintain accurate employment, time, and/or
25 payroll records.

26 44. As a direct result of RHCA’s illegal policies and procedures, Defendants failed to
27 maintain accurate records reflecting, among other things, the proper beginning and end of each
28

1 work period, the meal periods, the total hours worked during the pay period, the applicable rates
2 of pay, and the actual wages earned and paid, in violation of California law.

3 45. Plaintiff alleges that RHCA had, and continues to have, a policy, practice,
4 procedure, guideline, and/or culture of failing to reimburse for necessary business expenses.

5 46. Plaintiff and, on information and belief, other aggrieved employees were required
6 to use their personal cell phones to clock in and clock out for their shifts and meal breaks on the
7 ADP application. Defendants did not have a policy, practice, procedure and/or guideline of
8 reimbursing aggrieved employees, despite mandating Plaintiff and other aggrieved employees.

9 47. As a result of the foregoing, Defendants have failed to pay all wages due to
10 employees upon termination and failed to timely pay wages at least twice per calendar month on
11 the dates designated in advance by RHCA.

12 48. On September 15, 2022, Plaintiff submitted written notice to the California Labor
13 and Workforce Development Agency ("LWDA") and RHCA as required by the PAGA, informing
14 RHCA of the alleged violations of the Labor Code. A true and correct copy of the
15 September 15, 2022 written notice is attached hereto as **Exhibit 1** and is incorporated herein by
16 reference.

17 49. To date, more than 65 days has passed since the submission of Plaintiff's written
18 notice, and the LWDA has not provided notice of its intent to investigate Plaintiff's alleged
19 violations of the Labor Code.

20 50. Plaintiff further believes that additional violations may be discovered and therefore
21 reserves his right to allege additional violations of the law as investigation and discovery warrants.
22 In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative
23 complaint as necessary.

24 **PAGA DESIGNATION**

25 51. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
26 paragraphs of this Complaint.

27 52. By and through this representative action, Plaintiff intends to represent the
28 following aggrieved employees:

1 All current and former non-exempt employees of Defendants,
2 individually and/or collectively, in California during the period
3 commencing on the date that is within one-year and sixty-five days
4 prior to the filing of this Complaint through and including the last date
5 of trial (hereinafter the "PAGA Period"). To the extent that California
Rules of Court, Appendix I, Emergency Rule 9 and/or equitable
tolling operates to toll the claims by the PAGA employees against
Defendants, the PAGA Period should be adjusted accordingly.

6 53. PAGA Employees are all "employees" as the term is used in the Labor Code and
7 the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

8 54. A more precise definition of the aggrieved employees may be determined after
9 further investigation and discovery. Plaintiff reserves his right to redefine the group of aggrieved
10 employees as permitted by California law.

11 55. Pursuant to Labor Code §§ 2698 *et seq.*, any provision of the Labor Code that
12 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
13 divisions, commissions, boards, agencies or employees for violation of the code may, as an
14 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
15 himself or herself and other current or former employees pursuant to the procedures specified in
16 Labor Code § 2699.3.

17 56. Pursuant to the PAGA, all civil penalties recovered must be allocated seventy-five
18 percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant
19 to Labor Code § 2699(i).

20 57. During all, or a portion of, the one-year and sixty-five day period before Plaintiff
21 filed notice of his claims with the LWDA, RHCA was Plaintiff's and all other aggrieved
22 employees' employer or person acting on behalf of aggrieved employees' employer, either
23 individually or as an officer, agent, or employee of another person, within the meaning of Labor
24 Code §§ 558(a) and 1197.1, who paid or caused to be paid to any employee a wage less than the
25 minimum fixed by California state law, and as such, is subject to civil penalties for each underpaid
26 employee, as well as liquidated damages pursuant to Labor Code § 1194.2, and any applicable
27 penalties imposed pursuant to Labor Code § 203.
28

58. Plaintiff is an “aggrieved employee” under the PAGA because he was employed by the alleged violator, RHCA, and experienced one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of aggrieved employees. (See *Huff v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519.)

59. Plaintiff alleges that all other RHCA employees are also “aggrieved employees” under the PAGA as RHCA employed them and all aggrieved employees experienced one or more of the alleged violations outlined herein.

60. Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiff has exhausted his administrative remedies because he complied with the notice requirements outlined in Labor Code § 2699.3. On September 15, 2022, Plaintiff submitted notice to the LWDA and Defendants informing them of the Defendants’ alleged Labor Code violations pursuant to the PAGA. (See **Exhibit 1**.) Pursuant to the PAGA, the LWDA had 65 days to provide notice of whether it intended to investigate the alleged violations. To date, the LWDA has not provided notice of its intent to investigate the alleged violations. Plaintiff thus has the right to pursue, and does pursue, the asserted claims under PAGA in a representative capacity pursuant to Labor Code §§ 2698 *et seq.*

61. As set forth herein, RHCA has committed, and continues to commit, numerous violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in his representative capacity, to recover, on behalf of himself, all other aggrieved employees, the state of California, and the general public, civil penalties as well as attorneys’ fees and costs from Defendants for the alleged violations, described herein.

62. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201-204; 210; 226; 226.3; 226.7; 510; 512; 558; 1174; 1174.5; 1194; 1194.2; 1197; 1197.1; 1198; and 2802. Plaintiff and other aggrieved employees are entitled to, and therefore seek, the civil penalties described in Labor Code § 2699(f) for the violations of law described herein.

63. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other aggrieved employees, is entitled to, and therefore seeks, attorneys' fees and costs.

64. Plaintiff expressly disclaims the recovery of any "amount sufficient to recover underpaid wages" on behalf himself and all other aggrieved employees.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(By Plaintiff, in his Representative Capacity, against Defendant and Does 1-50)

PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Labor Code §§ 2698 *et seq.*]

65. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

66. Plaintiff, in his representative capacity on behalf of himself and all other aggrieved employees, is entitled to and thus seeks to recover civil penalties through a representative enforcement action based on violations of the following Labor Code and/or IWC Wage Order provisions:

- a. Failing to timely pay all minimum and/or regular wages during employment in violation of Labor Code §§ 201-204; 210; 1194; 1194.2; 1197; 1197.1; 1198; and IWC Wage Order No. 7-2001;
- b. Failing to timely pay all overtime wages during employment Labor Code §§ 204; 210; 510; 558; 1194; 1198; and IWC Wage Order No.7-2001;
- c. Failing to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods during employment in violation of Labor Code §§ 201-204; 226.7; 512; 558; 1198; and the "Meal Periods" section of IWC Wage Order No. 7-2001;
- d. Failing to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods during employment in violation of Labor Code §§

201-204; 226.7; 1198; and the “Rest Periods” section of IWC Wage Order No. 7-2001;

e. Failing to furnish accurate itemized wage statements in violation of Labor Code §§ 226; 226.3; and the “Records” section of IWC Wage Order No. 7-2001;

f. Failing to maintain accurate employment, time, and/or payroll records in violation of Labor Code §§ 226; 1174; 1174.5; and the “Records” section of IWC Wage Order No. 7-2001;

g. Failing to reimburse for necessary business expenses Labor Code § 2802;

h. Failing to timely pay all wages.

67. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code §§ 201.3; 203; 204; 204(b); 204.1; 204.2; 205; 205.5; and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff, in his representative capacity on behalf of himself and all other aggrieved employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 210.

68. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation for 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 deduction statement or fails to keep the records required in section 226(a), this civil penalty is in addition to any other penalty provided by law. Plaintiff, in his representative capacity on behalf of himself and all other aggrieved employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 226.3.

69. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for the initial violation and \$100 per pay period for each underpaid employee for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC. Plaintiff, in his

1 representative capacity on behalf of himself and all other aggrieved employees, is entitled to, and
2 therefore seeks, the civil penalty imposed by Labor Code § 558.

3 70. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to
4 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of
5 \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code
6 § 2699 for a violation of Labor Code § 1174(d). Plaintiff, in his representative capacity on behalf
7 of himself and all other aggrieved employees, is entitled to, and therefore seeks, the civil penalty
8 imposed by § 1174.5.

9 71. Labor Code § 1197.1 imposes a civil penalty of \$100 for each underpaid employee
10 for each pay period for which the employee is underpaid and a subsequent civil penalty of \$250
11 for each underpaid employee for each pay period for which the employee is underpaid for paying
12 or causing an employee to be paid a wage less than the minimum wage. Plaintiff, in his
13 representative capacity on behalf of himself and all other aggrieved employees, is entitled to, and
14 therefore seeks, the civil penalty imposed by Labor Code § 1197.1.

15 72. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee
16 for the initial violation, and \$200 per pay period, per employee for each subsequent violation for
17 all Labor Code provisions for which a civil penalty is not specifically provided, including, but not
18 limited to, Labor Code §§ 201-204; 210; 226; 226.3; 226.7; 510; 512; 558; 1174; 1174.5; 1194;
19 1194.2; 1197; 1197.1; and 1198. Plaintiff, in his representative capacity on behalf of himself and
20 all other aggrieved employees, is entitled to, and therefore seeks, the civil penalty imposed by
21 Labor Code § 2699(f).

22 73. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
23 brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and
24 costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other aggrieved
25 employees, is entitled to, and therefore seeks, attorneys' fees and costs.

26 74. Plaintiff, in his representative capacity on behalf of himself and all other aggrieved
27 employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor
28 Code § 218.5 and Code of Civil Procedure § 1021.5.

75. Plaintiff, in his representative capacity on behalf of himself and all other aggrieved employees, requests further relief as described in the below prayer for relief.

PRAYER FOR RELIEF

Plaintiff, in his representative capacity, prays for judgment against Defendant(s) and in favor of the state of California, Plaintiff, and all other aggrieved employees as follows:

- a. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code §§ 210; 226.3; 558; 1174.5; 1197.1; 2699(f) and/or other applicable law;
- b. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code § 2699(f);
- c. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, Labor Code §§ 210; 1194; 2699(g)(1); Code of Civil Procedure § 1021.5; and the "common fund" theory; the "substantial benefit" theory; the "catalyst" theory; and/or other applicable law; and
- d. For any and all other relief as this Court deems proper and just and is available under Labor Code §§ 2698 *et seq.*

Dated: February 17, 2023

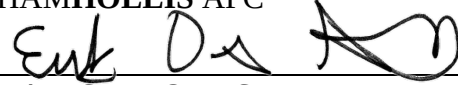
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By: 
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EXHIBIT 1

September 15, 2022

Attorneys at Law

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Erik Dos Santos
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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Rolling Hills Community Association of Rancho Palos Verdes
1 Portuguese Rd.
Rolling Hills, CA 90274

Rolling Hills Community Association of Rancho Palos Verdes
c/o Kristen Raig, Agent for Service of Process
1 Portuguese Rd.
Rolling Hills, CA 90274

**Re: Luis Gonzalez's Wage and Hour Claims Against Rolling Hills
Community Association of Rancho Palos Verdes**

Dear Labor and Workforce Development Agency and Rolling Hills Community Association of Rancho Palos Verdes:

Please be advised that Luis Gonzalez ("Claimant") has retained our firm, GrahamHollis, APC, to represent him for various claims against his employer Rolling Hills Community Association of Rancho Palos Verdes ("the Company").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor Code violations Claimant claims that the Company committed against him and all other current and former employees of the Company in California during the relevant statutory period. Claimant provides this notice, which includes facts and theories to support the Labor Code violations herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code § 2699.3. Claimant desires to file a civil action to enforce his rights under the Labor Code and seek compensation accordingly.

Pursuant to Labor Code § 2699(a), and by way of this written notice, Claimant intends to represent himself and all other current and former employees who performed work for the Company in California during the relevant time period (referred to herein as "aggrieved employees"). All aggrieved employees, including Claimant are believed

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to have suffered at least one of the Labor Code violations described herein. Claimant therefore contends that he and all other aggrieved employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Rolling Hills Community Association of Rancho Palos Verdes (“RHCA”) is a nonprofit corporation with its principal place of business located in Rolling Hills, California. RHCA is a community-based association that was established in 1936 to provide services to residents of the Rolling Hills neighborhood in Los Angeles County. Services include, but are not limited to, maintaining files on all properties within the community, reviewing plans and issuing building permits, and maintaining gate operations. RHCA is governed by a volunteer Board of Directors that serve three-year terms. Current board members include: Anne Smith, Annie Occiphinti, David McKinnie, Fred Lorig, and Ty Bobit.

Claimant has been employed by, or has otherwise performed work for, the Company as a Gate Attendant from approximately March 2020 to the present. As a Gate Attendant, Claimant’s job duties consist of, but are not limited to, confirming that visitors have permission to enter the premises by checking resident’s guest lists and/or confirming verbally with residents, calling law enforcement or emergency medical services when needed, and cleaning and sanitizing the gatehouse at the end of each shift.

Claimant is scheduled to work five (5) days per week and eight (8) hours per day, from 2:00 p.m. to 10:00 p.m. At all relevant times, Claimant is classified as a non-exempt employee and is compensated on an hourly basis. Claimant is compensated at an hourly rate of \$17.00 per hour and is paid bi-weekly. Claimant also receives a Christmas and a Birthday bonus from the Company.

The Company denies Claimant and other aggrieved employees in California specific rights afforded to them under the California Labor Code and the applicable Industrial Welfare Commission Wage Order (“IWC Wage Order”). For instance, the Company fails to pay Claimant and other aggrieved employees all minimum, regular, and overtime wages owed for all hours worked; fails to provide them with legally compliant meal and rest periods, or premium pay for missed or deficient meal or rest periods; fails to maintain accurate records or issue them accurate itemized wage statements; and fails to reimburse them for all necessary business expenses.

The Company fails to provide Claimant and other aggrieved employees the opportunity to take legally compliant 30-minute, off-duty meal periods commencing before the start of their sixth hour of work. The Company maintains an illegal meal period policy. The Company’s meal period only authorizes meal breaks for employees who work 8.5 hours or more in a day. Additionally, the meal period policy fails to authorize a meal period before the end of the fifth hour of work. The Company also utilizes illegal on-duty meal period agreements, which illegally waive certain employees’ meal periods.

Additionally, for some shifts, a “breaker” attendant is scheduled to drive to each of the three gates in the Rolling Hills Neighborhood. The breaker’s primary role is to relieve other gate attendants to take his or her 30-minute meal break and 15-minute rest breaks. If a breaker is not scheduled, then Claimant and other aggrieved employees cannot take a 30-minute meal break and forego rest breaks. Of note, breakers were only scheduled from September-October 2020, and were not scheduled before and have not

been scheduled after this period of time. Additionally, due to the long distances between each gate, when breaker attendants were scheduled, they often arrived late. Due to this late arrival, Claimant and other aggrieved employees often receive late meal breaks that do not commence before their sixth hour of work.

Claimant also alleges that the Company did not authorize and permit aggrieved employees to take legally compliant, off-duty 10-minute rest periods for every four (4) hours worked. Claimant contends that the Company's failure to provide legally compliant rest periods to aggrieved employees was largely due to insufficient coverage and/or the lack of an enforced schedule for rest periods. For instance, Claimant receives a printed schedule for rest breaks daily, but due to irregularities in the breaker shifts, the gate attendants typically are unable to take breaks at these scheduled times and/or take the rest breaks at all. If a breaker is not scheduled, Claimant and other aggrieved employees forego all rest breaks. Additionally, graveyard shifts from 10:00 p.m. to 6:00 a.m. do not have a breaker, and as such work through all 30-minute meal and 10-minute rest breaks.

Even though Claimant has not received legally compliant meal and rest periods, the Company did not pay Claimant the additional one hour of pay at his regular rate of pay that Claimant was owed for each workday that the Company did not provide Claimant a compliant meal or rest period, as required under the Labor Code and the applicable IWC Wage Order. On information and belief, the Company similarly failed to pay other aggrieved employees an additional hour of pay at their respective regular rates of pay for each workday that they were not provided a compliant meal or rest period. Consequently, the Company owes Claimant and other aggrieved employees a meal and rest period premium for each workday that Claimant and other aggrieved employees were not provided a compliant meal and rest period.

Claimant and other aggrieved employees are also not paid all minimum, regular, and/or overtime wages for all time spent working because the Company failed to pay them for the time they spent communicating with supervisors via phone call or text message outside of scheduled work hours. Despite the fact that all time spent performing these duties was compensable work hours and the Company was required to compensate Claimant and other aggrieved employees accordingly, the Company did not count all of this time as hours worked and did not provide all remuneration. The Company also failed to include bonuses into the regular rate of pay when Claimant and other aggrieved employees worked overtime.

The Company also requires Claimant and other aggrieved employees to report for work ten (10) to fifteen (15) minutes prior to the start of every scheduled shift to prepare for the day. Claimant and other aggrieved employees do not receive any compensation for the time spent prior to their shift starting. Accordingly, Claimant and other aggrieved employees were not paid all minimum, regular, and overtime wages for all hours worked.

As a direct result of the Company's illegal policies and procedures, the Company failed to maintain accurate records reflecting, among other things, all of Claimant's and other aggrieved employees' time worked and wages paid, as well as all meal and rest period premiums owed, in violation of California Law.

Furthermore, the Company fails to reimburse Claimant and, on information and belief, other aggrieved employees for all necessary business expenses that are incurred in the discharge of their job duties. For instance, Claimant was required to use his personal cell phone to clock in and clock out for his shift and meal break on the ADP application. Despite mandating aggrieved employees, including Claimant, to use their personal cell phone in the discharge of their work duties, the Company did not have a policy, practice, procedure and/or guideline of reimbursing aggrieved employees. Claimant and other aggrieved employees did not receive any reimbursement for the use of their personal cell phones as required by California law.

As a direct result of the aforementioned Labor Code violations, the Company did not pay Claimant and other aggrieved employees all wages due and payable during their employment, including minimum, regular, and overtime wages for all hours worked, and meal and rest period premium wages as required under Labor Code sections 201, 202 and 204.

Due to the foregoing Labor Code violations, the Company denied Claimant and other aggrieved employees certain rights afforded to them under the California Labor Code and IWC Wage Orders and Claimant, therefore, makes these claims against the Company on behalf of himself and all other aggrieved employees of the Company in California. The facts, claims, and/or legal theories contained in this written notice are based on the information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories of liability discovered after the sending of this letter on behalf of himself and all other current or former Aggrieved Employees against the Company and/or other persons or companies that may be discovered after the sending of this letter. Claimant reserves the right to revise these facts and/or add any new claims or legal theories by amending this written notice and/or by adding facts, claims, and/or legal theories to his civil complaint.

FAILURE TO PROVIDE MEAL PERIODS AND/OR TIMELY PAY PREMIUM WAGES
(Labor Code §§ 204, 226.7, 512, and the "Meal Periods" section of the applicable IWC Wage Order)

Section 512(a) of the Labor Code provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (Emphasis added.)

In pertinent part, the "Meal Periods" section of the applicable IWC Wage Order states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

A meal period generally comports with the requirements of California law if the employee has at least 30-minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id.* at p. 1040 [internal citations omitted].)

Pursuant to Labor Code § 226.7:

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

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

As set forth herein, the Company failed to provide Claimant and other aggrieved employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work. Consequently, Claimant and other aggrieved employees are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided. Claimant will pursue all

available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

**FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND/OR TIMELY PAY
PREMIUM WAGES**

(Labor Code §§ 204, 226.7, and the “Rest Periods” section of the applicable IWC Wage Order)

The “Rest Periods” section of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided. (Emphasis added.)

An employer has not authorized or permitted lawful off-duty rest periods unless the employer relieves its employees of any and all work-related duties and relinquishes all control over how its employees spend their time during rest periods. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

In pertinent part, Labor Code § 226.7 provides:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

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

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at pp. 1103-1114.)

As discussed herein, the Company failed to authorize aggrieved employees, including Claimant, to take an off-duty, uninterrupted 10-minute rest period for every four (4) hours worked or major fraction thereof. Therefore, Claimant and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

**FAILURE TO TIMELY PAY MINIMUM, REGULAR, OVERTIME,
AND/OR DOUBLE TIME WAGES**

(Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and the "Minimum Wages" and "Hours and Days of Work" sections of the applicable IWC Wage Order)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable on twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay "less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise"].)

The "Minimum Wages" section of the applicable IWC Wage Order further provides that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

Labor Code § 1197.1 provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

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Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code § 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 510(a), which codifies an employee’s right to overtime compensation, provides:

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

The “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Order mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code § 1194(a) provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code § 558 provides that “any 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” of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company failed to timely pay all minimum, regular, overtime, and/or double time wages to Claimant and other aggrieved employees for all time engaged in work on behalf of the Company. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all aggrieved employees to the extent permitted by law.

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Labor Code §§ 2802 and 2804)

Labor Code section 2802(a) provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Labor Code section 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code section 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimants will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

Labor Code section 2804 states, “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

As set forth above, the Company required Claimant and, on information and belief, other aggrieved employees to utilize their personal cell phones in the discharge of their duties. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

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FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

(Labor Code §§ 226, 1174, 1174.5, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 1174(c) requires every employer to “keep a record showing the names and addresses of all employees employed...” Labor Code § 1174(d) further requires every person employing labor in California to:

[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 ... employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

An employer is further obliged under Labor Code § 226(b) to keep the information required by Labor Code § 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment.

The “Records” section of the applicable IWC Wage Order also provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

As set forth above, the Company violated its record keeping requirements by failing to accurately record employee hours actually worked including, but not limited to, the Company’s failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all aggrieved employees to the extent permitted by law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer, ... and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

Labor Code § 226(h) further states, “an 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 attorneys’ fees.”

Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As set forth above, the Company failed to furnish Claimant and other aggrieved employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not, among other things, accurately reflect their total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate, the gross wages earned, and the net wages earned. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all aggrieved employees to the extent permitted by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code § 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

Labor Code § 558.1(a) further states that,

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

- (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203.
- (2) For each subsequent violation for the same specific offense, two

hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, and relevant IWC Wage Orders.

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by, among other things, failing to timely pay all regular, minimum, overtime, and/or double time wages; failing to provide legally compliant meal and/or rest periods and/or timely pay premium wages; failing to maintain accurate employment records; and failing to furnish accurate itemized wage statements as required under the Labor Code and the applicable sections of the IWC Wage Order. As a result, the Company is liable for civil penalties under Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f). Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Company's violations on behalf of himself and all aggrieved employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 226(e), 226(h), 558, 1194, 1194.2, 1197.1, and 2698, *et seq.*)

Labor Code §§ 210, 226(e), 226(h), 558, 1194, 1194.2, 1197.1, and 2698, *et seq.*, among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code § 2699(i), an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and he will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided by PAGA, on behalf of himself and all Aggrieved Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company violated the Labor Code and applicable IWC Wage Order, thereby depriving Claimant and other aggrieved employees of the rights and protections afforded to them. Specifically, Claimant contends that the Company violated Labor Code §§ 204, 210, 226, 226.3, 226.7,

510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and the applicable provisions of the IWC Wage Order. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all aggrieved employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Aggrieved Employees, as permitted by the PAGA.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik Dos Santos", with a stylized flourish at the end.

Erik Dos Santos